

CONTRACT FOR ENGINEERING SERVICES

This Contract for engineering services for the Tinker Sewer Mains and Lift Station Elimination ("Contract") is entered into this 19TH day of NOVEMBER, 2024, by and between the Oklahoma City Water Utilities Trust, a municipal trust ("Trust"), and Freese and Nichols, Inc. ("Engineer").

WITNESSETH:

PROJECT NO. TS-0011
TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
PHASE 1
ESTIMATED CONSTRUCTION COST- \$20,000,000

WHEREAS, the Trust intends to direct the Engineer to provide for design and all other engineering services related to a study and engineering report for the phasing of eliminating sewer lift stations in the Southwest Area of Tinker Air Force Base (TAFB) which consists of approximately 5.5 miles of sewer main that is conveyed north to a 36-inch sanitary sewer, and approximately 38 lift stations ("project"); and

WHEREAS, the Engineer will provide professional services for the project in accordance with this Contract, including the scope of work incorporated herein and as set forth in Exhibit A attached hereto; and

WHEREAS, this Contract may be amended in the future to engage the Engineer's services for preparation of Final Plans and Specifications, Bidding, Construction Administration and other services related to this project; and

WHEREAS, the Engineer has been selected under the standards adopted and the procedures prescribed by the resolution establishing procedures for selection of architects and engineers adopted by the City Council on July 23, 1974, amended on December 31, 1974, February 21, 1978, January 22, 1980, November 18, 1986, and August 29, 2023, which resolution, with its amendments, is made a part of this Contract by reference.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter relating to the project, the parties agree to the following:

1. **Definitions**. All terms and phrases not expressly defined herein shall have their ordinary meanings, consistent with Oklahoma and Oklahoma City law, except where the context clearly indicates a different meaning. For purposes of this Contract, the following terms and phrases shall have the meaning subscribed herein:

- A. *Bidding Documents* Those documents required to construct, renovate and/or modernize the project, including but not limited to standard provisions, special provisions, drawings, plans and specifications.

- B. *City Engineer* The officer of the City of Oklahoma City or designee, e.g., “Project Manager” in charge of engineering, construction and maintenance contracts on public rights-of-way, on public lands and capital improvement projects.

- C. *General Manager of the Trust* The officer of the Trust assigned by the Trust to administer the business of the Trust, herein called the “General Manager.”

- D. *Estimated Construction Cost* Not-to-exceed amount which has been designated as the maximum amount for the construction cost of the project.

2. **Basic Services.** The Engineer is hereby engaged and employed by the Trust to perform in accordance with good engineering practices and in the best interest of the Trust in accordance with the professional standard of care all of the work as set out herein and including Exhibit A, which is attached hereto and incorporated as a part of this Contract. The Engineer will provide services associated with research, development, design and construction, alteration, and/or repair of real property and improvements thereon, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, design development, plans and specifications, cost estimates, observations, shop drawing reviews, sample recommendations, assemble operating and maintenance manuals, site visits and other related services: In addition, the Engineer will provide:

A. Master Plan Services – Task 1A

See Exhibit A, related to the Scope of Work for this task.

B. Preliminary Report Services - Task 1B (by possible future amendment)

- (1) Prepare and make all necessary preliminary surveys, investigations, studies, reports and preliminary general plans and specifications. The preliminary investigation shall include a topographical survey of the site, layout of any existing, proposed, and/or recommended sanitary sewers, water lines, storm sewers, all other underground obstructions, street improvements, site drainage and detention studies, as appropriate, any and/or all of which might affect the construction of the project. The preliminary general plans and specifications shall be approved by the City Engineer. All plans shall be submitted with the appropriate title sheet as indicated on the Public Works web page: www.okc.gov/pw (OKC Autocad Standards link).

- (2) Prepare a utility and right-of-way plan showing recommended alignment for relocation of utilities and recommended right-of-way needs. The plan shall include existing and proposed easements. The plan shall show ownership of all properties affected by the project. The Engineer shall acquire the limited ownership list. The Engineer shall complete and submit the limited ownership list within thirty (30) calendar days of the date of a written work order.
- (3) Prepare a construction cost estimate of the improvements, extensions and repairs, and an estimate of all engineering fees, testing costs, right-of-way costs, and inspection fees in connection therewith.
- (4) Hold all necessary conferences with the Trust and all other interested parties (inclusive is the requirement for the Engineer to ensure all utility and right-of-way/easement requirements are well established prior to Preliminary Report submittal). This includes the conduct of a Utility Conference by the Engineer at a location determined by the Trust.
- (5) Prepare the Preliminary Report for submittal to the Trust covering the Engineer's preliminary surveys, studies, investigations and other items as specified in the paragraph "Basic Services" A. (1), (2) and (3) and Exhibit A hereof. If applicable, the report shall include a drainage study with complete computations and calculations and shall cover the total construction work by phases or sections and shall recommend to the Trust the order of construction and completion of each phase of construction. **Note:** For all water and sanitary sewer projects, the Engineer will prepare a separate "Engineering Report" (in accordance with Oklahoma Department of Environmental Quality (ODEQ) standards) for submittal to ODEQ.
- (6) Furnish the Trust up to two (2) hard copies and one (1) PDF copy of the Preliminary Report free of cost to the Trust. The cost of any additional copies of Preliminary Reports as the Trust may require will be reimbursed at the actual cost thereof.
- (7) Geotechnical Investigation:
 - a. The Engineer will recommend to the Trust the name of a geotechnical investigation/services firm from the Trust's listing of annual on-call engineering and testing laboratory contract firms.
 - b. The Engineer will identify and coordinate all requirements for geotechnical investigation and procure all geotechnical services related thereto, including but not limited to sampling, test boring, subsurface explorations, analysis and other investigations required for determining conditions and geotechnical recommendations for

foundations and paving design. Identify and coordinate sampling and analysis of water and other substances as appropriate.

- c. The Trust will approve the selected laboratory and the Engineer will pay the costs of such sampling, analysis, borings, tests, or explorations and investigations.
- (8) Prepare legal descriptions for the necessary temporary and permanent easements and prepare legal descriptions necessary for property to be acquired on forms provided by the Trust. Additionally, provide right-of-way ownership maps showing locations and dimensions of right-of-way to be acquired and assist the Trust when requested in negotiations with owners of property acquired for or affected by the improvements. When requested by the Trust, the Engineer will provide a proposal for staking of right-of-way for right-of-way acquisition purposes. Said right-of-way staking (when authorized by the Trust) will be billed to the Trust at the actual cost thereof in accordance with the "Payments" paragraph of this Contract.
 - (9) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
 - (10) The Preliminary Report shall be recommended by the General Manager for formal approval by the Trust (if applicable, the Engineer shall also prepare an Engineering Report, in accordance with Oklahoma Department of Environmental Quality (ODEQ), for submittal to ODEQ).

C. Final Plan Services - Task 2 (by possible future amendment)

- (1) Prepare final plans, specifications and construction cost estimate.
- (2) After approval of the Preliminary Report in whole or in part by the City, the Engineer shall proceed as directed in writing by the City Engineer to prepare detailed plans and specifications, using wherever applicable, City standards, details and specifications for such work. The Engineer shall complete said plans and specifications for submission to the City for its approval.
- (3) Prepare and furnish the Trust all final plans and specifications, all necessary forms for construction proposals and advertisements for Bids, subject to approval of the Trust, employing wherever applicable, standard Trust forms, in completed form.
 - a. Scale for plan and profile sheets for preliminary and final plans shall be approved by the City Engineer prior to preparation of plans.

- b. Aerial photographs will not be permitted for plan and profile sheets of the final construction plans.
 - c. The Engineer shall indicate on final plan and profiles all water lines, sanitary sewer lines, gas lines, oil lines, telephone conduits and all other underground obstructions, which might affect the construction of the project.
- (4) Notify all known utility companies and other entities with facilities affected by the proposed Project. Furnish one (1) copy of the plans to each of the utility companies and entities as determined necessary. Coordinate necessary utility and facility relocations or modifications for the Project and conduct a final conference at 60% plans.
- (5) The 60% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 60% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report submittal.

Furnish the Trust up to two (2) copies of the project 60% plans for review along with a detailed Fixed Limit of Construction cost estimate for said improvements, extensions and repairs. This submittal does not stop, impact or otherwise delay the Engineer's contract-allotted work order time for completion and submittal of final plans and specifications. Incorporate all recommended changes prior to submittal of the 95% final plans and specifications.

- (6) The 95% submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the 95% plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 60% plan submittal.

Upon completion of 95% final plans, the Engineer will submit "check print" sets to the Project Manager for review by appropriate departments/divisions. Upon completion of the "check print" reviews, the Engineer shall revise the plans accordingly. The Project Manager shall resolve any conflicts in comments. Upon completion of corrections, the

Engineer will then submit a final plans check set (along with the annotated “check print” copies) for a “final” review by the Project Manager.

- (7) The Final Plan submittal shall include a complete drainage report. This report shall include all storm sewer design calculations to support the storm sewer design included in the Final plans. The design calculations in this report shall conform with the storm sewer systems shown in the plans and shall include all drainage area maps; runoff calculations; storm sewer inlet, pipe, and other structure design calculations that are required for a complete review of the storm sewer system design. This report shall incorporate any, and all, comments in reference to the storm sewer design that were included in the review of the Preliminary Report and 95% plan submittal.

Prepare and furnish the Trust an electronic copy of all final plans and specifications, all necessary forms for Electronic Bidding and advertisements for Bids, subject to approval of the Trust, employing standard Trust forms, in completed form.

Furnish the Trust one (1) PDF of the final plans and specifications, all free of cost to the Trust. The cost of any additional copies of plans and specifications as the Trust may require will be reimbursed at the actual cost thereof.

- (8) Meet with the Trust or its representatives at any time requested for consultation or conference as directed in writing by the City Engineer.
- (9) Prior to the submission of Bidding Documents to the Trust for solicitation of Bids, the Engineer shall submit plans and specifications required for the granting of all necessary building permits.
- (10) Prepare all necessary plans, studies and applications for submission to City, State and Federal authorities as may be required for the initiation, prosecution, construction and for approval of grants and permits at no additional cost to the Trust.
- (11) Final design shall include the establishment of permanent horizontal and vertical alignment control points throughout the entire project limits using United States Geological Survey (USGS) data. The Engineer shall provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City’s GIS control network and datum. For all SC-XXXX projects, the Engineer shall provide an electronic file on the location of all sanitary sewer manhole cover coordinates, which shall be tied to the City’s GIS monument system.

D. Bidding Services - Task 3 (by possible future amendment)

- (1) Meet with the Trust or its representatives at any time requested for consultation or conference, as directed in writing by the General Manager. In this connection, the Engineer shall hold at least one (1) Pre-Bid Conference with prospective Bidders. The Engineer shall provide a power point presentation of the Bidding Documents for the purpose of pre-bid information to the prospective Bidders at a location determined by the Trust.
- (2) Answer all Trust and Bidder's questions regarding the bidding of the project and, upon approval by the City Engineer, prepare an electronic copy of all addendums for distribution.
- (3) The Trust will receive the Bids through the Electronic Bidding System and the Engineer will receive a copy of the Bids from the Trust. The Engineer will review and evaluate the Bids and will make recommendations to the Trust for an award. The Engineer shall assist, review and make recommendations to the Trust on all construction contract issues.
- (4) If Bids are received, all of which exceed the Estimated Construction Cost, the Engineer shall revise its plans as directed by the Trust, pursuant to the paragraph "Estimated Construction Cost" of this Contract.

E. Construction Administration Services - Task 4 (by possible future amendment)

- (1) The Engineer shall provide administration of the construction contract during construction and until final payment is made to the Construction Contractor. The Engineer will have the authority to act on behalf of the Trust only to the extent provided in this Contract, unless otherwise modified by written instrument.
- (2) Meet with the Trust or its representatives at any time requested for consultation or conference as directed in writing by the General Manager.
- (3) Assist in coordination of pre-work conferences for the Construction Contractor, the Trust and all other interested parties. The Trust will issue all work orders for the project.
- (4) Establish permanent horizontal and vertical alignment control points throughout the entire project limits from which the Construction Contractor shall set its control for construction (if applicable to this project, the Engineer will also provide bridge centerline horizontal and vertical control points). Provide a permanent benchmark within two hundred (200) feet of the beginning and ending of the proposed construction. All surveys and control points shall be tied to the City's GIS control network and datum. Construction staking is to be performed by the Construction Contractor.

The Engineer will periodically review the Construction Contractor's construction staking survey field notes and the actual staking to verify line and grade is in accordance with the Bidding Documents.

- (5) Provide interpretation of the plans and specifications in accordance with the intent of the Bidding Documents. Such interpretations shall be made upon request of the Trust and its representatives or the Construction Contractor, to safeguard the Trust against defects and deficiencies in the construction. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by the Construction Contractor. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (6) Perform coordination of the work of inspection bureaus and laboratories selected by the Trust for the inspection and testing of construction materials. Receive reports and recommend approval or rejection of the materials based upon reports made by such laboratories or bureaus. The costs of all such tests and inspection by laboratories or bureaus will be paid by the Trust.
- (7) Review and recommend approval of testing laboratory claim vouchers within ten (10) calendar days of receipt of claim.
- (8) The Engineer shall visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer will further determine, in general, if the work is being performed in a manner indicating that the work, when completed, shall be in accordance with the Bidding Documents. However, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work. The Engineer will keep the Trust informed of progress of the work, and will endeavor to guard the Trust against defects and deficiencies of the work. The Engineer does not guarantee the performance of the contract by the Construction Contractor, nor is it responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it shall not be responsible for a Construction Contractor's failure to carry out the work in accordance with the Bidding Documents.
- (9) Review all necessary information for monthly estimates (**within seven (7) calendar days of receipt from the contractor**) of the quantity of work performed, and review the claim vouchers for payments to be made to the

Construction Contractor during the progress of the work and upon completion of any and all work and report the same to the Trust.

- (10) Review the Construction Contractor's final request for payment (**within fourteen (14) calendar days of receipt from the contractor**) and certify that, to the best of its knowledge and industry standards, the completed work conforms to plans and specifications.
- (11) Prepare and keep a record of the work performed by any contractor on this project and file with the Trust a monthly progress report covering the work performed by the contractor(s). The progress report shall be attached to the Construction Contractor's claim for partial or monthly payment.
- (12) Except as otherwise provided in this contract, communications with the Engineer's consultants will be through the Engineer. Communications with the Construction Contractor's subcontractors and material suppliers will be through the Construction Contractor. Communications with other Trust contractors will be through the Trust. The Engineer shall be available at all times for the purpose of communication.
- (13) The Engineer shall recommend to the General Manager rejection of work that does not conform to the Bidding Documents. At any time during construction, the Engineer may be given the authority to require additional inspection or testing of the work by the General Manager.
- (14) The Engineer shall review for conformance with Bidding Documents, and approve or take other appropriate action upon the Construction Contractor's submittals, such as shop drawings, product data and samples. The Engineer's review of submittals will be promptly completed, but no longer than fourteen (14) calendar days from receipt of submittals. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Contractor as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not relieve the Construction Contractor of its contractual obligation to the Trust as required by the Bidding Documents. The Engineer's review of the Construction Contractor's submittals will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (15) The Engineer shall reply to the Construction Contractor's requests for information, prepare clarification drawings, prepare change orders, field orders, amendments, field changes and construction change directives. The

Engineer may recommend minor changes in the work, not inconsistent with the intent of the Bidding Documents. Such recommended changes shall be made by written order approved by the General Manager and shall be binding upon the Construction Contractor.

- (16) The Engineer shall conduct observations and inspections as required to determine the quality of work to be accepted and the date or dates of final completion and acceptance. The Engineer shall receive and forward to the Trust all written warranties and any related documents required by the Bidding Documents and assembled by the Construction Contractor. The Engineer will recommend approval of the Construction Contractor's final certificate of payment upon completion of the work and compliance with the requirements of the Bidding Documents.
- (17) The Engineer will review daily reports furnished by the Trust's inspector to evaluate and determine compliance with the Bidding Documents. Significant variations between reported conditions and the Bidding Documents shall be verified by the Engineer and resolved with the Construction Contractor and the Trust. The Engineer's duty to review daily reports and initiate remedial action shall not extend to the Construction Contractor's construction means, methods, techniques, sequencing or procedures or for safety precautions and programs in connection with the work.
- (18) The Engineer shall maintain a record ("log") of all documents it receives, creates or transmits during the construction of the project. The log shall include time requirements of responses if needed.

Clarifications to Construction Administration - Task 4

- (1) The Engineer shall be responsible for ensuring Construction Contractor compliance with the Construction Contract Documents. As such, the Engineer will administer the Construction Contract and will formally certify that the Construction Contract has been completed in conformance with the Construction Contract Documents as prepared by the Engineer.
- (2) Coordinate, schedule, and administer the pre-work conference(s) for the Construction Contract. This will include scheduling and coordination with the Construction Contractor, the Trust, other City departments and Trusts affected by the project, and all other interested parties such as utility companies, regulatory agencies, testing laboratories, inspection services, etc. The Engineer will prepare the required sign-in sheet and agenda prior to the meeting and will distribute minutes within two (2) days after the meeting. During the pre-work conference(s), the Engineer will discuss:
 - a) Overall project intent and included work;

- b) key items within plans and specifications;
 - c) Required shutdowns or outages that will impact service to customers or normal facility operations;
 - d) additional permits necessary for completion of the Construction Contract Documents, including, but not limited to: stormwater permits, work zone permits, building permits, etc.;
 - e) Construction Contractor schedule and milestones;
 - f) material testing laboratory and required test schedule;
 - g) pipeline and/or equipment factory testing and testing after installation including startup procedures;
 - h) SCADA installation requirements, testing and milestones;
 - i) operation and maintenance manuals and equipment warranties;
 - j) processes for claims, submittals and other project documents;
 - k) project acceptance and commissioning;
 - l) Engineer certification of project completion in accordance with the Construction Contract Documents.
- (3) The Engineer will review the Contractor's Project Schedule submissions for compliance and review revisions monthly, or more frequently as necessary, to determine if the Contractor's Project Schedule accurately describes the progress of the Work and if the Project will be completed in accordance with the requirements specified in the Contract Documents. If Construction Contractor cannot maintain compliance with the time requirements specified in the Construction Contract Documents, the Engineer will actively work with the Construction Contractor to develop a recovery project schedule that allows for completion of the Construction Contract in accordance with the Construction Contract Documents. Should the Construction Contractor not comply with the schedule recovery requirements, the Engineer will provide recommendations to the Trust on a course of action. Any required notifications to the Construction Contractor will be prepared by the Engineer for Trust execution.
- (4) The Engineer shall coordinate and schedule regular progress meetings necessary for coordination and successful completion of the Construction Contract and shall visit the project site(s) at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work. The Engineer shall prepare agendas and sign-in-sheets two (2) days prior to the progress meeting and shall prepare minutes summarizing the meetings within two (2) days after the progress meeting. The Engineer will further determine if the work is being performed in accordance with the Construction Contract Documents. Unless the Engineer is also providing Inspection Services, the Engineer is not required to make exhaustive or continuous on-site inspections to check quality or quantity of the work.
- (5) When the Engineer is not providing Inspection Services, the Engineer shall recommend to the City and the Trust the rejection of work that does not

conform to the Construction Contract Documents. At any time during construction, the Engineer may be given the authority by the Trust to require additional inspection or testing of the work. When the Engineer is providing Inspection Services, the requirements for inspection will be pursuant to Task 6 for Inspection Services in this contract.

- (6) The Engineer shall coordinate and schedule the Pre-Final Inspection for the Construction Contract upon the completion of work by the Construction Contractor in accordance with the Construction Contract Documents. The Engineer shall complete the Pre-Final Inspection with the Construction Contractor and the City's and the Trust's representatives and shall develop a punch list of all identified deficiencies or a Final Inspection Report if no deficiencies are identified. Deficiencies shall be items found to not comply with the Construction Contract Documents. Upon completion of the punch list items, the Engineer shall verify the completion of the punch list items and will then coordinate and schedule the Final Inspection with the Construction Contractor and the City's and the Trust's representatives. The Engineer shall then submit to the Trust a Certificate of Completion wherein it is stated that all work performed by the Construction Contractor was completed in accordance with the Construction Contract Documents.
- (7) During the course of construction, the Engineer shall review and approve all warranties and guarantees submitted by the Construction Contractor. The Engineer shall then present the approved warranties and guarantees to the Trust for execution.
- (8) The Engineer shall recommend to the Trust to beneficially occupy or begin operation and use of the facilities when the Construction Contractor has sufficiently completed work in accordance with the Construction Contract Documents as necessary to maintain continuous operations or service.

F. As-Built Drawing Services - Task 5 (by possible future amendment)

- (1) Upon termination or completion of this Contract, the Engineer shall, at its expense, correct the original drawings, show all as-built changes based on information from as-built field surveys, reflecting the actual construction of the project and shall furnish the Trust, without expense, electronic files on CD ROM in the latest AutoCAD version 2013 compatible with the City of Oklahoma City's current software and a PDF file in color. All written comments, changes or other markings on the final drawings must be highlighted in **RED** color.
- (2) Upon termination or completion of this Contract, the Engineer shall also furnish the Trust, without cost to the Trust, all basic calculations used in the design of the structures and original field notes on all land surveys, at

which time Engineer shall receive the retained portion of its fee as provided in Exhibit B of this Contract.

- (3) The Engineer shall submit GPS permanent benchmark with as-built drawings.
- (4) For all building/facility projects, the Engineer shall provide to the Trust an Operations and Maintenance (O&M) Manual (three copies) covering all systems and equipment constructed, installed or remodeled as a part of the construction project.

G. Provide Inspection Services – Task 6 (by possible future amendment)

- (1) The Engineer shall provide a qualified Inspector to perform the work identified within this task.
- (2) Prior to the advertisement for bids, prepare and submit to the Trust, for review and acceptance, a résumé showing the Inspector's experience and qualifications for this particular project. However, the Trust, through their review and acceptance, does not take any responsibility or liability for the Inspector or their work.
- (3) The Inspector will attend all pre-bid and pre-work conferences.
- (4) The Inspector shall perform inspection of all work under the Construction Contract.
- (5) The Inspector shall perform inspection of all materials received at the construction site and shall ensure that their storage is in accordance with all Construction Contract Requirements, manufacturer requirements and/or material labels.
- (6) Should work-in-progress or completed work be identified to not meet the requirements of the Construction Contract Documents, the Inspector shall immediately notify the Construction Contractor, the Engineer, and the City and the Trust if the Inspector believes the work does not conform to the contract documents.
- (7) The Inspector shall attend all job site meetings and shall report to the Engineer and the City and the Trust all issues concerning progress, quality assurance, quality control and dispute resolution.
- (8) The Inspector shall maintain at a readily available location, a copy of all Construction Contract documents and other pertinent documents in an orderly manner including a current set of construction documents annotated to include all Construction Contract related changes and clarifications. The

documents shall include, but not limited to, Construction Contract Documents, Requests for Information (RFIs) and the subsequent response to the RFI, Discrepancy and Nonconformance Reports, supplemental drawings, Engineer approved shop drawings, submittals, samples, and color schedules, correspondence, accepted schedules, construction change orders, amendments, logs, meeting minutes and a Construction Contractor directory.

- (9) The Inspector shall prepare and submit a Daily Inspection Report to the Engineer, the City and the Trust and the Construction Contractor.
- (10) The Inspector shall maintain all shop drawings, project data, or samples in an easily retrievable filing system.
- (11) The Inspector shall maintain a daily log book or diary, recording all pertinent inspections, including but not limited to:
 - a. Inspector's time and activities;
 - b. Weather conditions at the site;
 - c. The nature and location of work being performed by the Construction Contractor;
 - d. Identification of any work that the Inspector believes fails to strictly conform to the contract documents, along with the Inspector's actions regarding such inspections;
 - e. Identification of any work determined to be nonconforming, along with the disposition of such nonconformance;
 - f. Copies of all reports made to the Construction Contractor of nonconforming work;
 - g. Description of all disputes among the Construction Contractor, Subcontractors and Suppliers; and
 - h. Description of how each dispute or nonconforming work is resolved.
- (12) The Inspector shall be present at the construction site while any critical installations and/or necessary testing will be required, is proceeding and shall provide inspection of the quality of construction on a regular and consistent manner. The Inspector will have authority to act on behalf of the Trust only to the extent provided by this Contract. The Inspector is not responsible for creating or implementing the Construction Contractor's schedules nor for any failure by the Construction Contractor to perform its work in accordance with Construction Contract Documents.
- (13) The Inspector shall pre-review the Contractor's pay application to reconcile pay quantities, review and sign the time of completion report, and initial the pay application.

(14) The Inspector may NOT (unless authorized by the Trust):

- a. Authorize deviations from the Construction Contract Documents.
- b. Conduct or participate in tests or third-party inspections.
- c. Assume any of the responsibilities of the Construction Contractor, subcontractors or suppliers.
- d. Expedite the work for the Construction Contractor.
- e. Advise or issue directions to the Construction Contractor concerning aspects of construction means, method, techniques, sequences or procedures, or safety precautions and programs in connection with the work.
- f. Authorize the Trust to beneficially occupy or begin operation and use of the facilities in whole or part.
- g. Reject work or require special inspection or testing.
- h. Order the Construction Contractor to stop the work or any portion thereof.

(15) The discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the project site, including but not limited to, asbestos, asbestos products, polychlorinated biphenyls (PCBs), lead, or other toxic substances is not the responsibility of the Inspector. If the Inspector has actual notice of such hazardous materials, he/she shall notify the City and the Trust immediately of its discovery.

3. **No Extra Work.** No claims for extra work of any kind or nature or character shall be recognized by or be binding upon the Trust unless such work or service is first approved in writing by the Trust.
4. **Additional Services.** Additional Services are project-related services as enumerated in Exhibit "E," attached hereto and made a part hereof, and are not included as Basic Services. Additional Services shall only be provided upon prior written and clearly detailed direction from the General Manager, acting within the limits of State law, Ordinances of the City of Oklahoma City and policies established by the City Council, and upon acceptance by the Engineer. Any Additional Services performed pursuant to the above written direction shall be paid in accordance with the Compensation and Payments paragraphs of this Contract.
5. **Compensation.** The aggregate total compensation for all engineering services under this Contract shall not exceed a total fee of \$274,600, which includes: for Basic Services an amount not to exceed \$234,600, as specifically set forth in Exhibit B, attached hereto and incorporated herein; and, for Additional Services an amount not to exceed \$40,000, as specifically set forth in Exhibit E attached hereto and incorporated herein.
6. **Payments.**

- A. Payment of claims for incremental work completed on each task may be submitted. Invoices for the amount and value of the work and services performed by the Engineer shall be submitted monthly to the Trust and shall meet the standards of quality as established under this Contract. Invoices will include the percentage of completion for each task and payment will be made based on the percentage of the task fee completed. The Trust agrees to pay the Engineer, as compensation for such engineering services as listed herein. The invoices shall be prepared and submitted by the Engineer and be accompanied by a status report identifying the task components, effort accomplished during the time period, and the percentage of completion thereof, to the Trust. Payment of any invoice for any work or services is not deemed to be recognition of satisfactory performance of said work or services or a waiver of any right of the Trust or any obligation of the Engineer should it be determined later that said work or services were negligently performed or provided or were not performed or provided in accordance with the standards required by this Contract. Surveyors or other professional consultants engaged by the Engineer for the normal structural, electrical or mechanical engineering services shall be billed to the Trust by the Engineer at the actual cost thereof.
 - B. The Engineer shall present two (2) copies of the invoice with two (2) properly executed claim vouchers to the Trust for compensation and payment. The Trust will review the invoice and claim voucher for payment. Should the Trust question or request additional documentation or disapprove all or a portion of any invoice, the Engineer will be notified so that it may provide additional documentation sufficient to demonstrate the invoice and claim should be paid, in whole or in part; provided, however, no invoices or claims shall be paid the aggregate of which are in excess of the "not to exceed" amounts or limitations established in Exhibit B.
 - C. Final payment shall not be deemed to waive any rights or obligations of the parties to this Contract.
7. **Indemnity.** The Engineer will not be required to indemnify, insure, defend or hold harmless the City or participating trusts against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the Trust or their agents, representatives, subcontractors, suppliers or any other entity for whom the Engineer is not otherwise legally responsible.
- The Engineer must indemnify the Trust against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Engineer and any person or entity for which the Engineer is legally responsible are adjudicated liable.
8. **Insurance.** Prior to approval of this contract, the Engineer shall obtain insurance coverage as provided below. The Engineer must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement

pages shall be provided to the City and its participating trusts on a timely basis if requested by City staff. The Engineer will provide the Certificate(s) of Insurance to the City and its participating trusts with the executed contract (contract will not be processed for approval without the contract-required verification of insurance indicated on the Certificate(s) of Insurance). Certificate(s) of Insurance must be insurance industry standard forms, such as ACORD.

All insurance must be from responsible insurance companies which are authorized to do business in the state of Oklahoma and are acceptable to the City and its participating trusts. The required insurance coverage and policies shall be performable in Oklahoma City, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Contract under any other provision of this Contract, including but not limited to any indemnification provision.

- A. Additional Insureds: All liability policies (except professional liability and worker's compensation and employer's liability policies) shall provide that the City of Oklahoma City and the Oklahoma City Water Utilities Trust are named additional insureds without reservation or restriction.

All insurance coverage of the Engineer shall be primary to any insurance or self-insurance program carried by the City and its participating trusts.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

Subrogation as to any additional insured shall be waived.

- B. Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000 per occurrence. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Engineer is stating a deductible does not exist and thus a deductible is not approved or accepted. If the Engineer's deductible is higher than declared, then the City and its participating trusts will hold an equal amount from pay claims until corrected.

Self-insured retentions will not be accepted unless accompanied by a bond (financial guarantee bond) or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Engineer's self-insured retention.

- C. Policy Limits: The insurance coverage and limits required of the Engineer under this Contract are designed to meet the minimum requirements of the City and its participating trusts. Such coverage and limits are not designed as a recommended

insurance program for the Engineer. The Engineer alone shall be responsible for the sufficiency of its own insurance program. Should the Engineer have any question concerning its exposures to loss under this Contract or the possible insurance coverage needed therefore, the Engineer should seek professional assistance.

Except for professional liability insurance, all policies shall be in the form of an “occurrence” insurance coverage or policy. If any insurance is written in a “claims-made” form, the Engineer shall also provide tail coverage that extends a minimum of two years from the expiration of this Contract.

The minimum aggregate limits of such insurance policies and continuing coverage shall be:

- (1) Worker's Compensation and Employer's Liability Insurance. The Engineer shall provide and maintain, during the term of the Contract, worker's compensation insurance as prescribed by the laws of the state of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the site of the Project, and in case any work is subcontracted, the Engineer shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Engineer. In the event any class of employees engaged in work performed under the Contract or at the site of the Project is not protected under such insurance heretofore mentioned, the Engineer shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
- (2) Commercial General Liability Insurance. The Engineer shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, as provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (3) Automobile Liability Insurance. The Engineer shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Contract, including the City and any public trust participating in the Project, under the Governmental Tort Claims Act, 51 O.S. § 151 *et seq.*, (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein.

Property damage liability in an amount not less than Two Hundred Thousand Dollars (\$200,000.00) per claimant for loss, damage to or destruction of property, including but not limited to consequential damages arising out of a single accident or occurrence.

All other liability in an amount not less than One Hundred Seventy Five Thousand Dollars (\$175,000.00) per claimant for claims including death, personal injury, and all other claims arising out of a single accident or occurrence.

Single occurrence or accident liability in an amount not less than One Million Dollars (\$1,000,000.00) for any number of claims arising out of a single accident or occurrence.

- (4) Professional Liability Insurance. The Engineer shall provide and maintain professional liability insurance coverage in an amount not less than \$1,000,000 aggregate annual limit liability. Such insurance coverage shall be maintained during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the Trust.

- D. Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by the Trust or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates have been provided to the City Engineer prior to execution of this Contract and are attached hereto. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- E. Cancellation. There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Engineer authorizes the City and its participating trusts to confirm all information so furnished as to the Engineer's compliance with its bonds and insurance requirements with the Engineer's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Contract is a breach of this Contract for which the Engineer shall repay and reimburse all payment made under the Contract and such other damages, losses, and costs incurred by the City and its participating trusts. The City and its participating trusts may at their option suspend this Contract until there is full compliance with this paragraph, or may cancel or terminate this Contract and seek damages for the breach of this Contract. The remedies in this paragraph shall not be deemed to waive or release any remedy available to The City and its participating trusts. The City and its participating trusts expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit below the aggregate limit required to this contract, the Engineer shall immediately notify the City and its participating trusts and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City and its participating trusts request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit below the aggregate limit required by this contract, the Engineer hereby agrees to promptly authorize and have delivered to the City and its participating trusts such statement.

The Engineer must carry and maintain the contract-required insurance coverages and may not cancel, fail to be renewed, nor decrease their limits without thirty (30) days written notice to the City and its participating trusts. In the event that a contract-required insurance coverage (policy) is canceled by the Engineer's insurance company and through no fault of the Engineer, the Engineer must immediately provide written notice to the City and its participating trusts and immediately provide properly executed Certificate(s) of Insurance evidencing coverage (policy) replacement of the canceled coverage(s). The Certificate(s) of Insurance must specifically indicate (in the remarks section of the form or elsewhere) the project number and project description. An authorized representative of the insurance companies listed on the Certificate(s) of Insurance must sign the Certificate(s).

- F. Duration of Coverage. All insurance coverage required under this Contract except professional liability insurance shall be maintained in full force and effect until completion and formal acceptance of the Project by the City and its participating trusts. The Engineer shall maintain in full force in effect the required professional liability insurance stated above during this Contract, during the construction of the Project, and for a period of two (2) years after the final, formal acceptance of this Project by the City and its participating trusts.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Contract.

- G. The Architect and its insurer will not be required to indemnify, insure, defend or hold harmless the Trust against liability for damage arising out of death or bodily injury to persons or damage to property which arises out of the negligence or fault of the Trust or their agents, representatives, subcontractors, suppliers or any other entity for whom the Architect is not otherwise legally responsible.

The Architect and its insurer must indemnify the Trust against liability for damage arising out of death or bodily injury to persons or damage to property; provided, that indemnification shall not exceed an amount that is proportionate to the degree or percentage of negligence or fault for which the Architect and any person or entity for which the Architect is legally responsible are adjudicated liable.

9. **Termination for Convenience.** The Trust may terminate this Contract (with or without cause), in whole or in part, for the Trust's convenience. The Trust may terminate by delivery of a notice to the Engineer, pursuant to paragraph "Notices" herein.

Upon receipt of the notice of termination, the Engineer shall (1) immediately discontinue all work and services affected (unless the notice directs otherwise), and (2), deliver to the Trust all work performed, documents, data, drawings, specifications, reports, calculations, field notes, tracings, plans, models, computer files, estimates, summaries and other information and materials accumulated in performing this Contract, whether complete or incomplete unless the notice directs otherwise.

Upon termination for the convenience by the Trust, the Trust shall pay the Engineer for all work and services rendered, up to the time of the notice of termination, in accordance with the terms, limits and conditions of this Contract and as further limited by the not to exceed amounts set out in this Contract.

The rights and remedies of the Trust provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

Termination herein shall not terminate or suspend any of the required provisions of paragraph "Indemnity" or "Insurance" of this Contract.

10. **Notices.** All notices given pursuant to this Contract shall be in writing, delivered or mailed by United States mail, postage prepaid or faxed (with hard copy follow up by mail or delivery) and addressed as follows:

To the Trust:
The Oklahoma City Water Utilities Trust
420 West Main Street, Suite 500
Oklahoma City, Oklahoma 73102
Attn: Chris Browning, Director/General Manager

Phone Number: (405) 297-2822

To the Engineer:
Freese and Nichols, Inc.
3600 NW 138th St, STE 202
Oklahoma City, OK 73134
Attn: William (Clay) Herndon
Phone Number: (405) 607-7060

The address of any person or party may be changed by notice to the other party, given in the manner described above. All such notices shall be deemed received when delivered.

11. **Stop Work.** Upon notice to the Engineer, the Trust may issue a stop work order suspending the performance of work and/or services under this Contract. The stop work order shall not terminate or suspend any of the required provisions of paragraph “Indemnity” and/or “Insurance” of this Contract.
12. **Compliance with Laws, Ordinances, Specifications and Regulations.** The Engineer shall comply with all existing and applicable federal, Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto, applicable to the work and/or services provided by this Contract. All work product provided by the Engineer must comply with and provide for compliance with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations and all amendments and additions thereto in the use of the work product of the Engineer. All work product provided by the Engineer must specifically direct and must provide sufficient information and contacts for the Construction Contractor to timely comply with all Oklahoma and Oklahoma City laws, standards, codes, ordinances, administrative regulations, and all amendments and additions thereto, in the use of the work product of the Engineer and timely performance by the Construction Contractor.
13. **Records and Accounts.** During the term of this Contract and continuing for a period the longer of five (5) years after the final acceptance of the completed project by the Trust, or until the final resolution of any outstanding disputes between the Trust and the Engineer or the contractor(s) on the project, the Engineer shall maintain: all documents, notes, drawings, specifications, reports, estimates, summaries, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, computer files and any other materials produced, created or accumulated in performing this Contract that have not been submitted to the Trust subsequent to final completion of the project and its internal accounting records, and other supporting documents pertaining to the claims and/or invoices for costs of work and/or services of this Contract. The Engineer must maintain its accounting records in accordance with generally accepted accounting principles applied on a consistent basis. The Engineer shall permit periodic audits by the Trust and the Trust's authorized representative. The periodic audits of the records in support of claims and invoices for the Contract shall be performed at times and places mutually agreed upon by the Trust and Engineer. Agreement as to the time and place for audits may not be unreasonably withheld.

14. **Reporting to the Trust.** The Engineer shall report to the Trust on a regular monthly basis and on an as needed basis.
15. **Prohibition Against Collusion.** The Engineer warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Engineer to solicit or secure this Contract. The Engineer further warrants that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Engineer, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. In addition, the Engineer must execute the Anti/Non-Collusion Affidavit, attached as Exhibit C, prior to the effective date of this Contract.
16. **Sub-consultant, Subcontractor or Employee Conflict of Interest.** Any work performed by the Engineer's employees, sub-consultants or subcontractors on this project shall prohibit said persons from contracting with, working for, or otherwise assisting any potential Bidder to do any project-related work for the Bidder which may in any way be (or construed to be) a conflict of interest. It is the responsibility of the Engineer to require all employees, sub-consultants, or subcontractors engaged by the Engineer to advise the Trust of any business relationship (formal or otherwise) which may pertain directly or indirectly to this project and/or which may in any way be (or construed to be) a conflict of interest. The Engineer will also notify the Trust of any such business relationship and/or conflict of interest. Any conflict of interest discovered by the Trust may be cause for rejection of the Bid in question and/or cancellation of the Engineer's contract.
17. **Work Orders.** The Engineer shall proceed with the provision of work and/or services for this Contract upon receipt of work orders from the City Engineer. The Engineer shall complete and submit the Master Plan Services – Task 1A within two hundred (200) calendar days of date of written work order from the City Engineer, shall complete and submit the Preliminary Report Services - Task 1B within (by possible future amendment) calendar days of date of written work order from the City Engineer (for engineering services contracts, this work order includes completion and submittal of the limited ownership list within thirty (30) calendar days of the date of the work order), and shall complete and submit the Final Plan Services - Task 2 within (by possible future amendment) calendar days of date of written work order from the City Engineer. For either Preliminary Reports/Plans or Final Plans and Specifications, the Trust will endeavor to review and return comments and/or corrections (if any) to the Engineer within thirty (30) calendar days from date of receipt of the documents from the Engineer. Subsequently, the Engineer shall return the corrected documents along with check print copies (if applicable) within thirty (30) calendar days from date of the City's transmittal letter directing corrections. If the Engineer cannot perform the work and/or services within the time provided, and upon the submission by the Engineer of a request in writing to the Trust, indicating the length of extension required to perform a task, the General Manager may grant at his or her sole discretion a reasonable extension of time. The request from the Engineer shall state the reason for the extension request, along with evidence showing that the Engineer is unable to complete this work in the time specified

in the work order for reasons beyond its control. The Engineer is prohibited from claiming damages for delays and extensions of time.

18. **Ownership of Documents.** All documents, notes, drawings, specifications, reports, estimates, summaries, computer files, renderings, models, photographs, field notes, as-built drawings, information, survey results, plans, and any other materials produced, created or accumulated in performing this Contract, are and shall remain the property of the Trust and may be reproduced, distributed and published in whole or part without permission or any additional payments or fees to the Engineer. Reuse of said documents by the Trust shall be at the Trust's risk and responsibility and not that of the Engineer. The parties may use any portions of said documents at their own risk and responsibility. During preparation of design documents, the Engineer shall do weekly backups of CADD computer files and maintain said backups in a safe and secure off-site location. These back up CADD computer files are the property of the Engineer.
19. **References Not Incorporated.** The use of language or definitions from the Federal Acquisition Regulations ("FAR"), the American Institute of Architects ("AIA") or any other publication, are not intended to adopt by reference or otherwise any or all of the language, definitions, regulations or publications or any interpretation thereof.
20. **Standard of Care.** In providing the work and services herein, the Engineer shall maintain during the course of this Contract the standard of reasonable care, skill, diligence and professional competency for such work and/or services. The Engineer agrees to require all of its consultants, by the terms of its consultants' contracts, to provide services at the same standard of expert care, skill, diligence and professional competence required of the Engineer.
21. **Estimated Construction Cost.** If the lowest and best Bid proposed in response to the solicitation of Bids for construction of the project, in accordance with the Bidding Documents provided by the Engineer, exceeds the Estimated Construction Cost or funds available for this project, the Engineer, at no increase or additional cost to the Trust shall redesign the project and redraft the Bidding Documents so that the construction Bids pursuant to a subsequent solicitation come within the Estimated Construction Cost.
22. **Design Corrections.** The Engineer agrees to make any necessary corrections to the designs, drawings, specifications or other documents, work or services furnished, when such documents or services contain any errors, deficiencies or inadequacies caused by the Engineer, at no cost to the Trust. The Engineer further agrees to be liable for any damages caused by its negligence and/or the negligent failure to timely discover and/or make such necessary corrections. The Engineer is not relieved of liability for design errors, deficiencies or inadequacies undiscovered by the Trust upon its review or inspection, nor is the Engineer relieved from liability for the Trust's lack of review or inspection of said documents.
23. **Backup Required.** In accordance with good engineering practices, the Engineer must back up all data, surveys, tests, work, plans, specifications, notes, calculations, RFI,

records, reports, documents (collectively referred to as “data”) in the form of an electronic file on a USB drive, data storage, or to an offsite electronic storage facility. Should any data become lost, corrupted, inaccessible, or unusable (collectively “loss”), the Engineer must timely recreate all data within the original time frame of the engineering contract at its sole cost. No extensions or additional time will be granted the Engineer for loss of data. No additional payment or reimbursement will be made to the Engineer for loss of data. The Engineer will be responsible for any and all costs, expenses, or lost opportunities incurred by The City, Trust, and construction contractor resulting from the failure to meet schedules, milestones, performance standards, or performance requirements related to loss of data.

24. **Notice of Design Limitations.** The Engineer will immediately advise the Trust at any time it believes that the project being designed will exceed, or is likely to exceed, the allocated cost for construction as set forth in this Contract.
25. **Sub-consultants.** The Engineer agrees to submit for approval by the Trust, prior to their engagement, a list of any sub-consultants or subcontractors the Engineer intends to engage to perform work and/or services and the scope of work and/or services to be performed related to this Contract. Such approval of subcontractors and sub-consultants and scope of work and/or services to be performed will not be unreasonably withheld. The Engineer must notify the Trust and seek pre-approval of any substitutions or changes in sub-consultants or subcontractors and changes in the subcontractor or sub-consultant’s scope of work and services related to this Contract. Approval of subcontractors or sub-consultants or their work and services will not relieve or release the Engineer from responsibility or liability to perform all work and services under this Contract and will not create any responsibility, liability or duty upon the Trust as to the selection of or work and services provided by the subcontract or sub-consultant under this Contract.
26. **Nondiscrimination.** In connection with the performance of work and/or services under this Contract, the Engineer agrees as follows:
 - A. The Engineer shall not discriminate against any employee or applicant for employment because of age, race, creed, color, sex, national origin, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3(2). The Engineer shall take affirmative action to ensure that employees or applicants for employment are treated without regard to their age, race, creed, color, national origin, sex, ancestry or disability as defined by the Americans with Disabilities Act of 1990, Section 3 (2). Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff, termination or cancellation, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer shall agree to post, in conspicuous places, Exhibit D.
 - B. In the event of the Engineer's noncompliance with this nondiscrimination clause, this Contract may be suspended, canceled or terminated by the Trust. The Trust may declare the Engineer ineligible for further contracts or agreements until

compliance, and/or satisfactory proof of intent to comply shall be made by the Engineer.

- C. The Engineer agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this Contract. The Engineer shall also execute the nondiscrimination certificate, attached and incorporated as Exhibit D, prior to the effective date of this Contract.
27. **Assignment.** Inasmuch as this Contract is a personal and professional service agreement which relies upon the personal and professional integrity, financial standing and unique ability and expertise of the Engineer to provide professional and personal services to the Trust, the parties agree that the Engineer may not assign its obligations, rights or interest in this Contract except the assignment of subcontractors and sub-consultants as set forth in paragraph "Termination for Default" subparagraph B.
28. **Termination for Default.** The Trust may terminate or cancel this Contract for cause, in whole or in part, for failure of the Engineer to fulfill in accordance with good engineering practices and in the best interests of the Trust or to promptly fulfill its obligations under this Contract.
- A. After due default notice and thirty (30) days within which to correct the default, this Contract may be terminated by the non-defaulting party upon written notice. Upon termination for cause by the Trust, the Trust shall pay the Engineer for all work and services completed in accordance with good engineering practices and in the best interests of the Trust and useable by the Trust for the project(s) in the Notice to Proceed, up to the time of the effective date of termination.
 - B. If this Contract is terminated by reason of a default of the Engineer prior to the completion of this project, regardless of the reason for said termination, the Engineer shall immediately assign to the Trust any contracts and/or agreements relative to this project entered into between the Engineer and its subcontractors and sub-consultants, as the Trust may designate in writing and with the consent of the subcontractors and sub-consultants so designated. With respect to those contracts and/or agreements assigned to and accepted by the Trust, the Trust shall only be required to compensate such subcontractors and sub-consultants for compensation accruing to such parties under the terms of their agreements with the Engineer from and after the date of such assignment to and acceptance by the Trust. All sums claimed by such subcontractors or sub-consultants to be due and owing for services performed prior to such assignment and acceptance by the Trust shall constitute a debt between the Engineer and the affected subcontractors or sub-consultants, and the Trust shall in no way be deemed liable for such sums. The Engineer shall include this provision and the Trust's rights and obligations hereunder in all agreements or contracts entered into with the Engineer's subcontractors and sub-consultants.

- C. Termination herein shall not terminate or suspend any of the required provisions of the paragraph “Indemnity” or “Insurance” of this Contract.
29. **Time Is of the Essence.** Both the Trust and the Engineer expressly agree that time is of the essence with respect to this Contract, and the time for performance of each task established by the work orders shall be made a part of this Contract and shall be strictly observed and enforced. Any failure on the part of the Trust to timely object to the time of performance shall not waive any right of the Trust to object at a later time.
30. **No Damage for Delay.** No payment, compensation or adjustment of any kind (other than an approved extension of time) shall be made to the Engineer for damages because of hindrances or delays from any cause in the progress of the work, whether such hindrances or delays be avoidable or unavoidable. The Engineer agrees that it will make no claim for compensation or damages for any such delays and will accept as full satisfaction for such delays the extensions of time.
31. **Severability.** In the event that any provision, clause, portion or section of this Contract is unenforceable or invalid for any reason, such unenforceability or invalidity may not affect the enforceability or validity of any other paragraph or the remainder of this Contract.
32. **Entire Agreement.** This Contract, including its Exhibits and any other documents or certificates incorporated herein by reference, expresses the entire understanding of the Trust and the Engineer concerning the Contract. Neither the Trust nor the Engineer has made or shall be bound by any agreement or any representation to the other concerning this Contract which is not expressly set forth herein.
33. **Amendment.** This Contract may be modified only by a written amendment of subsequent date hereto, approved by the Trust and the Engineer. In the event the Engineer's Basic Services are increased or changed so as to materially increase the need for engineering services in excess of the not to exceed total compensation, the Engineer may seek to amend this Contract.
34. **Execution in Counterparts.** This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
35. **Descriptive Headings.** The descriptive headings of the sections of this Contract are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of this Contract.
36. **Construction and Enforcement.** This Contract shall be construed and enforced in accordance with the laws of the State of Oklahoma. In the event of ambiguity in any of the terms of this Contract, it shall not be construed for or against any party on the basis that such party did or did not author the same.

37. **Survival of Representations.** All representations and covenants of the parties shall survive the expiration of the Contract.
38. **Parties Bound.** This Contract shall be binding upon and inure to the benefit of all parties. This Contract is solely for the benefit of the parties and their successors in interest, and none of the provisions hereof are intended to benefit third parties.
39. **Venue of Actions.** The parties agree that if any legal action is brought pursuant to this Contract, such action shall be instituted in the District Court of Oklahoma County.
40. **Effective Date.** The effective date of this Contract shall be the date of execution of this Contract by the Trust.
41. **Local Business Utilization Report.** On December 22, 2020, the City Council approved and re-established the Small, Local and Minority Business Utilization (LBU) Program. The program encourages and promotes the use of small, local and minority business subcontractors on public construction contracts. The goal is to provide assistance, guidance, and opportunities for small, local and minority businesses to work on Trust projects.

The Engineer agrees to submit a Small, Local and Minority Business Utilization ("LBU") Report to the Trust within fourteen (14) days of the issuance of the Notice to Proceed, to include the following information:

- A. A list identifying each of its subconsultants or subcontractors;
- B. The location and contact information of the principal place of business of each subconsultant or subcontractor;
- C. The status of each of its subconsultants and subcontractors, and which class of business; local, small, minority, N/A etc.
- D. The general scope of work to be performed by each subconsultant or subcontractor;
- E. The dollar amount of each subcontract; and
- F. The tools and/or organizations used to locate and contact these businesses.

The Engineer further agrees to submit to the Trust a monthly report identifying the scope of work and amount of payments made to each subconsultant or subcontractor for the preceding month on a form provided by the Trust.

42. **Crime Prevention through Environmental Design** The Crime Prevention through Environmental Design (CPTED) concept suggests that natural surveillance, natural access control, and territoriality can be effectively applied to a project and its surrounding

environment to provide safety for users. A CPTED design can also promote community confidence and improve natural surveillance methods to reduce/prevent common crime and vandalism.

The Engineer should implement the concepts of CPTED, where appropriate, to reduce the real and perceived areas of potential problems during the project design.

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**EXHIBIT A
SCOPE OF WORK
PROJECT NO. TS-0011
TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
PHASE 1**

PROJECT DESCRIPTION

The following is a scope of services for Freese and Nichols, Inc. (Engineer) to provide a study and engineering report for the phasing of eliminating sewer lift stations in the Southwest Area of Tinker Air Force Base (TAFB). The Oklahoma Water Utilities Trust owns and operates the wastewater system on TAFB, excluding the privatized Family Housing area. The wastewater system consists of approximately 25 miles of sewer mains, 470 manholes, and 57 lift stations. Most of the sewer mains on TAFB have diameters less than 15-inches and are vitrified clay pipes. The Southwest Area consists of approximately 5.5 miles of sewer main that is conveyed north to a 36-inch sanitary sewer interceptor near SE 29th Street and Sooner Road. There are approximately 38 lift stations in the Southwest Area. The fixed Limit of Construction Cost is \$20,000,000.

The purpose of this project is to perform Task 1A Services resulting in a Master Plan report that:

1. Provides an engineering evaluation of the TAFB wastewater system located within the Southwest Area to develop a trunk sewer system that will eliminate as many lift stations as practical.
2. Provides a master planning level report with an assessment and conceptual level design of the wastewater system and associated planning-level cost estimates to eliminate as many lift stations as practical while focusing on TAFB accessibility and constructability.

Tasks 1B through 6 are by possible future amendment, upon approval of the master planning report.

PROJECT ASSUMPTIONS

1. Engineer will be required to coordinate security clearances and access through TAFB personnel.
2. No invert information is populated within the wastewater line GIS data. All upstream and downstream invert data will be obtained through survey and “measure downs” by opening the manhole lid and using a measuring stick to determine the depth.
3. No flow data is available within the TAFB. Only flow data from the Oklahoma City meter downstream is available.
4. Engineer will be provided with all available geotechnical and monitoring well data at the project site, if available.
5. Engineer will be provided with the previous hydraulic model prepared for the TAFB, however the Trust will not be able to validate the accuracy of the model.

SCOPE OF SERVICES

The following scope of services is intended to supplement Paragraph 2 – Basic Services in the Contract. The Engineer shall provide the following scope of services for the Project as follows:

Task 1A – Master Plan Services

The following scope shall constitute Task 1A. Engineer shall provide Master Plan Report Services in accordance with the Basic Services of this Contract and as listed below. The Preliminary Design phase is the phase in which preliminary pipeline alignments are determined, surveying is completed, and other services necessary to advance the design to 15% are completed.

A. Project Management and Progress Reporting:

1. The Engineer shall provide project management and progress reporting functions required to successfully complete Task 1A.
2. Monthly Progress Reporting: The Engineer shall prepare and submit to Trust monthly invoice packets including the following:
 - a. A cover letter providing general project status, progress completed during the invoice period for each major subtask, overall percent complete for each major subtask, planned activities for the upcoming month, information requests, action items required to be addressed by the Trust, schedule status with any applicable delays, and a list of potential scope adjustments.
 - b. Monthly invoice.
 - c. Updated project schedule.
3. Potential Scope Adjustment Register: The Engineer shall maintain a potential scope adjustment (PSA) register. In the event there is consideration given for changes to the Project's scope of work, Engineer will develop and present PSAs with the next monthly invoice transmittal.
 - a. Engineer shall itemize the potential changes detailing the anticipated cost impact to the Engineer's contract and the Project's construction cost.
 - b. Engineer shall detail impacts, if any, to the project schedule.
4. Progress Meetings:
 - a. Engineer shall conduct regular monthly progress status meetings with the Trust. The meetings shall cover the following items at a minimum:
 - i. Update the team on project status, progress achieved, budget and schedule status/concerns and potential deviations from the Scope of Services and corrective actions.
 - ii. Discuss project issues, coordinate work activities and review work activities planned for the upcoming period. These progress meetings will be in addition to other work product review meetings or workshops with Trust as identified herein. The Engineer will prepare an agenda for each meeting.
 - iii. Engineer shall distribute meeting minutes within seven (7) calendar days of the meeting.
5. Quality Assurance and Quality Control: The design documents shall be reviewed by Engineer's technical advisors and/or senior technical staff for quality assurance and quality control (QA/QC) purposes prior to delivery to the Trust.
 - a. Engineer shall develop and implement a QA/QC plan and submit the QA/QC plan to the Trust for review.
 - b. Engineer QA/QC reviews of each deliverable shall be completed prior to submitting to the Trust for review. A concurrent QA/QC review with the Trust shall not be permitted without prior written approval from the Trust.

- c. Results of the reviews shall be maintained by the Engineer in its records files until completion of the PROJECT. The results of the QA/QC review shall be incorporated into the Final Design Documents.
- 6. Schedule: Engineer shall provide a detailed schedule for execution of the project prior to the project kickoff meeting.
 - a. Schedule shall allow for Trust review periods of at least two (2) weeks.
 - b. Schedule shall include tentative dates for major review meetings.
 - c. Schedule shall be updated monthly based on progress.
- 7. Provide project design information and coordinate with other consultants contracted by the Trust pertaining to related issues whereby multiple projects share a common process or function and/or are within the immediate vicinity of each other's improvements throughout the duration of the project.

B. Task 1A Kickoff Meeting:

- 1. Task 1A Kickoff Meeting: Engineer shall conduct a project initiation meeting to review the scope and clarify Trust's requirements for the project, review pertinent available data, review project staffing and organization, present initial work plan, and review initial work schedule.
 - a. Prepare and submit an agenda two (2) business days prior to the project initiation meeting.
 - b. Prepare and submit meeting minutes to the Trust for review and comment within seven (7) calendar days of the meeting.

C. Design Surveys:

- 1. Design surveys shall be completed in two phases. A preliminary survey shall be completed prior to development of the preliminary site locations and pipeline alignments to confirm feasibility of the concepts. A detailed design survey shall be completed after submitting the final Engineering Design Report and written notification from the Trust, which will be authorized by possible future amendment.
- 2. Preliminary: Engineer shall provide site survey services as required to develop the Preliminary Site Locations, Pipeline Alignments, Recommendation for rehabilitation/replacement, and Engineering Design Report. This includes limited spot shots, flowlines, manholes, and other survey data as determined to be necessary by the Engineer to validate the preliminary design. The following items are considered part of this scope:
 - a. Completion of reasonable security protocol steps for site access.
 - b. 2-man crew with per-diem, daily drafting support to convert field collected data into CAD formatting, and daily review/consultation from Professional Land Surveyor overseeing the project.
 - c. Up to 10 days of fieldwork is included in the scope, which is intended to cover potential delays in accessing TAFB. A typical day of work (pending daily check in/out protocol timing) would approximately yield survey of the following:
 - i. Up to 150 'spot' elevations or other singular point observations: high/low points along proposed profile, paint/flag markings of buried utilities, singular items of interest (utility pedestals, above ground improvements, etc.)
 - ii. Up to 30 exposed conduit structures: accessible/visible culvert pipes, concrete boxes, or similar improvements
 - iii. Up to 20 'minor' structures: manholes with no more than 4 conduits requiring

- flowline measurements/pipe sizing/material estimation.
- iv. Up to 10 ‘moderate’ structures: manholes with more than 4 conduits, or multiple drops/inverts, or structures where visibility/access is hindered.
 - v. Up to 6 ‘major’ structures: lift stations (typical wet well as-built procedures), large underground basins containing multiple access points for verification of inflow/outflow conduits, concrete ditch or maintained creek (no trees, underbrush, visible/foot traffic navigability) cross sections containing less than 12 observation points (top, toe, break-line, flowline, elevation, etc.)

D. Hydraulic Analysis:

Engineer will utilize the existing hydraulic model completed by others for this analysis. The primary purpose of the hydraulic model is to quickly perform hydraulic evaluations with the primary focus on decommissioning lift stations and conveying flow by gravity. It is understood that no flow data is available, so Engineer will utilize meetings with TAFB and engineering judgement to allocate existing and future flows within the hydraulic model.

1. Task A: Wastewater Flows
 - a. Data Collection: FNI will compile information from the Trust, including updated GIS files, hydraulic models developed by others, and recently completed wastewater system improvements.
 - b. Review and Evaluate Historical Wastewater Flow Data: FNI will review and evaluate historical wastewater flows at the Oklahoma City flow meter downstream of TAFB.
 - c. Develop and Distribute existing and future Flows: FNI will meet with TAFB staff and use engineering judgement to allocate wastewater flows in the study area. FNI will gather information from TAFB to determine if any potential additional flow will be added in future planning periods.
2. Task B: Wastewater Model Development and Calibration
 - a. Review and Update Existing Wastewater Model: FNI will review the existing wastewater model developed by others of the TAFB. FNI will obtain the latest GIS geodatabase to update any existing or missing infrastructure in the model. FNI will gather information on any missing Lift Station and Force Main information provided. FNI will meet with TAFB staff to review lift station operational data. FNI will provide locations where the model or GIS database is lacking information on lines that are 6 inches and larger and will rely on the Trust to compile any plans, as-builts, developer, and CIP projects that are not included in the Trust database for FNI to incorporate into the collection system model.
 - b. Field Investigation and Verification: FNI will identify areas for the Trust staff to investigate missing information during the model update and review process. FNI will locate areas where verification of flow direction is necessary, and as-built information is unavailable. Preliminary survey information will be used to inform the design analysis, absent of available information.
 - c. Distribute Wastewater Flows in the Model: Engineer will allocate the wastewater flows in the hydraulic model to evaluate the existing infrastructure.
3. Task C: Hydraulic Analysis, System Evaluation, and Prioritized Capacity CIP
 - a. Existing System Evaluation: Engineer will evaluate the wastewater model under peak wet weather conditions and will identify existing surcharging and overflow locations and other capacity/restriction issues. FNI will prepare mapping and model

results showing all surcharging and overflow locations by magnitude and locations. FNI will categorize manholes by overflow amounts during design storm and sewer line surcharging by amounts during design event(s).

- b. Future System Analysis: FNI will utilize existing and Buildout wastewater model scenarios under peak wet weather conditions to determine the system response for surcharging and overflow events. FNI will utilize the future system model scenarios to analyze the impact of future flows on the collection system. FNI will apply the selected design storm(s) to the future system models to locate potential future system deficiencies based on specified design criteria.
- c. Develop Wastewater System Improvement Alternatives: Using the hydraulic model, engineer will develop and size improvements to eliminate excessive surcharging and overflows in the system resulting from increased wastewater flow from projected future flows. FNI will develop improvement alternatives for gravity lines, lift stations, and force mains. Improvements needed to correct existing deficiencies will also be included. FNI will develop mapping showing improvements required for the existing and Buildout planning periods as well as improvements needed to correct existing deficiencies. FNI will provide mapping including model results with and without recommended improvements.

E. Master Plan Report

- 1. Master Plan Report: Engineer shall develop an Engineering Report that shall serve as the Engineering Design Report and 15% design deliverable. The Engineering Design Report shall include:
 - a. General project scope and background references
 - b. Plans:
 - i. Preliminary pipeline alignment of gravity and pressure mains including a utility and right-of-way plan including all existing easement research;
 - c. Civil design criteria including:
 - i. Proposed connection points to TAFB and Trust systems
 - ii. Crossings including utilities, creeks, streets, highways, and railroads;
 - iii. Pipeline appurtenances including manholes and air release/vacuum relief facilities.
 - iv. Proposed trenchless installation locations and methods
 - v. Traffic control recommendations
 - vi. Special coordination needs
 - d. Regulatory and code requirements
 - e. Constructability and construction phasing analysis and recommendations for implementation into the Construction schedule
 - f. Opinion of Probable Construction Cost (OPCC) for each Area.
- 2. Opinion of Probable Construction Costs:
 - a. All opinions of probable construction costs (OPCC) developed shall follow the recommendations of the Association of Advancement of Cost Engineering (AACE) International Recommendation Practice No. 18R with regard to methodology and accuracy.
 - b. The cost opinion level of accuracy presented by the Engineer shall be a Class 3 – Budget Authorization or Control cost opinion in accordance with accepted industry guidelines defined by AACE. The Class 4 estimate is commensurate with

development of the design concept to a 10% to 40% level; the expected accuracy on the low end will be -10 to -20 percent and the expected accuracy on the high end will be from +20 to +30 percent.

- c. Engineer shall provide summary and detail reports of the OPCC. Summary OPCC report shall match the anticipated bid structure of the Project.
- 3. Drawings shall be included as appendices to the Engineering Design Report.
- 4. Draft Report:
 - a. Engineer shall submit two (2) draft hard copies and Microsoft Word and PDF formats of the Engineering Design Report for review and comment by the Trust.
- 5. Review meeting: Engineer shall conduct the meeting between Trust’s Project Team and Engineer to present a summary of the Engineering Design Report.
 - a. Prepare and submit an agenda two (2) business days prior to the review meeting.
 - b. Prepare and submit meeting minutes to the Trust for review and comment within seven (7) calendar days of the meeting.
 - c. Engineer shall incorporate Trust review comments into the final version.
- 6. Final Report:
 - a. Engineer shall incorporate Trust comments into the final report.
 - b. Engineer shall submit four (4) final copies of the final Engineering Design Report in hardcopy format and in electronic PDF format.
 - i. PDF format shall have the following features:
 - (1) Shall be fully indexed using the Table of Contents.
 - (2) Bookmarks shall be created in the navigation frame for each major entry in the Table of Contents.
 - c. Engineer shall submit a response matrix and decision log documenting the proposed action to the Trust’s comments with the final report.

Task 1B - Preliminary Report Services (by possible future amendment)

Task 2 - Final Plan Services (by possible future amendment)

Task 3 - Bidding Services (by possible future amendment)

Task 4 - Construction Administration Services (by possible future amendment)

Task 5 - As-Built Drawings Services (by possible future amendment)

Task 6 - Project Inspection Services (by possible future amendment)

Completion Times:

Work Item	Time to Complete ¹	Completion Time from NTP ¹
Task 1A – Draft Master Plan Report (15% Design)	170 calendar days	170 calendar days
Task 1A – Final Master Plan Report (15% Design)	30 calendar days	200 calendar days
Task 1B – Engineering Report	TBD	TBD

Task 2 – 60% Design	TBD	TBD
Task 2 – 90% Design	TBD	TBD
Task 2 – 100% Design	TBD	TBD

1. Completion times shall include review time by the Trust for each deliverable. A minimum of two (2) weeks shall be provided for each deliverable included in Task 1. A minimum of two (2) weeks shall be provided for 60% Design deliverable review. A minimum of two (2) weeks shall be provided for 90% Design deliverable review. A minimum of one (1) week shall be provided for 100% Design deliverable review.
2. The schedule provided assumes a Notice to Proceed (NTP) date of January 6, 2025 and is built using working days, which will need to be converted to calendar days. If NTP is received on a different date, the schedule will be adjusted accordingly.

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**EXHIBIT B
COMPENSATION
PROJECT NO. TS-0011
TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
PHASE 1**

Under the terms of this Contract, the Engineer agrees to perform the work and services described in this Contract. The Trust agrees, in accordance with the limitations and conditions set forth in the Contract, to pay an amount not to exceed \$274,600 which includes: for Basic Services an amount not to exceed \$234,600 as specifically set forth in this Exhibit B; and, for Additional Services an amount not to exceed \$40,000, as specifically set forth in Exhibit E.

B.I. Basic Work and Services

Compensation for basic services may not exceed \$234,600, and in no event may the Engineer receive compensation in excess of the amount listed for each task for performance of its basic services.

The Engineer may receive up to the following amounts of the not to exceed amounts for services rendered upon the completion of the following tasks. Partial payments of the not to exceed amounts for each task may be invoiced for incremental work completed. Not to exceed amounts below are accumulative for successive tasks.

Task 1A an amount not to exceed:
\$234,600

Completion and recommendation by the General Manager for approval by the Trust of the Master Plan for the project.

The breakdown for Task 1A is as follows:

Project Management and Progress Reporting	\$79,080
Task 1A Kickoff Meeting	\$ 6,840
Design Surveys – Preliminary	\$49,750
Hydraulic Analysis	\$64,500
Master Plan/15% Design	\$34,430

Task 1 an amount not to exceed:
(by possible future amendment)

Completion and recommendation by the General Manager for approval by the Trust of the Preliminary Report for the project.

Task 2 an additional amount not to exceed:
(by possible future amendment)

Completion and acceptance by the Trust of the final plans and specifications for the project.

Task 3 an additional amount not to exceed:

(by possible future amendment)

Award of the construction contract to the successful Bidder.

Task 4 an additional amount not to exceed:
(by possible future amendment)

Upon completion and final acceptance by the Trust of the completed project. Said amount is to be paid proportionately to the level of completion of project construction. The proportionate amount is to be consistent with the Construction Contractor's percentage of completion.

Task 5 an additional amount not to exceed:
(by possible future amendment)

Upon satisfactory completion and acceptance of the as-built drawings.

Task 6 an additional amount not to exceed:
(by possible future amendment)

Compensation for Inspection Services shall not be greater than the amount and value of the work and services performed by the Engineer.

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EXHIBIT C
ANTI/NON-COLLUSION AFFIDAVIT
PROJECT NO. TS-0011
TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
PHASE 1

State of Oklahoma)
) SS.
County of Oklahoma)

The undersigned Engineer, of lawful age, being duly sworn, upon his/her oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal for, and on behalf of, the Engineer; that the Engineer has not, directly or indirectly, entered into any agreement, express or implied, with any other architect/engineer(s), having for its object the controlling of the price or amount of the Contract, the limiting of the services of the architect/engineers, the parceling or farming out to any architect/engineer(s) or other persons, of any part of the Contract or any part of the subject matter of the Contract, or of the profits thereof.

The Engineer further states that the Engineer has not been a party to any collusion among other persons, firms or contractors in restraint of freedom of competition, by any agreement to Contract at a fixed price or to refrain from competing; or with any city official, city employee or city agent as to the quantity, quality, or price in the prospective Contract, or any other terms of the said prospective Contract; or in any discussions between the Engineer or city official, city employee or city agent concerning the exchange or money or other thing of value for special consideration in the letting of a Contract. The Engineer states that it has not paid, given or donated or agreed to pay, give or donate to any city official, officer or employee of the Trust or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of this Contract.

Printed name of the Engineer: William C. Herndon

Signature of executing individual: *William C Herndon*

Title: Principal/Vice President

3600 NW 138th St., Suite 202, Oklahoma City, OK 73134

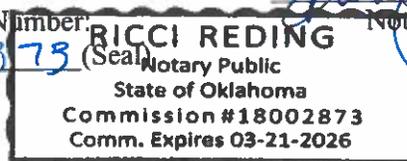
Address of the Engineer 405-607-7060 Zip Code

(A.C.) Tel. Number and FAX Number

Signed and sworn to before me on this 4 day of November,

2024, by William C. Herndon

My Commission Expires/Commission Number: 3-21-2026 / 18002873 Notary Public



**EXHIBIT D
NONDISCRIMINATION CERTIFICATE
PROJECT NO. TS-0011**

**TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
PHASE 1**

State of Oklahoma)
)
County of Oklahoma) SS.

In connection with the performance of work under this Contract, the Engineer agrees as follows:

- A. The Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). The Engineer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, national origin, sex, ancestry, age or disability, as defined by the Americans with Disabilities Act of 1990, Sec. 3(2). Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. The Engineer and sub-consultants shall agree to post in a conspicuous place, Exhibit D.
- B. In the event of the Engineer's noncompliance with this Nondiscrimination Certificate, the Contract may be canceled, terminated or suspended by the Trust. The Engineer may be declared, by the Trust, ineligible for further contracts until satisfactory proof of intent to comply shall be made by the Engineer and/or sub-consultants.
- C. The Engineer agrees to include the requirements of this Nondiscrimination Certificate in any subcontracts connected with the performance of this Contract.

I have read the above clause and agree to abide by its requirements.

Printed name of the Engineer: William C. Herndon

Signature of executing individual: *William C Herndon*

Title: Principal/Vice President

3600 NW 138th St., Suite 202, Oklahoma City, OK 73134

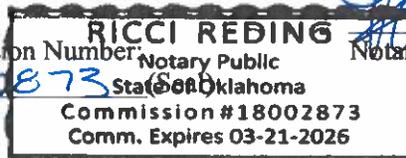
Address of the Engineer Zip Code

405-607-7060

(A.C.) Tel. Number and (FAX No.)

Signed and sworn to before me on this 4 day of November, 2021, by William C. Herndon

My Commission Expires/Commission Number 3-21-2026 / 18002873 Notary Public *Ricci Reding* Notary Public



**EXHIBIT E
 ADDITIONAL SERVICES
 PROJECT NO. TS-0011
 TINKER SEWER MAINS AND LIFT STATION ELIMINATION, SOUTHWEST AREA,
 PHASE 1**

Additional Services shall only be provided upon prior written and clearly detailed direction of the General Manager. The Engineer may be directed to perform any, all or none of the following Additional Services that may include, but not be limited to, the following:

- AS.1: Additional geotechnical investigation and services.
- AS.2: Subsurface Utility Engineering (SUE) Services: Engineer will undertake subsurface utility investigations. Compensation for this task shall be as outlined below. Where required, Engineer shall provide subsurface utility engineering (SUE) services to determine conflicts with existing utilities. The SUE services shall determine the exact location and depth of the existing utility. The actual number of locations shall be determined after field investigation and preliminary survey services are completed. SUE services shall either be Quality Level “A” or Quality Level “B” in accordance with ASCE 38-02 (Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data) as recommended by the Engineer and approved by the Trust. Additional legal descriptions, exhibits, and acquisition services.
- AS.3: Additional staking for easement preparation.
- AS.4: Additional easement research and verification
- AS.5: Additional Construction Administration Services per Task 4 in excess of the construction duration listed in Task 4. Compensation for this task shall be as outlined below.
- AS.6: Additional Inspection Services per Task 6 in excess of the construction duration listed in Task 6. Compensation for this task shall be as outlined below.
- AS.7: Additional services to allow for design of other project areas. A detailed scope and fee for the additional services shall be submitted.
- AS.8: Additional Services necessary for completion of the project. A detailed scope and fee for the additional services shall be submitted.
- AS.9: Coordination with MacArthur Associated Consultants, LLC for TS-0012.

Unit Prices:

Item	Unit Price	Unit
Additional Geotechnical Borings	TBD	Each
SUE – Quality “A”	TBD	Each
SUE – Quality “B”	TBD	Each

Additional legal descriptions, exhibits, and acquisition services	TBD	Parcel
Additional staking for easement preparation	TBD	Parcel
Additional easement research and verification	TBD	Parcel
Additional Construction Administration Services	TBD	Month
Additional Construction Inspection Services	TBD	Hour
Additional Coordination with Outside Consultant	\$20,000	Not to Exceed

Compensation for Additional Services: Included in the not to exceed total compensation is an allowance for Additional Services in an amount not to exceed \$40,000. This allowance is to be used and paid to the Engineer in the manner established in this Contract, unless other compensation means are agreed to in writing by the General Manager. The Additional Services compensation may only be used after the Engineer has performed Additional Services upon prior written authorization by the City Engineer. Invoices submitted for Additional Services shall represent only hours actually worked on this project by the Engineer's employees and the Engineer's consultant's employees and shall be accounted for separately for each Additional Service performed.

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EXHIBIT F - FEDERAL CONTRACT CLAUSES

SECTION I

Contract Clauses

In the event of any inconsistencies between non-mandatory FAR and DFARS clauses incorporated by reference herein or elsewhere and any clauses set forth in full text in this Contract, the full text clauses shall control.

I.1 FAR 52.252-2 Clauses Incorporated by Reference (Feb 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<https://www.ecfr.gov/>
 (End of Clause)

I.2 FAR Clauses

The following FAR clauses are incorporated by reference:

FAR Paragraph	Clause Title	IAW	Date
52.202-1	Definitions	FAR 2.201	Jun 2020
52.203-3	Gratuities	FAR 3.202	Apr 1984
52.203-5	Covenant Against Contingent Fees	FAR 3.404	May 2014
52.203-6	Restrictions on Subcontractor Sales to the Government	FAR 3.503-2	Jun 2020
52.203-7	Anti-Kickback Procedures	FAR 3.502-3	Jun 2020
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity	FAR 3.104-9(a)	May 2014
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity	FAR 3.104-9(b)	May 2014
52.203-12	Limitation on Payments to Influence Certain Federal Transactions	FAR 3.808(b)	Jun 2020
52.203-13	Contractor Code of Business Ethics and Conduct	FAR 3.1004(a)	Jun 2020
52.203-17	Contractor Employee Whistleblower Rights and Requirements to Inform Employees of Whistleblower Rights	FAR 3.908-9	Jun 2020
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements	FAR 3.909-3(b)	Jan 2017
52.204-4	Printed or Copied Double-sided on Postconsumer Fiber Content Paper	FAR 4.303	May 2011
52.204-9	Personal Identity Verification of Contractor Personnel	FAR 4.1303	Jan 2011

FAR Paragraph	Clause Title	IAW	Date
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards	FAR 4.1403(a)	Jun 2020
52.204-13	System for Award Management Maintenance	FAR 4.1105(b)	Oct 2018
52.204-19	Incorporation by Reference of Representations and Certifications	FAR 4.1202(b)	Dec 2014
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities	FAR 4.2004	Jul 2018
52.207-3	Right of First Refusal of Employment	FAR 7.305(c)	May 2006
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	FAR 9.409	Jun 2020
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters	FAR 9.104-7(c)	Oct 2018
52.215-2	Audit and Records – Negotiation	FAR 15.209(b)	Jun 2020
52.215-8	Order of Precedence – Uniform Contract Format See Section C.1 of contract	FAR 15.209(h)	Oct 1997
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data—Modifications	FAR 15.408(c)	Jun 2020
52.215-13	Subcontractor Certified Cost or Pricing Data—Modifications <i>DEVIATION 2018-00015</i>	FAR 15.408(e)	Jun 2020 May 2018
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications	FAR 15.408(m)	Jun 2020
52.219-8	Utilization of Small Business Concerns	FAR 19.708(a)	Oct 2018
52.219-9	Small Business Subcontracting Plan <i>Alternate II</i>	FAR 19.708(b)	Jun 2020 Alt II Nov 2016
52.219-16	Liquidated Damages—Subcontracting Plan	FAR 19.708(b)(2)	Jan 1999
52.219-28	Post-Award Small Business Program Representation	FAR 19.309(c)	May 2020
52.222-1	Notice to the Government of Labor Disputes	FAR 22.103-5(a)	Feb 1997
52.222-3	Convict Labor	FAR 22.202	Jun 2003
52.222-4	Contract Work Hours and Safety Standards—Overtime Compensation	FAR 22.305	Mar 2018
52.222-21	Prohibition of Segregated Facilities	FAR 22.810(a)(1)	Apr 2015
52.222-26	Equal Opportunity	FAR 22.810(e)	Sep 2016

FAR Paragraph	Clause Title	IAW	Date
52.222-37	Employment Reports on Veterans	FAR 22.1310(b)	Jun 2020
52.222-40	Notification of Employee Rights Under the National Labor Relations Act	FAR 22.1605	Dec 2010
52.222-50	Combating Trafficking in Persons	FAR 22.1705(a)(1)	Jan 2019
52.222-54	Employment Eligibility Verification	FAR 22.1803	Oct 2015
52.223-3	Hazardous Material Identification and Material Safety Data	FAR 23.303	Jan 1997
52.223-5	Pollution Prevention and Right-to-Know Information <i>Alternate I</i>	FAR 23.1005(b)	May 2011 Alt I May 2011
52.223-6	Drug-Free Workplace	FAR 23.505	May 2001
52.223-12	Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners	FAR 23.804(a)(2)	Jun 2016
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving	FAR 23.1105	Jun 2020
52.225-13	Restrictions on Certain Foreign Purchases	FAR 25.1103(a)	Jun 2008
52.227-1	Authorization and Consent	FAR 27.201-2(a)(1)	Jun 2020
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement	FAR 27.201-2(b)	Jun 2020
52.228-5	Insurance-Work on a Government Installation	FAR 28.310	Jan 1997
52.232-1	Payments	FAR 32.111(a)(1)	Apr 1984
52.232-8	Discounts for Prompt Payment	FAR 32.111(b)(1)	Feb 2002
52.232-11	Extras	FAR 32.111(c)(2)	Apr 1984
52.232-17	Interest	FAR 32.611(a) and (b)	May 2014
52.232-18	Availability of Funds	FAR 32.706-1(a)	Apr 1984
52.232-23	Assignment of Claims <i>Alternate I</i>	FAR 32.806(a)(1)	May 2014 Alt I Apr 1984
52.232-25	Prompt Payment	FAR 32.908(c)	Jan 2017
52.232-33	Payment by Electronic Funds Transfer - System for Award Management	FAR 32.1110(a)(1)	Oct 2018
52.232-39	Unenforceability of Unauthorized Obligations	FAR 32.706-3	Jun 2013

FAR Paragraph	Clause Title	IAW	Date
52.232-40	Providing Accelerated Payments to Small Business Subcontractors	FAR 32.009-2	Dec 2013
52.233-1	Disputes <i>Alternate I</i>	FAR 33.215	May 2014 Alt I Dec 1991
52.233-3	Protest after Award	FAR 33.106(b)	Aug 1996
52.233-4	Applicable Law for Breach of Contract Claim	FAR 32.215(b)	Oct 2004
52.237-2	Protection of Government Buildings, Equipment, and Vegetation	FAR 37.110(b)	Apr 1984
52.237-3	Continuity of Services	FAR 37.110(c)	Jan 1991
52.242-13	Bankruptcy	FAR 42.903	Jul 1995
52.243-1	Changes – Fixed-Price <i>Alternate I</i>	FAR 43.205(a)(1)(2)	Aug 1987 Alt I Apr 1984
52.244-6	Subcontracts for Commercial Items	FAR 44.403	Jun 2020
52.246-25	Limitation of Liability – Services	FAR 46.805(a)(4)	Feb 1997
52.248-1	Value Engineering	FAR 48.201	Jun 2020
52.249-2	Termination for Convenience of the Government (Fixed-Price)	FAR 49.502(b)(1)(i)	Apr 2012
52.249-8	Default (Fixed-Price Supply and Service)	FAR 49.504(a)(1)	Apr 1984
52.252-6	Authorized Deviations in Clauses	FAR 52.107(f)	Apr 1984
52.253-1	Computer Generated Forms	FAR 53.111	Jan 1991

I.2.1 Disputes

The requirements of the Disputes clause at FAR 52.233-1 are supplemented to provide that in regard to the interpretation of retail rates, rate schedules and items directly related to rates and rate schedules provided under this contract, the parties agree to accept as authoritative the interpretation of any statewide public utility regulatory authority with jurisdiction over the contractor. The Government shall not be bound to accept as authoritative interpretations that conflict with Federal law or regulation or that are found by any administrative or judicial forum to: 1) result in discrimination against the Installation; 2) have resulted from abuse of discretion; or 3) have directly or indirectly resulted from any failure on the part of the regulatory authority or its members to comply with applicable laws and regulations.

I.3 DFARS Clauses Incorporated by Reference

The use in this contract of any Defense Federal Acquisition Regulation Supplement (48 CFR Chapter 2) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

The following DFARS clauses are incorporated by reference:

DFARS Paragraph	Clause Title	IAW	Date
252.203-7000	Requirements Relating to Compensation of Former DoD Officials	DFARS 203.171-4(a)	Sep 2011
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies	DFARS 203.570-3	Dec 2008
252.203-7002	Requirement to Inform Employees of Whistleblower Rights	DFARS 203.970	Sep 2013
252.203-7003	Agency Office of the Inspector General	DFARS 203.1004(a)	Aug 2019
252.203-7004	Display of Hotline Posters	DFARS 203.1004(b)(2)(ii)	Aug 2019
252.204-7000	Disclosure of Information	DFARS 204.404-70(a)	Oct 2016
252.204-7003	Control of Government Personnel Work Product	DFARS 204.404-70(b)	Apr 1992
252.204-7004	Level I Antiterrorism Awareness Training for Contractors	DFARS 204.7203	Feb 2019
252.205-7000	Provision of Information to Cooperative Agreement Holders	DFARS 205.470	Dec 1991
252.209-7004	Subcontracting with Firms that Are Owned or Controlled by the Government of a Country that is a State Sponsor of Terrorism	DFARS 209.409	May 2019
252.219-7003	Small Business Subcontracting Plan (DoD Contracts)—Basic	DFARS 219.708(b)(1)(A) and (b)(1)(A)(1)	Dec 2019
252.223-7001	Hazard Warning Labels	DFARS 223.303	Dec 1991
252.223-7004	Drug-Free Work Force	DFARS 223.570-2	Sep 1988
252.223-7006	Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials--Basic	DFARS 223.7106 and 223.7106(a)	Sep 2014
252.223-7008	Prohibition of Hexavalent Chromium	DFARS 223.7306	Jun 2013
252.225-7012	Preference for Certain Domestic Commodities	DFARS 225.7002-3(a)	Dec 2017
252.225-7048	Export Controlled Items	DFARS 225.7901-4	Jun 2013
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns	DFARS 226.104	Apr 2019
252.231-7000	Supplemental Cost Principles	DFARS 231.100-70	Dec 1991
252.232-7003	Electronic Submission of Payment Requests and Receiving Reports	DFARS 232.7004(a)	Dec 2018
252.232-7010	Levies on Contract Payments	DFARS 232.7102	Dec 2006

DFARS Paragraph	Clause Title	IAW	Date
252.235-7003	Frequency Authorization – Basic	DFARS 235.072(b)(1)	Mar 2014
252.236-7005	Airfield Safety Precautions	DFARS 236.570(b)(3)	Dec 1991
252.243-7001	Pricing of Contract Modifications	DFARS 243.205-70	Dec 1991
252.243-7002	Requests for Equitable Adjustment	DFARS 243.205-71	Dec 2012
252.244-7000	Subcontracts for Commercial Items and Commercial Components (DOD Contracts)	DFARS 244.403	Jun 2013
252.247-7023	Transportation of Supplies by Sea—Basic	DFARS 247.574(b)(1)	Feb 2019

I.4 Utility Services Clauses Incorporated by Reference

The following Utility Services FAR and DFARS clauses are incorporated herein by reference.

Paragraph	Clause Title	IAW	Date
52.241-4	Change in Class of Service (Applicable to Tariff Priced Contracts Only)	FAR 41.501(c)(3)	Feb 1995
52.241-5	Contractor's Facilities	FAR 41.501(c)(4)	Feb 1995
52.241-11	Multiple Service Locations	FAR 41.501(d)(5)	Feb 1995
252.241-7001	Government Access	DFARS 241.501-70(b)	Dec 1991

I.5 Clauses Incorporated by Reference: Construction Wage Rates Requirements

The following FAR clauses are incorporated by reference and apply to Initial System Deficiency Corrections, subsequent System Deficiency Corrections, and new connections that involve construction, alteration, or repair (including painting or decorating).

Paragraph	Clause Title	IAW	Date
52.222-6	Construction Wage Rate Requirements	FAR 22.407(a)	Aug 2018
52.222-7	Withholding of Funds	FAR 22.407(a)	May 2014
52.222-8	Payrolls and Basic Records	FAR 22.407(a)	Aug 2018
52.222-9	Apprentices and Trainees	FAR 22.407(a)	Jul 2005
52.222-10	Compliance with Copeland Act Requirements	FAR 22.407(a)	Feb 1988
52.222-11	Subcontracts (Labor Standards)	FAR 22.407(a)	May 2014
52.222-12	Contract Termination – Debarment	FAR 22.407(a)	May 2014
52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations	FAR 22.407(a)	May 2014
52.222-14	Disputes Concerning Labor Standards	FAR 22.407(a)	Feb 1988
52.222-15	Certification of Eligibility	FAR 22.407(a)	May 2014

I.6 Other Clauses and Contract Texts

FAR 52.204-21 Basic Safeguarding of Covered Contractor Information Systems (Jun 2016)

(a) *Definitions.* As used in this clause--

“Covered contractor information system” means an information system that is owned or operated by a contractor that processes, stores, or transmits Federal contract information.

“Federal contract information” means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

“Information” means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

“Information system” means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

“Safeguarding” means measures or controls that are prescribed to protect information systems.

(b) Safeguarding requirements and procedures.

- (1) The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered contractor information systems. Requirements and procedures for basic safeguarding of covered contractor information systems shall include, at a minimum, the following security controls:
- (i) Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).
 - (ii) Limit information system access to the types of transactions and functions that authorized users are permitted to execute.
 - (iii) Verify and control/limit connections to and use of external information systems.
 - (iv) Control information posted or processed on publicly accessible information systems.
 - (v) Identify information system users, processes acting on behalf of users, or devices.
 - (vi) Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.
 - (vii) Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.
 - (viii) Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.
 - (ix) Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
 - (x) Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.
 - (xi) Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
 - (xii) Identify, report, and correct information and information system flaws in a timely manner.
 - (xiii) Provide protection from malicious code at appropriate locations within organizational information systems.
 - (xiv) Update malicious code protection mechanisms when new releases are available.
 - (xv) Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

(2) *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial items, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

(End of clause)

FAR 52.204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2020)

(a) *Definitions.* As used in this clause--

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

Covered foreign country means The People's Republic of China.

Covered telecommunications equipment or services means--

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Critical technology means--

- (1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;
- (2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled--
 - (i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - (ii) For reasons relating to regional stability or surreptitious listening;
- (3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);
- (4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);
- (5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or
- (6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817). Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

(b) Prohibition. (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an

exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

(c) Exceptions. This clause does not prohibit contractors from providing--

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts

it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e) and excluding paragraph (b)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

FAR 52.222-35: Equal Opportunity for Veterans (Jun 2020)

(a) *Definitions.* As used in this clause--

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at Federal Acquisition Regulation (FAR) 22.1301.

(b) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.

(c) Subcontracts. The Contractor shall insert the terms of this clause in subcontracts valued at or above the threshold specified in FAR 22.1303(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

FAR 52.222-36: Equal Opportunity for Workers with Disabilities (Jun 2020)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(b) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of Clause)

FAR 52.241-2: Order of Precedence—Utilities (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, Section C.1, Precedence, of this contract shall control.

(End of clause)

FAR 52.241-3: Scope and Duration of Contract (FEB 1995)

(a) For the period identified in F.2, Commencement of Service, the Contractor agrees to furnish and the Government agrees to purchase the utility services as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(End of clause)

FAR 52.241-6: Service Provisions (FEB 1995)

(a) Measurement of service.

(1) If required under the terms of the contract, the Contractor shall provide suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense.

(2) When applicable, the Contractor shall read all meters at periodic intervals of approximately 30 days unless otherwise identified in this contract.

(b) Meter test.

(1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters, if any, at intervals identified in this contract. The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests may be grounds for a request for equitable adjustment.

(c) Change in volume or character. Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) Continuity of service and consumption. The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, and, unless otherwise stated in this contract, shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods,

earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities.

(End of clause)

FAR 52.241-7: Change in Rates or Terms and Conditions of Service for Regulated Services (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give the Contracting Officer written notice of

(1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and

(2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service, if in accordance with the terms of this contract, will become effective upon the issuance of a contract modification (unless otherwise specified in the contract). The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of Clause)

FAR 52.243-7: Notification of Changes (Jan 2017)

(a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

"Specifically Authorized Representative (SAR)," as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within 15 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state --

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
- (3) The identification of any documents and the substance of any oral communication involved in such conduct;
- (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including --
 - (i) What line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and
- (6) The Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) Government response. The Contracting Officer shall promptly, within 60 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either --

- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

- (2) Countermand any communication regarded as a change;
- (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
- (4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) Equitable adjustments.

(1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made --

- (i) In the contract price or delivery schedule or both; and
- (ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of Clause)

DFARS 252.204-7012: Safeguarding Covered Defense Information and Cyber Incident Reporting (Dec 2019)

(a) *Definitions.* As used in this clause—

Adequate security means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

Compromise means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

Contractor attributional/proprietary information means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

Controlled technical information means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

Covered contractor information system means an unclassified information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

Covered defense information means unclassified controlled technical information or other information, as described in the Controlled Unclassified Information (CUI) Registry at <http://www.archives.gov/cui/registry/category-list.html>, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies, and is—

- (1) Marked or otherwise identified in the contract, task order, or delivery order and provided to the contractor by or on behalf of DoD in support of the performance of the contract; or
- (2) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract.

Cyber incident means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

Forensic analysis means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Malicious software means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

Media means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which covered defense information is recorded, stored, or printed within a covered contractor information system.

Operationally critical support means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

Rapidly report means within 72 hours of discovery of any cyber incident.

Technical information means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security*. The Contractor shall provide adequate security on all covered contractor information systems. To provide adequate security, the Contractor shall implement, at a minimum, the following information security protections:

(1) For covered contractor information systems that are part of an information technology (IT) service or system operated on behalf of the Government, the following security requirements apply:

(i) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract.

(ii) Any other such IT service or system (*i.e.*, other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract.

(2) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1) of this clause, the following security requirements apply:

(i) Except as provided in paragraph (b)(2)(ii) of this clause, the covered contractor information system shall be subject to the security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations" (available via the internet at <http://dx.doi.org/10.6028/NIST.SP.800-171>) in effect at the time the solicitation is issued or as authorized by the Contracting Officer.

(ii)(A) The Contractor shall implement NIST SP 800-171, as soon as practical, but not later than December 31, 2017. For all contracts awarded prior to October 1, 2017, the Contractor shall notify the DoD Chief Information Officer (CIO), via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award.

(B) The Contractor shall submit requests to vary from NIST SP 800-171 in writing to the Contracting Officer, for consideration by the DoD CIO. The Contractor need not implement any security requirement adjudicated by an authorized representative

of the DoD CIO to be nonapplicable or to have an alternative, but equally effective, security measure that may be implemented in its place.

(C) If the DoD CIO has previously adjudicated the contractor's requests indicating that a requirement is not applicable or that an alternative security measure is equally effective, a copy of that approval shall be provided to the Contracting Officer when requesting its recognition under this contract.

(D) If the Contractor intends to use an external cloud service provider to store, process, or transmit any covered defense information in performance of this contract, the Contractor shall require and ensure that the cloud service provider meets security requirements equivalent to those established by the Government for the Federal Risk and Authorization Management Program (FedRAMP) Moderate baseline (<https://www.fedramp.gov/resources/documents/>) and that the cloud service provider complies with requirements in paragraphs (c) through (g) of this clause for cyber incident reporting, malicious software, media preservation and protection, access to additional information and equipment necessary for forensic analysis, and cyber incident damage assessment.

(3) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraphs (b)(1) and (2) of this clause, may be required to provide adequate security in a dynamic environment or to accommodate special circumstances (e.g., medical devices) and any individual, isolated, or temporary deficiencies based on an assessed risk or vulnerability. These measures may be addressed in a system security plan.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor's ability to perform the requirements of the contract that are designated as operationally critical support and identified in the contract, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <https://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <https://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-

approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <https://public.cyber.mil/eca/>.

(d) *Malicious software.* When the Contractor or subcontractors discover and isolate malicious software in connection with a reported cyber incident, submit the malicious software to DoD Cyber Crime Center (DC3) in accordance with instructions provided by DC3 or the Contracting Officer. Do not send the malicious software to the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or

(5) To a support services contractor (“recipient”) that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

(1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve covered defense information, including subcontracts for commercial items, without alteration, except to identify the parties. The Contractor shall determine if the information required for subcontractor performance retains its identity as covered defense information and will require protection under this clause, and, if necessary, consult with the Contracting Officer; and

(2) Require subcontractors to—

(i) Notify the prime Contractor (or next higher-tier subcontractor) when submitting a request to vary from a NIST SP 800-171 security requirement to the Contracting Officer, in accordance with paragraph (b)(2)(ii)(B) of this clause; and

(ii) Provide the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable, when reporting a cyber incident to DoD as required in paragraph (c) of this clause.

(End of clause)

DFARS 252.232-7007: Limitation of Government’s Obligation (APR 2014)

(a) Contract line item(s) 0001 through 0050 are incrementally funded. For these item(s), the sum of \$ 0.00 of the total price is presently available for payment and allotted to this contract. An allotment schedule is set forth in paragraph (j) of this clause.

(b) For item(s) identified in paragraph (a) of this clause, the Contractor agrees to perform up to the point at which the total amount payable by the Government, including reimbursement in the event of termination of those item(s) for the Government's convenience, approximates the total amount currently allotted to the contract. The Contractor is not authorized to continue work on those item(s) beyond that point. The Government will not be obligated in any event to reimburse the Contractor in excess of the amount allotted to the contract for those item(s) regardless of anything to the contrary in the clause entitled "Termination for Convenience of the Government." As used in this clause, the total amount payable by the Government in the event of termination of applicable contract line item(s) for convenience includes costs, profit, and estimated termination settlement costs for those item(s).

(c) Notwithstanding the dates specified in the allotment schedule in paragraph (j) of this clause, the Contractor will notify the Contracting Officer in writing at least ninety days prior to the date when, in the Contractor's best judgment, the work will reach the point at which the total amount payable by the Government, including any cost for termination for convenience, will approximate 85 percent of the total amount then allotted to the contract for performance of the applicable item(s). The notification will state (1) the estimated date when that point will be reached and (2) an estimate of additional funding, if any, needed to continue performance of applicable line items up to the next scheduled date for allotment of funds identified in paragraph (j) of this clause, or to a mutually agreed upon substitute date. The notification will also advise the Contracting Officer of the estimated amount of additional funds that will be required for the timely performance of the item(s) funded pursuant to this clause, for a subsequent period as may be specified in the allotment schedule in paragraph (j) of this clause or otherwise agreed to by the parties. If after such notification additional funds are not allotted by the date identified in the Contractor's notification, or by an agreed substitute date, the Contracting Officer will terminate any item(s) for which additional funds have not been allotted, pursuant to the clause of this contract entitled "Termination for Convenience of the Government."

(d) When additional funds are allotted for continued performance of the contract line item(s) identified in paragraph (a) of this clause, the parties will agree as to the period of contract performance which will be covered by the funds. The provisions of paragraphs (b) through (d) of this clause will apply in like manner to the additional allotted funds and agreed substitute date, and the contract will be modified accordingly.

(e) If, solely by reason of failure of the Government to allot additional funds, by the dates indicated below, in amounts sufficient for timely performance of the contract line item(s) identified in paragraph (a) of this clause, the Contractor incurs additional costs or is delayed in the performance of the work under this contract and if additional funds are allotted, an equitable adjustment will be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the item(s), or in the time of delivery, or both. Failure to agree to any such equitable adjustment hereunder will be a dispute concerning a question of fact within the meaning of the clause entitled "Disputes."

(f) The Government may at any time prior to termination allot additional funds for the performance of the contract line item(s) identified in paragraph (a) of this clause.

(g) The termination provisions of this clause do not limit the rights of the Government under the clause entitled "Default." The provisions of this clause are limited to the work and allotment of funds for the contract line item(s) set forth in paragraph (a) of this clause. This clause no longer applies once the contract is fully funded except with regard to the rights or obligations of the parties concerning equitable adjustments negotiated under paragraphs (d) and (e) of this clause.

(h) Nothing in this clause affects the right of the Government to terminate this contract pursuant to the clause of this contract entitled “Termination for Convenience of the Government.”

(i) Nothing in this clause shall be construed as authorization of voluntary services whose acceptance is otherwise prohibited under 31 U.S.C. 1342.

The parties contemplate that the Government will allot funds to this contract in accordance with B.3 Schedule.

(End of clause)

I-0001 I.I28.01 FEDERAL, STATE, AND LOCAL TAXES (DLA Energy NOV 2011) (DEVIATION)

(a) As used in this contract provision—

(1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

(2) **After-relieved tax** means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(3) **All applicable Federal and State taxes** means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.

(4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.

(5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.

(6) **Outlying areas** means—

(i) **Commonwealths.** Puerto Rico and the Northern Mariana Islands;

(ii) **Territories.** American Samoa, Guam, and the U.S. Virgin Islands;
and

(iii) Minor outlying islands. Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.

(7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.

(8) **Tax** means taxes, duties and environmental or inspection fees, except social security or other employment taxes.

- (b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided.
- (c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.
- (d) The contract price shall be decreased by the amount of any after-relieved tax.
- (e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

(End of Section)



ADDITIONAL REMARKS SCHEDULE

AGENCY Ames & Gough		NAMED INSURED Freese and Nichols, Inc. 801 Cherry Street, Suite 2800 Fort Worth, TX 76102	
POLICY NUMBER SEE PAGE 1			
CARRIER SEE PAGE 1	NAIC CODE SEE P 1	EFFECTIVE DATE: SEE PAGE 1	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance

Description of Operations/Locations/Vehicles:

and Workers Compensation policies include a Waiver of Subrogation in favor of the Additional Insured where permissible by state law and when required by written contract. 30-day Notice of Cancellation will be issued for the General Liability, Auto Liability, Umbrella Liability, Workers Compensation and Professional Liability policies in accordance with policy terms and conditions.

General Liability deductible is \$0

Automobile Liability deductibles are \$1,000 Comp/\$1,000 Collision.

Umbrella Liability retention is \$10,000.

Workers Compensation deductible is \$0.

Professional Liability deductible is \$25,000.