

CONTRACT DOCUMENTS

FOR

TOMPKINS CHANNEL DREDGING – 2011

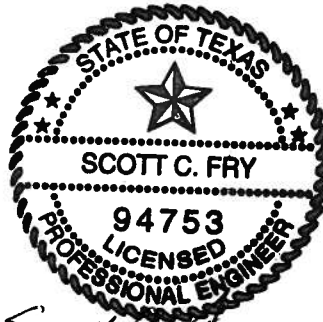
(SOUTH PADRE CHANNEL)

AT

SOUTH PADRE ISLAND, TEXAS

PREPARED BY:

CITY OF SOUTH PADRE ISLAND PUBLIC WORKS DEPARTMENT



Scott C. Fry
11/2/11

NOVEMBER 2011

SWG-1996-00026

TABLE OF CONTENTS

TOMPKINS CHANNEL DREDGING – 2011

CITY OF SOUTH PADRE ISLAND

NOTICE TO BIDDERS

INSTRUCTIONS TO BIDDERS

BID FORM

BID BREAKDOWN

GENERAL CONDITIONS

SPECIAL CONDITIONS

TECHNICAL SPECIFICATIONS

DIVISION 1	GENERAL REQUIREMENTS	
	Section 01030	Summary of Work
	Section 01040	Project Coordination
	Section 01090	Definitions and Standards
	Section 01100	Permits
	Section 01200	Project Meetings
	Section 01250	Measurement and Basis of Payment
	Section 01300	Submittals
	Section 01500	Temporary Facilities
	Section 01700	Contract Closeout
DIVISION 2	SITE WORK	
	Section 02205	Environmental Protection
	Section 02482	Dredging

AGREEMENT

PERFORMANCE BOND

PAYMENT BOND

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

CONSENT SURETY COMPANY TO FINAL PAYMENT

DREDGE MATERIAL PLACEMENT AREA CONSTRUCTION PLANS

APPENDIX 'A' – DREDGE MATERIAL PLACEMENT AREA CONSTRUCTION PLANS

NOTICE TO BIDDERS

NOTICE TO BIDDERS

The City of South Padre Island will receive bids for the **TOMPKINS CHANNEL DREDGING – 2011** until 2:00 pm, November 16th, 2011 at the South Padre Island Municipal Complex, located at 4601 Padre Blvd, South Padre Island, Texas 78597. The bids will be publicly opened and read aloud at 2:15 pm. Bids should be sent in sealed envelopes to the attention of Susan Hill, City Secretary and be clearly marked **TOMPKINS CHANNEL DREDGING**.

Sealed bids are invited for the following work: Maintenance dredging of an approximately 5-mile long recreational vessel channel in the Laguna Madre Bay, adjacent to South Padre Island.

Copies of the bid documents may be obtained for \$75.00.

Bids will be based on a unit price basis. A Bid Bond in the amount of 5% of the greatest amount bid issued by an acceptable surety shall be submitted with each bid. A certified or cashier's check may be submitted in lieu of the Bid Bond. The successful bidder shall be required to provide both performance and payment bonds. In addition, the successful bidder must ensure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, or national origin.

The City reserves the right to reject any or all bids or to waive any informalities in the bidding. Bids may be held by the City for a period not-to-exceed 60 days from the date of Bid Opening for the purpose of reviewing the Bids and investigating the Bidders' qualifications prior to the contract award.

Scott C. Fry, P.E.
Public Works Director

INSTRUCTION TO BIDDERS

INSTRUCTIONS TO BIDDERS

TOMPKINS CHANNEL DREDGING – 2011

PART 1 – GENERAL

1.01 INTERPRETATION OF BID DOCUMENTS

If any person contemplating submitting a bid for the proposed contract is in doubt as to the meaning of any part of the specifications or other contract documents, they may submit to the Engineer (Public Works Director) a written request for an interpretation thereof prior to 48 hours of the hour of opening of bids. The person submitting the request will be responsible for its prompt delivery. Bidders shall carefully examine the plans, specifications, and other documents. Should they be in doubt as to their meaning, they should at once notify the Engineer and obtain clarification by addendum prior to submitting any bid. The City will not be responsible for any other explanation or interpretations of the proposed documents.

It is the bidder's responsibility to make inquiry as to any addenda issued. All addenda shall become part of the contract documents and all bidders shall be bound by such addenda, whether or not received by the bidders.

1.02 INSPECTION OF SITE

Each bidder shall visit the site of the proposed work and fully acquaint himself with the existing conditions there and should fully inform himself as to the facilities involved, the difficulties, and restrictions pertinent to the performance of the contract. The bidder shall thoroughly examine and familiarize himself with the drawings, technical specifications, and all other contract documents. The contractor, by the execution of the contract shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal document, or to visit the site or acquaint himself with the existing conditions. The City will be justified in rejecting any claim based on facts regarding which he should have been on notice as a result thereof.

1.03 ALTERNATE BID ITEMS

There are no Alternate bid items being considered by the City.

1.04 BIDS

- A. All bids shall be regular in every respect and no interlineations, excisions or special conditions may be made or included by the bidder.
- B. The City may consider as irregular any bid on which there is an alteration of or departure from the bid form and, at its option, may reject any irregular bid.
- C. The contract will require the completion of the work in accordance with the contract documents. Heavy consideration will be given to the Standby Time as well as the Base Bid.
- D. All bids shall be submitted in sealed envelopes upon the blank form of the proposal attached herein, and are subject to all requirements of the contract documents. Envelopes will be marked on front with:

SEALED BID

Bid Proposal For

TOMPKINS CHANEL DREDGING - 2011

- E. The right is reserved, as the interest of the City may require, to reject any and all bids, and to waive any formality in bids received. The City reserves the right to consider as unqualified to do the work any bidder who does not habitually perform with his own forces the major portions of the work involved in construction of the improvements embraced in this contract.
- F. In case of ambiguity, or lack of clearness in stating the prices in the bids, the City reserves the right to consider the most advantageous thereof, or to reject the bid. Unreasonable (or unbalanced) prices will authorize the City to reject any bid.
- G. Erasures or other corrections in the bid must be noted over the signature of the bidder.

1.05 INTERPRETATION OF QUOTED PRICES

In case of a difference in written words and figures in the Bid Form, the amount stated in written words shall govern.

1.06 ELECTRONIC MODIFICATIONS

Any bidder will be permitted to modify his bid by electronic communication (email) at any time prior to the scheduled closing time for receipt of bids, provided such communication is received by the City fifteen (15) minutes prior to said closing time, and provided further, that a representative of the City has sent a confirmation of receipt via email. The bidder shall submit his electronic modification to all of the following addresses:

shill@myspi.org

Susan Hill, City Secretary

rmoya@myspi.org

Ray Moya, Assistant Public Works Director

rtrevino@myspi.org Reuben Trevino, Coastal Resources Manager

djones@myspi.org Darla Jones, Assistant City Manager

An email confirmation from any of the above stated officials will be sufficient for the processing of the modification.

1.07 DELIVERY OF PROPOSALS

It is the Bidder's responsibility to deliver their proposal to the proper location. The mere fact that a proposal was dispatched will not be considered. The bidder must have the proposal actually delivered.

1.08 TIME FOR RECEIVING BIDS

Bids received prior to the advertised hour of opening will be kept securely sealed. The officer appointed to open the bids will decide when the specified time has arrived and no bid received thereafter will be considered. Late bids received through national public couriers, such as UPS, Fedex, or the Postal Service will not be granted exceptions, unless the bidder contacts the City on the day of the bid, and submits his bid electronically following the method stated in Section 1.06. This bid will not be validated, however, unless the original copy is delivered by the courier on that same business day.

1.09 NUMBER OF SIGNED SETS OF DOCUMENTS (FOR SUCCESSFUL BIDDER AWARDED THE CONTRACT)

- A. The contract and all bonds will be prepared in not less than four (4) counterpart (original signed) sets.
- B. The City will furnish the contractor up to two (2) sets of executed contract documents free of charge, and additional sets may be obtained at the City's current fee for processing copies.

1.10 EXECUTION

The failure of the successful bidder to execute the agreement and supply the required bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the City may grant shall constitute a default and the City may, at its option either award the contract to the next lowest responsible bidder, or re-advertise for bids. In either case, the City may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the City for a refund.

1.11 EQUAL EMPLOYMENT OPPORTUNITY

Attention is called to the requirements for ensuring that employees and applicants for employment are not discriminated against because of their race, color, creed, sex, or national origin.

1.12 STATEMENT OF BIDDERS QUALIFICATIONS

Each bidder shall submit on the form furnished for that purpose, a statement of the bidder's qualifications. The City shall have the right to take such steps as it deems necessary to determine the ability of the bidder to perform his obligations under the contract, and the bidder shall furnish the City all such information and data for this purpose as it may request. The right is reserved to reject any bid where an investigation of the available data does not satisfy the City that the bidder is qualified to carry out properly the terms of the contract. The City may request the low bidder to submit a financial statement or offer acceptable evidence of his ability to perform under this contract.

1.13 BID SECURITY

Each proposal must be accompanied by a certified check, cashier's check or bid bond acceptable to the City in an amount equal to at least 5% of the greatest amount bid (which may include the Base Bid plus Bid Alternates) and guarantee that the bidder, if awarded the contract, will promptly execute the contract in accordance with the proposal in a manner and form required by the bid documents. Certified or cashier's checks furnished as bid security must be drawn on a bank that is a member of the Federal Deposit Insurance Corporation (FDIC).

All cashier's and certified checks furnished as bid security will promptly be returned to the respective bidders except those which the City elects to hold until the successful bidder has executed the contract. Thereafter, all remaining cashier's and certified checks, including the check of the successful bidder, will be returned.

1.14 PERFORMANCE AND PAYMENT BONDS

The successful bidder must furnish performance and payment bonds upon the forms which are attached herein (or Bonding Company's forms, with owner approval) in the amount of 100% of the contract price from an approved surety company holding a permit from the State of Texas to act as surety (and acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States) or other surety, or sureties acceptable to the owner.

1.15 TOTAL PROPOSAL PACKAGE REQUIRED

- A. The Bid Form and Bid Breakdown shall be prepared and submitted in DUPLICATE. Bidder may remove proposal forms from the specifications and retain the specifications.**
- B. Qualification Statements. Bidders shall complete the Statement of Bidders Qualifications attached hereinafter. The Contractor shall be experienced in this type of work to be eligible as a bidder on this job.**
- C. Bid security is required by 1.13 of Instructions to Bidders.**
- D. Schedule of Equipment Rental Rates for Extra Work.**
- E. Schedule of Labor Charge Rates for Extra Work.**

1.16 INQUIRIES

All questions during bidding shall be directed to:

**Darla Jones
Assistant City Manager
City of South Padre Island
4601 Padre Blvd
South Padre Island, Texas 78597
956.761.3037
djones@myspi.org**

STATEMENT OF BIDDER'S QUALIFICATIONS

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets.

Name of Bidder: _____ Date Organized: _____

Number of years in contracting business under present name: _____

Contracts on hand:

<u>Contract</u>	<u>Amount</u>	<u>Anticipated Completion</u>
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Type of work performed by your company: _____

Have you ever failed to complete any work awarded to you? _____

Have you ever defaulted on a contract? _____

List the more important projects recently completed by your firm (be sure to include projects of similar importance).

<u>Project</u>	<u>Amount</u>	<u>Month/Year Completed</u>
----------------	---------------	-----------------------------

Major equipment available for this contract:

Attach resumes for the principal members of your organization, including the officers as well as the proposed superintendent for this project.

Credit Available: \$ _____ Bank reference: _____

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City in verification of the recitals comprising this Statement of Bidder's Qualifications.

Executed this ___ day of _____, 2011.

By _____

Title _____

BID FORM

BID FORM
TOMPKINS CHANNEL DREDGING – 2011
CITY OF SOUTH PADRE ISLAND
4601 PADRE BLVD.
SOUTH PADRE ISLAND, TEXAS 78597

Gentlemen:

The undersigned bidder, in compliance with your Notice to Bidders for **TOMPKINS CHANNEL DREDGING – 2011** having examined the plans and specifications with related Contract Documents and the site of the proposed work and being familiar with all of the conditions surrounding the proposed dredging, including the availability of machinery and plant, will perform the work as specified, in accordance with the Contract Documents, within the time set forth herein and at the prices stated below. The prices and/or amounts shown are to cover all costs, including profit and overhead, incurred in performing the work required under the Contract Documents, of which this Bid Form is a part.

The bidder hereby proposes to furnish all labor, materials, tools, equipment, plant, supplies, superintendence, insurance, incidentals, and services necessary or required to fully complete the work as shown on the drawings and described in the specifications for the prices noted below.

The bidder shall operate under a separated contract as defined by Section 3.291 of Chapter 3, Tax Administration of Title 34, Public Finance of the Texas Administrative Code, in order to qualify from exemption of sales, excise, and use taxes. The bidder will comply with the applicable rules and regulations governing such contracts (see Special Conditions – Taxes Section 1.23).

The proposal is structured so that the bidder may bid on any or all 2 separate dredging methods. The City's preference for this project is dredging method number 1, and the City may elect to award this method regardless of the price submitted for method 2.

Should the City elect to award a contract under dredging method 2, a modification to the Corps Permit will be required. The bid price shall remain firm for a period of up to sixty (60) days after the scheduled date for receiving bids to allow the City to pursue necessary permit modifications and construction easements.

The bidder shall complete all sections of the proposal under each of the dredging methods he elects to submit.

BID FORM

TOMPKINS CHANNEL DREDGING – 2011

The bidder hereby acknowledges that the Owner may elect to award any, all or none of the Bid Alternates listed in this proposal. Any irregular (or weighted) bid items will be considered as just cause for not accepting the bid.

DREDGING METHOD 1.

This dredging method consists of dredging the Tompkins Channel by mechanical means to the limits set forth on the plans with the dredged material transported to the placement area by a barge and mechanically off loaded.

A. BASE BID

The Base Bid shall include the mobilization, setup, dredging, constructing, monitoring and maintaining the disposal area, demobilization and all other work associated with dredging of the Tompkins Channel.

Base Bid Price:

In words

In figures

Contract time to complete the work: _____ Calendar Days.

DREDGING METHOD 2.

This dredging method consists of dredging the Tompkins Channel by hydraulic means to the limits set forth on the plans with the dredged material transported to the placement area by a continuous pipeline with booster stations as necessary.

A. BASE BID

The Base Bid shall include the mobilization, setup, dredging, constructing, monitoring and maintaining the disposal area, demobilization and all other work associated with dredging of the Tompkins Channel.

Base Bid Price:

In words

In figures

Contract time to complete the work: _____ Calendar Days

B. STANDBY TIME

The City will have the authority to suspend the work for such period as may be considered necessary. Standby time will be paid only if the work is shut down at the request of the City. The Standby Rate per day will be paid to the Contractor for each day the work is suspended. The Agreed Contract Time for the work will be extended by the amount of Standby Time requested by the City. The Standby Rate shall be full compensation for all equipment, labor and other expenses. Standby Rate is \$_____/Day.

- C. Enclosed with the Bid Form is a bid bond, cashier's or certified check in the amount of 5% of Bid Amount, which amount is not less than five (5) percent of the maximum possible amount of the contract. It is agreed that this bond or check shall be forfeited to the City if this Bid Form is accepted within sixty (60) calendar days from the date Bid Forms are received and the undersigned bidder fails to enter into a written contract and execute conditions stated in the Contract Documents within ten (10) calendar days after written Notice of Award is given. Otherwise, the bond or check will be promptly returned to the bidder.
- D. The bid price shall hold firm for a period of sixty (60) calendar days after the scheduled date for receiving bids. The City reserves the right to reject any and all bids if the General Land Office impact fees cause the project costs to exceed the available budget. This determination will be made after the bid opening and prior to the contract award (if any).
- E. If awarded the contract, the undersigned bidder hereby agrees to commence work under this contract within ten (10) calendar days after the date of the written Notice to Proceed and to fully complete the project within the number of days from the date of the Notice to Proceed, as specified for the Base Bid and any Alternate awarded.
- F. The bidder is required to fill out the attached Bid Breakdown to expedite proper evaluation of the bids. This Bid Breakdown is part of the Bid; and failure to complete this sheet may cause the bid to be rejected.
- G. The bidder understands that the City reserves the right to reject any or all bids, to waive any informalities in the bidding, and that the work is to be done on a unit price basis.
- H. We (have ____) (have not ____) visited the site and (are ____)(are not ____) aware of the existing conditions.

BID FORM
TOMPKINS CHANNEL DREDGING – 2011
CITY OF SOUTH PADRE ISLAND

Bidder acknowledges receipt of the following addenda:

Respectfully submitted,

CONTRACTOR: _____
(Company Name)

BY: _____
(Signature)

NAME: _____

TITLE: _____

ADDRESS, TELEPHONE NUMBER & CONTACT PERSON (For all official correspondence)

DATE: _____

BID BREAKDOWN

BID BREAKDOWN
TOMPKINS CHANNEL DREDGING – 2011

BREAKDOWN OF BID PRICES

This breakdown is part of the Contract Documents and is to help the City evaluate the bids and detect possible errors or omissions and to indicate approximate quantities to be dredged at each site. The Bidder shall fill out the items listed below so that the total matches the prices shown on the Bid Form.

DREDGING METHOD 1:

A. BASE BID

a. Tompkins Channel, 80' bottom width

<u>Item</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Extension</u>
MOBILIZATION/DEMOBILIZATION (60% paid at end of mobilization) (40% paid at end of demobilization)	1 L.S.	\$ _____	\$ _____
PLACEMENT AREA CONSTRUCTION & MAINTENANCE (SEE APPENDIX 'A')	1 L.S.	\$ _____	\$ _____
DREDGING	11,000 C.Y.	\$ _____	\$ _____

DREDGING METHOD 2:

A. BASE BID

a. Tompkins Channel, 80' bottom width

<u>Item</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Extension</u>
MOBILIZATION/DEMOBILIZATION (60% paid at end of mobilization) (40% paid at end of demobilization)	1 L.S.	\$ _____	\$ _____
PIPELINES	1 L.S.	\$ _____	\$ _____
PLACEMENT AREA CONSTRUCTION & MAINTENANCE (SEE APPENDIX 'A')	1 L.S.	\$ _____	\$ _____
DREDGING	11,000 C.Y.	\$ _____	\$ _____

GENERAL CONDITIONS

TABLE OF CONTENTS OF GENERAL CONDITIONS

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>	<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
1. DEFINITIONS		2.8 Preconstruction Conference	4
1.1 Addenda	1	2.9 Initially acceptable Schedules	4
1.2 Agreement	1	3. CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	
1.3 Application for Payment	1	3.1-3.2 Intent	4
1.4 Asbestos	1	3.3 Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies	5
1.5 Bid	1	3.4 Intent of Certain Terms or Adjectives	5
1.6 Bidding Documents	1	3.5 Amending Contract Documents	5
1.7 Bidding Requirements	1	3.6 Supplementing Contract Documents	6
1.8 Bonds	1	3.7 Reuse of Documents	6
1.9 Change Order	1	4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	
1.10 Contract Documents	1	4.1 Availability of Lands	6
1.11 Contract Price	1	4.2 Subsurface and Physical Conditions	6
1.12 Contract Times	1	4.2.1 Reports and Drawings	6
1.13 CONTRACTOR	1	4.2.2 Limited Reliance by CONTRACTOR Authorized; Technical Data	6
1.14 <i>defective</i>	1	4.2.3 Notice of Differing Subsurface or Physical Conditions	7
1.15 Drawings	1	4.2.4 ENGINEER's Review	7
1.16 Effective Date of the Agreement	2	4.2.5 Possible Contract Documents Change	7
1.17 ENGINEER	2	4.2.6 Possible Price and Times Adjustments	7
1.18 ENGINEER's Consultant	2	4.3 Physical Conditions - Underground Facilities	7
1.19 Field Order	2	4.3.1 Shown or Indicated	7
1.20 General requirements	2	4.3.2 Not Shown or Indicated	8
1.21 Hazardous Waste	2	4.4 Reference Points	8
1.22 Laws and Regulations; Laws or Regulations	2	4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material	8
1.23 Liens	2	5. BONDS AND INSURANCE	
1.24 Milestone	2	5.1-5.2 Performance, Payment and Other Bonds	9
1.25 Notice of Award	2	5.3 Licensed Sureties and Insurers; Certificates of Insurance	9
1.26 Notice to Proceed	2	5.4 CONTRACTOR's Liability Insurance	9
1.27 OWNER	2	5.5 OWNER's Liability Insurance	10
1.28 Partial Utilization	2	5.6 Property Insurance	10
1.29 PCBs	2	5.7 Boiler and Machinery or Additional Property Insurance	11
1.30 Petroleum	2	5.8 Notice of Cancellation Provisions	11
1.31 Project	2	5.9 CONTRACTOR's Responsibility for Deductible Amounts	11
1.32 Radioactive Material	2	5.10 Other Special Insurance	11
1.33 Resident Project Representative	2	5.11 Waiver of Rights	11
1.34 Samples	2	5.12-5.13 Receipt and Application of Insurance Proceeds	12
1.35 Shop Drawings	2	5.14 Acceptance of Bonds and Insurance; Option to Replace	12
1.36 Specifications	2	5.15 Partial Utilization - Property Insurance	12
1.37 Subcontractor	2	6. CONTRACTOR'S RESPONSIBILITIES	
1.38 Substantial Completion	2	6.1-6.2 Supervision and Superintendence	12
1.39 Supplementary Conditions	3	6.3-6.5 Labor, Materials and Equipment	13
1.40 Supplier	3	6.6 Progress Schedule	13
1.41 Underground Facilities	3		
1.42 Unit Price Work	3		
1.43 Work	3		
1.44 Work Change Directive	3		
1.45 Written Amendment	3		
2. PRELIMINARY MATTERS			
2.1 Delivery of Bonds	3		
2.2 Copies of Documents	3		
2.3 Commencement of Contract Times; Notice to Proceed	3		
2.4 Starting the Work	3		
2.5.2.7 Before Starting Construction; CONTRACTOR's Responsibility to Report: Preliminary Schedules; Delivery of Certificates of Insurance	4		

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>	<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
6.7 Substitutes and "Or-Equal" Items; CONTRACTOR's Expense; Substitute Construction Methods or Procedures; ENGINEER's Evaluation	13	9.4 Clarifications and Interpretations	21
6.8-6.11 Concerning Subcontractors, Suppliers and Others; Waiver of Rights	14	9.5 Authorized Variations in Work	21
6.12 Patent Fees and Royalties	14	9.6 Rejecting Defective Work	22
6.13 Permits	15	9.7-9.9 Shop Drawings, Change Orders and Payments	22
6.14 Laws and Regulations	16	9.10 Determinations for Unit Prices	22
6.15 Taxes	16	9.11-9.12 Decisions on Disputes; ENGINEER as Initial Interpreter	22
6.16 Use of Premises	16	9.13 Limitations on ENGINEER's Authority and Responsibilities	23
6.17 Site Cleanliness	16	10. CHANGES IN THE WORK	
6.18 Safe Structural Loading	16	10.1 OWNER Ordered Change	23
6.19 Record Documents	16	10.2 Claim for Adjustment	23
6.20 Safety and Protection	16	10.3 Work Not Required by Contract Documents	23
6.21 Safety Representative	17	10.4 Change Orders	23
6.22 Hazard Communication Programs	17	10.5 Notification of Surety	24
6.23 Emergencies	17	11. CHANGE OF CONTRACT PRICE	
6.24 Shop Drawings and Samples	17	11.1-11.3 Contract Price: Claim for Adjustment; Value of the Work	24
6.25 Submittal Procedures: CONTRACTOR's Review Prior to Shop Drawing or Sample Submittal	17	11.4 Cost of the Work	24
6.26 Shop Drawing & Sample Submittals Review by ENGINEER	18	11.5 Exclusions to Cost of the Work	25
6.27 Responsibility for Variation From Contract Documents	18	11.6 CONTRACTOR's Fee	26
6.28 Related Work Performed Prior to ENGINEER's Review and Approval of Required Submittals	18	11.7 Cost Records	26
6.29 Continuing the Work	18	11.8 Cash Allowances	26
6.30 CONTRACTOR's General Warranty and Guarantee	18	11.9 Unit Price Work	27
6-31-6.33 Indemnification	19	12. CHANGE OF CONTRACT TIMES	
6.34 Survival of Obligations	19	12.1 Claim for Adjustment	27
7. OTHER WORK		12.2 Time of the Essence	27
7.1-.3 Related Work at Site	19	12.3 Delays Beyond CONTRACTOR's Control	27
7.4 Coordination	20	12.4 Delays Beyond OWNER's and CONTRACTOR's Control	27
8. OWNER'S RESPONSIBILITIES		13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK	
8.1 Communications to Contractor	20	13.1 Notice of Defects	28
8.2 Replacement of ENGINEER	20	13.2 Access to the Workz	28
8.3 Furnish Data and Pay Promptly When Due	20	13.2 Tests and Inspections; Contractor's Cooperation	28
8.4 Lands and Easements; Reports and Tests	20	13.4 OWNER's Responsibilities; Independent Testing Laboratory	28
8.5 Insurance	20	13.5 CONTRACTOR's Responsibilities	28
8.6 Change Orders	20	13.6-13.7 Covering Work Prior to Inspection, Testing or Approval	28
8.7 Inspections, Tests and Approvals	20	13.8-13.9 Uncovering Work at ENGINEER's Request	28
8.8 Stop or Suspend Work; Terminate CONTRACTOR's Services	20	13.10 OWNER May Stop the Work	29
8.9 Limitations on OWNER's Responsibilities	20	13.11 Correction or Removal of Defective Work	29
8.10 Asbestos, PCHs, Petroleum, Hazardous Waste or Radioactive Material	21	13.12 Correction Period	29
8.11 Evidence of Financial Arrangements	21	13.13 Acceptance of Defective Work	29
9. ENGINEER'S STATUS DURING CONSTRUCTION		13.14 OWNER May Correct Defective Work	29
9.1 OWNER's Representative	21	14. PAYMENTS TO CONTRACTOR AND COMPLETION	
9.2 Visits to Site	21	14.1 Schedule of Values	30
9.3 Project Representative	21	14.2 Application for Progress Payment	30

<i>Article or Paragraph Number & Title</i>	<i>Page Number</i>
14.3 CONTRACTOR's Warranty of Title	30
14.4-14.7 Review of Applications for Progress Payments	30
14.8-14.9 Substantial Completion	31
14.10 Partial Utilization	32
14.11 Final Inspection	32
14.12 Final Application for Payment	32
14.13-14. final Payment and Acceptance	32
14.15 Waiver of Claims	33
15. SUSPENSION OF WORK AND TERMINATION	
15.1 OWNER May Suspend Work	33
15.2-15.4 OWNER May Terminate	33
15.5 CONTRACTOR May Stop Work or Terminate	34
16. DISPUTE RESOLUTION	34
17. MISCELLANEOUS	
17.1 Giving Notice	34
17.2 Computation of times	35
17.3 Notice of Claim	35
17.4 Cumulative Remedies	35
17.5 Professional Fees and Court Costs Included	35
EXHIBIT GC-A	36

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1. *Addenda* - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2. *Agreement* - The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3. *Application for Payment* - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4. *Asbestos* - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5. *Bid* - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6. *Bidding Documents* - The Notice to Bidders, Instructions to Bidders, the Bid Form, the Bid Breakdown, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.7. *Bidding Requirements* - The Notice to Bidders, Instructions to Bidders, and the Bid Form, and Bid Breakdown.
- 1.8. *Bonds* - Performance and Payment bonds and other instruments of security.
- 1.9. *Change Order* - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.10. *Contract Documents* - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directive, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.
- 1.11. *Contract Price* - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.12. *Contract Times* - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for the final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.
- 1.13. *CONTRACTOR* - The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.14. *defective* - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.15. *Drawings* - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined. Also referred to as Plans, Construction Drawings, and Construction Plans.

1.16. *Effective Date of the Agreement* - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

1.17. *ENGINEER* - The person, firm or corporation named as such in the Agreement.

1.18. *ENGINEER's Consultant* - A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

1.19. *Field Order* - A written order issued by ENGINEER which orders minor changes in the work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

1.20. *General Requirements* - Sections of Division I of the Specifications.

1.21. *Hazardous Waste* - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

1.22. *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.23. *Liens* - Liens, charges, security interests or encumbrances upon real property or personal property.

1.24. *Milestone* - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

1.25. *Notice of Award* - The written notice by OWNER or ENGINEER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.26. *Notice to Proceed* - A written notice given by OWNER or ENGINEER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.

1.27. *OWNER* - The public body or authority, corporation, association, firm or person with whom

CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.

1.28. *Partial Utilization* - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

1.29. *PCBs* - Polychlorinated biphenyls.

1.30. *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

1.31. *Project* - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.32. *Radioactive Material* - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

1.33. *Resident Project Representative* - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

1.34. *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.35. *Shop Drawings* - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

1.36. *Specifications* - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.37. *Subcontractor* - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.38. *Substantial Completion* - The Work (or a specified part thereof) has progressed to the point where, in the

opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.39. *Supplementary Conditions* - The part of the Contract Documents which amends or supplements these General Conditions. Also referred to as Special Conditions in the Contract Documents.

1.40. *Supplier* - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

1.41. *Underground Facilities* - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.42. *Unit Price Work* - Work to be paid for on the basis or unit prices.

1.43. *Work* - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

1.44. *Work Change Directive* - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or

documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.

1.45. *Written Amendment* - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

2.2. OWNER shall furnish to CONTRACTOR up to two executed copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents, and three sets of plans and specifications as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

2.3. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day specified in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Work:

2.4. CONTRACTOR shall start to perform the Work within ten (10) days from the date indicated on the Notice to Proceed, but no Work shall be done at the site prior to the date on which the Contract Time commence to run.

Before Starting Construction:

2.5. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; However, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

2.6. Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:

2.6.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.7. Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

2.8. After the Agreement is executed by all parties, but

before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate may be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

2.9. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work not interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be

inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.

3.3. Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:

3.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

3.3.2. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR, shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1. the provisions of any such standard,

specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

3.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or Regulation).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's Consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgement of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjectives shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

3.5. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

3.5.1. a formal written Amendment,

3.5.2. a Change Order (pursuant to paragraph 10.4),
or

3.5.3. a Work Change Directive (pursuant to
paragraph 10.1).

3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.6.1. a Field Order (pursuant to paragraph 9.5),

3.6.2. ENGINEER'S approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or

3.6.3. ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER.

**ARTICLE 4 - AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL
CONDITIONS; REFERENCE POINTS**

Availability of Lands:

4.1. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall

identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2. Subsurface and Physical Conditions:

4.2.1. Reports and Drawings: Reference is made to the Contract Documents for identification of:

4.2.1.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and

4.2.1.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.

4.2.2. Limited Reliance by CONTRACTOR Authorized: Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not part of the Contract Documents. Such "technical data" is identified in the Contract Documents. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.4.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.2.3. *Notice of Differing Subsurface or Physical Conditions:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:

4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or

4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or

4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents: then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

4.2.4. *ENGINEER's Review:* ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining addition exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

4.2.5. *Possible Contract Documents Change:* If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

4.2.6. *Possible Price and Times Adjustments:* An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to

the following:

4.2.6.1. such conditions must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;

4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;

4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and

4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if;

4.2.6.4.1. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under negotiated contract; or

4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3. *Physical Conditions - Underground Facilities:*

4.3.1. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities

or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. *Not Shown or Indicated:* If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

Reference Points:

4.4. OWNER shall provide reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1. OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2. CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

4.5.4. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.

4.5.5. The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except

as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

5.4. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate and further defined in the Special Conditions for the Work being performed and furnished and will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work

and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.4.1. claims under workers' compensation, disability benefits and other similar employee benefit acts;

5.4.2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR'S employees;

5.4.4. claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5.4.5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

5.4.6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

5.4.7. with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER'S Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insured, and include coverage for the respective officers and employees of all such additional insureds;

5.4.8. include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

5.4.9. include completed operations insurance;

5.4.10. include contractual liability insurance

covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;

5.4.11. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);

5.4.12. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and

5.4.13. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter); and

5.4.14. as further specified in the Special Conditions.

OWNER's Liability Insurance:

5.5. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

5.6. Unless otherwise provided in the Supplementary Conditions, OWNER may, at the Owner's option, purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance would:

5.6.1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER,

ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

5.6.2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;

5.6.3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

5.6.4. cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and

5.6.5. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.

5.7. OWNER may, at the Owner's option purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

5.8. All the policies of insurance (and the certificates or other evidence thereof) that may be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 may contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days' prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.

5.9. OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

5.10. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 and 5.7. OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.11 Waiver of Rights:

5.11.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

5.11.2. In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors,

employees and agents of any of them for:

5.11.2.1. loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by OWNER; and

5.11.2.2. loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other insured peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds:

5.12. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

5.13. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace:

5.14. If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

Partial Utilization-Property Insurance:

5.15. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design

or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR. The ENGINEER reserves the right to approve the superintendent proposed by the CONTRACTOR.

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNERS. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the

Contract Documents.

Progress Schedule:

6.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:

6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General requirements applicable thereto.

6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other suppliers may be accepted by ENGINEER under the following circumstances:

6.7.1.1. "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2. *Substitute Items:* If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall

submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

6.7.1.3. *CONTRACTOR's Expense:* All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.

6.7.2. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in

ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.

6.7.3. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by Owner and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Contract Documents, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such

Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject *defective* Work.

6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier for other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the ENGINEER through CONTRACTOR.

6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6

or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights for copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulation, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action,

legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, not shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

6.19. CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER. Final payment will not be made until the record documents, Samples, and Shop Drawings are received by the ENGINEER.

Safety and Protection:

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all persons on the Work site or who may be affected by the Work;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER, or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

6.22. CONTRACTOR shall be responsible for

coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

Emergencies:

6.23. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24. Shop Drawings and Samples:

6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25. Submittal Procedures:

6.25.1. Before submitting each Shop Drawing or

Sample. CONTRACTOR shall have determined and verified:

6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,

6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and

6.25.1.3. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2 Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

6.25.3. At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26. ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract

Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27. ENGINEER'S review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28. Where a Shop drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

6.30.1. CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

6.30.1.1. abuse, modification or improper

maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or

6.30.1.2. normal wear and tear under normal usage.

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

6.30.2.1. observations by ENGINEER;

6.30.2.2. recommendation of any progress for final payment by ENGINEER;

6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;

6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;

6.30.2.5. any acceptance by OWNER or any failure to do so;

6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;

6.30.2.7. any inspection, test or approval by others;
or

6.30.2.8. any correction of *defective* work by OWNER.

Indemnification:

6.31. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from the performance of the Work, provided that any such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself),

including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.

6.32. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.33. The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to the liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

6.34. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

ARTICLE 7 - OTHER WORK

Related Work at Site:

7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then:

(i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such

authority and responsibility will be itemized; and

7.4.3. the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8-OWNER'S RESPONSIBILITIES

8.1. Except as otherwise provided in these General Conditions, OWNER may issue all communications to CONTRACTOR through ENGINEER.

8.2. In case of termination of the employment of ENGINEER, OWNER will appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.3. OWNER will furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.

8.4. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.

8.5. OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.

8.6. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.7. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.8. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.

8.9. The OWNER shall not supervise, direct or have

control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

8.10. OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

8.11. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

9.1. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such

visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

9.3. If OWNER and ENGINEER agree, ENGINEER may furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. IF OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

9.5. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents

which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

9.6. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be *defective*, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.

9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Prices:

9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon shall be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of

intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement" entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to

exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.

9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.

9.13. Limitations on ENGINEER's Authority and Responsibilities:

9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

9.13.2. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all

maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.

9.13.5. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

ARTICLE 10 - CHANGES IN THE WORK

10.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.

10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.

10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;

10.4.2. changes in the Contract Price or Contract Times which are agreed to by the parties; and

10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

11.2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this

paragraph 11.2.

11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:

11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1. through 11.9.3, inclusive);

11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);

11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:

11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

11.4.5. Supplemental costs including the following:

11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof

- all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.

11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.5. The term Cost of the Work shall not include any of the following:

11.5.1. Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents,

expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4. - all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

11.5.2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.

11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).

11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of *defective* Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

11.6. Contractor's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.6.1. a mutually acceptable fixed fee; or

11.6.2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

11.6.2.1. for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;

11.6.2.2. for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;

11.6.2.3. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

11.6.2.4. no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;

11.6.2.5. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

11.6.2.6. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.

11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

11.8.1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2. CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9. Unit Price Work:

11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Bid Breakdown. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.

11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:

11.9.3.1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Bid Breakdown, unless specified otherwise in the Special Conditions, and

11.9.3.2. there is no corresponding adjustment with respect to any other item of Work; and

11.9.3.3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1. The Contract Times (or Milestones) may only be

changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2. All time limits stated in the Contract Documents are of the essence of the Agreement.

12.3. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.4. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER, be liable to CONTRACTOR, and Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors

performing other work as contemplated by Article 7.

**ARTICLE 13 - TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR
ACCEPTANCE OF DEFECTIVE WORK**

13.1. *Notice of Defects:* Prompt notice of all *defective* Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

13.2. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

Tests and Inspections:

13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

13.4. OWNER will employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

13.4.1. for inspection, tests or approvals covered by paragraph 13.5 below;

13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and

13.4.3. as otherwise specifically provided in the Contract Documents.

13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such

inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

13.9. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in articles 11 and 12.

OWNER May Stop the Work:

13.10. If the Work is *defective*, or CONTRACTOR fails to supply sufficient skilled workers for suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

13.11. If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12. Correction Period:

13.12.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

13.12.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction

period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3. Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13. If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored

elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2. By the fifth day of the month immediately following the month in which the work was performed, (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that

OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Special Conditions.

CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Applications for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

14.4. ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER'S knowledge, information and belief:

14.5.1. the Work has progressed to the point indicated,

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

14.5.3. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER'S recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the Work is *defective*, or completed Work has been damaged requiring correction or replacement,

14.7.2. the Contract Price has been reduced by Written Amendment or Change Order,

14.7.3. OWNER has been required to correct *defective* Work or complete Work in accordance with paragraph 13.14, or

14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

14.7.5. claims have been made against OWNER on account of CONTRACTOR'S performance or furnishing

of the Work,

14.7.6. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens,

14.7.7. there are other items entitling OWNER to set-off against the amount recommended, or

14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraph 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive:

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER'S objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be

completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from Owner. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER'S issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

14.10. Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

14.11. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

14.12. After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of the surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

14.13. If, on the basis of ENGINEER'S observation of the Work during construction and final inspection, and

ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR

14.14. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

14.15. The making and acceptance of final payment will constitute:

14.15.1. a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents: and

14.15.2. a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);

15.2.2. if CONTRACTOR disregards Law and Regulations of any public body having jurisdiction;

15.2.3. if CONTRACTOR disregards the authority of ENGINEER; or

15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances construction equipment and machinery at the site and use the same to the full extent they could be used

by CONTRACTOR (without liability to CONTRACTOR for trespass or/ conversion), incorporate in the Work all materials and equipment stored at the site or of which OWNER has paid CONTRACTOR by which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to the OWNER. Such claims, costs, losses and damages incurred by Owner will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit of such work;

15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

15.4.4. for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

CONTRACTOR May Stop Work or Terminate:

15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 15.4. in lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that might arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-A, "Dispute Resolution Agreement," attached hereto and made a part hereof. If not such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraph 9.10, 9.11, and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

Giving Notice:

17.1. Whenever any provisions of the Contract Documents requires the giving of written notice, it will be

deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of other party or of any of the party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for a waiver of the provisions of any applicable statute of limitations or response.

Cumulative Remedies:

17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not to be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

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**EXHIBIT GC-A to General
Conditions of the Agreement
Between OWNER and
CONTRACTOR**

DISPUTE RESOLUTION AGREEMENT

OWNER and CONTRACTOR hereby agree that Article 16 of the General Conditions to the Agreement between OWNER and CONTRACTOR is amended to include the following agreement of the parties:

16.1. All claims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided by paragraph 14.15) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.

16.2. No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which ENGINEER has rendered a written decision or (b) the thirty-first day after the parties have presented their evidence to ENGINEER if a written decision has not been rendered by ENGINEER before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period will result in ENGINEER's decision being final and binding upon OWNER and CONTRACTOR. If ENGINEER renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of ENGINEER rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.

16.3. Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to ENGINEER for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

16.4. Except as provided in paragraph 16.5 below, no arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including ENGINEER, ENGINEER's Consultant and the officers, directors, agents, employees or consultants of any of them) who is not a party to this contract unless:

16.4.1. the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and

16.4.2. such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and

16.4.3. the written consent of the other person or entity sought to be included and of OWNER and CONTRACTOR has been obtained for such inclusion, which consent shall make specific reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5. Notwithstanding paragraph 16.4 if a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the Work of a Subcontractor, either OWNER or CONTRACTOR may join such Subcontractor as a party to the arbitration between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts required by paragraph 6.11 a specific provision whereby the Subcontractor consents to being joined in an arbitration between OWNER and CONTRACTOR involving the Work of such Subcontractor. Nothing in this paragraph 16.5 nor in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of Subcontractor and against OWNER, ENGINEER or ENGINEER's Consultants that does not otherwise exist.

16.6. The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal.

16.7. OWNER and CONTRACTOR agree that they shall first submit any and all unsettled claims, counterclaims, disputes and other matters in question between them arising out of or relating to the Contract Documents or the breach thereof ("disputes"), to mediation by The American Arbitration Association under the Construction Industry Mediation Rules of the American Arbitration Association prior to either of them initiating against the other a demand for arbitration pursuant to paragraphs 16.1 through 16.6, unless delay in initiating arbitration would irrevocably prejudice one of the parties. The respective thirty and ten day time limits within which to file a demand for arbitration as provided in paragraphs 16.2 and 16.3 above shall be suspended with respect to a dispute submitted to mediation within those same applicable time limits and shall remain suspended until ten days after the termination of the mediation. The mediator of any dispute submitted to mediation under this Agreement shall not serve as arbitrator of such dispute unless otherwise agreed.

SPECIAL CONDITIONS

SPECIAL CONDITIONS
TOMPKINS CHANNEL DREDGING – 2011
TABLE OF CONTENTS

- 1.01 DESCRIPTION
- 1.02 INSPECTION
- 1.03 UNIT PRICES
- 1.04 PARTIAL PAYMENTS
- 1.05 PERMITS
- 1.06 SCOPE OF WORK
- 1.07 PROTECTION OF EXISTING EQUIPMENT, STRUCTURES AND UTILITIES
- 1.08 MISPLACED MATERIAL
- 1.09 SIGNAL LIGHTS
- 1.10 CHANNEL TRAFFIC
- 1.11 PHYSICAL DATA
- 1.12 CONTRACT DOCUMENTS
- 1.13 USE OF THE SITE
- 1.14 PROTECTION OF JOB SITE
- 1.15 HORIZONTAL AND VERTICAL CONTROL
- 1.16 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS
- 1.17 SANITARY FACILITIES
- 1.18 ASSIGNMENT OR NOVATION
- 1.19 LOSS FROM NATURAL CAUSES
- 1.20 PRECONSTRUCTION CONFERENCE
- 1.21 TAXES
- 1.22 INSURANCE
- 1.23 FAILURE TO COMPLETE WORK
- 1.24 SEAGRASS
- 1.25 TEMPORARY SUSPENSION OF WORK
- 1.26 SPECIAL EVENTS

SPECIAL CONDITIONS

TOMPKINS CHANNEL DREDGE – 2011

PART 1 – GENERAL

1.01 DESCRIPTION

- A. Name of Project: The work covered by these Contract Documents is entitled “TOMPKINS CHANNEL DREDGING – 2011”.

- B. Related Documents: Drawings and Specifications (Contract Documents), including General Conditions, Special Conditions, and all Technical Specifications apply to work of this section.

- C. Intent: The intent and purpose of the drawings and specifications is to provide a completed project in place and ready for operation.
The cost of all work not covered separately as such shall be included in the unit prices bid for the work item set out in the proposal.
The proposal consists of the Statement of Bidder’s Qualifications, Bid Form and Bid Breakdown.

This contract shall include all work necessary for completion of the subject project in accordance with the plans and specifications. “All work” will consist of furnishing all materials, labor, supervision, equipment, tools and other services for this project.

- D. Owner: The word “Owner” shall be understood as referring to the City of South Padre Island, Texas.

- E. Engineer: The word “Engineer” shall be understood as referring to the Project Engineer, or his duly authorized representative.

1.02 INSPECTION

The Contractor shall perform the before and after dredge soundings and perform his own quality control. The equipment used shall be subject to the approval of the Engineer. The Engineer may witness the soundings. The Contractor shall cooperate with and assist the Engineer as required.

The Contractor shall be required to furnish at the request of the Engineer, the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the dredging plant as may be reasonably necessary in inspecting and supervising the work.

In addition, the Contractor shall, at the request of the Engineer, provide suitable transportation from all points on shore designated by the Engineer to and from the various pieces of plant, and to and from the disposal areas.

1.03 UNIT PRICES

The Owner reserves the right to adjust actual quantities by increasing up to twenty five percent (25%), or decreasing up to twenty five percent (25%) from the estimated quantities shown in the Bid Breakdown. Any deviation above or below these ranges may be negotiated to a mutually agreed upon price, at the option of either the Owner or the Contractor.

1.04 PARTIAL PAYMENTS

In order to be paid, the Contractor shall prepare and submit to the Engineer a statement of the amount of work done up to and including the last day of the preceding month, together with invoices for all materials received at the site of the work. The Engineer will review, and upon approval, forward onto the Owner for payment.

The Owner will pay the approved amount on the next regularly scheduled working day after the end of the pay cycle the total amount of the statement approved by the Engineer, less five percent (5%), which five percent (5%) will be retained by the Owner until final payment is made, and less any previous payments and less any sums due the Owner under the terms of this contract. It is also understood that if the whole work is near completion and an unexpected delay occurs due to no fault of the Contractor, the Owner may upon written recommendation of the Engineer, pay a reasonable and equitable portion of the retained amount to the Contractor, or at the Owner's option, the Contractor may be relieved of his obligation to fully complete the work, and paid the balance due him under the Contract, providing that he submits proof that all bills are paid. Invoicing shall not be more than once per month. The City of South Padre Island will conform to the Prompt Payment Act.

1.05 PERMITS

The Owner has obtained Corps of Engineers permits and General Land Office Easements that may be required to complete the work with the exception of those additional permits that will be required for optional dredging method 2. The Owner will apply for the appropriate permit after bids are received and a dredging option is selected. The Contractor shall comply with all State, Federal, and local regulatory requirements, and obtain any other permits or approvals necessary. The Contractor shall comply with the COE permits, GLO easements and conditions thereof. The Contractor shall take notice of any terms and conditions in all of the permits and easements concerning the use of silt curtains, protection of seagrasses or any other special requirements that will affect the prosecution of the work. Copies of these permits and easements are included in Section 01100.

1.06 SCOPE OF WORK

A general scope of work is outlined in the Notice to Bidders. The Scope of work for the project includes work as identified on the plans and outlined in the specifications, and is summarized in Section 01030.

1.07 PROTECTION OF EXISTING EQUIPMENT, STRUCTURES, AND UTILITIES

The Contractor is notified that dredging will occur adjacent to active existing marine and waterfront facilities. Overdredging or contact with dredging equipment could damage these structures. The drawings do not show the location of existing surface or subsurface structures adjacent to the work. It shall be the Contractor's responsibility to verify existing equipment, structures, and the condition of existing utilities and locations thereof prior to bidding. Should damage occur to any equipment, structures, or utilities, the Contractor shall contact the Owner immediately. All repairs will be at the Contractor's expense. The Contractor shall maintain a sufficient clearance between the dredge and existing structures, or portions thereof, and utilize precautionary devices such as buoys or other means as necessary. Should the Contractor overdredge or allow the dredging equipment to become in contact with any portion of any structure, repairs to the damaged areas shall be made by the Contractor, to the satisfaction of the Engineer, at no additional cost to the Owner. Failure to show existing equipment, structures, and utilities on the drawings will not be considered sufficient basis for claims for additional compensation for extra work in any manner whatsoever, unless the obstruction encountered is such to necessitate substantial changes in the lines or grades, or requires the building of special work for which no provision is made in the drawings and which is not essentially subsidiary to some item of work for which provision is made. It is assumed that as elsewhere provided the Contractor has thoroughly inspected the site, is informed as to the correct location of surface structures, and has included the cost of such incidental work in the price bid, and has considered and allowed for all foreseeable incidental work due to variable subsurface conditions, whether such conditions and such work are fully and properly described on the drawings or not. Minor changes and variations of the work specified and shown on the drawings shall be expected by the Contractor and allowed for as incidental to the satisfactory completion of a whole and functioning work or improvement.

1.08 MISPLACED MATERIAL

Should the Contractor, during the progress of the construction, lose, dump, throw overboard, sink, or misplace any material, plant, machinery or appliance, which in the opinion of the Engineer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, until the same are removed. Should he refuse, neglect or delay compliance with the above requirements, such obstructions may be removed by the Owner, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or

sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 et seq).

1.09 SIGNAL LIGHTS

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as set forth in Commandant U.S. Coast Guard Instruction M16672.2, Navigation Rules: International – Inland (COMDTINST M16672.2) or 33CFR81 Appendix A (International) and 33 CFR 84 through 89 (Inland) as applicable.

1.10 CHANNEL TRAFFIC

Traffic in the Tompkins Channel consists of recreational vessels of various sizes. The Contractor is informed that channel traffic will interfere with dredging to some extent, and allowances for this shall be included in the Contractor's Bid.

1.11 PHYSICAL DATA

Information furnished below is for the Contractor's review. However, it is expressly understood that the Owner will not be responsible for any interpretation or conclusion drawn therefrom by the Contractor. The Owner also shall not be responsible for any lack of information herein pertaining to physical conditions of the site. The Contractor shall make every effort possible to familiarize himself with and research the conditions to be expected at the site.

- A. Tidal Conditions: Under ordinary conditions, the mean monthly tidal range is about one and one-half feet. The height of the tide is largely dependent on the force, direction and duration of the wind. Strong southeasterly winds may depress the water surface as much as, and in some instances more than, two feet below mean low tide; while northerly winds may raise the water surface as much as, and in some instances more than, two feet above mean low tide.
- B. Project Location: The Tompkins Channel is accessible from both the Gulf of Mexico and the Gulf Intracoastal Waterway.
- C. For channel traffic, refer to Special Conditions Section 1.10.
- D. The Contractor is notified that dredging will occur adjacent to active, existing marine and waterfront facilities. Overdredging or contact with dredge equipment could damage these structures.

1.12 CONTRACT DOCUMENTS

The Contract Documents are complimentary and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the contract documents, priority of interpretation shall be in the following order; Signed agreement, Addenda (if any), Performance and Payment Bonds, Bid Form, Plans, Special Conditions, Instruction to Bidders, Technical Specifications, and General Conditions.

Omissions from the drawings or specifications, or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications. The Contractor shall check all drawings furnished to him immediately upon their receipt and shall promptly notify the Engineer of any discrepancies. Figures marked on drawings shall, in general, be followed in preference to scaled measurements. Large scale drawings shall, in general, govern over small scale drawings. The Contractor shall review all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

Any Bidder whose Proposal is accepted shall be required to execute the Contract, and to furnish satisfactory Performance and Payment Bonds within ten (10) days after written notice that the Contract has been awarded, and failure or neglect to do so shall constitute a breach of the Agreement affected by the acceptance of the Proposal. The damages to the Owner for such a breach will include a loss from interference with his construction program and other items whose accurate amount will be difficult or impossible to compute. The amount of the Check or Bid Bond accompanying the Proposal of such Bidder shall be retained by the Owner as liquidated damages for such breach. In the event any Bidder whose Proposal is accepted shall fail or refuse to execute the Contract as hereinbefore provided, the Owner may at its option determine that such Bidder has abandoned the Contract and, therefore, his Proposal and the acceptance thereof shall be null and void and the Owner shall be entitled to liquidated damages as provided.

1.13 USE OF THE SITE

The work will be carried out in an active waterway. The entire length of the Tompkins Channel shall remain functional and open to traffic at all times.

1.14 PROTECTION OF JOB SITE

The Contractor shall be responsible for protection of the job site. The Contractor shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the property of himself or any other person, as a result of his operations hereunder. Drawings and specifications as well as additional

information concerning the work to be performed passing from or through the Engineer shall not be interpreted as requiring or allowing Contractor to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to the work of the Contractor is to perform. Contractor shall be fully and completely liable, at his own expense, for design, construction, installation, and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

1.15 HORIZONTAL AND VERTICAL CONTROL

- A. Owner's Responsibilities: At such times as he may elect, the Owner may make surveys to check conformance of the work with required lines, grades or quantities. Owner provided project benchmarks and control points are as indicated on the drawings.
- B. Contractor's Responsibilities: The Contractor shall provide any and all construction staking, baselines or reference points that may be required by his operation to insure conformance with the lines and grades shown on the drawings. It shall also be the responsibility of the Contractor to maintain and preserve all stakes and other marks established by the Engineer until authorized to remove them. If such marks are destroyed by the Contractor through his negligence prior to their authorized removal, they may be replaced by the Engineer at his discretion. The expense of replacement will be deducted from any amounts due, or to become due to the Contractor.

1.16 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, promotion, demotion or transfer, compensation, and selection for training, including apprenticeship.

1.17 SANITARY FACILITIES

The Contractor shall furnish, install and maintain sanitary facilities for the workmen. As the needs arise, a sufficient number of enclosed temporary toilets shall be conveniently placed as required. Drinking water shall be provided from an approved source, so piped or transported as to keep it safe and fresh and served from single service containers or

satisfactory types of sanitary drinking stands or fountains. All such facilities and services shall be furnished in strict accordance with existing and governing health regulations.

1.18 ASSIGNMENT OR NOVATION

The Contractor shall not assign or transfer, whether by an assignment or novation, any of its rights, duties, benefits, obligations, liabilities, or responsibilities under this Contract without the written consent of the Owner; provided, however, that assignments to banks or other financial institutions maybe made without the consent of the Owner. No assignment or novation of this Contract shall be valid unless the assignment or novation expressly provides that the assignment of any of the Contractor's rights or benefits under the Contract is subject to a prior lien for labor performed, services rendered, and materials, tools, and equipment supplied for the performance of the work under this Contract in favor of all persons, firms, or corporations rendering such labor or services or supplying such materials, tools, or equipment.

1.19 LOSS FROM NATURAL CAUSES

All loss or damage arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstances, or from unusual difficulties encountered in the prosecution of the work shall be sustained and borne by the Contractor at his own expense.

1.20 PRECONSTRUCTION CONFERENCE

A preconstruction conference will be held prior to the commencement of construction. Time and date will be established at a later date. The Contractor shall prepare a submittal to be presented at the preconstruction conference, that indicates the monthly anticipated partial payments, and includes the construction schedule.

1.21 TAXES

Contracts for improvements to real property awarded by the City do not qualify for any exemption of sales, excise, and use taxes unless the Contractor elects to operate under a separated contract as defined by Section 3.291 of Chapter 3, Tax Administration of Title 34, Public Finance of the Texas Administrative Code, or such other rules or regulations as may be promulgated by the Comptroller of Public Accounts of Texas.

A. If the successful bidder elects to operate under a separated contract, he shall:

- a. Obtain the necessary sales tax permits from the State Comptroller.
- b. Identify, in the appropriate spaces in the Statement of Materials and Other Charges form, the cost of materials physically incorporated into the project.

- c. Provide resale certificates to suppliers.
- B. Under a separated contract, only materials incorporated into the project will be tax exempt. Equipment rental, certain equipment purchases, and consumable items not physically incorporated into City realty are not tax exempt. Fuel, however, remains tax exempt.
- C. If the successful bidder does not elect to operate under a separated contract, he shall be responsible for all sales, excise, and use taxes applicable to this project.
- D. Subcontractors are eligible for sales tax exemptions if the subcontractor also complies with the above requirements. The Contractor must issue a resale certificate to the subcontractor and the subcontractor, in turn, issue a resale certificate to his supplier.
- E. The Contractor is liable for payment of all other taxes, such as worker's compensation, unemployment, and other contributions based on wages.
- F. The Contractor is responsible for the final determination and payment of all sales taxes due and payable under current State Law.

1.22 INSURANCE

Before commencing work, the Contractor shall secure with a reputable company or companies and subject to the approval of the Owner, Liability Insurance Policy, including liability coverage for explosion, collapse, and underground causes. All such insurance shall name the Engineer, the City of South Padre Island, and employees as additional insured to include damages arising out of the negligence of the additional insured(s). The minimum limits of liability of such policy shall be:

- A. Comprehensive general liability insurance against claims for injury or death to persons or damage to personal property on or about the construction site with minimum limits of liability of \$1,000,000 combined single limit for each occurrence. Contractor's deductible shall not be in excess of \$5,000 for any one (1) occurrence without the prior written permission of the Owner. Such insurance shall include, but not be limited to, bodily injury liability, personal injury liability, property damage liability, broad form property damage liability, contractual liability, products or completed operations liability, and liability for property of others in the care, custody and control of the Contractor.
- B. Comprehensive automobile liability insurance against claims for injury or death to persons or damage to property occurring on or about the construction site with

limits of liability in accordance with statutory requirements. Such insurance shall include, but not be limited to, bodily injury liability, personal injury liability, property damage liability, hired car liability, and non-owner auto liability.

- C. Workers' Compensation insurance as will protect Contractor's employees from claims under the Texas Workers Compensation Act as well as all Federal Acts applicable to the Contractor's operations at the site such as, but not limited to, U.S. Longshoremen and Harborworkers Act, Jones Act, and Federal Employers Liability Act. The limit of liability under Employers Liability section of the Texas Workers Compensation Policy and all Federal Acts insurance shall be in accordance with statutory requirements.

The Contractor shall, prior to the commencement of any work contemplated by the contract, furnish the Owner a certificate or certificates properly executed by the insurance carrier showing all insurance to be in force as required by this contract.

The certificate or certificates shall permit the cancellation or alteration of such policies only after 30 days written notice to the Owner. Additionally, the Contractor shall, prior to the commencement of any work contemplated by the contract furnish the Owner a copy of the "Additional Insured" endorsement or endorsements properly executed by the insurance carrier for all insurance required by this contract. A letter is also required from the insurance carrier stating that they have reviewed the proposed construction techniques, the project insurance requirements, and the Contractor's policies, and the coverages indicated on submitted certificate(s) provide the indicated coverages herein.

Any physical damage insurance carried on Contractor's equipment must be endorsed to waive subrogation as respects Owner.

All accidents or injuries to Contractor's employees on the job site must be immediately reported to the Owner.

1.23 FAILURE TO COMPLETE WORK ON TIME

If the Contractor fails to complete the contract in the calendar days specified, the time charge will be made for each calendar day thereafter.

The time set forth in the Bid Form for the completion of the work is of the essence of the contract. For each calendar day that any work shall remain uncompleted after the expiration of the calendar days specified in the contract, together with any additional calendar days allowed, \$500.00 per day will be deducted from the money due or to become due to the Contractor, not as a penalty, but as liquidated damages.

1.24 SEAGRASSES

The Contractor shall use care with all construction equipment so as not to damage existing seagrasses outside of the dredging area. No propwashing is allowed. The Contractor shall employ the use of silt screens or other equipment as necessary to avoid seagrass damage outside of the dredging area.

Should the USACE determine that damage to the existing seagrasses has occurred as a result of construction activities, mitigation shall be required as outlined in the permit. The Contractor shall be responsible for all mitigation costs, if damage to the seagrasses occurs as a result of his activities.

1.25 TEMPORARY SUSPENSION OF WORK

The Owner will have the authority to suspend the work, wholly or in part, for such period as he may consider necessary. Notice of such suspension with the reasons therefore will be given to the Contractor in writing. The Contractor shall not suspend work without written authority of the Owner. Should the Owner direct the Contractor to cease construction operations, the Contractor will be paid at the Standby Rate set forth in the Proposal.

1.26 SPECIAL EVENTS

As of now, there are no Special Events anticipated to take place within the Channel during the Contract time. If any events are set to occur, the Owner reserves the right to suspend work as outlined in Section 1.26 above.

TECHNICAL SPECIFICATIONS

DIVISION I
GENERAL REQUIREMENTS

SECTION 01030

SUMMARY OF THE WORK

PART 1 – GENERAL

1.01 RELATED DOCUMENTS

- A. Drawings (Also referred to herein as plans or construction plans) and specifications of the contract documents, apply to work of this section.

1.02 WORK DESCRIPTION

- A. General: Project work is briefly summarized in the Notice to Bidders and described in the Contract Documents.
- B. Work includes all materials, labor and equipment necessary for the **Tompkins Channel Dredging – 2011**. The work shall include, but is not limited to the following major work items:

Base Bid.

Includes dredging of the Tompkins Channel from Station 0+00 Baseline A to Station 6+00 Baseline M to a bottom width of 80 feet and a depth of 6 feet below mean low tide (MLT). The dredging may be accomplished by any one of the following dredging methods:

Dredging Method 1

This dredging method consists of dredging by mechanical means. The contractor may use the Seahorse Harbor Channel and the adjacent property as defined in the plans and specifications. Dredged material may be barged to this location and offloaded. The work includes the construction, monitoring, and maintenance of the dredged material placement area (see Appendix 'A').

Dredging Method 2

This dredging method consists of dredging by hydraulic means with the dredged material transported to the placement area by a continuous pipeline with booster stations as necessary. The work includes the placement, maintenance and removal of temporary dredged material discharge pipelines and booster stations; and construction, maintenance, and monitoring of the dredged material placement area (see Appendix 'A').

In addition to the above mentioned items, all other items shown in the project drawings and described in the Contract Documents. This list is intended to provide a general description of the work, but is not intended to be all inclusive.

1.03 INTERPRETATION OF CONTRACT DOCUMENTS

- A. In the event of duplications or conflicts of Contract Documents after the Contract has been executed, the most expensive method of work, materials and equipment shall be construed as the requirement, with a credit for all costs saved accruing to the Owner in the event the least expensive method of work is directed. A duplication of work is not intended by the Contract Documents and any duplications specified shall not become a basis for extra cost to the Owner.
- B. Explanatory notes on the drawings shall be preferred to conflicting drawn-out indications. Large scale details will be preferred to small scale drawings and figured dimensions to scale measurements. Where figures are lacking, scale drawings and figured dimensions to scale measurements are to be checked from the work in place. Should variations be found, they must be referred to the Engineer for instructions.
- C. The division of the specifications into sections is for convenience and orderly development only, and is not intended to apportion the various phases of the work among the various contractors on the project. Items required by the work generally covered under a section of the specifications may be mentioned under such section but specified in detail elsewhere. Neither the mention nor the detailed specification is intended to divide the work between contractors. Such division or apportionment is the responsibility of the prime contractor and should be delineated in any subcontract agreements. The priority of interpretation shall be as specified in Section 1.12 of the Special Conditions.

1.04 SCHEDULE OF DRAWINGS

<u>SHEET NUMBER</u>	<u>TITLE</u>
1	COVERSHEET & INDEX
2	PROJECT LAYOUT
3	PLAN: STA 0+00 – 26+00 ALIGNMENT 'A'
4	PLAN: STA 26+00 – 50+00 ALIGNMENT 'A'
5	PLAN: STA 50+00 – 72+98.70 ALIGNMENT 'A'
6	PLAN: STA 0+00 – 24+00 ALIGNMENT 'B'
7	PLAN: STA 24+00 ALIGNMENT 'B' – 16+00 ALIGNMENT 'C'
8	PLAN: STA 16+00 ALIGNMENT 'C'–4+00 ALIGNMENT 'E'
9	PLAN: STA 4+00 ALIGNMENT 'E'–6+00 ALIGNMENT 'G'
10	PLAN: STA 6+00 ALIGNMENT 'G'–5+00 ALIGNMENT 'J'

- 11 PLAN: STA 5+00 ALIGNMENT 'J'–1+00 ALIGNMENT 'M'
- 12 PLAN: STA 1+00 ALIGNMENT 'M'–18+31.81 ALIGNMENT 'N'
- 13 CROSS SECTIONS ALIGNMENT 'A'
- 14 CROSS SECTIONS ALIGNMENT 'A'
- 15 CROSS SECTIONS ALIGNMENT 'A'
- 16 CROSS SECTIONS ALIGNMENT 'A' & 'B'
- 17 CROSS SECTIONS ALIGNMENT 'B'
- 18 CROSS SECTIONS ALIGNMENT 'B' & 'C'
- 19 CROSS SECTIONS ALIGNMENT 'C' & 'D'
- 20 CROSS SECTIONS ALIGNMENT 'D', 'E' & 'F'
- 21 CROSS SECTIONS ALIGNMENT 'F' & 'G'
- 22 CROSS SECTIONS ALIGNMENT 'G', 'H' & 'I'
- 23 CROSS SECTIONS ALIGNMENT 'J' & 'K'
- 24 CROSS SECTIONS ALIGNMENT 'K', 'L' & 'M'
- 25 CROSS SECTIONS ALIGNMENT 'N'
- 26 DREDGED MATERIAL PLACEMENT AREA

APPENDIX 'A' SHT 1 DREDGE MATERIAL PLACEMENT AREA PLAN

APPENDIX 'A' SHT 2 DREDGE MATERIAL PLACEMENT AREA DETAILS

APPENDIX 'A' SHT 3 DREDGE MATERIAL PLACEMENT AREA EROSION CONTROL PLAN

APPENDIX 'A' SHT 4 DMPA EXISTING SITE SURVEY

1.05 EXAMINATION OF SITE

Bidders shall visit the site and be thoroughly familiar with job conditions, prior to submitting a bid. All surface features from the site to the disposal areas are not shown on the drawings. Failure to give proper consideration to these conditions when preparing bids will not constitute grounds for additional compensation.

END OF SECTION

SECTION 01040
PROJECT COORDINATION

PART 1 – GENERAL

1.01 SUMMARY

- A. This section specifies administrative and supervisory requirements necessary for project coordination including, but not limited to:
 - a. Coordination.
 - b. Administrative and supervisory personnel.
 - c. General installation provisions.

- B. Progress meetings, coordination meetings, and preinstallation conferences are included in Section 01200, "Project Meetings."

- C. Requirements for the Contractor's Construction Schedule are included in Section 01300. "Submittals."

1.02 COORDINATION

- A. Coordination: Coordinate construction activities included under various sections of these specifications to assure efficient and orderly installation of each part of the work. Coordinate construction operations included under different sections of the specifications that are dependent upon each other for proper installation, connection, and operation.
 - 1. Where installation of one part of the work is dependent on installation of other components, either before or after its own installation, schedule construction activities in the sequence required to obtain the best results.
 - 2. Where availability of space is limited, coordinate installation of different components to assure maximum accessibility for required maintenance, service and repair.
 - 3. Make adequate provisions to accommodate items scheduled for later installation.
 - 4. Prepare memoranda for distribution to each party involved outlining special procedures required for coordination. Include such items as required notices, reports and attendance at meetings.

- B. **Administrative Procedures:** Coordinate scheduling and timing of required administrative procedures with other construction activities to avoid conflicts and ensure orderly progress of the work. Such administrative activities include, but are not limited to , the following:
 - a. Preparation of schedules.
 - b. Installation and removal of temporary facilities.
 - c. Delivery and processing of submittals.
 - d. Progress meetings.
 - e. Project close-out activities.

1.03 SUBMITTALS

Staff Names: Contractors submitting proposals shall provide proposed organization charts, listing both home and field office personnel to be assigned to the project.

- A. Within 10 days of Notice to Proceed, submit a list of the Contractor's principal staff assignments, including the superintendent and other personnel in attendance at the site; identify individuals, their duties and responsibilities; list their addresses and telephone numbers.
- B. The Engineer may make investigations as necessary to determine the ability of the designated superintendent and shall have the authority to reject any superintendent initially or during the course of the Project when in the sole judgement of the Engineer, there is good cause for doing so. In the event of a rejection, the Engineer will notify the Contractor in writing of the rejection and reasons therefore. The Contractor shall within fifteen (15) calendar days after the receipt of such notice submit the name and qualifications of another designated construction superintendent. The Engineer will, within a reasonable period, approve or disapprove the nomination.

PART 2 – EXECUTION

2.01 GENERAL INSTALLATION PROVISIONS

- A. **Manufacturer's Instructions:** Comply with manufacturer's installation instructions and recommendations to the extent that those instructions and recommendations are more explicit or stringent than requirements contained in the Contract Documents.
- B. Inspect materials or equipment immediately upon delivery and again prior to installation. Reject damaged and defective items.
- C. Recheck measurements and dimensions before starting installation procedure.
- D. Install each component during weather conditions and point in project sequence that will ensure the best possible results. Isolate each part of the completed construction from incompatible material as necessary to prevent deterioration.

- E. Coordinate temporary enclosures with required inspections and tests to minimize the necessity or uncovering completed construction for that purpose.

2.02 CLEANING AND PROTECTION

- A. During handling and installation, clean and protect construction in progress and adjoining materials in place. Apply protective covering where required to ensure protection from damage or deterioration at Substantial Completion.
- B. Limiting Exposures: Supervise construction activities to ensure that no part of the construction, completed or in progress, is subject to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following:
 - 1. Excessive static or dynamic loading.
 - 2. Excessive internal or external pressures.
 - 3. Heavy traffic.
 - 4. Vibration from adjacent activity.
 - 5. Erosion.
 - 6. Overdredging.
 - 7. Damage by contact with dredge or ancillary equipment.

END OF SECTION

SECTION 01090

DEFINITIONS AND STANDARDS

PART 1 – GENERAL

1.01 SUMMARY

- A. This section specifies administrative requirements for compliance with governing regulations, codes and standards.
- B. Requirements include obtaining permits, licenses, inspections, releases and similar documentation, as well as payments, statements and similar requirements associated with regulations, codes, and standards.

1.02 DEFINITIONS

- A. General: Definitions contained in this article are not necessarily complete but are general due to the extent that they are not defined more explicitly elsewhere in the Contract Documents.
- B. "Indicated" refers to graphic representations, notes or schedules on the drawings, or other paragraphs or schedules in specifications, and similar requirements in Contract Documents. Where term such as "shown", "noted", and "specified" are used, it is to help locate the reference; no limitation on location is intended except as specifically noted.
- C. Directed: Terms such as "directed", "requested", "authorized", "selected", "approved", "required", and "permitted" mean "directed by the Engineer", "requested by the Engineer", and similar phrases. However, no implied meaning shall be interpreted to extend the Engineer's responsibility into the Contractor's area of construction supervision.
- D. Approve: The term "approved", where used in conjunction with the Engineer's action on the Contractor's submittals, applications, and requests, is limited to the responsibilities and duties of the Engineer stated in the General and Special Conditions. Such approval shall not release the Contractor from responsibility to fulfill Contract Document requirements unless otherwise provided in the Contract Documents.
- E. Regulation: The term "Regulations" includes laws, statutes, ordinances and lawful orders issued by authorities having jurisdiction, as well as rules, conventions and agreements within the construction industry that control performance of the Work, whether they are lawfully imposed by authorities having jurisdiction, or not.
- F. Furnish: The term "furnish" is used to mean "supply and deliver to the project site, ready for unloading, unpacking, assembly, installation, and similar operations".
- G. Install: The term "install" is used to describe operations at project site including the actual "unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning and similar operations".

- H. Provide: The term “provide” means “to furnish and install, complete and ready for the intended use”.
- I. Installer: An “installer” is an entity engaged by the Contractor, either as an employee, subcontractor or sub-subcontractor, for performance of a particular construction activity, including installation, erection, application and similar operations. Installers are required to be experienced in the operations they are engaged to perform.
- J. Project site is the space available to the Contractor for the performance of the work, either exclusively or in conjunction with others performing other construction as part of the project. The extent of the project site is shown on the drawings.
- K. Testing Laboratories: A “testing laboratory” is an independent entity engaged to perform specific inspections or tests, either at the project site or elsewhere, and to report on and, if required, interpret results of those inspections or tests.
- L. Substantially Completed: The term “substantially completed” means that the structure has been made suitable for use or occupancy or the facility is in a condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

1.03 INDUSTRY STANDARDS

- A. Applicability of Standards:
 - a. Except where Contract Documents include more stringent requirements, applicable construction industry standards have the same force and effect as if bound or copied directly into the Contract Documents. Such standards are made a part of the Contract Documents by reference. Individual sections indicate which codes and standards the Contractor must keep available at the project site for reference.
 - b. Referenced standards take precedence over standards that are not referenced but recognized in the construction industry as standard practice.
- B. Publication Dates: Where compliance with an industry standard is required, comply with standard in effect as of date of Contract Documents.
- C. Conflicting Requirements:
 - a. Where compliance with two or more standards is specified, and they establish different or conflicting requirements for minimum quantities or quantity levels, the most stringent requirement will be enforced unless the Contract Documents indicate otherwise. Refer requirements that are different but apparently equal and uncertainties as to which quality level is more stringent to the Engineer for a decision before proceeding.

- b. **Minimum Quantities or Quality Levels:** In every instance the quantity or quality level shown or specified shall be the minimum to be provided or performed. The actual installation may comply exactly, within specified tolerances, with the minimum quantity or quality specified, or it may exceed that minimum within reasonable limits. In complying with these requirements, indicated numeric values are minimum or maximum values as noted or appropriate for the context of the requirements. Refer instances of uncertainty to the Engineer for decision before proceeding.
- D. **Copies of Standards:** Each entity engaged in construction on the project is required to be familiar with industry standards applicable to that industry's construction activity. Copies of applicable standards are listed but not included with the Contract Documents.
- E. **Abbreviations and Names:** Trade association names and titles of general standards are frequently abbreviated. Where acronyms or abbreviations are used in the specifications or other Contract Documents they mean the recognized name of the trade association, standards generating organization, authority having jurisdiction or other entity applicable to the context of the text provision.

END OF SECTION

SECTION 01100

CORPS OF ENGINEERS PERMITS AND GENERAL LAND OFFICE EASEMENTS

PART 1 – GENERAL

1.01 RELATED DOCUMENTS

A copy of previously obtained Corps of Engineers permits and General Land Office easements are contained in this Section. The Contractor shall comply with all provisions contained in these permits. Where dredge depth or configurations conflict between the plans and the permits, the configurations shown on the plans govern. The Contractor shall contact the following agencies 10 days prior to commencement of dredging:

USACE Local Office	Chip Worely	956-546-2456
USACE Corpus Christi Office	Desiree Wilson	361-814-5847 ext. 130
US Coast Guard Corpus Christi	Lt. Comm. E.V. Stein	361-888-3162 ext. 513
Texas General Land Office	Rene Garcia	361-825-3032
US Coast Guard South Padre Island	Lt. Josh Sager	956-761-2668

TOMPKINS CHANNEL

COE PERMIT



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
CORPUS CHRISTI REGULATORY FIELD OFFICE
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

October 26, 2011

REPLY TO
ATTENTION OF:

Corpus Christi Regulatory Field Office

SUBJECT: Permit Application – SWG-1996-00026

RECEIVED
10/27/11

City of South Padre Island
Attn: Scott Fry
4601 Padre Blvd.
South Padre Island, Texas 78597

Dear Mr. Fry:

The above numbered permit has been approved and a signed copy is enclosed for your retention. In addition, also enclosed are ENG Form 4336 and a copy of "Notice to Permittee" which provides important information for permit administration. You should notify the District Engineer, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Lloyd Mullins".

Lloyd Mullins, Supervisor
Corpus Christi Regulatory Field Office

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee City of South Padre Island

Permit No. SWG-1996-00026

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To mechanically dredge selected locations along the 5 mile long Tompkins Channel. The multiple selected locations amount to 532,000 square feet of area, with 11,000 cubic yards of silt and sand to be dredged in order to restore the previously authorized 6-foot depth of the Tompkins Channel. The dredged material will be placed on a barge, then transported to and placed on Sea Horse Harbor, an upland site, located at the west end of Marisol Street on South Padre Island. The project will be conducted in accordance with the attached plans, in 26 sheets.

Project Location: Within the Tompkins Channel, which is eastward from the Gulf Intracoastal Waterway, just north of and parallel to the Queen Isabella Memorial Causeway, and then northerly parallel to the western shore of South Padre Island, in Cameron County, Texas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Condition:

1. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
2. The permittee will utilize silt curtains when any dredging is conducted to insure that adjacent seagrass and oyster habitat areas are not impacted by sediment.
3. The permittee must notify the Galveston District Corpus Christi Regulatory Field Office, in writing, at the start of construction within the jurisdictional area as well as upon completion.
4. The permittee must submit a post-construction report to the Galveston District Corpus Christi Regulatory Field Office within 30 days of completion. The report should indicate if any impacts to seagrass and oyster habitat areas occurred. If impacts occurred, a detailed description of the impacts, including the size of the area impacted and the type of habitat impacted, must be included in the post-construction report.

Further Information:

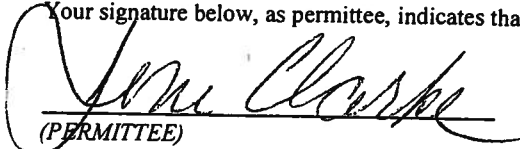
1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

- e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
 5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.




 (PERMITTEE)
 CITY OF SOUTH PADRE ISLAND

10/24/11

 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



 (DISTRICT ENGINEER)
 LLOYD MULLINS, SUPERVISOR
 CORPUS CHRISTI REGULATORY FIELD OFFICE
 FOR COLONEL CHRISTOPHER W. SALLESE

10-26-11

 (DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

 (TRANSFEEE - Typed/Printed Name)

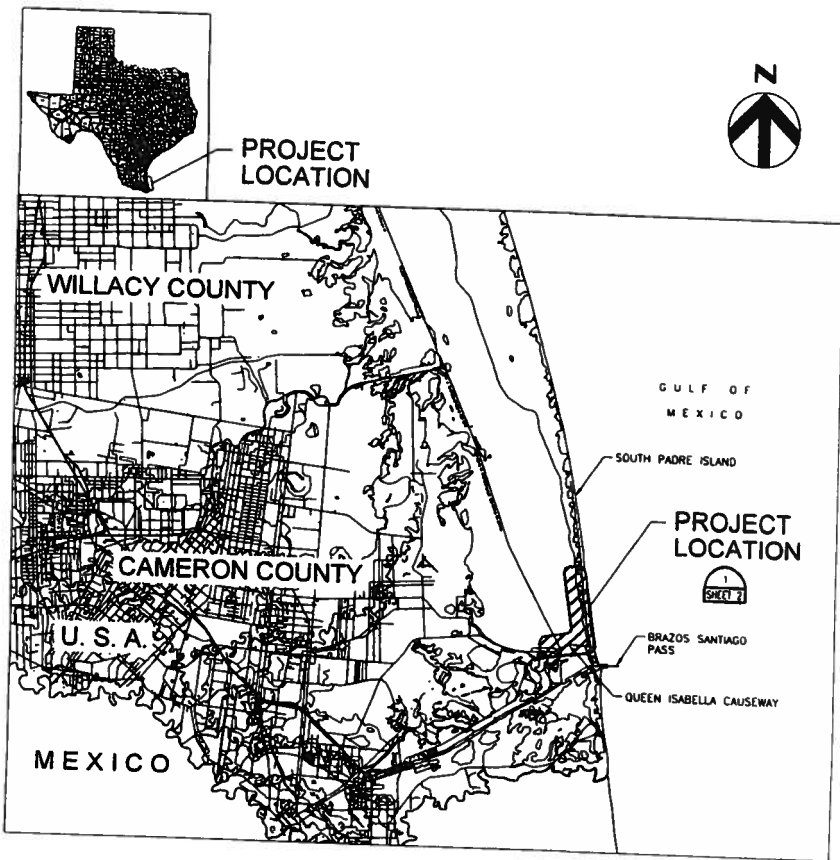
 (DATE)

 (TRANSFEEE - Signature)

 (Mailing Address)



PERMITTED PLANS



Contract Drawings For

City of South Padre Island

Tompkins Channel Maintenance Dredge

November 2010

Robert N. Pinkerton
 JoAnn Evans
 Sam Listi
 Alita Bagley
 Rick Ridolfi
 Courtney Hayden
 Joni Clarke

Mayor
 Mayor Pro-Tem
 Council Member
 Council Member
 Council Member
 Council Member
 City Manager

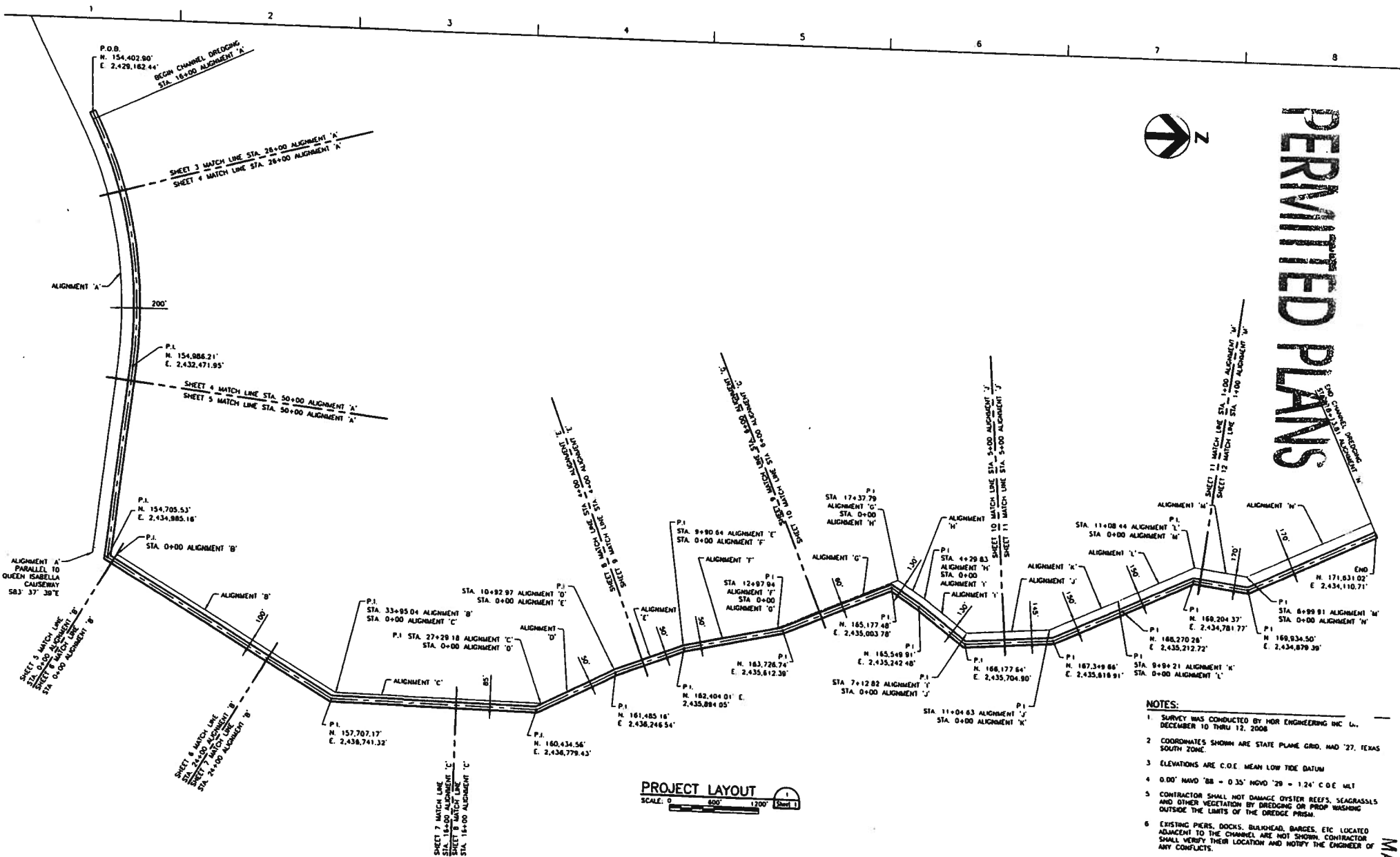
INDEX OF DRAWINGS

SHEET NO	TITLE
1	COVER SHEET AND INDEX
2	PROJECT LAYOUT
3	PLAN - STA. 0+00 - 28+00 ALIGNMENT 'A'
4	PLAN - STA. 28+00 - 50+00 ALIGNMENT 'A'
5	PLAN - STA. 50+00 - 72+88 TO ALIGNMENT 'A'
6	PLAN - STA. 0+00 - 24+00 ALIGNMENT 'B'
7	PLAN - 24+00 ALIGNMENT 'B' TO STA. 18+00 ALIGNMENT 'C'
8	PLAN - STA. 18+00 ALIGNMENT 'C' TO STA. 4+00 ALIGNMENT 'E'
9	PLAN - STA. 4+00 ALIGNMENT 'E' TO STA. 6+00 ALIGNMENT 'G'
10	PLAN - 6+00 ALIGNMENT 'G' TO STA. 5+00 ALIGNMENT 'J'
11	PLAN - STA. 5+00 ALIGNMENT 'J' TO STA. 1+00 ALIGNMENT 'M'
12	PLAN - STA. 1+00 ALIGNMENT 'M' TO STA. 18+13.61 ALIGNMENT 'N'
13	CROSS SECTIONS ALIGNMENT 'A'
14	CROSS SECTIONS ALIGNMENT 'A'
15	CROSS SECTIONS ALIGNMENT 'A'
16	CROSS SECTIONS ALIGNMENT 'A' & 'B'
17	CROSS SECTIONS ALIGNMENT 'B'
18	CROSS SECTIONS ALIGNMENTS 'B' & 'C'
19	CROSS SECTIONS ALIGNMENTS 'C' & 'D'
20	CROSS SECTIONS ALIGNMENTS 'D', 'E' & 'F'
21	CROSS SECTIONS ALIGNMENTS 'F' & 'G'
22	CROSS SECTIONS ALIGNMENTS 'G', 'H' & 'I'
23	CROSS SECTIONS ALIGNMENTS 'I' & 'K'
24	CROSS SECTIONS ALIGNMENTS 'K', 'L' & 'M'
25	CROSS SECTIONS ALIGNMENT 'N'
26	DREDGED MATERIAL PLACEMENT AREA

MAR 28 2011

SWG-PP16-00026

PERMITTED PLANS



- NOTES:**
1. SURVEY WAS CONDUCTED BY HCR ENGINEERING INC. L.L.C. DECEMBER 10 THRU 12, 2008.
 2. COORDINATES SHOWN ARE STATE PLANE GRID, NAD '27, TEXAS SOUTH ZONE.
 3. ELEVATIONS ARE C.O.E. MEAN LOW TIDE DATUM.
 4. 0.00' NAVD '88 = 0.35' NAVD '29 = 1.24' C.O.E. MLLT
 5. CONTRACTOR SHALL NOT DAMAGE OYSTER REEFS, SEAGRASSES AND OTHER VEGETATION BY DREDGING OR PROP WASHING OUTSIDE THE LIMITS OF THE DREDGE PRISM.
 6. EXISTING PIERS, DOCKS, BULKHEADS, BARRIES, ETC LOCATED ADJACENT TO THE CHANNEL ARE NOT SHOWN. CONTRACTOR SHALL VERIFY THEIR LOCATION AND NOTIFY THE ENGINEER OF ANY CONFLICTS.
 7. TOP OF PIER AT TED'S RESTAURANT BOAT RAMP AT ELEV. +1.1 MLLT. TOP OF BULKHEAD AT 60'S PIER AT ELEV. +1.1' MLLT. TOP OF CAP ON CAUSEWAY PILES AT ELEV. 6.0' MLLT.

PROJECT LAYOUT
SCALE: 1" = 1200'

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	ECDF\projectlayout.dwg
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

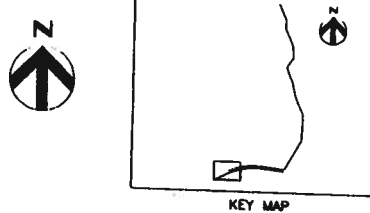
PROJECT LAYOUT		
FILENAME	TCDFProjectLayout.dwg	SHEET
SCALE	AS SHOWN	2

Sub-A96-00026
Sheet 2 of 26

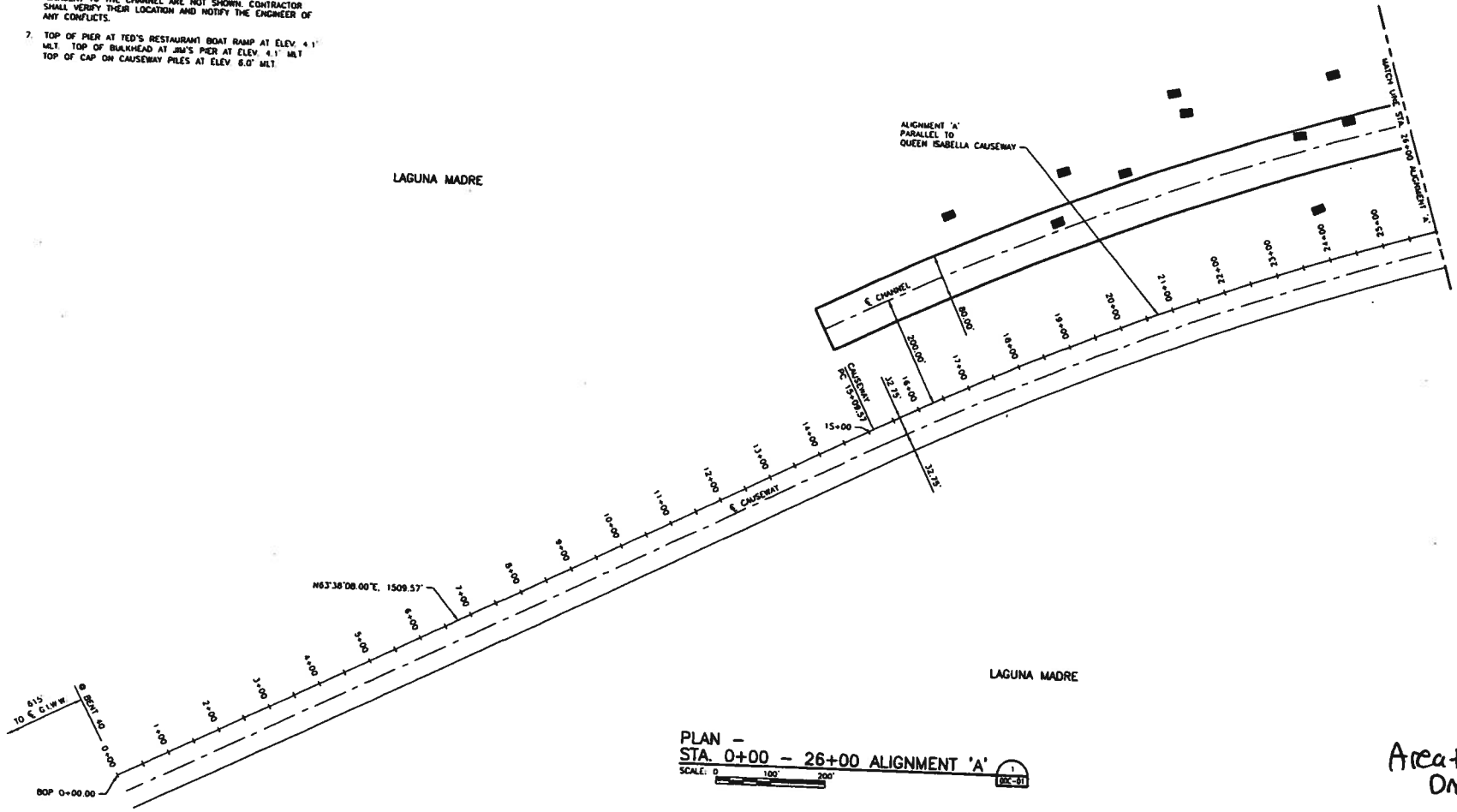
MAR 28 2011

NOTES:

1. SURVEY WAS CONDUCTED BY HOB ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
2. COORDINATES SHOWN ARE STATE PLANE GRID, NAD '27, TEXAS SOUTH ZONE.
3. ELEVATIONS ARE C.O.E. MEAN LOW TIDE DATUM.
4. 0 00' NAD '88 = 0.35' NAD '29 = 1.24' C.O.E. M.T.
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PERMITTED PLANS



PLAN -
 STA. 0+00 - 26+00 ALIGNMENT 'A'
 SCALE: 0 100 200' 1 002-81

LEGEND

- ALIGN
- CHANNEL LIMITS
- CHANNEL BOTTOM ABOVE -8.0'
- spot elevation survey points

Area to be Dredged →

MAR 28 11

City of South Padre Island
 Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

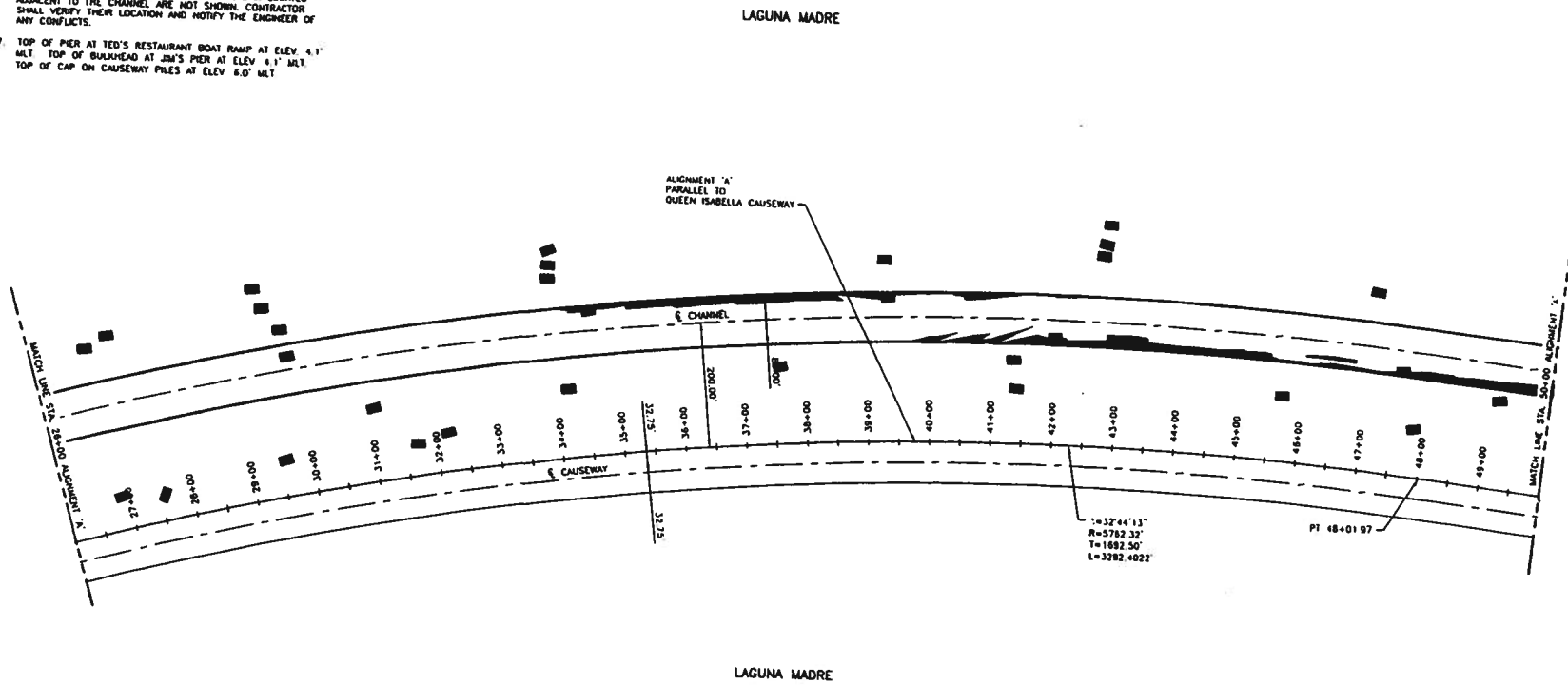
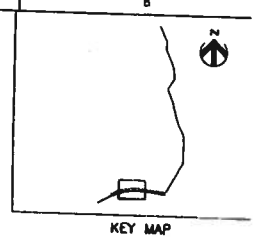
PLAN -
 STA. 0+00 - 26+00 ALIGNMENT 'A'

FILENAME	TCDSheet3.dwg	SHEET
SCALE	1" = 300'	3

SW6-1996-00026

NOTES:

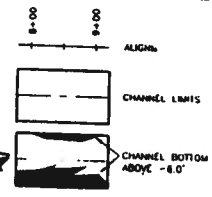
1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
2. COORDINATES SHOWN ARE STATE PLANE GRID, NAD '83, TEXAS SOUTH ZONE.
3. ELEVATIONS ARE C.O.E. MEAN LOW TIDE DATUM.
4. 0.00' NAVD '88 = 0.35' NVD '29 = 1.24' C.O.E. M.T.
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PERMITTED PLANS

PLAN -
STA. 26+00 - 50+00 ALIGNMENT 'A'
SCALE: 0 100' 200'

LEGEND



■ Spot elevation survey points

MAR 28 2011

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



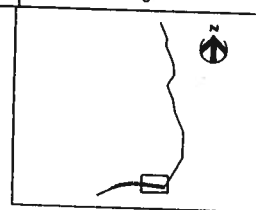
Tompkins Channel Maintenance Dredge

PLAN - STA. 26+00 - 50+00 ALIGNMENT 'A'		
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SCALE	1" = 300'	4

Sub-1996-0026
Sheet 11 of 16

NOTES:

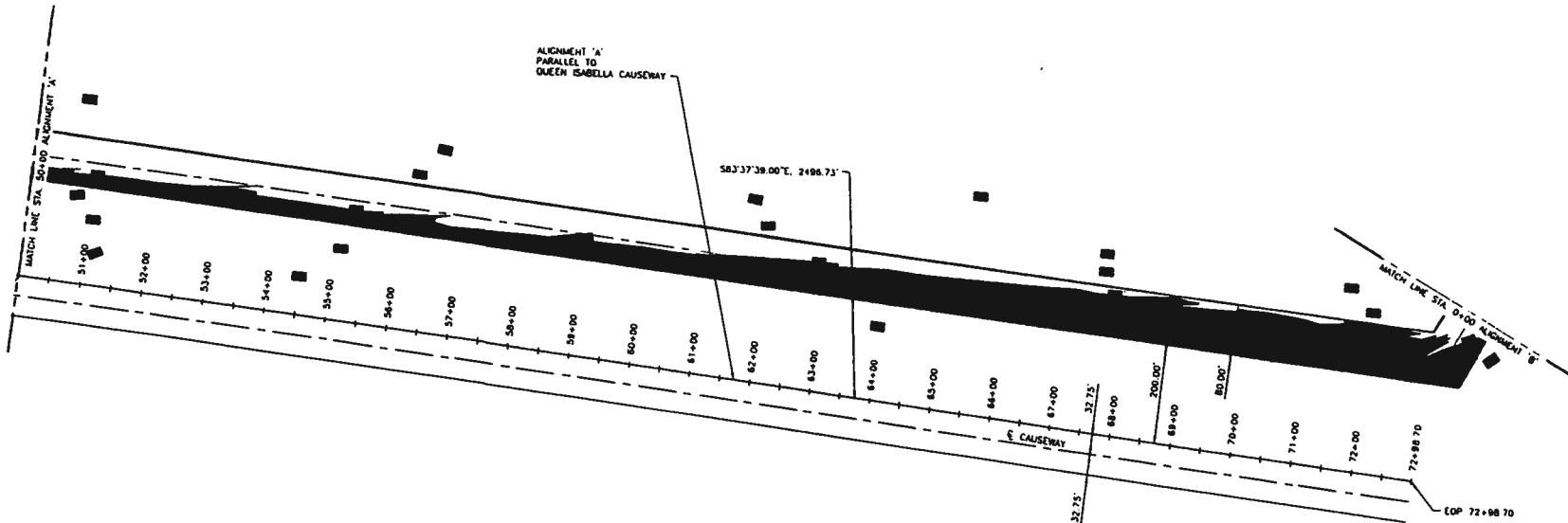
1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
2. COORDINATES SHOWN ARE STATE PLANE GRID, MAD '27, TEXAS SOUTH ZONE.
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KEY MAP

LAGUNA MADRE

PERMITTED PLANS



LAGUNA MADRE

PLAN -
STA. 50+00 - 72+98.70 ALIGNMENT 'A'
SCALE: 0 100 200

LEGEND

- ALIGN
- CHANNEL LIMITS
- ▨ CHANNEL BOTTOM ABOVE -6.0'
- spot elevations
- survey points

Area to be Dredged

MAR 28 2011

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
D	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001

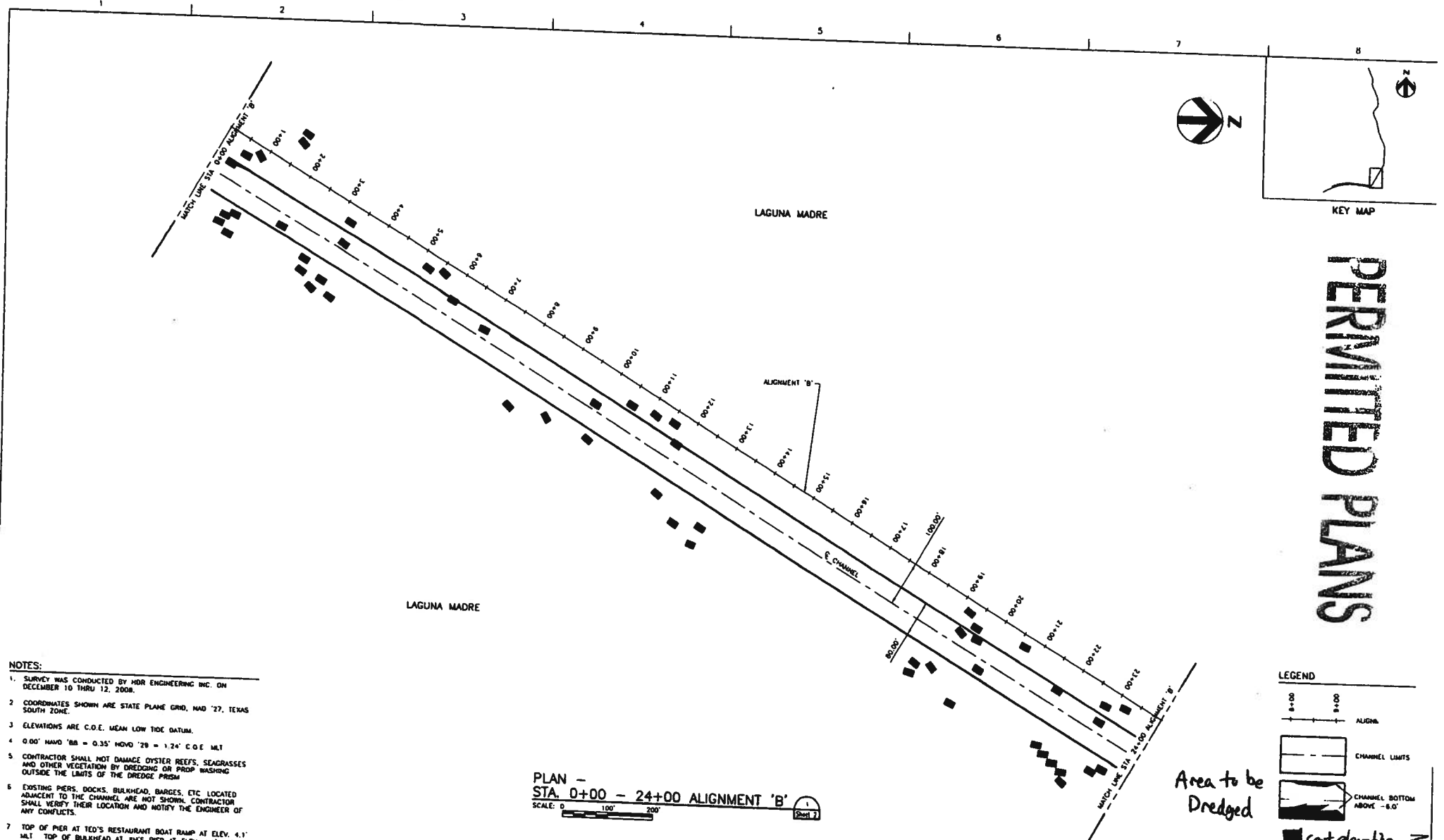


Tompkins Channel Maintenance Dredge

PLAN - STA. 50+00 - 72+98.70 ALIGNMENT 'A'

FILENAME	TCDS0005.dwg	SHEET	5
SCALE	1" = 300'		

Sub-1996-00026



PERMITTED PLANS

- NOTES:**
1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
 2. COORDINATES SHOWN ARE STATE PLANE GRID, MAD '27, TEXAS SOUTH ZONE.
 3. ELEVATIONS ARE C.O.E. MEAN LOW TIDE DATUM.
 4. 0.00' HAWO '88 = 0.35' HAWO '28 = 1.24' C.O.E. M.L.T.
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PLAN -
 STA. 0+00 - 24+00 ALIGNMENT 'B'
 SCALE: 0 100' 200'

LEGEND

- ALIGNMENT
- CHANNEL LIMITS
- CHANNEL BOTTOM ABOVE -8.0'
- Spot elevation survey points

Area to be Dredged

MAR 28 2011

City of South Padre Island
 Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001

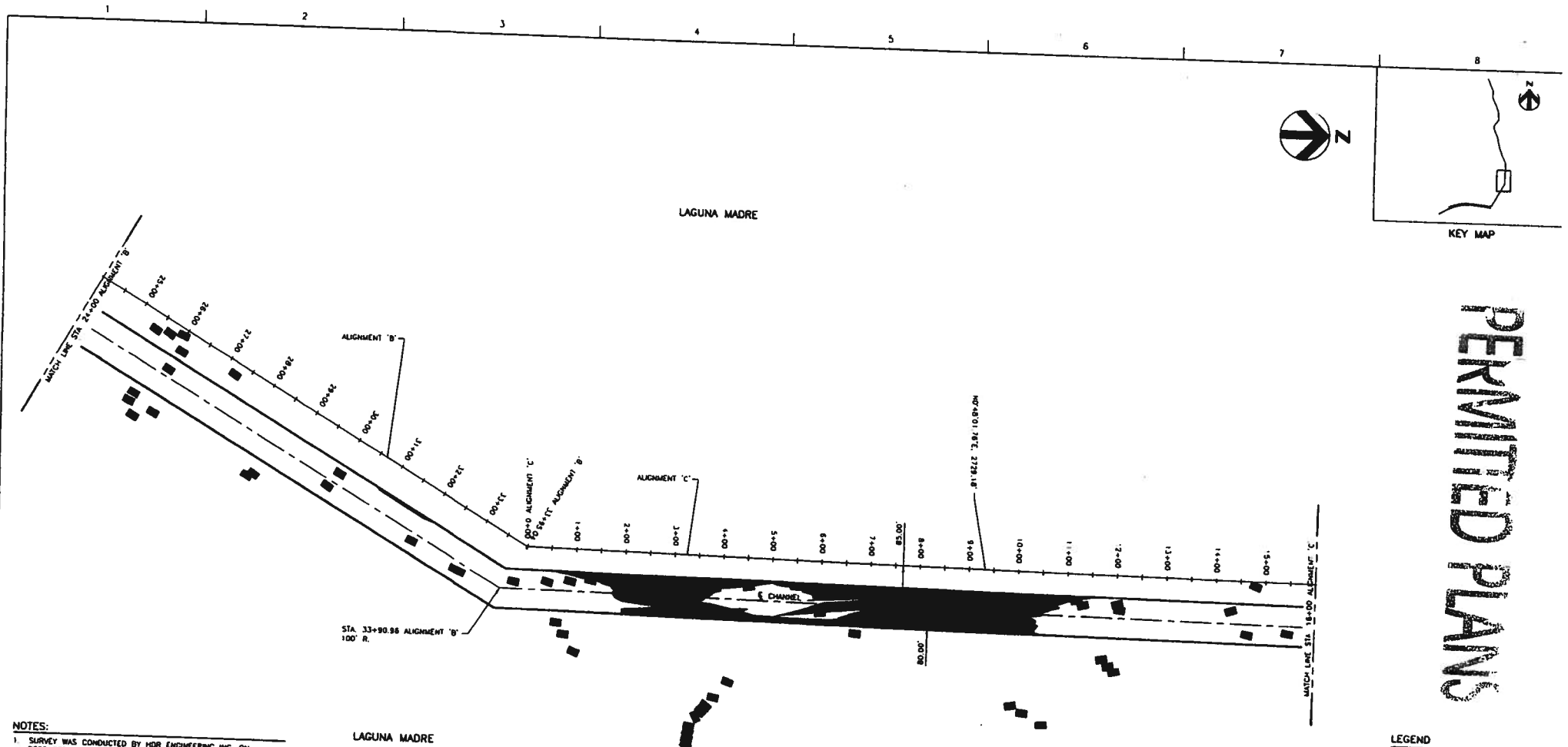


Tompkins Channel Maintenance Dredge

PLAN -
 STA. 0+00 - 24+00 ALIGNMENT 'B'

FILENAME	TCDSheetE.dwg	SHEET
SCALE	1"=300'	6

Sub-1996-00026
 Sheet 6 of 26



PERMITTED PLANS

- NOTES:**
1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
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PLAN - STA. 24+00 ALIGNMENT 'B'
TO STA. 16+00 ALIGNMENT 'C'
SCALE: 0 100' 200'

LEGEND

- ALIGNMENT
- CHANNEL LIMITS
- CHANNEL BOTTOM ABOVE -6.0'
- spot elevation survey points

Area to be Dredged →

MAR 28 2011

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

PLAN - STA. 24+00 ALIGNMENT 'B' TO STA. 16+00 ALIGNMENT 'C'

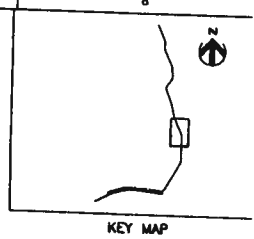
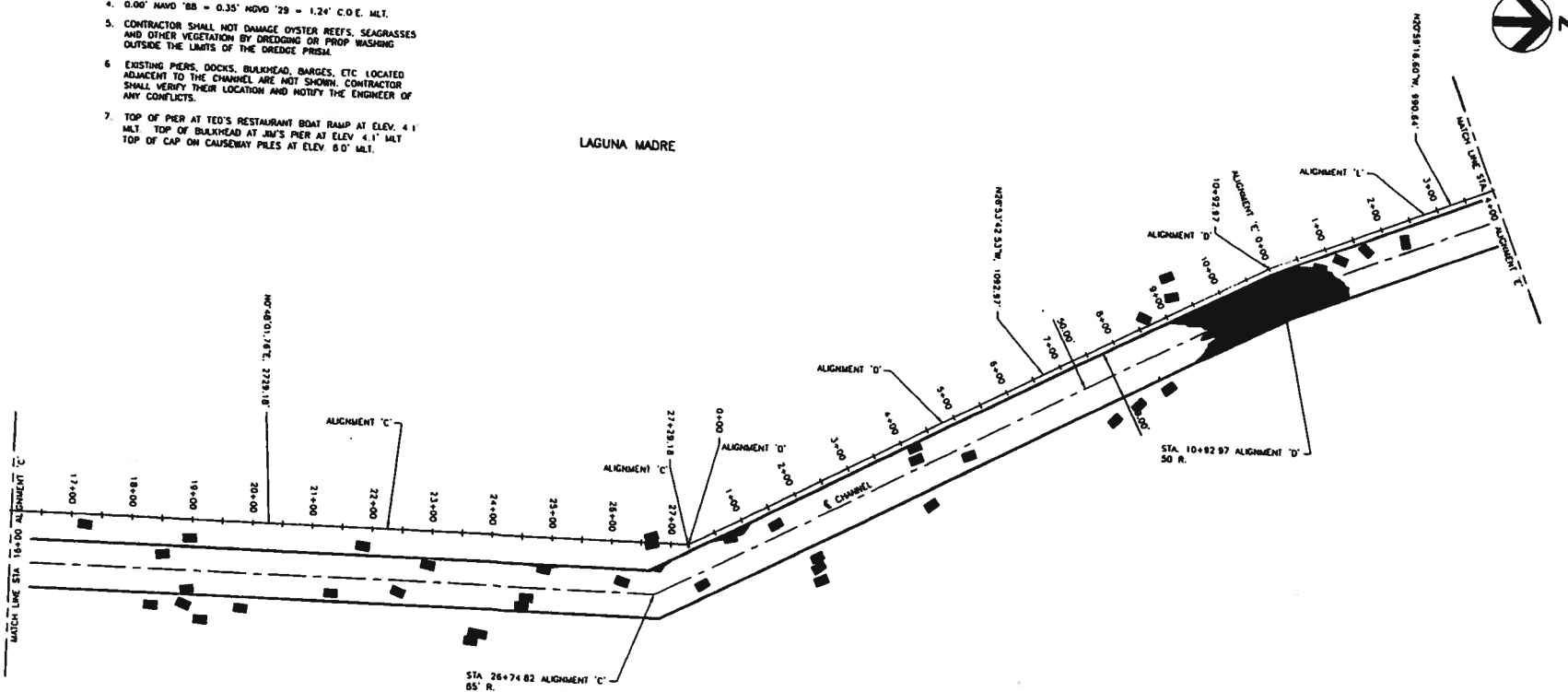
FILENAME	ICDSheet 7.dwg	SHEET	7
SCALE	1" = 300'		

SYG-1996-00026

NOTES:

1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
2. COORDINATES SHOWN ARE STATE PLANE GRID, NAD '27, TEXAS SOUTH ZONE.
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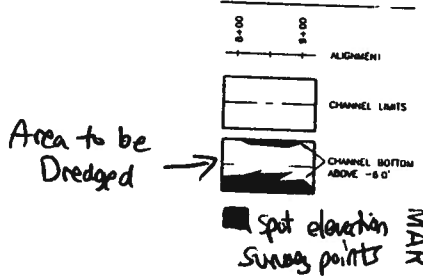
LAGUNA MADRE



PERMITTED PLANS

PLAN - STA. 16+00 ALIGNMENT 'C'
TO STA. 4+00 ALIGNMENT 'E'
SCALE 0 100' 200' (Sheet 2)

LEGEND



MAR 28 2011

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	SMITH C. TR. P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

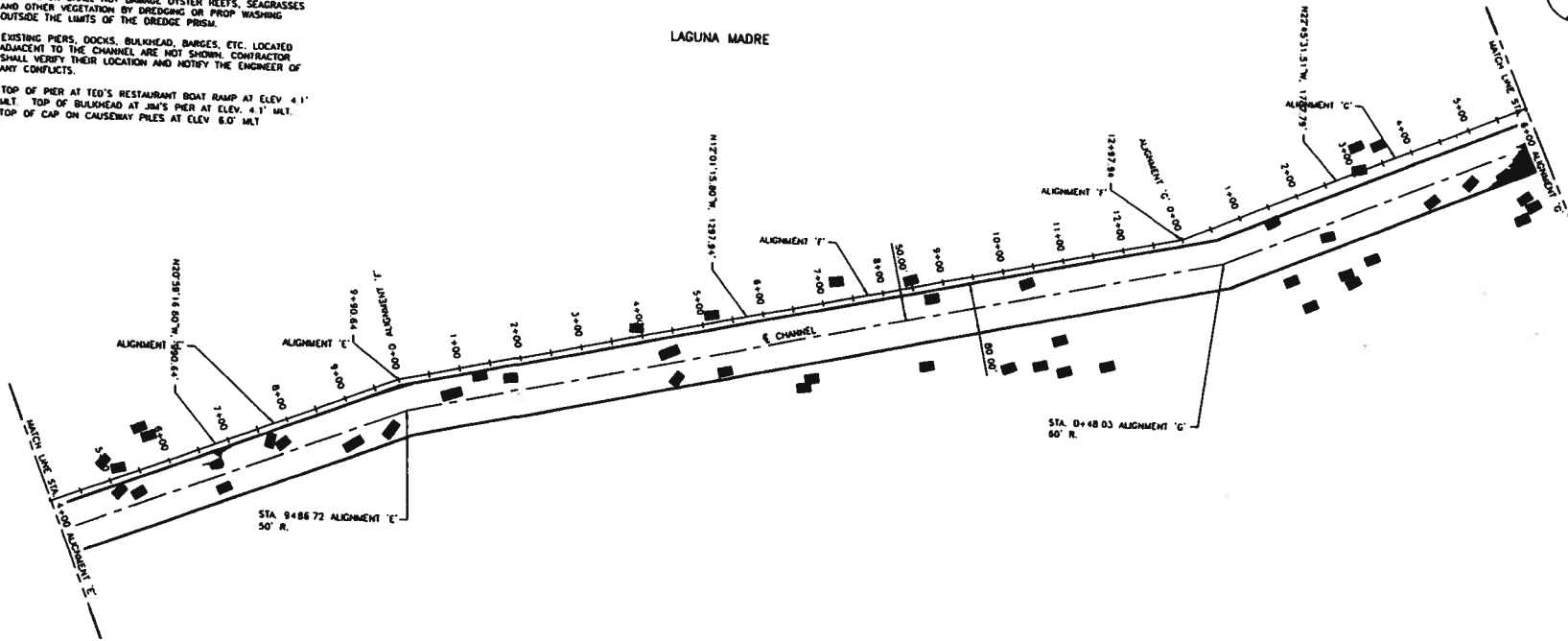
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FILENAME	TCDSheet18.dwg
SCALE	1"=300'
SHEET	8

SW6-1996-00026
Sheet 2 of 2

NOTES:

1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
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LAGUNA MADRE



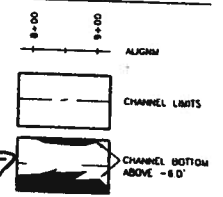
PERMITTED PLANS

PLAN - STA. 4+00 ALIGNMENT 'E'
TO STA. 6+00 ALIGNMENT 'G'

SCALE: 0 100' 200'



LEGEND



Area to be Dredged

spot elevation survey points

MAR 28 2011

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	SMITH C. (P), P.E.
DRAWN BY	S. FT.
CHECKED BY	S. FT.
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

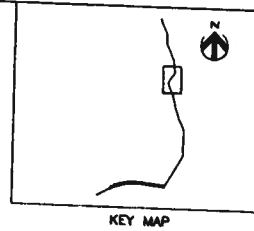
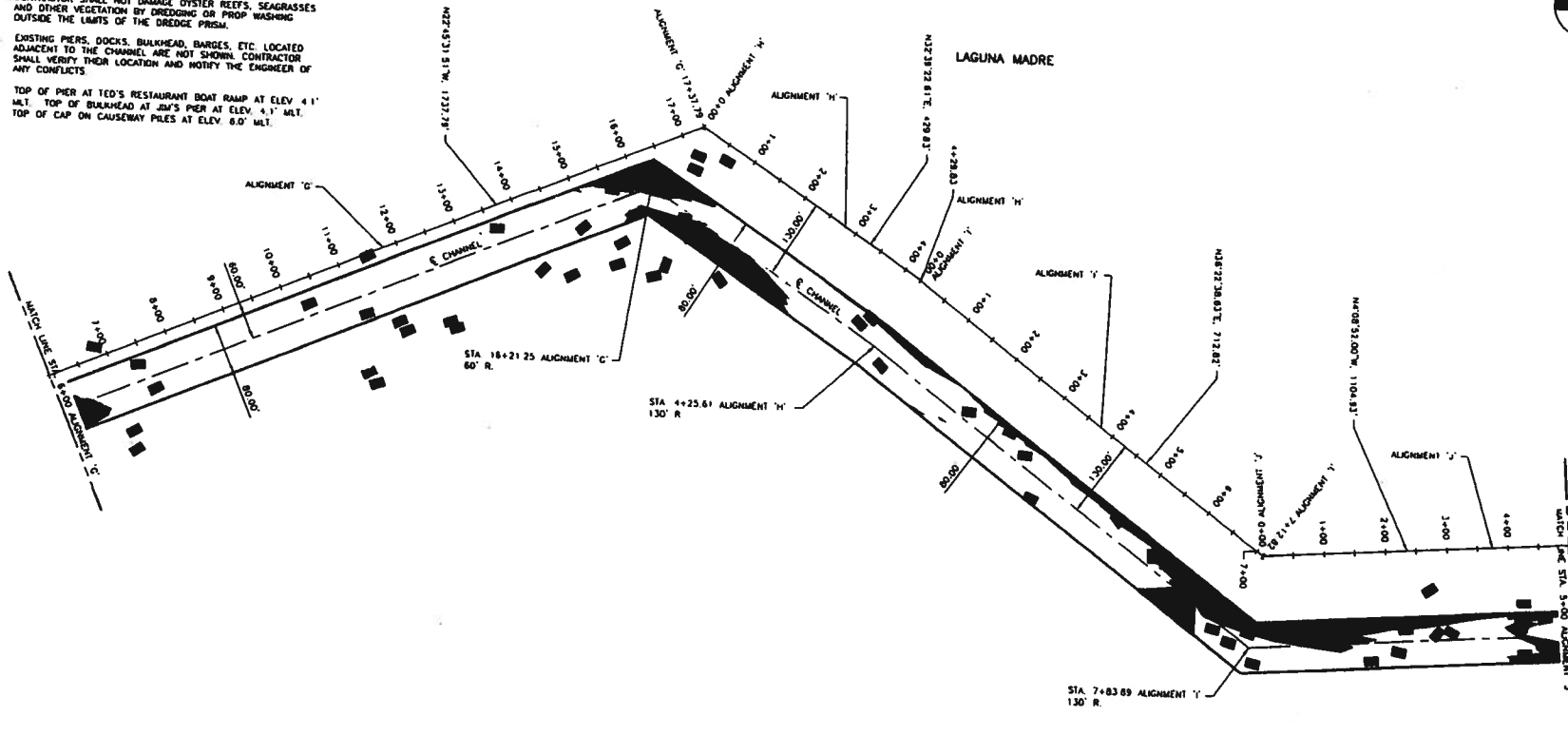
PLAN - STA. 4+00 ALIGNMENT 'E' TO STA. 6+00 ALIGNMENT 'G'

FILENAME	Sheet 9.dwg	SHEET
SCALE	1"=300'	9

Sub-1996-00026
Sheet 9 of 26

NOTES:

1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC. ON DECEMBER 10 THRU 12, 2008.
2. COORDINATES SHOWN ARE STATE PLANE GRID, MAD '27, TEXAS SOUTH ZONE.
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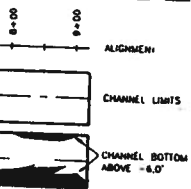
PERMITTED PLANS

PLAN - STA. 6+00 ALIGNMENT 'G'
TO STA. 5+00 ALIGNMENT 'J'

SCALE: 0 100' 200'



LEGEND



Area to be Dredged

spot elevation survey points

MAR 28 2011

PLAN - STA. 6+00 ALIGNMENT 'G'
TO STA. 6+00 ALIGNMENT 'J'

FILENAME	TCDSheet10.dwg	SHEET	19
SCALE	1"=300'		

Sub-1996-00026

City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	D

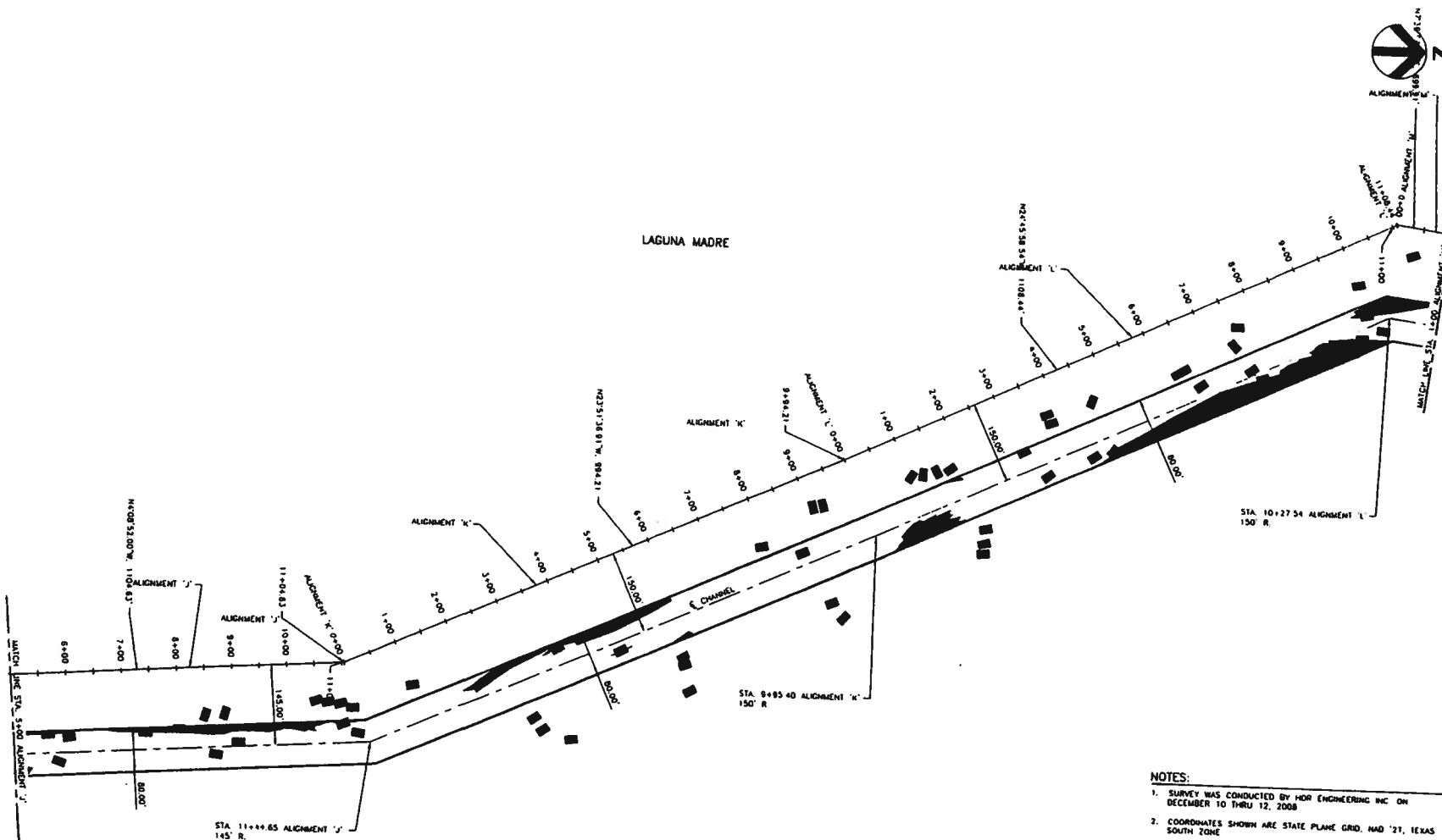
PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel Maintenance Dredge

PERMITTED PLANS

KEY MAP



PLAN - STA. 5+00 ALIGNMENT 'J'
TO STA. 1+00 ALIGNMENT 'M'

SCALE: 0 100 200

NOTES:

1. SURVEY WAS CONDUCTED BY HDR ENGINEERING INC ON DECEMBER 10 THRU 12, 2008
2. COORDINATES SHOWN ARE STATE PLANE GRID, NAD '83, TEXAS SOUTH ZONE
3. ELEVATIONS ARE C O E MEAN LOW TIDE DATUM
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LEGEND

- 8+00 8+00 ALIGNMENT
- CHANNEL LIMITS
- CHANNEL BOTTOM ABOVE -6.0'
- Area to be Dredged
- spot elevation
- Survey points

City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Sam C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	1001



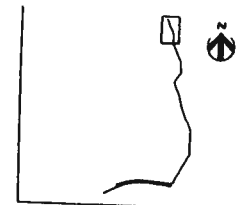
Tompkins Channel
Maintenance Dredge

PLAN -
STA. 5+00 ALIGNMENT 'J'
TO STA. 1+00 ALIGNMENT 'M'

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SCALE	1"=300'		

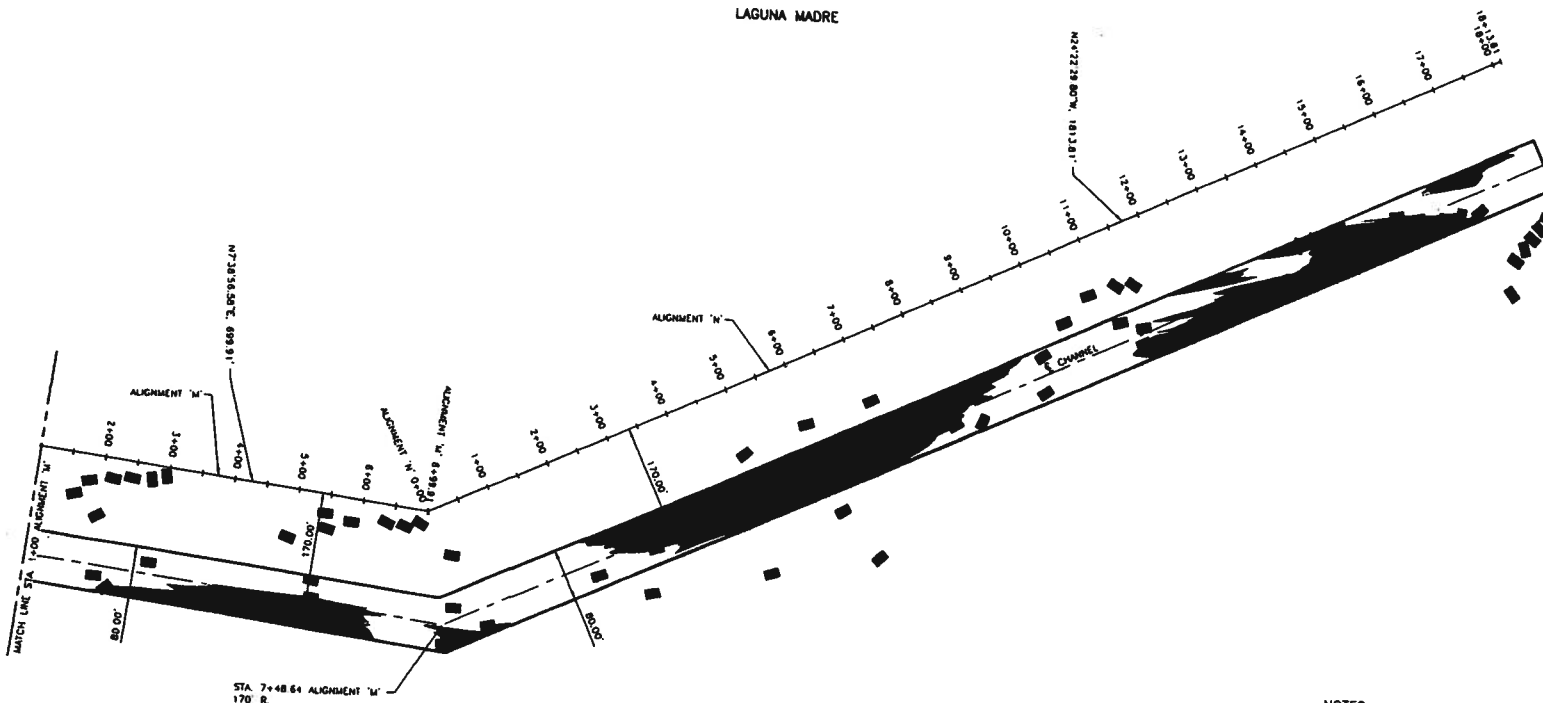
566-1996-00026

MAY 28 2011



KEY MAP

LAGUNA MADRE



PERMITTED PLANS

PLAN - STA. 1+00 ALIGNMENT 'M'
TO STA. 18+13.81 ALIGNMENT 'N'

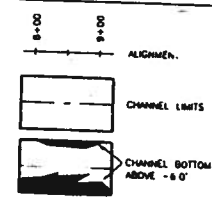
SCALE 0 100' 200'

Sheet 1

NOTES:

- 1 SURVEY WAS CONDUCTED BY HDR ENGINEERING INC ON DECEMBER 10 THRU 12, 2008
- 2 COORDINATES SHOWN ARE STATE PLANE GRID, NAD '83, TEXAS SOUTH ZONE.
- 3 ELEVATIONS ARE C.O.E MEAN LOW TIDE DATUM.
- 4 0 00' NAD '83 = 0 35' NGVD '29 = 1 24' C.O.E M.T.
- 5 CONTRACTOR SHALL NOT DAMAGE OYSTER REEFS, SEAGRASSES AND OTHER VEGETATION BY DREDGING OR PROP WASHING OUTSIDE THE LIMITS OF THE DREDGE PRISM.
- 6 EXISTING PIERS, DOCKS, BULKHEAD, BARGES, ETC LOCATED ADJACENT TO THE CHANNEL ARE NOT SHOWN, CONTRACTOR SHALL VERIFY THEIR LOCATION AND NOTIFY THE ENGINEER OF ANY CONFLICTS
- 7 TOP OF PIER AT TED'S RESTAURANT BOAT RAMP AT ELEV 4.1' M.T. TOP OF BULKHEAD AT JIM'S PIER AT ELEV 4.1' M.T. TOP OF CAP ON CAUSEWAY PILES AT ELEV. 6.0' M.T.

LEGEND



Area to be Dredged
 ■ spot elevation survey points

MAR 28 2011

City of
 South Padre
 Island
 Public Works
 Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001

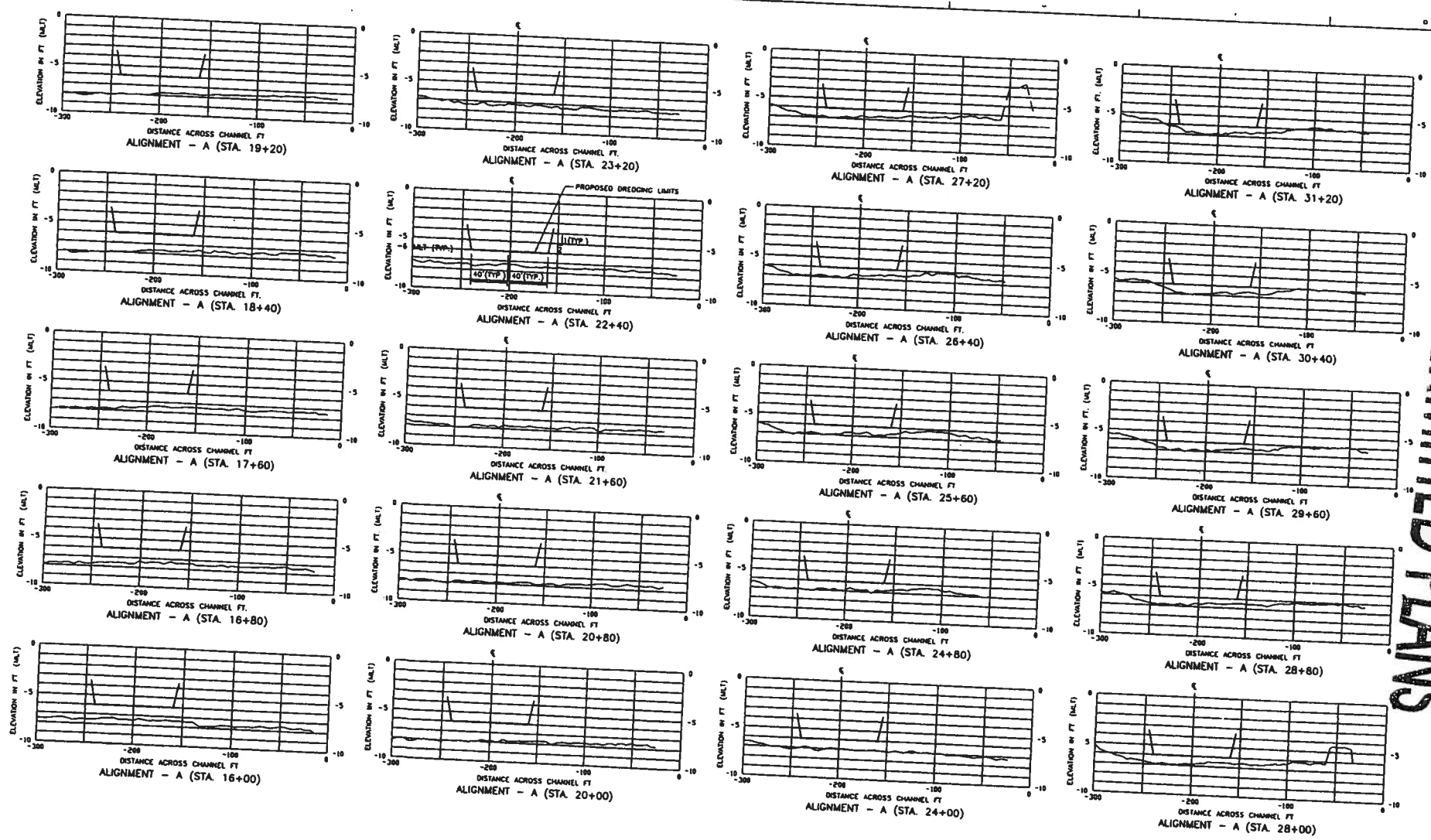


Tompkins Channel
 Maintenance Dredge

PLAN - STA. 1+00 ALIGNMENT 'M' TO STA. 18+13.81 ALIGNMENT 'N'		
FILENAME	ICDSheet12.dwg	SHEET
SCALE	1"=300'	12

SW6-1996-00026
 11/29/2010

PERMITTED PLANS



City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel
Maintenance Dredge

— DREDGE TEMPLATE
- - - DECEMBER 2008 GRADE
— CHANNEL BOTTOM ABOVE -8.0'

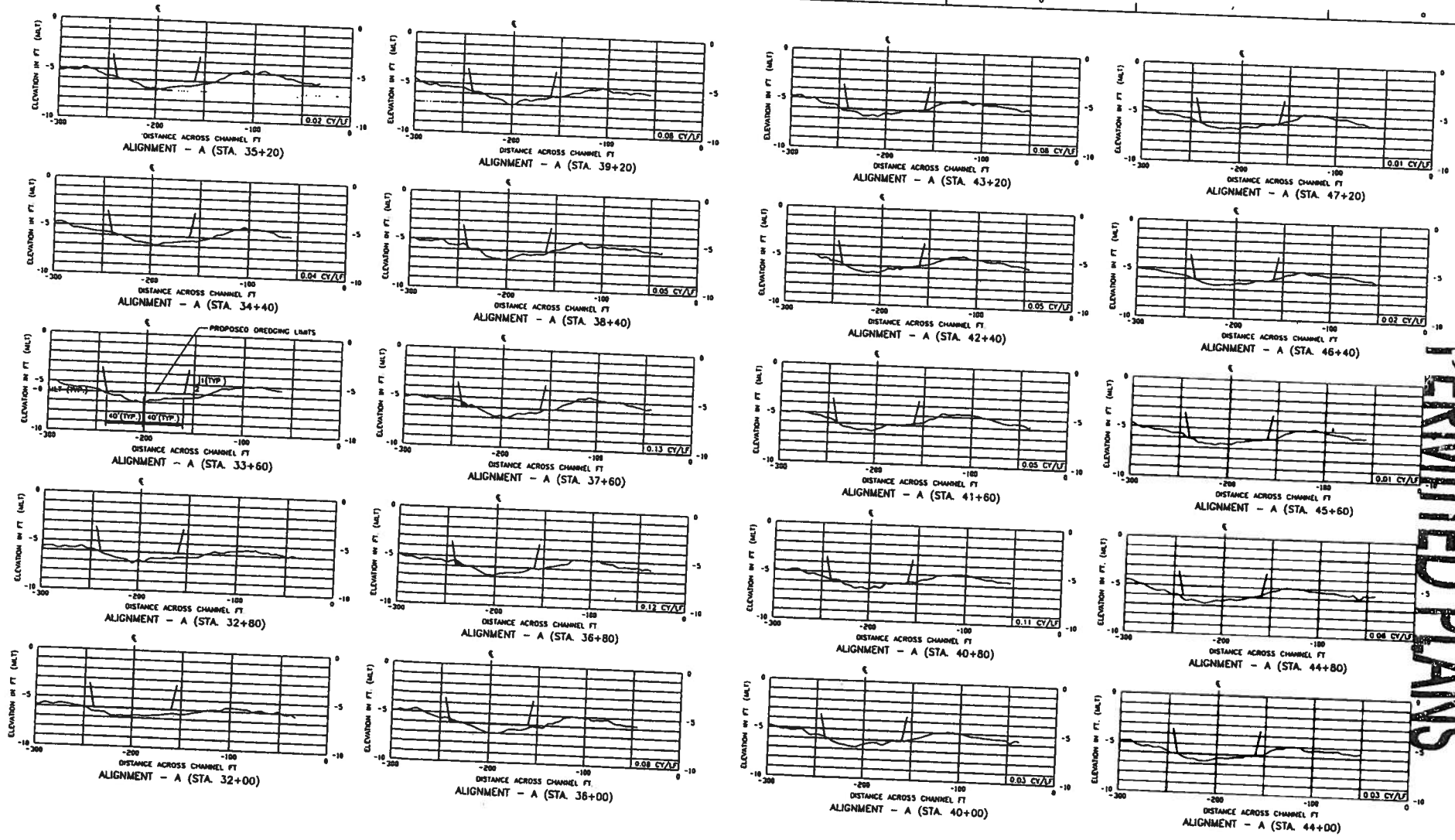


CROSS SECTIONS ALIGNMENT "A"	
FILENAME	TCDSheet13.dwg
SCALE	GRAPHIC
SHEET	13

SW6-1996-00026
Sheet 13 of 26

MAR 28 2011

PERMITTED PLANS



**City of
South Padre
Island**
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/28/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



**Tompkins Channel
Maintenance Dredge**

— DREDGE TEMPLATE
- - - DECEMBER 2008 GRADE
▬ CHANNEL BOTTOM ABOVE -6'



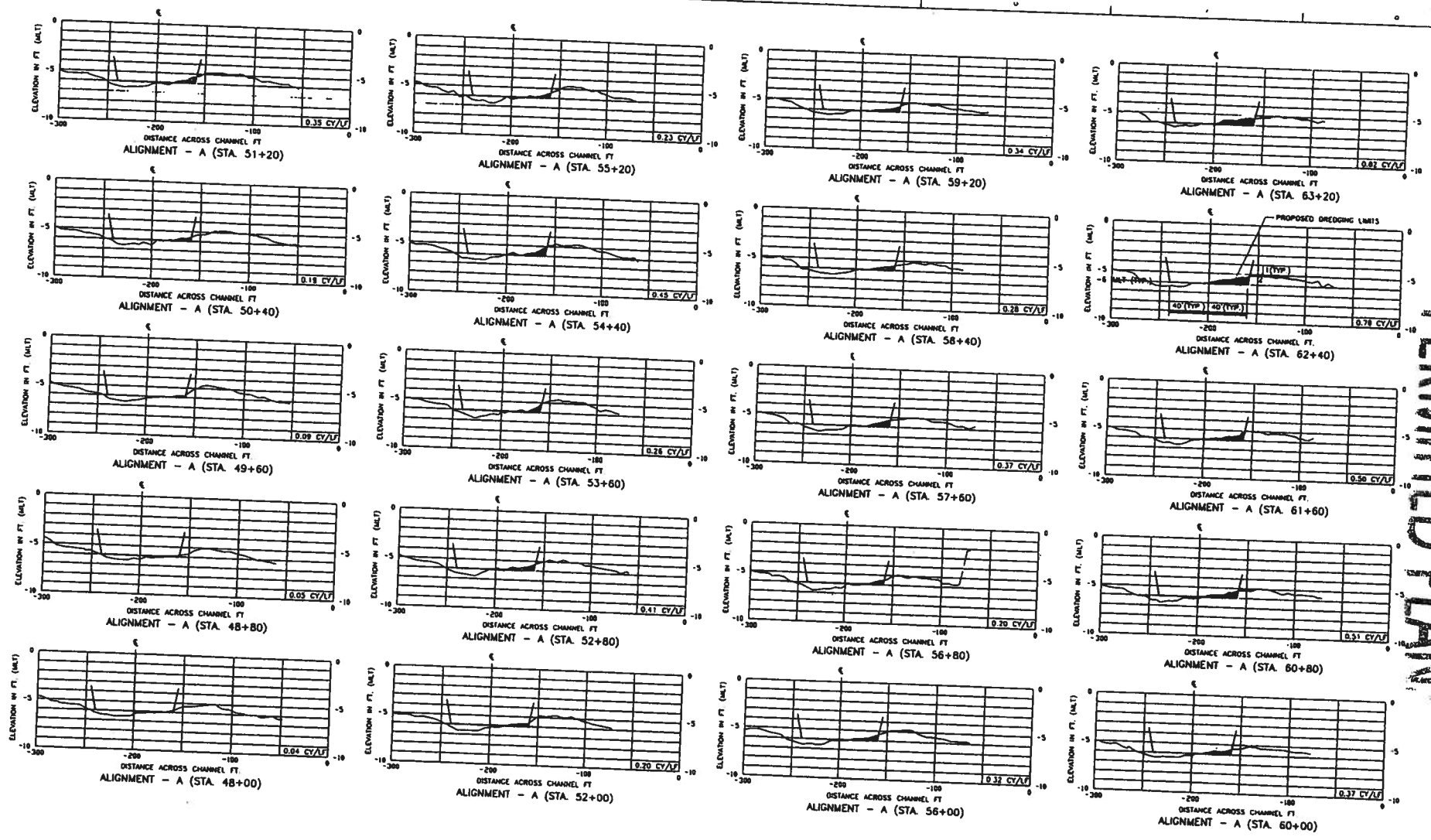
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SCALE	GRAPHIC	14

Sub-1996-00026
Sheet 14 of 26

MAR 28 2011

PERTINENT PLAN



City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



— DREDGE TEMPLATE
 - - - - - DECEMBER 2006 GRADE
 CHANNEL BOTTOM ABOVE - 0'



Tompkins Channel
Maintenance Dredge

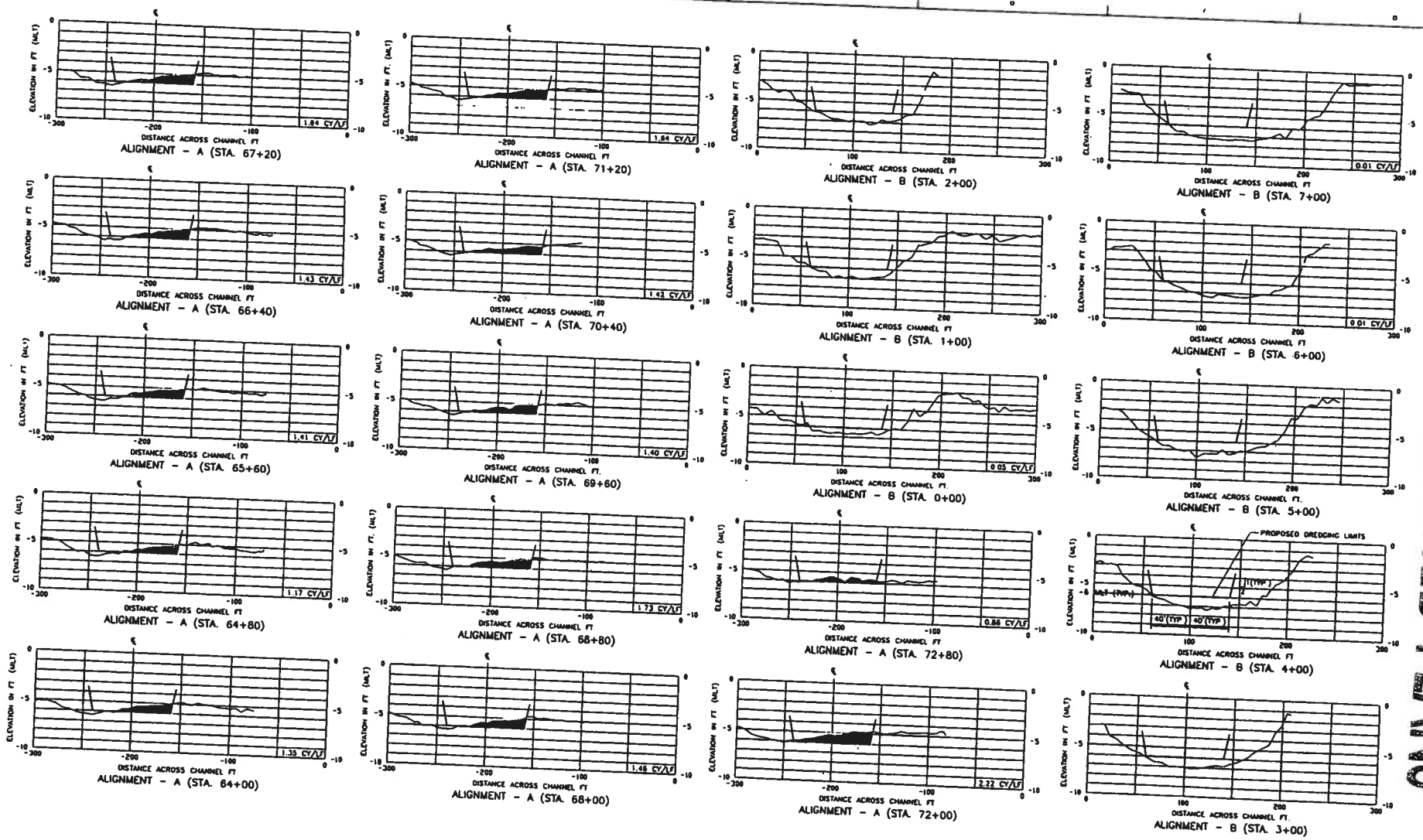
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ALIGNMENT "A"

FILENAME	TCDSheet15.dwg	SHEET	15
SCALE	GRAPHIC		

Sw6-1996-00026
Sheet 15 of 26

MAR 28 2011

PERMITTED PLANS



City of
 South Padre
 Island
 Public Works
 Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	

PROJECT MANAGER	Scott C. Try, PE
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel
Maintenance Dredge

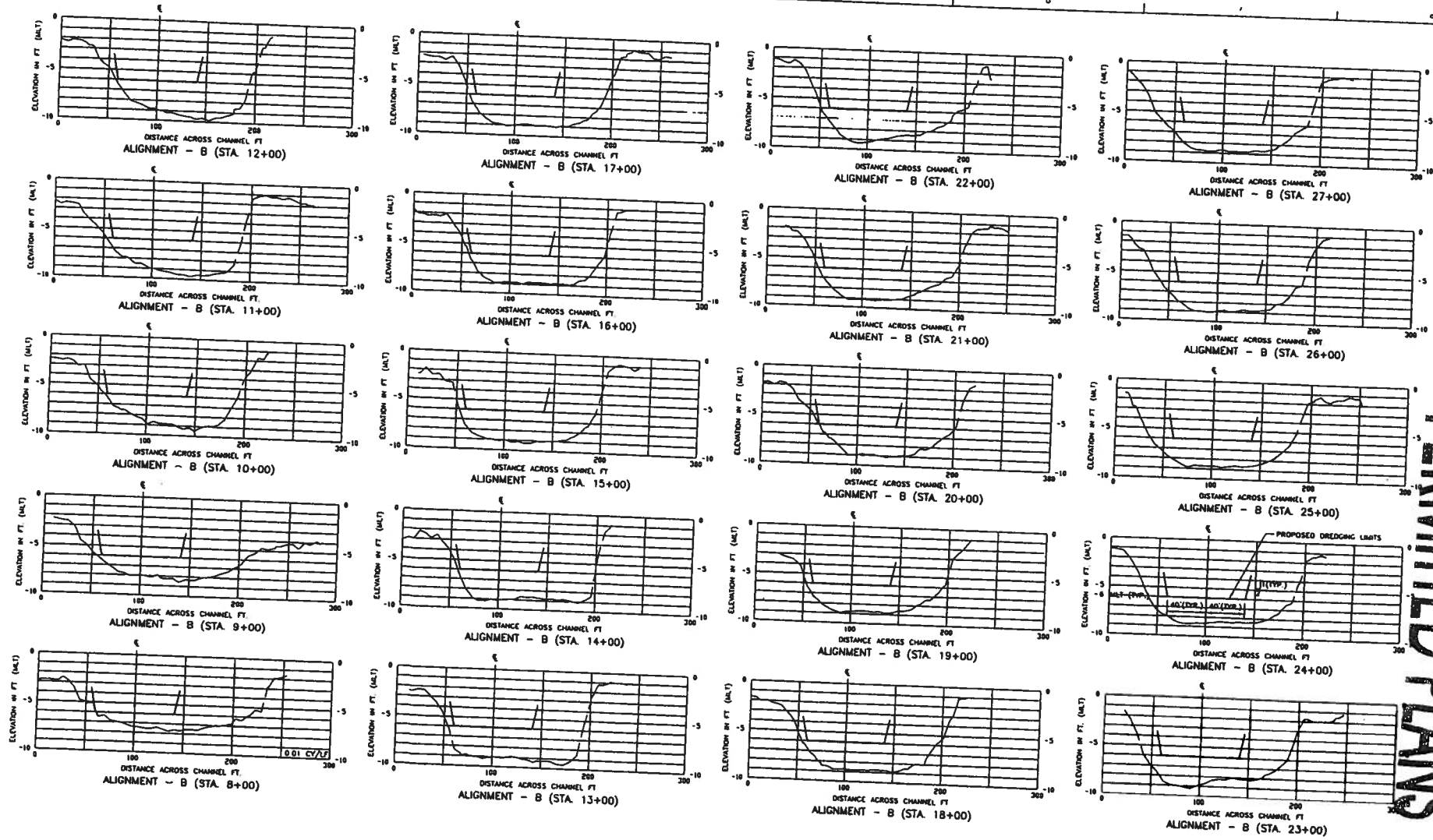
DREDGE TEMPLATE
 DECEMBER 2008 GRADE
 CHANNEL BOTTOM ABOVE -6.6'



CROSS SECTIONS ALIGNMENTS "A" & "B"	
FILENAME	TCDSheet18
SCALE	GRAPHIC
SHEET	16

SW6-1996-00026
 Sheet 16 of 26

1107 07 2011



PERMITTED PLANS

City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel
Maintenance Dredge

DREDGE TEMPLATE
DECEMBER 2008 GRADE
CHANNEL BOTTOM ABOVE -8.0'

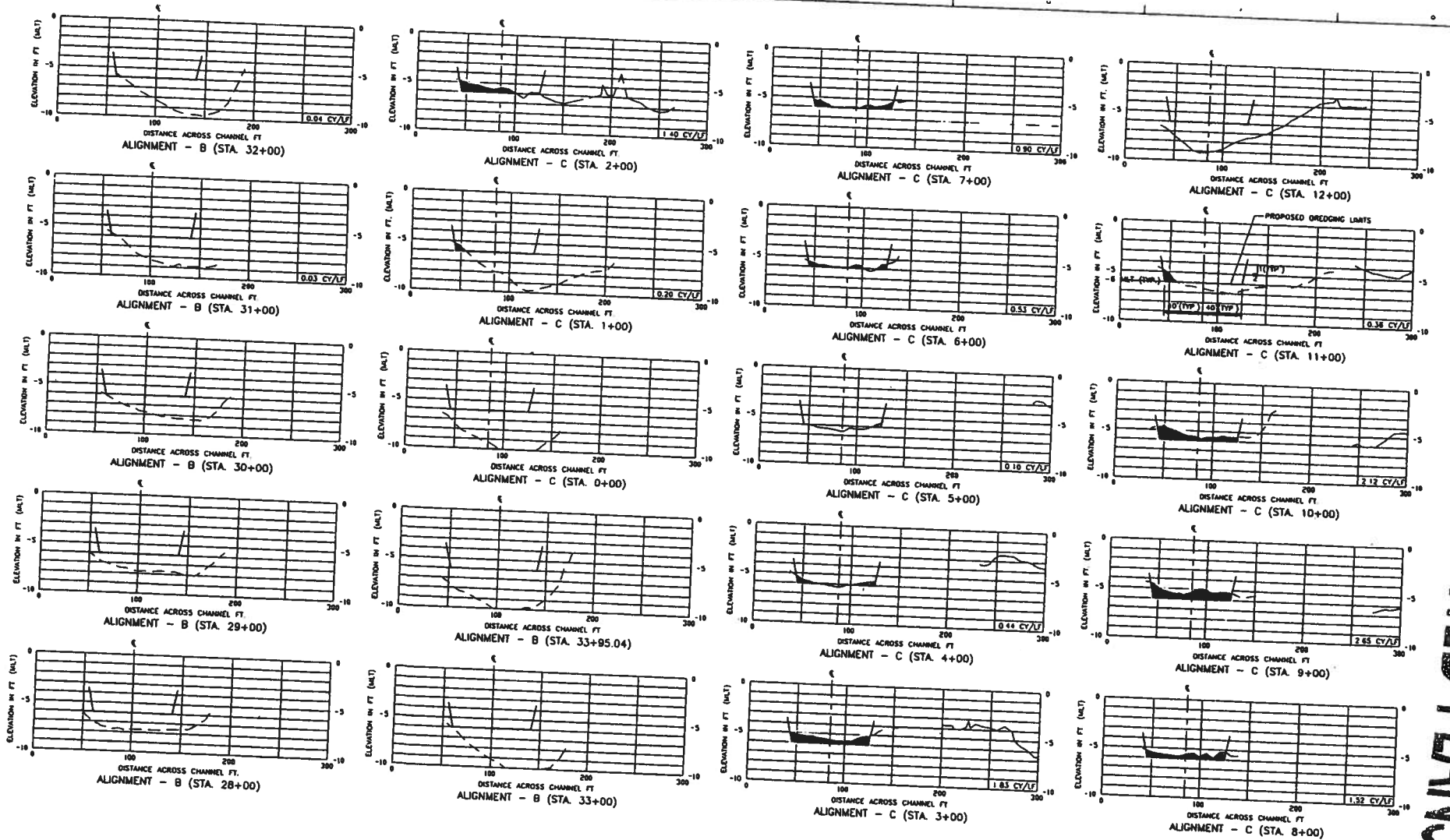
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FILENAME	TCDSheet17
SCALE	GRAPHIC
SHEET	17

SW6-1996-00026
Sheet 17 of 26

MAR 28 2011

PERMITTED PLANS

MAR 28 2011



City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001

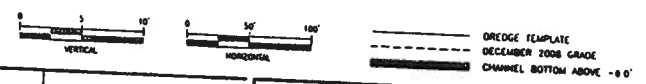


Tompkins Channel
Maintenance Dredge

CROSS SECTIONS
ALIGNMENTS "B" & "C"

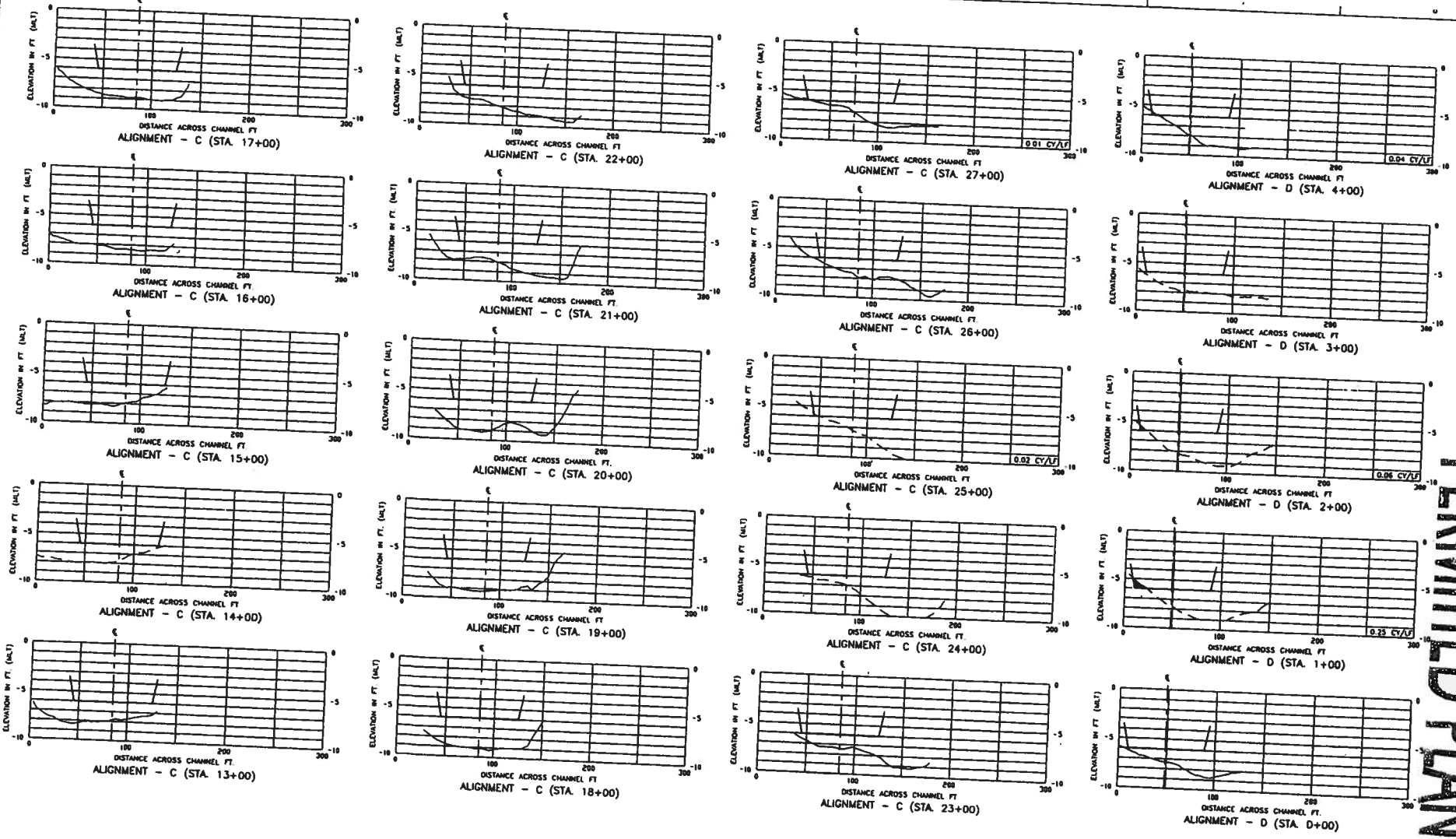
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SW6-1996-00026
Sheet 18 of 26



PERMITTED PLANS

MAR 28 2011



City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott E. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



— DREDGE TEMPLATE
 - - - - - DECEMBER 2006 GRADE
 — CHANNEL BOTTOM ABOVE -6.0'



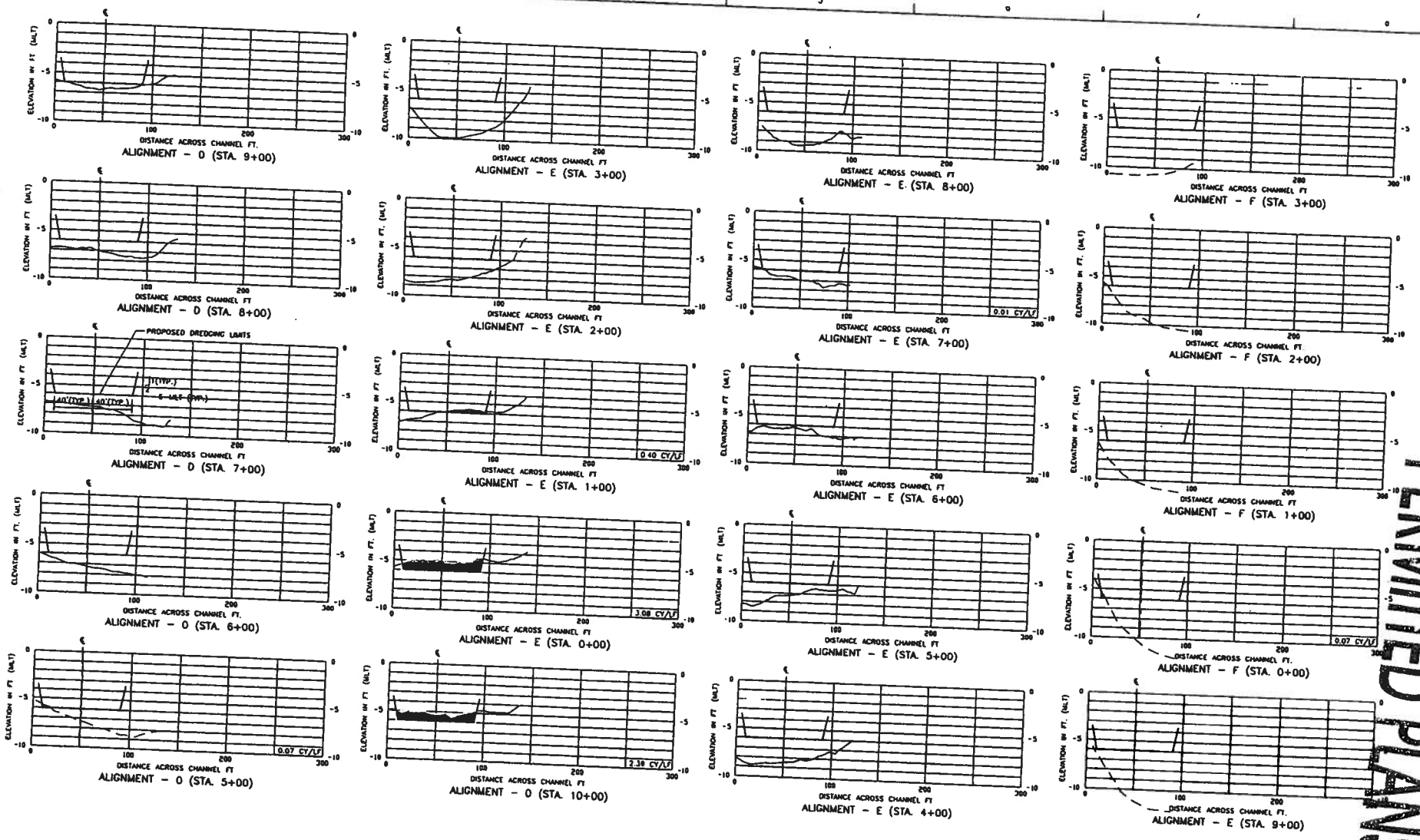
Tompkins Channel
Maintenance Dredge

CROSS SECTIONS ALIGNMENTS "C" & "D"	
FILENAME	TCDSheet19
SCALE	GRAPHIC
SHEET	19

SW6-1996-00026
Sheet 19 of 26

PERMITTED PLANS

MAR 28 2011



City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/28/2010	0

PROJECT MANAGER: Scott C. Fry, P.E.
DRAWN BY: S. Fry
CHECKED BY: S. Fry
PROJECT NUMBER: 001



Tompkins Channel Maintenance Dredge

CROSS SECTIONS ALIGNMENTS "D", "E" & "F"		
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SCALE	GRAPHIC	20

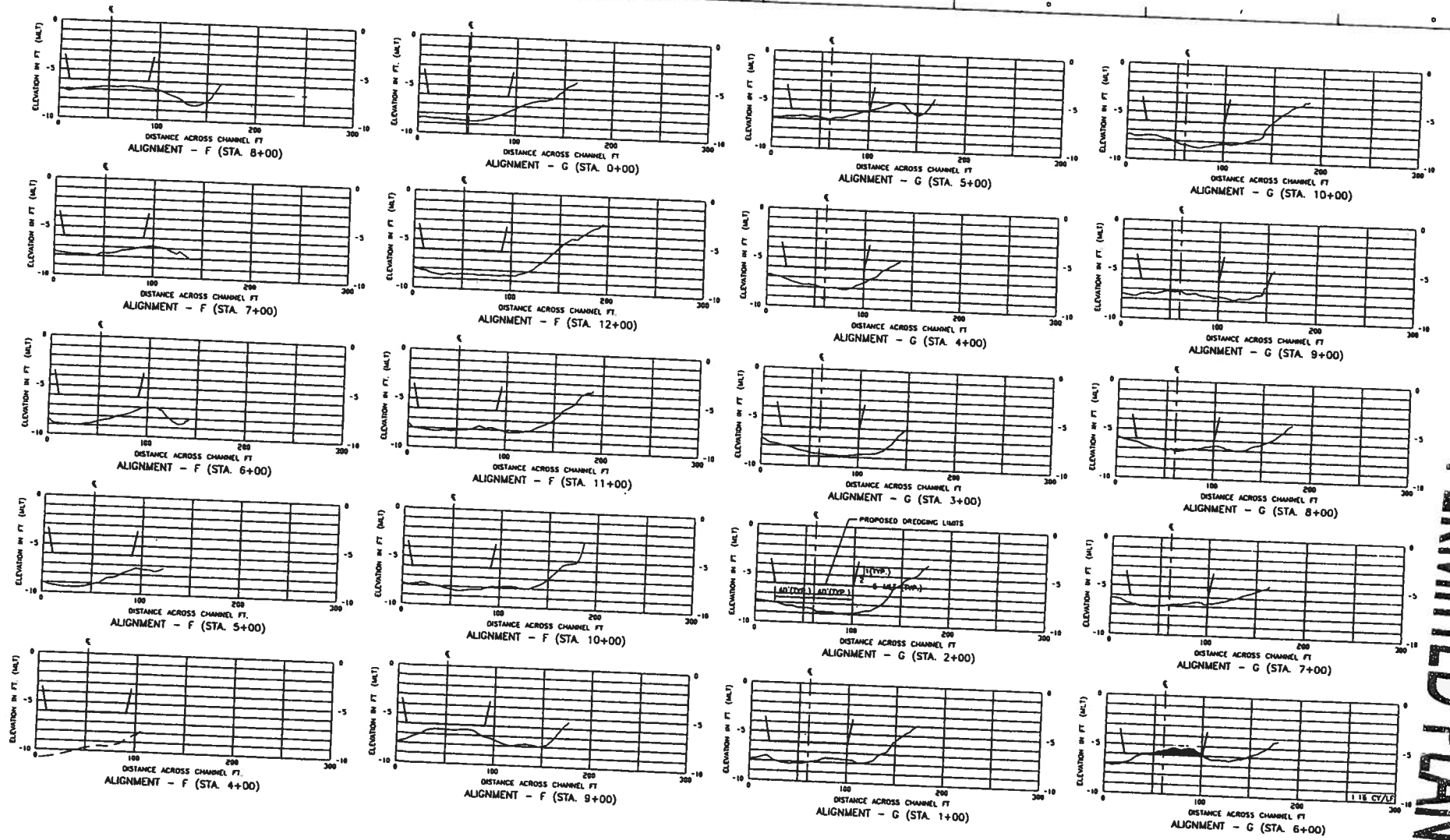


— DREDGE TEMPLATE
- - - DECEMBER 2008 GRADE
— CHANNEL BOTTOM ABOVE -0.0'

Sw6-1996-00026
Sheet 20 of 26

PERMITTED PLANS

MAR 28 2011



City of
South
Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel
Maintenance Dredge

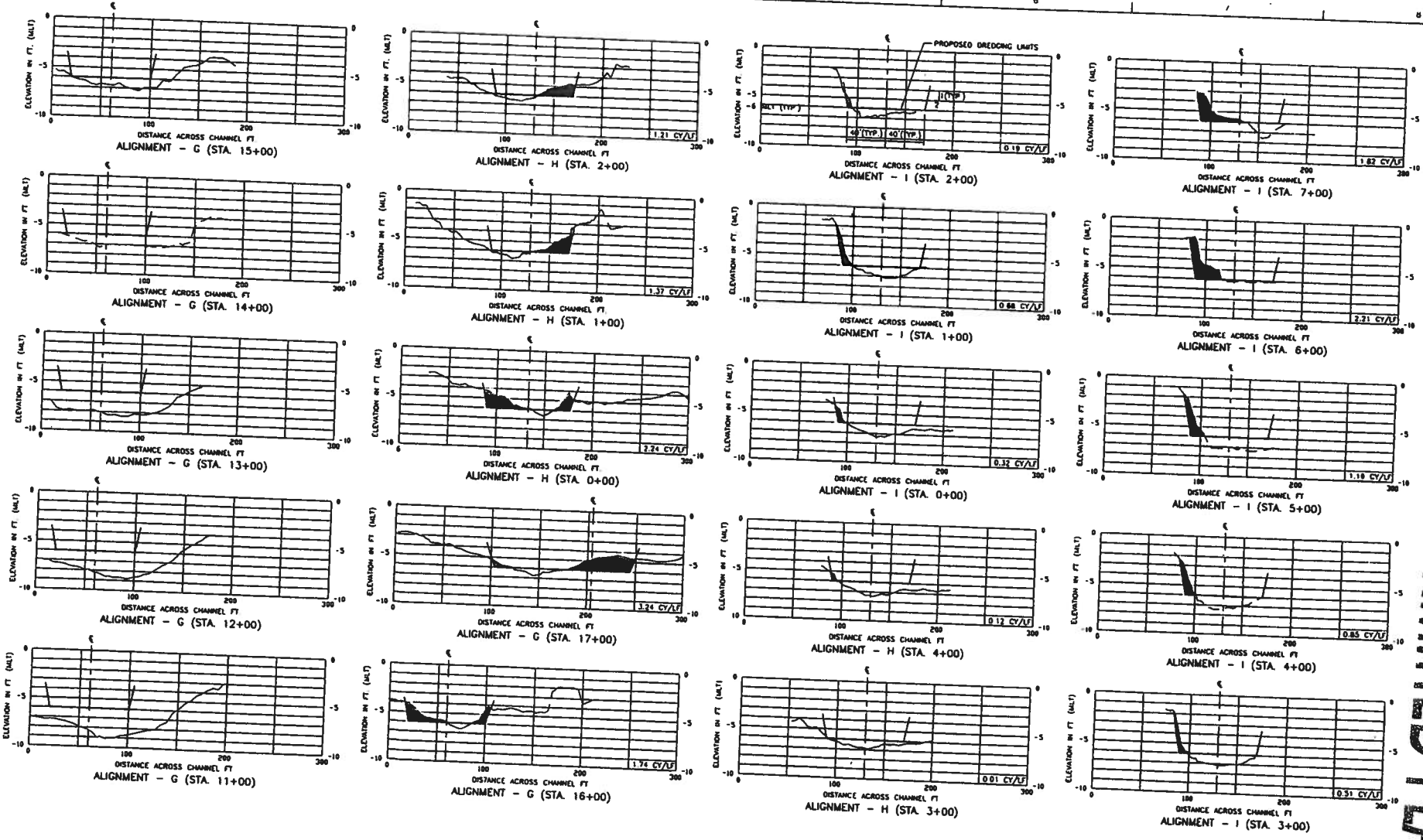
CROSS SECTIONS
ALIGNMENTS "F" & "G"

FILENAME	TCDSheet21	SHEET
SCALE	GRAPHIC	21

SW6-1996 000 26
Sheet 21 of 26

PERMITTED PLANS

MAR 28 2011



City of
South
Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



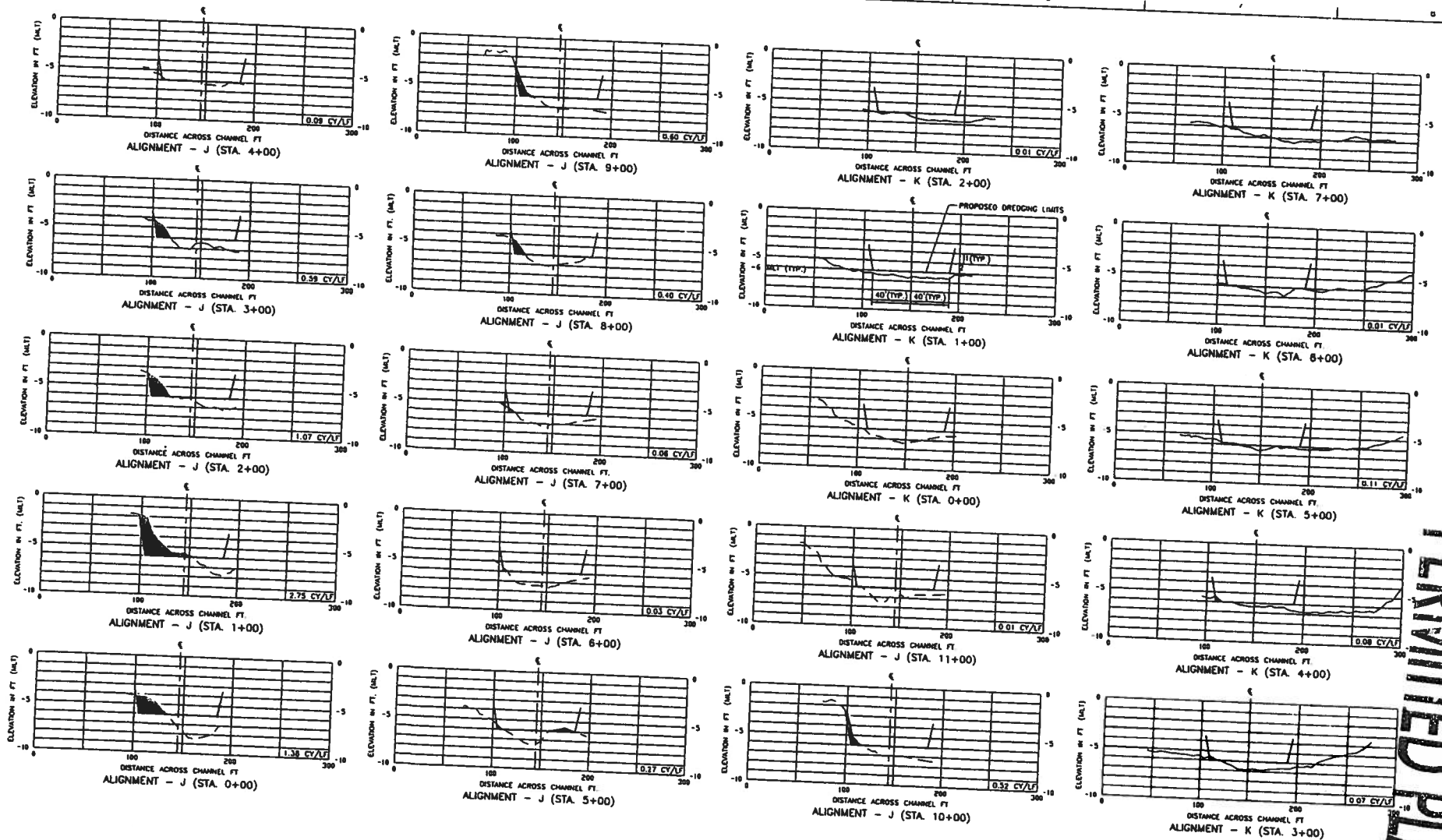
Tompkins Channel
Maintenance Dredge

CROSS SECTIONS ALIGNMENTS "G", "H" & "I"	
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SCALE	GRAPHIC
SHEET	22



DREDGE TEMPLATE
DECEMBER 2008
CHANNEL BOTTOM

Sub-1996-000 26
Sheet 22 of 26



PERMITTED PLANS

MAR 28 2011

City of
South Padre
Island
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



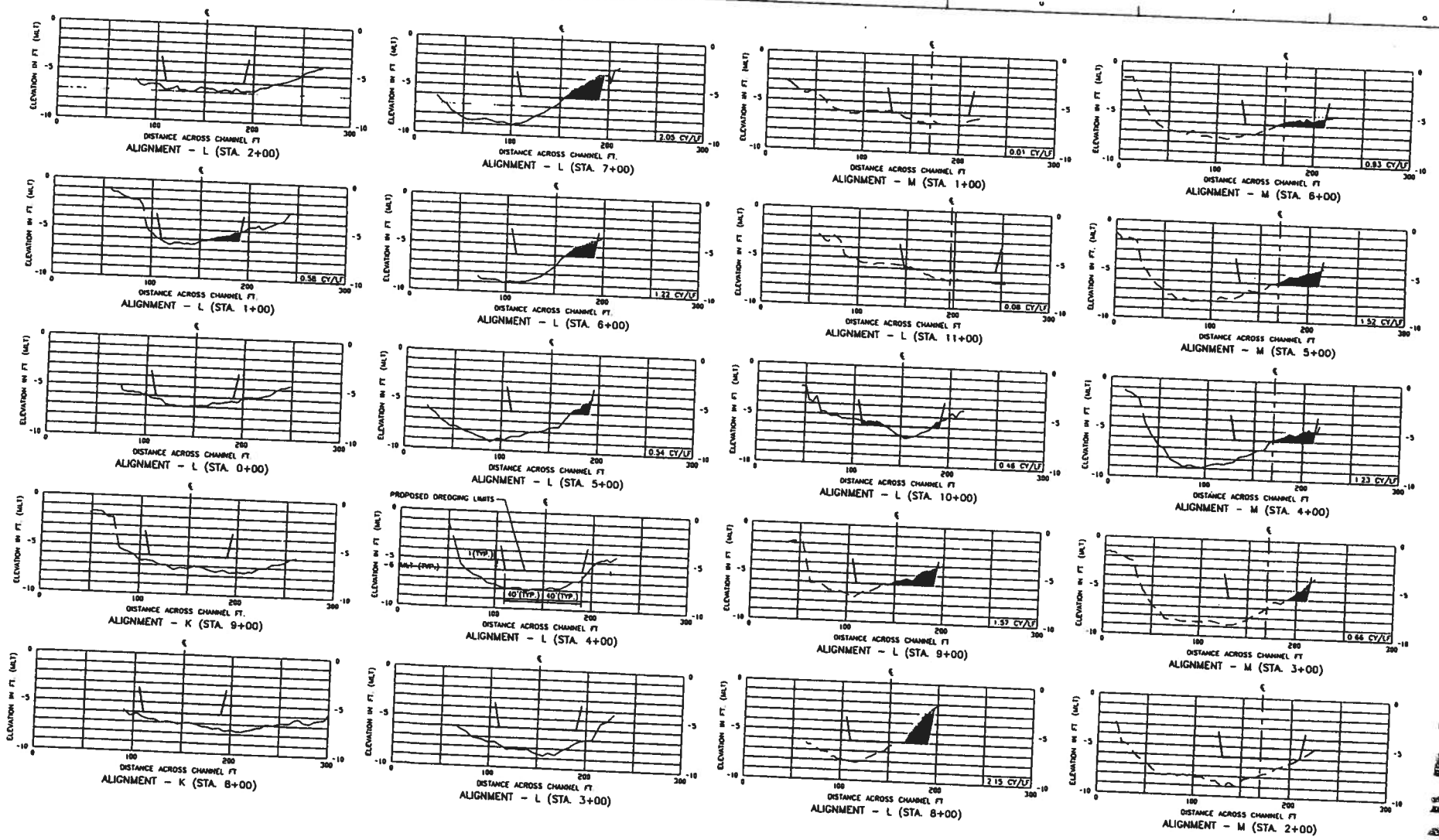
Tompkins Channel
Maintenance Dredge

CROSS SECTIONS ALIGNMENTS "J" & "K"	
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SCALE	GRAPHIC
SHEET	23

Sub-1996-00026
Sheet 23 of 26

PERMITTED PLANS

MAR 28 2011



DREDGE TEMPLATE
 DECEMBER 2008 GRADE
 CHANNEL BOTTOM ABOVE -6.0'

City of
 South Padre
 Island
 Public Works
 Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



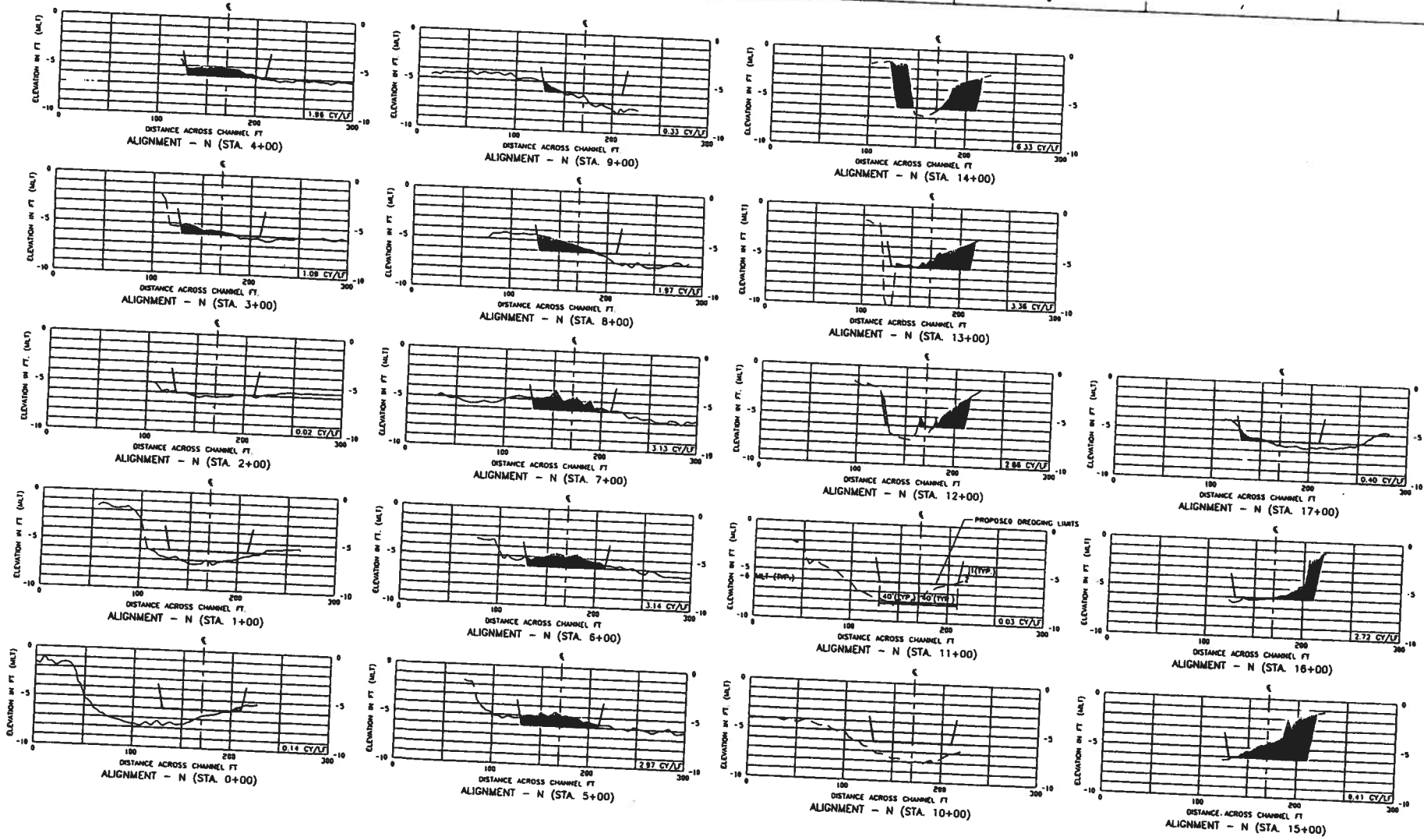
Tompkins Channel
 Maintenance Dredge

CROSS SECTIONS ALIGNMENTS "K", "L" & "M"	
FILENAME	KCDShm24
SCALE	GRAPHIC
SHEET	24

Sub-1996-00026
 Sheet 24 of 26

PERMITTED PLANS

MAR 28 2011



City of South Padre Island
Public Works Department

ISSUE	DATE	DESCRIPTION
0	11/29/2010	0

PROJECT MANAGER: SWH C. Fry, PE
 DRAWN BY: S. Fry
 CHECKED BY: S. Fry
 PROJECT NUMBER: 001



Tompkins Channel Maintenance Dredge

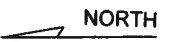
--- DREDGE TEMPLATE
 - - - - - DECEMBER 2008 GRADE
 _____ CHANNEL BOTTOM ABOVE -8.0'



CROSS SECTIONS ALIGNMENT "N"	
FILENAME: TCDShm125	SHEET: 25
SCALE: GRAPHIC	

SW6-1996-00026
Sheet 25 of 26

PERMITTED PLANS

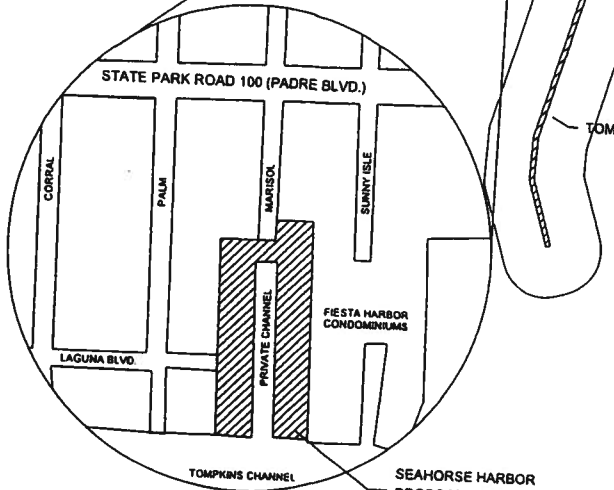


GULF OF MEXICO

SOUTH PADRE ISLAND, TEXAS

BRIGGS SANTIAGO PASS
REGISTERED PROFESSIONAL ENGINEER

LAGUNA MADRE BAY



- PROJECT NOTES**
- 1 A TEMPORARY CONSTRUCTION EASEMENT WILL BE GRANTED TO ALLOW THE USE OF THE SEA HORSE HARBOR SUBDIVISION FOR THE DURATION OF THIS PROJECT. THE CONTRACTOR MAY USE THE SPECIFIED AREA TO UNLOAD DREDGED MATERIAL FROM BARGES AND SPREAD IT.
 - 2 THE CONTRACTOR WILL BE RESPONSIBLE FOR DETERMINING CHANNEL CLEARANCES AND WATER DEPTHS TO VERIFY THAT THERE IS ADEQUATE OPERATING ROOM.
 - 3 THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE STABILITY OF THE EXISTING BULKHEAD PRIOR TO PLACING ANY LOAD ON OR ADJACENT TO THE STRUCTURE. ANY MATS, SHORING OR OTHER PROTECTIVE FEATURES REQUIRED FOR THE USE OF THE SITE SHALL BE REMOVED AT THE COMPLETION OF THE PROJECT.
 - 4 THE SITE SHALL BE KEPT IN A NEAT AND ORDERLY FASHION DURING THE PROSECUTION OF THE WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING THE SITE TO ITS PRE-EXISTING CONDITION.
 - 5 THE CONTRACTOR SHALL BE RESPONSIBLE TO ANY DAMAGES TO LOCAL INFRASTRUCTURE SUCH AS STREETS, MANHOLES, ETC.
 - 6 THE CONTRACTOR SHALL SUBMIT A POLLUTION PREVENTION PLAN THAT WILL SHOW HOW THE SITE WILL BE PREPARED AND MAINTAINED SO THAT EXCESS SILT OR OTHER POLLUTANTS ARE PREVENTED FROM ENTERING THE LAGUNA MADRE BAY.
 - 7 THE CONTRACTOR SHALL TAKE CARE TO PROTECT EXISTING SEA GRASS BEDS THAT ARE OUTSIDE THE LIMITS OF THE CHANNEL. THE CONTRACTOR IS RESPONSIBLE FOR MITIGATION OF ANY SHORT-TERM OR LONG-TERM IMPACTS TO SEAGRASSES AT NO ADDITIONAL EXPENSE TO THE OWNER.

TOMPKINS CHANNEL

SEAHORSE HARBOR
PROPOSED DREDGE MATERIAL
PLACEMENT AREA

**City of
South
Padre
Island**
Public Works
Department

ISSUE	DATE	DESCRIPTION
0	2/9/2010	0

PROJECT MANAGER	Scott C. Fry, P.E.
DRAWN BY	S. Fry
CHECKED BY	S. Fry
PROJECT NUMBER	001



Tompkins Channel
Maintenance Dredge

DREDGED MATERIAL
PLACEMENT AREA

FILENAME	TC0Sheet07.dwg	SHEET	26
SCALE	N.T.S.		

SW6-1996-00026
Sheet 26 of 26

MAR 28 2011

NOTICE TO PERMITTEES

Department of the Army Permits for Work in Navigable Waters require attention to administration and policies which are often misunderstood or disregarded. To avoid possible misinterpretations and to expedite procedures, permit post-authorization requirements and pertinent information are outlined as follows:

1. Permits remain in effect until revoked, relinquished, or the structures are removed. An extension of time for completion of structures or work may be granted provided that a public notice is issued and that evidence is furnished of the bona fide intention of the permittee to complete the work within a reasonable time. If work or structures are not completed within the time provided in the permit, it is the permittee's responsibility to request an extension of time at least 4 months before the expiration date.

2. Maintenance of authorized completed structures may be done at any time without extending the completion period. It is, however, required that the District Engineer be notified prior to commencement of maintenance.

3. SPECIAL REGULATIONS GOVERN MAINTENANCE WORK INVOLVING--
DREDGING OR FILL. This maintenance is not authorized by the original permit and specific prior approval is required before such work is commenced in navigable waters. Your request for authorization should be submitted in time for public notice requirements and coordination with other agencies.

4. If ownership of structures or work covered by a permit is transferred, the District Engineer must be notified immediately. The notification will provide information so that permit responsibilities can be changed to the new owner or assignee.

5. Permittees are reminded that the Area Engineer must be notified as soon as possible of the time for commencement of construction or work, and immediately upon completion. If pipelines across Federal project channels are covered by the permit, the Area Engineer should be informed of the date the pipelines are to be placed in time for him to arrange for an inspector to be present.

6. All material changes in location or plans must be submitted promptly to the District Engineer for approval before construction is begun.

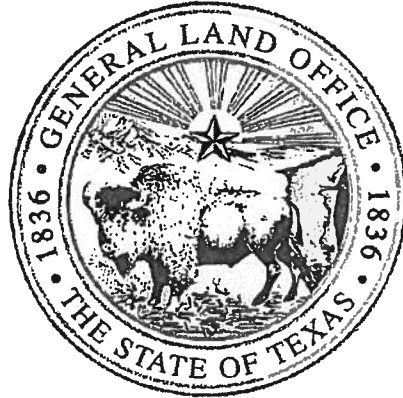
7. Permits should not be considered as an approval of design features of any structure authorized or an implication that such structure is adequate for the purpose intended.

DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS

TOMPKINS CHANNEL

GLO EASEMENT

TEXAS GENERAL LAND OFFICE



COASTAL LEASE NO. CL20110002

By virtue of the authority granted by Chapter 33 of the Texas Natural Resource Code, Title 31 of the Texas Administrative Code, all amendments thereto, all other applicable statutes, and subject to all rules and regulations promulgated pursuant thereto, the State of Texas (the "Grantor"), acting by and through the Commissioner of the General Land Office (the "GLO") as Chairman of the School Land Board (the "Board") on behalf of the Permanent School Fund (the "PSF"), hereby grants to the grantee (the "Grantee") named under the "Grantee Name" section of Attachment A, the Control Page, the right to use a tract of state-owned real property (the "Premises"), which property is described in the "Premises" section of Attachment A and further depicted in Attachment B, for the purposes described in this agreement (the "Agreement").

ARTICLE I: INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Agreement as a whole and not to any particular provision, section, Attachment, or schedule, unless otherwise specified;
- (c) The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Agreement, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Agreement; and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement;
- (e) All attachments within this Agreement, including those referenced by incorporation, and any amendments are considered part of the terms of this Agreement;

- (f) This Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Grantor or by the Grantor by way of consent, approval, or waiver shall be deemed modified by the phrase "in its/their sole discretion." Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Grantor shall not be unreasonably withheld or delayed;
- (h) All due dates and/or deadlines referenced in this Agreement that occur on a weekend or holiday shall be considered as if occurring on the next business day;
- (i) All time periods in this Agreement shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received; and
- (j) Time is of the essence in this Agreement.

ARTICLE II GRANTING CLAUSE

2.01 GRANTING CLAUSE

In consideration of the payments stated in Article IV of this Agreement and other consideration stated therein, the receipt and sufficiency of which are hereby acknowledged, and according to the covenants and commitments herein agreed to be kept and performed by the Grantee, the Grantor grants to the Grantee the right to use the Premises for the purposes and under the conditions and obligations described in the following section of this Agreement.

2.02 SCOPE OF GRANTING CLAUSE

The Grantee's use of the Premises is subject to compliance with the following covenants, obligations, and conditions:

(a) Use

The Premises may be used by the Grantee solely for those uses specified under the "Use(s) of Premises" section of **Attachment A** and for no other purpose. Except as otherwise provided in this Agreement, the Premises are to remain in their current topographical and hydrologic condition during the term of the Agreement. The Grantee is specifically prohibited from modifying the Premises in any manner not authorized in this Agreement and from using, or allowing the use by others, of the Premises for any other purpose.

(b) Trash

The Grantee shall be responsible for the removal and disposal of all trash at the Premises, whether or not such trash is generated by the Grantee or its guests and invitees.

(c) Improvements

- i) The Grantee's right to use the Premises is exclusive as to those alterations, additions, and/or improvements located, or to be located, on the Premises (collectively the "Improvements"), as more specifically described under the "Use(s) of Premises" section of **Attachment A** and further depicted on **Attachment B**, and non-exclusive as to the remainder. The location of the Improvements shall become fixed as specified under **Attachment B** and shall not be changed except by a written amendment to this Agreement. Improvements existing prior to the execution of this Agreement are and shall remain the property of the Grantor;
- ii) Except as otherwise allowed in this Agreement, no construction, land modifications or excavation, or permanent property improvements may be allowed or undertaken without the Grantor's prior express written consent. The Grantee may not maintain or allow any nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance. The Grantee may file a criminal complaint or institute civil proceedings to protect his right of possession and leasehold interest in the Premises against trespass of other infringement of the Grantee's rights by third parties. The Grantee is specifically prohibited from using or allowing the use by others of the Premises for any purpose not stated herein, including, but not limited to, mining, hauling, or otherwise removing rock, sand, gravel, aggregate, or other such materials, without the Grantor's prior express written approval;
- iii) Prior to undertaking construction or installation of Improvements on the Premises, the Grantee shall provide written notice of the terms of this Agreement to each person or entity authorized by the Grantee to perform any such activity on its behalf. If a dispute arises concerning construction or installation of the Improvements, the Grantee shall provide the Grantor with a copy of all applicable notices within ten (10) days of the Grantor's written request;
- iv) The Grantee, in its sole cost and expense, shall make, and be solely responsible for, any repairs, maintenance, or replacements to the Improvements that the Grantor considers necessary or as required by this Agreement. If the Grantee fails or refuses to honor such a request, or in case of an emergency, the Grantor may make such repairs, maintenance, renewals, or replacements. **THE GRANTEE WAIVES ANY CLAIM FOR DAMAGE CAUSED THEREBY AND IS LIABLE TO THE GRANTOR FOR ANY COSTS INCURRED;**
- v) Prior to expiration of this Agreement or upon notice of termination, the Grantee shall remove all of the Improvements, remove any resulting debris, and pay Grantor all monies due. The grantee shall take whatever measures are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any Improvements. If the Grantee fails to comply with this provision, the Grantor shall have the right to perform the work, in which event the Grantee shall be liable to the Grantor for all cost, loss, and damage incurred by the Grantor;
- vi) Notwithstanding the preceding, pursuant to Title 31 of the Texas Administrative Code, the Grantor may waive the removal/restoration requirements in this Section if,

in the Grantor's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State; and

- viii) Grantee shall insure that all Improvements constructed, placed, or operated by it on the Premises are visible to operators of marine craft at all times. Grantee shall further take any and all steps necessary to insure that Improvements constructed, placed, or operated by it on the Premises do not constitute a hazard to operators of marine craft. Grantee may not restrict or prevent other persons from access to navigating open, navigable waters.

(d) Special conditions

The Grantee shall adhere to the special conditions, if any, listed under the "Special Conditions" section of Attachment A.

2.03 As Is

THE GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND ACCEPTS THE SAME "AS IS," IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTEE ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION OF THE GRANTOR WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS RELYING ON THE GRANTEE'S OWN INSPECTION OF THE PREMISES. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS AGREEMENT IS FREE OF LIENS, ENCUMBRANCES, AND/OR PRIOR RIGHTS. THE GRANTEE IS PUT ON NOTICE THAT OTHER GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD, AND THE GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE GLO AND RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

2.04 RESERVATIONS

The Grantor reserves the full use of the Premises and all rights with respect to its surface and subsurface for any and all purposes except for those granted to the Grantee. The aforementioned reserved full use of the Premises by the Grantor includes the right of ingress, egress, and use of the Premises by the Grantor, its officers, agents, representatives, employees, and other authorized users for any authorized purpose.

2.05 RIGHT OF ENTRY

- (a) In any circumstances where the Grantor is granted a right of entry on the Premises during the term of the Agreement, no such entry shall constitute an eviction or disturbance of the Grantee's use and possession of the Premises, a breach by the Grantor of any of its obligations hereunder, render the Grantor liable for damages for loss of business or otherwise, entitle the Grantee to be relieved from any of its obligations hereunder, grant the Grantee any right of off-set or recoupment, or other remedy.

- (b) In exercising any right of entry, the Grantor agrees to exercise its right of entry only at reasonable times (except in an emergency) for purposes of inspection, repair, and as necessary to protect the State's interests, and the Grantor agrees not to unreasonably interfere with the Grantee's authorized use of the Premises. The Grantee shall provide the Grantor with keys or combinations to all locks that may limit access to the Premises.
- (c) Further, the Grantee authorizes the State, its officers, agents, representatives, and employees to access the Premises over and across Grantee's Adjacent Property. Grantor agrees to use the Adjacent Property only to the extent and for the length of time necessary to provide access to and from the Premises. The foregoing authorization creates a license only, and does not create an easement over the Adjacent Property.
- (d) Grantee acknowledges that Grantor's right of ingress and egress shall remain in effect as long as any improvements placed on the Premises by Grantee remain on the Premises and/or as necessary for Grantor to confirm the removal (in whole or in part) of those improvements.
- (e) Any aforementioned right of entry shall survive the termination of this Contract.

2.06 DAMAGE OR DESTRUCTION OF PREMISES AND/OR IMPROVEMENTS

No damage to the Premises, or damage to or destruction of any Improvements, shall in any way alter, affect, or modify the Grantee's obligations under this Agreement. In the event any such damage or destruction exceeds the cost listed under the "Cost of Damage" section of **Attachment A** per event to repair, the Grantee shall give written notice to Grantor within seven (7) calendar days of the damage or destruction, including a description of the damage or destruction and, as far as known to the Grantee, the cause of the damage or destruction. The Grantee shall immediately remove all debris resulting from such damage or destruction and take such action as is necessary to place the Premises in a neat, safe condition. Within 90 days of the event causing the damage or destruction, the Grantee must either repair or replace the Improvements, if permitted by law, or return the Premises to their natural condition. The Grantor may make repairs or replacements pursuant to this section, whereupon the Grantee shall be liable to pay the Grantor, upon demand, the cost and expense incurred in accomplishing such action. Any failure by the Grantee to make such payment to the Grantor may be treated by the Grantor as an Event of Default.

ARTICLE III: TERM

The effective date and termination date of this Agreement are specified under the "Effective and Termination Dates" section of **Attachment A**, unless renewed or earlier terminated as provided herein. Unless otherwise specified herein, renewal of this Agreement is at the sole discretion of the Grantor.

ARTICLE IV: CONSIDERATION

The Grantee shall pay, in consideration of the mutual covenants and agreements set forth in this Agreement, the payment(s) and/or fee(s) listed under the "Payment(s) and/or Fee(s)" section of **Attachment A** on or before the due date.

ARTICLE V: EVENTS OF DEFAULT

5.01 EVENTS OF DEFAULT

With respect to the Grantee, it shall be an event of default hereunder ("Event of Default") if:

- (a) the Grantee fails or refuses to timely pay Consideration or any other payments required by this Agreement after it becomes due;
- (b) the Grantee fails or refuses to comply, timely perform, or observe any of the covenants, duties, obligations, and/or conditions under this Agreement;
- (c) the Grantee abandons or vacates the Improvements, the Premises, or any significant portion thereof;
- (d) there is an entry of a court order requiring the dissolution, winding up, or termination of the Grantee's business affairs; or
- (e) the Grantee fails to materially comply with rules and regulations in the Texas Administrative Code, the Texas Natural Resources Code, or any other rules or regulations promulgated by any state or federal governmental entity with proper jurisdiction over any of the uses permitted under this Agreement, unless such a failure to comply is redressed through an enforcement action by an applicable state agency with proper jurisdiction.

5.02 NOTICE AND CURE

There shall be no consequences for an Event of Default under this Agreement, unless the defaulting party receives written notice of the Event of Default and such Event of Default continues for a period of 30 days after the defaulting party receives the notice. A notice of Event of Default shall specify the event or events constituting the default. This 30 day period shall be extended if the act, event, or condition is one that by its nature or circumstances reasonably requires more than 30 days to cure; provided, however, the defaulting party shall promptly and in good faith initiate and diligently pursue measures that are expected to cure or eliminate the Event of Default in a reasonable period of time. If either party fails to cure an Event of Default, the non-defaulting party shall be entitled to terminate this Agreement by written notice. This notice and cure provision does not apply to an Event of Default under provision 5.01(a) or any emergency situations that affect public health or safety.

5.03 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

If an Event of Default occurs and the Grantee fails to cure within the period provided above, the Grantor may, at its option, do any one or more of the following:

- (a) terminate this Agreement by sending written notice of such termination, in which event the Grantee shall immediately surrender possession of the Premises to the Grantor (such termination shall not prejudice the rights of the Grantor for any claim of payments due);
- (b) enter upon and take possession of the Premises and expel or remove the Grantee and any other occupant, with or without having terminated the Agreement; or

(c) alter locks and other security devices, if any, at the Premises.

The failure of either the Grantee or the Grantor to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any other right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Grantee or the Grantor may be exercised from time-to-time and as often as may be deemed expedient by the Grantee or the Grantor, as the case may be. In an Event of Default, the Grantor shall have the option, but not the obligation, to mitigate its damages.

ARTICLE VI: GENERAL TERMS, CONDITIONS, AND EXCEPTIONS

6.01 ASSIGNMENT

The Grantee shall not assign or otherwise dispose of an interest in this Agreement or the Premises without the express prior written consent of the Grantor; and any attempt to assign or otherwise dispose without consent shall be void and of no effect. This prohibition against assigning or disposition shall be construed to include a prohibition against any assignment or disposition by operation of law. If this Agreement is assigned, or if an interest in this Agreement or the Premises is disposed of, the Grantor may nevertheless collect Consideration from the assignee and apply the net amount collected to the Consideration payable hereunder. No such transaction or collection of Consideration shall release the Grantee from the further performance of its covenants, duties, and obligations.

6.02 INDEMNITY

EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OF THE GRANTOR, THE GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE GRANTOR AND THE GRANTOR'S OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- **THIS AGREEMENT;**
- **THE USE OR OCCUPANCY OF THE PREMISES;**
- **ANY NEGLIGENCE, ACT, OMISSION, NEGLECT, OR MISCONDUCT OCCURRING IN, ON, OR ABOUT THE PREMISES; OR**
- **ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.**

THE GRANTEE ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE PREMISES. THE GRANTEE EXPRESSLY AGREES TO USE AND OCCUPY THE PREMISES AND PLACE ANY IMPROVEMENTS ON THE PREMISES AT ITS OWN RISK. THE GRANTEE SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, CUSTOMERS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GRANTOR.

6.03 PROTECTION OF NATURAL AND HISTORICAL RESOURCES

(a) Unauthorized Discharge

The Grantee shall use the highest degree of care and all appropriate safeguards to prevent pollution of air, ground, or water in, on, or about the Premises through an unauthorized discharge, and to protect and preserve natural resources and wildlife habitat. In the event of such discharge or damage to natural resources in, on, or about the Premises that is the result of an act or omission of the Grantee, its officers, employees, agents, representatives, contractors, and/or invitees, the Grantee shall immediately notify appropriate agencies of the State of Texas and the Grantor and undertake all required and appropriate action to remedy the same. The Grantee shall be liable for all damages to the Premises, public lands, and waters as a result of such act or omission and for mitigation of any such damages.

(b) Natural Historical Preservation Act and Antiquities Code of Texas

THE GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 AND THE ANTIQUITIES CODE OF TEXAS. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, THE GRANTEE SHALL IMMEDIATELY CEASE SUCH ACTIVITIES AND SHALL IMMEDIATELY NOTIFY THE GRANTOR AND THE TEXAS HISTORICAL COMMISSION, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

6.04 COMPLIANCE WITH OTHER LAWS; NUISANCE

The Grantee, at its own expense, will comply with all federal, state, municipal, and other laws, codes, ordinances, rules, and regulations applicable to the Premises; and will install, remove, and alter such equipment and facilities in, and make such alterations to, the Premises as may be necessary to comply. The Grantee will not make any unlawful use of the Premises or permit any unlawful use thereof; and will not commit, or permit anyone else to commit, any act that is a nuisance or annoyance to the Grantor or adjacent property owners or tenants, or which might, in the exclusive judgment of the Grantor, damage the Grantor's goodwill or reputation, or tend to injure or depreciate the value of the Premises and/or any Improvements located thereon. The obligations of the Grantee under this Section shall survive any termination of this Agreement.

6.05 NOTICE

- (a) The Grantee shall provide written notice to the Grantor of any change in the Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement. The Grantee shall provide to the Grantor any other information reasonably requested by the Grantor in writing within 30 days following such request.
- (b) Any payments and required written notices under this Agreement shall be delivered by hand, facsimile, or United States Registered or Certified Mail, adequate postage prepaid, to the address(es) listed under the "Address(es) for Notification" section of **Attachment A**. A party may change its address by giving notice as provided above. No change of address shall be binding until notice of such change of address is given as required.

6.06 SEVERABILITY

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

6.07 ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

6.08 TAXES

The Grantee shall, as further consideration for this Agreement, pay and discharge all "Taxes" (as hereinafter defined) properly assessed in any calendar year (or portion thereof) during the term of this Agreement. For the purposes of this Agreement, the term "Taxes" means all taxes, assessments, impositions, levies, charges, excises, fees, licenses, and other sums (whether now existing or hereafter arising, whether foreseen or unforeseen, and whether under the present system of taxation or some other system), that during the term of this Agreement may be levied, assessed, charged, or imposed by any governmental authority or other taxing authority or accrue on the Premises and any Improvements or other property thereon, whether belonging to the Grantor or the Grantee, or to which either of them may become liable in relation thereto. The term "Taxes" shall also include all penalties, interest, and other charges payable by reason of any delay or failure or refusal of the Grantee to make timely payments as required pursuant to this provision. **THE GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR HARMLESS FROM LIABILITY FOR ANY AND ALL TAXES, TOGETHER WITH ANY INTEREST, PENALTIES, OR OTHER SUMS IMPOSED, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.**

6.09 ENCUMBRANCE OF INTEREST

The Grantee may not mortgage, hypothecate, encumber, or grant any deed of trust or security interest that encumbers the Premises. Further, the Grantee may not collaterally assign any rent or other income generated from the Premises. Prior to expiration or termination of this Agreement, the Grantee will provide the Grantor with documentation sufficient to evidence the Grantor's ownership of the Improvements not required to be removed per Article II.

6.10 PROPER AUTHORITY

Each party hereto represents and warrants that the person executing this Agreement on its behalf has full power and authority to enter into this Agreement.

6.11 RELATIONSHIP OF THE PARTIES

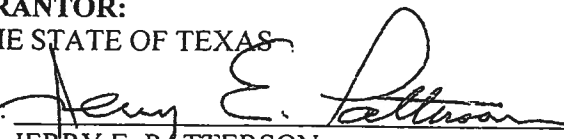
Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the Grantor any liability whatsoever with respect to the indebtedness, liabilities, and obligations of the Grantee or any other party.

6.12 GRANTEE'S WAIVER OF CERTAIN RIGHTS AND ASSERTIONS

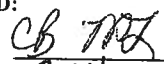



The Grantee waives and relinquishes all rights that the Grantee might have to claim any nature of lien against the Grantor and the Premises, or withhold or deduct from or offset against any Consideration or other sums provided hereunder to be paid to the Grantor by the Grantee. The Grantee waives and relinquishes any right, either as a claim or as a defense, that the Grantor is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Grantor not expressly set forth in this Agreement.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

GRANTOR:
THE STATE OF TEXAS

By: 
JERRY E. PATTERSON
Commissioner, General Land Office
Chairman, School Land Board

Date: 3/8/2011

APPROVED:
Contents: 
Legal: 
Deputy: 
Executive: 

ATTACHMENT A: CONTROL PAGE

GRANTEE'S NAME

Town of South Padre Island

PREMISES

A portion of State Tract Numbers 720, 733, 734, 746 and 747, Laguna Madre, Cameron County, Texas (the "Premises"). The Premises are further described and depicted on **Attachment B** attached hereto and incorporated herein by reference.

USE(S) OF PREMISES

Authorized Use(s) of the Premises: 2,780,500 square feet (63.8) acres of coastal public land encumbered by maintenance dredging of a 27,805 foot long public channel measuring 80 feet in bottom width and 100 feet in top width being 50 feet on either side of a centerline.

SPECIAL CONDITIONS

1. Grantee is specifically prohibited from using or permitting the use of the Premises for any commercial or illegal purpose. Provided the Grantor does not unreasonably interfere with Grantee's use of the Premises, the Grantor may use or permit the use of the Premises for any purpose consistent with Grantee's use of the Premises.
2. Grantee shall notify the General Land Office, Corpus Christi Field Office in writing at least two (2) weeks prior to commencing dredging operations and within one (1) week following completion of the work.
3. Grantee shall notify the General Land Office, Corpus Christi Field Office in writing at least sixty (60) days prior to undertaking any maintenance dredging activities occurring during the term of this contract.
4. All maintenance dredging activities are to be confined within the limits of the authorized excavation areas.
5. The boundary of all areas to be dredged, as depicted in Exhibits, shall be clearly marked using temporary navigation aids (posts, pilings, poles, buoys, flags, etc.) so that construction crews can properly delineate boundaries of the authorized work area and avoid impacts to state-owned land and resources adjacent to the project site. All materials used to mark the work area shall be removed by the Grantee and properly disposed of on private upland property within 30-days following completion of construction.
6. Grantee is to be aware, and is to make Grantee's employees, contractors, and/or agents aware, that submerged state-owned lands adjacent to the project site shall not be used for temporary beaching, grounding, or storage of equipment related to execution of this project, and that any incidental damage to seagrass and/or other natural resources in the project vicinity due to such actions shall be the mutual liability of Grantee and the responsible party, and shall be subject to the requirements of mitigation and/or compensation as specified in the Agreement.
7. Silt curtains are to be installed prior to beginning any dredging action, and shall be maintained around the perimeter throughout the duration of all dredging activity to minimize turbidity levels within adjacent waters.
8. Depth of the dredged area authorized herein shall not exceed -6 feet below Mean Low Water (MLW). Over-dredging for advance maintenance is specifically prohibited.
9. Propwashing is considered a form of dredging and, as such, is specifically prohibited as a method of creating or maintaining areas of increased water depth.

10. All dredged material (spoil) authorized by this instrument shall be placed and contained on private property above the limits of mean high water, and Grantee waives any right to claim ownership of Coastal Public Land as a result of artificial accretion caused by deposition of dredged material.
11. Grantee is required to perform mitigation and/or pay surface damage fees according to General Land Office policy in effect at the time damages occur for any and all surface damages resulting from actions of Grantee's employees, contractors, and/or agents. Such mitigation and/or payment of damage fees shall be performed in the manner and within the time frame specified in written notice provided by the General Land Office to Grantee following said damages.
12. Impacts to sensitive habitats, specifically seagrasses, oyster reefs, tidal flats, and emergent vegetation outside of the authorized dredging corridor area are to be strictly avoided. Grantee and its employees, contractors, and/or agents shall be liable for impacts to state natural resources outside of the authorized dredging corridor. If the STATE determines that impacts to sensitive habitat areas have occurred outside the leased corridor, such areas shall be subject to mitigation and/or surface damage fees.
13. Navigation aids, consistent with U.S. Coast Guard guidance, shall be installed and maintained by the Grantee upon completion of dredging operations.

COST OF DAMAGE

Five Thousand and No/100 Dollars (\$5,000) per event.

EFFECTIVE AND TERMINATION DATES

This Agreement is for a total period of ten (10) years, effective on November 1, 2010, and terminating on October 31, 2020.

PAYMENT(S) AND/OR FEE(S)

Grantee and Grantor acknowledge that no rental fees shall be assessed for the described use of the premises, while Grantee is not in default of the terms agreed upon herein. Grantor further acknowledges the receipt of the appropriate contract application and processing fees.

ADDRESS(ES) FOR NOTIFICATION

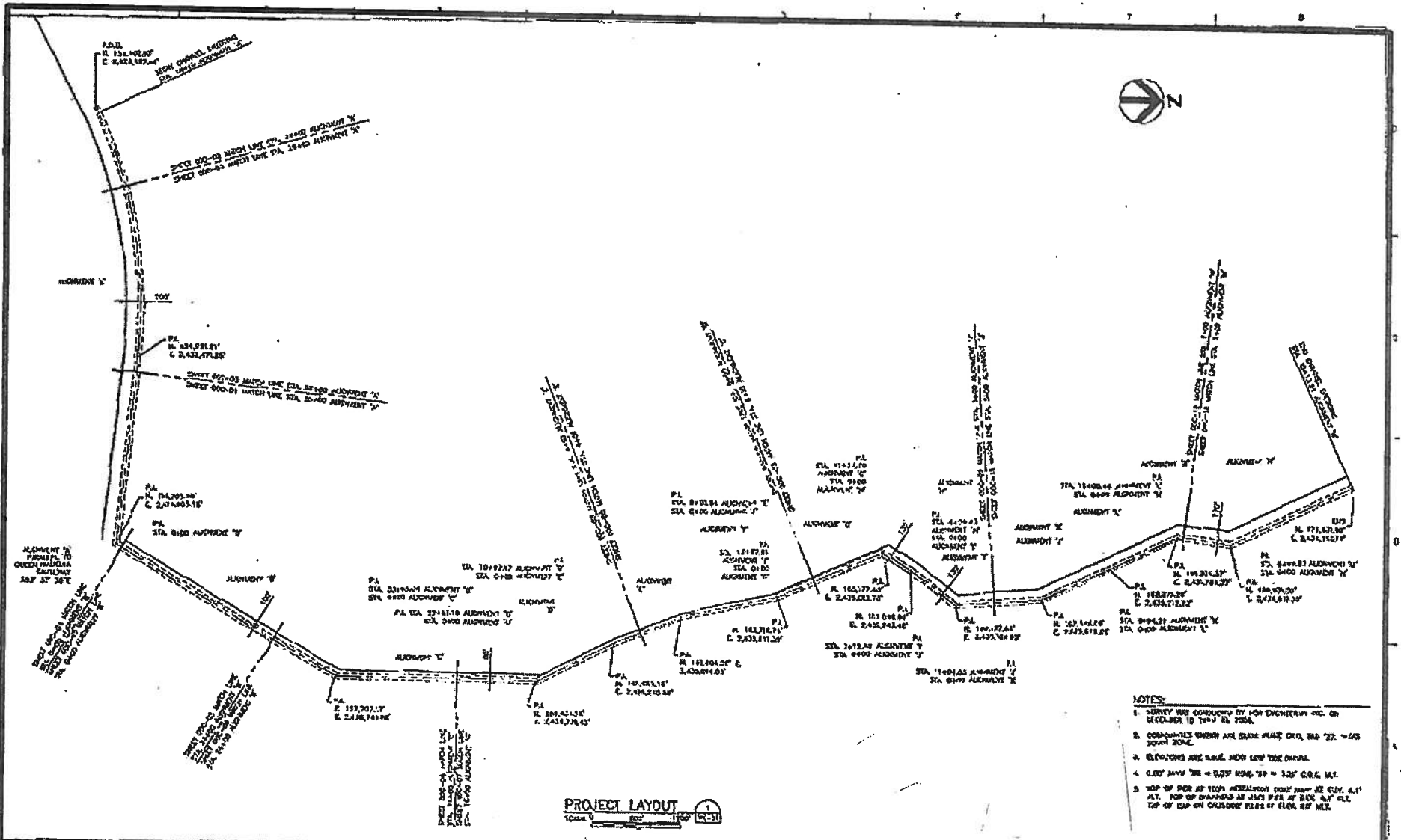
Grantor's Contact Information

Name: Texas General Land Office
Title: Deputy Commissioner, Professional Services
Address: 1700 N. Congress Ave.
Address: Austin, Texas 78701-1495

Grantee's Contact Information

Name: Town of South Padre Island
Address: 4601 Padre Blvd
Address: South Padre Island, TX 78597-7325

ATTACHMENT B:



- NOTES:**
1. SURVEY WAS CONDUCTED BY HOK ENGINEERING CO. ON NOVEMBER 10 TO 12, 2008.
 2. CORRECTIONS WERE MADE PLAIN ON THE DRAWING.
 3. ELEVATIONS ARE U.S.C. MEAN LOW TIDE (MLLT).
 4. CLOSURE WAS 0.03' HORIZ. TO = 120' C.R.E. H.S.
 5. TOP OF PILE AT EACH ABUTMENT SHALL BE 4.0' HIGHER AT. TOP OF BRANCHES AT JUNCTIONS SHALL BE 4.0' HIGHER AT. TOP OF CAP ON OUTSIDE PILES AT EACH END SHALL BE 4.0' HIGHER AT.

PROJECT LAYOUT
 SCALE: 1" = 100'
 DATE: 11/11/08

	PROJECT NO. _____ SHEET NO. _____ OF _____ DATE: _____	DRAWN BY: _____ CHECKED BY: _____ PROJECT NUMBER: _____			Tompkins Channel Survey	PROJECT LAYOUT
	TITLE: _____ CLIENT: _____	PROJECT: _____ LOCATION: _____				

Attachment B
 Town of South Padre Island
 CL20110002



Approximate location of Thompkins Channel shown by red line

Attachment B-2
Town of South Padre Island
CL20110002

SECTION 01200

PROJECT MEETINGS

PART 1 – GENERAL

1.01 SUMMARY

- A. This section specifies administrative and procedural requirements for project meetings including but not limited to:
 - a. Preconstruction Conference.**
 - b. Coordination Meetings.**
 - c. Progress Meetings.****
- B. Construction schedules are specified in Section 01300, "Submittals".**

1.02 PRECONSTRUCTION CONFERENCE

- A. A preconstruction conference and organizational meeting will be scheduled by the Owner at the project site or other convenient location no later than 10 days after execution of the Agreement and prior to commencement of construction activities. Conduct the meeting to review responsibilities and personnel assignments with the owner.**
- B. Attendees: The owner, Engineer, Contractor and subcontractors shall each be represented at the conference by persons familiar with and authorized to conclude matters relating to the work.**
- C. Agenda: Discuss items of significance that could affect progress including such topics as:
 - a. Tentative construction schedule.**
 - b. Critical working sequence.**
 - c. Designation of responsible personnel.**
 - d. Procedures for processing field decisions.**
 - e. Procedures for processing applications for payment.**
 - f. Distribution of Contract Documents.**
 - g. Submittal of shop drawings, product data and samples.**
 - h. Preparation of record documents.**
 - i. Use of premises.**
 - j. Office, work and storage areas.**
 - k. Equipment deliveries and priorities.**
 - l. Safety procedures.**
 - m. First aid.**
 - n. Security.**
 - o. Housekeeping.**
 - p. Working hours.****

1.03 COORDINATION MEETINGS

- A. The Owner reserves the right to schedule and conduct coordination meetings at his option.
- B. Contractor shall conduct coordination meetings with his subcontractors, but the Owner shall be invited to such meetings.
- C. Agenda: Review and solve operational conflicts between subcontractors, suppliers and/or Owner's operations.

1.04 PROGRESS MEETINGS

- A. The Owner reserves the right to schedule and conduct weekly meetings at his option.
- B. The Contractor shall conduct progress meetings at the project site at regularly scheduled intervals. Coordinate dates of meetings with preparation of the payment requests.
- C. Agenda: Review and correct or approve minutes of the previous progress meeting. Review other items of significance that could affect progress. Include topics for discussion as appropriate to the current status of the project.
- D. Contractor's Construction Schedule: Review progress since the last meeting. Determine where each activity is in relation to the Contractor's construction schedule, whether on time or ahead or behind schedule. Determine how construction behind schedule will be expedited; secure commitments from parties involved to do so. Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the contract time.
- E. Review the present and future needs of each entity present, including such items as:
 - a. Interface requirements.
 - b. Time.
 - c. Sequences.
 - d. Site utilization.
 - e. Hours of work.
 - f. Hazards and risks.
 - g. Housekeeping.
 - h. Quality and work standards.
 - i. Change orders.
 - j. Documentation of information for payment requests.
- F. Reporting: No later than three days after each progress meeting date, distribute copies of minutes of the meeting to each party present and to other parties who should have been present. Include a brief summary, in narrative form, of progress since the previous meeting and report.
- G. Schedule Updating: Revise the construction schedule after each progress meeting where revisions to the schedule have been made or recognized. Issue the revised schedule concurrently with the report of each meeting.

END OF SECTION

SECTION 01250

MEASUREMENT AND BASIS OF PAYMENT

PART 1 – GENERAL

1.01 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary General Conditions, Special Conditions, and Technical Specification Sections, apply to work of this section.
- B. Contractor's Bid Form and Bid Breakdown.

1.02 DESCRIPTION OF SECTION

This section further defines the work covered by each scheduled bid item.

1.03 QUANTITIES AND MEASUREMENTS

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents and weight only shall be considered. The method of measuring the bid items and payment of such is set out hereinafter.

1.04 MEASUREMENT AND PAYMENT

All items shall be measured and paid for as set out in the Technical Specifications or set out in the Proposal and further described below. The Engineer will be the sole judge and make the final decision as to the percentage complete and the monetary amount for interim payment to the Contractor.

The various items of construction in the Contractor's Bid Form will be paid according to the amounts of work completed for each item in the Bid Breakdown. This price shall be full compensation for furnishing all materials, equipment, labor, tools, transportation, superintendence, overhead and profit necessary to complete the construction of the various project items listed in the proposal and as itemized below. It is not the intent of the Bid Breakdown to itemize each and every item required. Items required for project completion would be considered subsidiary. The base bid item shall include all work not specifically identified as an alternate bid item, unless specified otherwise.

The Owner will pay for Mobilization and Demobilization to and from the site. However, the costs for Mobilization shall not exceed sixty percent (60%) of the total cost for Mobilization plus Demobilization. The lump sum price for Mobilization and Demobilization, shall include all costs in connection with the mobilization and demobilization of all plant necessary to perform the work under the various bid items, all transportation and other costs incidental to delivery of the plant and other equipment to the general work area in a condition ready for operation and, after the completion of all work, for the removal of the plant and equipment from the work site.

The Owner will pay for the actual material removed from the site on a unit price per in place cubic yard basis. Overdepth will not be paid for. The determination of quantities of work acceptably completed under the terms of the contract, or as directed by the Engineer in writing, will be made by the Engineer, based on Before Dredge (B.D.) and After Dredge (A.D.) soundings. Soundings shown on the plans were performed in January 2009 and may be used as B.D. soundings. The Contractor, at his option, may elect to perform new B.D. soundings at his expense prior to dredging. The Contractor shall conduct A.D. soundings as soon as practicable after dredging is complete.

The Contractor shall make provisions for the Engineer to witness the B.D. and A.D. soundings. The Contractor shall use this information to calculate the quantities of material removed from within the allowable limits of dredging. The Contractor shall submit the quantity calculations to the Engineer for review. The average end area method from the sections plotted on the plans will be used for computation of quantities. The Engineer will be the sole judge as to the final quantity determinations.

For the Base Bid, the Contractor shall include the cost necessary to maintain levees, spillways, and ditches in the Dredged Material Placement Area (see Appendix 'A'), placing and maintaining discharge lines, and all other work associated with removing the material, in the unit cost for the material excavated.

END OF SECTION

SECTION 01300

SUBMITTALS

PART 1 – GENERAL

1.01 SUMMARY

This section specifies administrative and procedural requirements for submittals required for the performance of the work, including:

- A. Contractor's partial payment and construction schedule.
- B. Submittal schedule.
- C. Weekly construction reports.
- D. Shop drawings.
- E. Product data and mill certificates.

1.02 SUBMITTAL PROCEDURES

- A. Coordination: Coordinate preparation and processing of submittals with performance of construction activities. Transmit each submittal sufficiently in advance of performance of related construction activities to avoid delay.
 - a. Coordinate each submittal with fabrication, purchase, testing, delivery, other submittals and related activities that require sequential activities.
 - b. Processing:
 - i. Allow sufficient review time so that installation will not be delayed as a result of the time required to process submittals including time for resubmittals.
 - ii. Allow two weeks for initial review. Allow additional time if processing must be delayed to permit coordination with subsequent submittals. The Engineer will promptly advise the Contractor when a submittal being processed must be delayed for coordination.
- B. Submittal Preparation: Place a permanent label or title block on each submittal for identification. Indicate the name of the entity that prepared each submittal on the label or title block.
 - a. Provide a space approximately 4 x 5 in. on the label or beside the title block on Shop Drawings to record the Contractor's review and approval markings and the action taken.
 - b. Include the following information on the label for processing and recording action taken.
 - i. Project Name.
 - ii. Date.
 - iii. Name of Engineer.
 - iv. Name of Contractor.
 - v. Name of subcontractor.
 - vi. Name of supplier.
 - vii. Name of manufacturer.
 - viii. Number and title of appropriate specification section.
 - ix. Drawing number and detail references as appropriate.

1.03 CONTRACTOR'S PARTIAL PAYMENT AND CONSTRUCTION SCHEDULE

- A. Schedule: Prepare a fully developed construction schedule, preferably a computer based CPM type, but a Gantt chart as a minimum. Submit within ten days of Notice to Proceed.**
- a. Secure time commitments for performing critical elements of the work from parties involved. Coordinate each element on the schedule with other construction activities; including minor elements involved in the sequence of the work. Show each activity in proper sequence. Indicate graphically sequences necessary for completion of related portions of the work.**
 - b. Coordinate the Contractor's construction schedule with the schedule of values, list of subcontractors, submittal schedule, progress reports, schedule of anticipated monthly partial payment requests, and all other schedules.**
 - c. Indicate completion in advance of the date established for Substantial Completion. Indicate Substantial Completion on the schedule to allow time for the Engineer's procedures necessary for certification of Substantial Completion.**

1.04 SUBMITTAL SCHEDULE

- A. After development and acceptance of the Contractor's construction schedule, prepare a complete schedule of submittals. Submit the schedule within ten days of the date required for establishment of the Contractor's construction schedule.**
- a. Coordinate submittal schedule with the list of subcontractors, schedule of values and the list of products as well as the Contractor's construction schedule.**
 - b. Prepare the schedule in chronological order; include all submittals required during construction. Provide the following information:**
 - i. Scheduled date for the first submittal.**
 - ii. Related section number.**
 - iii. Submittal category.**
 - iv. Name of subcontractor.**
 - v. Description of the part of the work covered.**
 - vi. Scheduled date for resubmittal.**
 - vii. Scheduled date for Engineer's final release or approval.**
- B. Distribution:**
- a. Following response to initial submittal, print and distribute copies to the Engineer, Owner, subcontractors, and other parties required to comply with submittal dates indicated. Post copies in the project meeting room and field office.**
 - b. When revisions are made, distribute to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the work and are no longer involved in construction activities.**

- C. **Schedule Updating:** Revise the schedule after each meeting or activity, where revisions have been recognized or made. Issue the updated schedule concurrently with report of each meeting.

1.05 WEEKLY CONSTRUCTION REPORTS

Prepare a weekly construction report recording the following information concerning events at the site and submit to the Engineer at weekly intervals:

- A. List of subcontractors at the site.
- B. Approximate count of personnel at the site.
- C. General weather conditions.
- D. Accidents and unusual events.
- E. Meetings and significant decisions.
- F. Stoppages, delays, shortages, losses.
- G. Orders and requests of governing authorities.
- H. Change orders received, implemented.
- I. Service connected, disconnected.
- J. Equipment or system tests and startups.
- K. Partial completions, occupancies.
- L. Authorized substantial completions.

1.06 SHOP DRAWINGS

- A. Submit newly prepared information, drawn to accurate scale. Highlight, encircle, or otherwise indicate deviations from the Contract Documents. Do not reproduce Contract Documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the project is not considered shop drawings. Reproductions of the Contract Documents will be immediately rejected for resubmittal.
- B. Shop drawings include fabrication and installation drawings, setting diagrams, schedules, patterns, templates and similar drawings. Include the following information.
 - a. Dimensions.
 - b. Identification of products and materials included.
 - c. Compliance with specified standards.
 - d. Notation of coordination requirements.
 - e. Notation of dimensions established by field measurements.
- C. **Sheet Size:** Except for templates, patterns and similar full-sized drawings, submit shop drawings on sheets at least 8-1/2 x 11 in., but no larger than 24 x 36 in.

1.07 PRODUCT DATA

Collect product data into a single submittal for each element of construction or system. Product data includes printed information such as manufacturer's installation instructions, catalog cuts, standard color charts, roughing-in diagrams and templates, standard wiring diagrams and performance curves. Where product data must be

pecially prepared because standard printed data is not suitable for use, submit as "Shop Drawings".

- A. Manufacturer's printed recommendations.
- B. Compliance with recognized testing agency standards.
- C. Application of testing agency labels and seals.
- D. Notation of dimensions verified by field measurement.
- E. Notation of coordination requirements.
- F. Mill Certificates.

1.08 ENGINEER'S ACTION

- A. Except for submittals for record, information of similar purposes where action and return is required or requested, the Engineer will review each submittal, mark to indicate action taken, and return promptly.
- B. Compliance with specified characteristics is the Contractor's responsibility. Submittal will be rejected for non-compliance of required characteristics.

END OF SECTION

SECTION 01500

TEMPORARY FACILITIES

PART 1 – GENERAL

1.01 SUMMARY

- A. This section specifies requirements for temporary services and facilities, including utilities, construction and support facilities, security and protection.
- B. Temporary construction and support facilities required include, but are not limited to:
 - a. Field offices and storage sheds.
 - b. Sanitary facilities.
 - c. Temporary enclosures.
 - d. Waste disposal services.
 - e. Construction aids and miscellaneous services and facilities.

PART 2 – PRODUCTS

2.01 MATERIALS

General: Provide new materials. Undamaged, previously used materials in serviceable condition may be used if acceptable to the Engineer. Provide materials suitable for the use intended.

PART 3 – EXECUTION

3.01 TEMPORARY CONSTRUCTION AND SUPPORT FACILITIES INSTALLATION

- A. Locate field offices, storage sheds, sanitary facilities, and other temporary construction and support facilities for easy access and in areas away from construction hazards. Consult the Owner prior to locating such facilities.
- B. Provide incombustible construction for offices, shops and sheds located within the construction area or within 30 ft. of building lines. Comply with requirements of NFPA 241.
- C. Field Offices: Provide insulated, weather-tight temporary offices of sufficient size to accommodate required office personnel at the project site. Keep the office clean and orderly.
- D. Temporary Access: Construct and maintain temporary roads to adequately support the indicated loading and to withstand exposure to traffic during the construction period.
- E. Sanitary facilities include temporary toilets, wash facilities, and drinking water fixtures. Comply with regulations and health codes for the type, number, location, operation and maintenance of fixtures and facilities. Install where facilities will best serve the project's needs.

- F. **Collection and Disposal of Waste:** Collect waste from construction areas and elsewhere daily. Comply with requirements of NFPA 241 for removal of combustible waste material and debris. Enforce requirements strictly. Do not hold materials more than seven days during normal weather or three days when the temperature is expected to rise above 80° F (27° C). Handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly. Dispose of material in a lawful manner.

3.02 SECURITY AND PROTECTION FACILITIES INSTALLATION

- A. **Barricades, Warning Signs and Lights:** Comply with standards and code requirements for erection of structurally adequate barricades. Mark with appropriate colors, graphics and warning signs to inform personnel and the public of the hazard being protected against. Where appropriate and needed, provide lighting including flashing red or amber lights.
- B. **Termination and Removal:** Complete or, if necessary, restore permanent construction that may have been delayed because of interference with the temporary facility. Repair damaged work, clean exposed surfaces and replace construction that cannot be satisfactorily repaired.

END OF SECTION

SECTION 01700

CONTRACT CLOSEOUT

PART 1 – GENERAL

1.01 SECTION INCLUDES

- A. Closeout procedures.
- B. Final clearing.
- C. Project record documents.

1.02 CLOSEOUT PROCEDURES

- A. Submit written certification that Contract Documents have been reviewed, work has been inspected, and that work is complete in accordance with Contract Documents and ready for Engineer and Owner inspection.
- B. Provide submittals to Engineer that are required by governing or other authorities.
- C. Submit final application for payment indentifying total adjusted contract sum, previous payments, and sum remaining due.
- D. Submit Contractor's Final Payment Affidavit and Consent of Surety Company to Final Payment. Copies of these documents are located in the back of these specifications.
- E. Submit notarized document stating that the Contractor releases or waives all liens in full.

1.03 FINAL CLEANING

- A. Execute final cleaning prior to final inspection.
- B. Clean site and remove debris and surplus materials from the site areas.

1.04 PROJECT RECORD DOCUMENTS

- A. Maintain on site one set of the following record documents; record actual revisions to the work:
 - a. Contract drawings.
 - b. Specifications.
 - c. Addenda.
 - d. Change Orders and other modifications to the contract.
 - e. Review shop drawings, product data and samples.
- B. Store record documents separate from documents used for construction.
- C. Record information concurrent with construction progress.
- D. Specifications: Legibly mark and record at each product section description of actual constructed elevations, including the following:
 - a. Measured locations of utilities and appurtenances concealed in construction referenced to visible and accessible features of the work;
 - b. Field changes of dimension and detail.
 - c. Details not on original contract drawings.
- E. Submit documents to owner with draw request for final payment.

END OF SECTION

DIVISION II
SITE WORK

SECTION 02205

ENVIRONMENTAL PROTECTION

PART 1 – GENERAL

1.01 DESCRIPTION

This section covers prevention of environmental pollution and damage as the result of construction operations under this contract and for those measures set forth in other Technical Provisions of these specifications. For the purpose of this specification, environmental pollution and damage is defined as the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural and/or historical purposes. The control of environmental pollution and damage requires consideration of air, water, and land, and includes management of visual aesthetics, noise, solid waste, radiant energy, and radioactive materials, as well as other pollutants.

1.02 LOCATION OF FIELD OFFICES, STORAGE AND OTHER CONTRACTOR FACILITIES

The Contractor's field offices, staging areas, stockpile storage, and temporary buildings shall be placed in areas approved by the Owner. Temporary movement or relocation of Contractor facilities shall be made only on approval by the Owner.

PART 2 – EXECUTION

2.01 QUALITY CONTROL

The Contractor shall establish and maintain quality control for environmental protection of all items set forth herein. The Contractor shall record on daily reports any problems in complying with laws, regulations and ordinances and corrective action taken.

2.02 PROTECTION OF ENVIRONMENTAL RESOURCES

The environmental resources within the project boundaries and those affected outside the limits of permanent work under this contract shall be protected during the entire period of this contract. The Contractor shall confine his activities to areas defined by the drawings and specifications. Environmental protection shall be as stated in the following subparagraphs.

2.03 PROTECTION OF LAND RESOURCES

Prior to the beginning of any construction, the Contractor shall identify all land resources to be approved by the Engineer. The Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil,

and land forms without special permission from the Owner. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Where such special emergency use is permitted, the Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs.

2.04 PROTECTION OF WATER RESOURCES

The Contractor shall keep construction activities under surveillance, management and control to avoid pollution of surface and ground waters. Special management techniques as set out below shall be implemented to control water pollution by the listed construction activities which are included in this contract.

2.05 PROTECTION OF FISH AND WILDLIFE RESOURCES

The Contractor shall keep construction activities under surveillance, management and control to minimize interference with, disturbance to and damage of fish and wildlife. Species that require specific attention along with measures for their protection will be listed by the Contractor prior to beginning of construction operations.

2.06 PROTECTION OF AIR RESOURCES

The Contractor shall keep construction activities under surveillance, management and control to minimize pollution of air resources. All activities, equipment, processes, and work operated or performed by the Contractor in accomplishing the specified construction shall be in accordance with the State of Texas Clean Air Act implemented in 1967, and all Federal emission and performance laws and standards. Ambient Air Quality Standards set by the Environmental Protection Agency shall be maintained for those construction operations and activities specified in this section. Special management techniques as set out below shall be implemented to control air pollution by the construction activities which are included in the contract.

2.07 PARTICULATES CONTROL

The Contractor shall maintain all excavations, stockpiles, haul roads, permanent and temporary access roads, plant sites, excavated areas, borrow areas, demolition areas and all other work areas within or outside of the project boundaries free from particulates which would cause the air pollution standards mentioned in paragraph 2.06 above to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, light bituminous treatment, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in the work area. Sprinkling, to be efficient, must be repeated at such intervals as to keep the disturbed area damp at all times. The Contractor must have sufficient, competent equipment available to accomplish this task. Particulate control shall be performed as the work proceeds and whenever a particulate nuisance or hazard occurs.

2.08 POST CONSTRUCTION CLEAN UP

The Contractor shall clean up areas used for construction to the satisfaction of the Engineer.

2.09 RESTORATION OF LANDSCAPE DAMAGE

The Contractor shall restore all landscape features damaged or destroyed during construction operations outside the limits of the approved work areas. Such restoration shall be in accordance with the plan submitted for approval by the Owner. This work will be accomplished at the Contractor's expense.

2.10 TRAINING OF CONTRACTORS PERSONNEL IN ENVIRONMENTAL PROTECTION

- A. The Contractor shall train his personnel in all phases of environmental protection. The training shall include methods of detecting and avoiding pollution, familiarization with pollution standards, both statutory and contractual, and installation and care of facilities (vegetative covers, and instruments required for monitoring purposes) to ensure adequate and continuous environmental pollution control.
- B. The Contractor shall train his personnel on best management practices for Sea Turtle Protection. The Contractor shall meet with representatives of Sea Turtle, Inc. to familiarize himself with these best management practices.

END OF SECTION

SECTION 02482

DREDGING

PART 1 – GENERAL

1.01 DESCRIPTION OF WORK

The work consists of furnishing all plant, labor, materials and equipment and performing all work required by these specifications and the schedules and drawings forming parts thereof for the Tompkins Channel Dredging – 2011. The contractor shall remove sufficient material to provide the design depths, limiting side and end slopes described in hereafter.

1.02 ORDER OF WORK

The Contractor shall submit his proposed order of work in the construction schedule submittal provided for in Section 01300 Submittals.

1.03 LOCATION

The Tompkins Channel is located on the south coast of Texas in the Laguna Madre, adjacent to the City of South Padre Island. The channel begins near the intersection point of the Gulf Intracoastal Waterway and the Queen Isabella Memorial Causeway, and runs eastward adjacent to and parallel with the Causeway approximately 8,000 feet, then turns north and follows the western shore of South Padre Island for a distance of approximately 18,000 feet. The nearest ports with terminal facilities are located in Port Isabel, and at the Port of Brownsville, about 9 miles to the southwest.

1.04 ARCHEOLOGICAL SITES AND SHIPWRECKS

If during the dredging and disposal operations the Contractor encounters archeological sites or shipwrecks of possible historical nature, he shall cease work immediately and notify the Engineer by the fastest available means. After investigation by the Engineer, the Contractor will be instructed on how to proceed and if an unreasonable delay is incurred or the work is changed, the contract will be modified accordingly.

1.05 OBSTRUCTION OF NAVIGATION

The Contractor will be required to conduct work in such manner as to obstruct navigation as little as possible. If the Contractor's plant does obstruct the use of channels or passages and makes movement difficult or endangers the passage of vessels, said plant shall be promptly moved on the approach of any vessel to the extent necessary to afford a practicable passage. Upon the completion of the work, the Contractor shall promptly remove his plant, including ranges, buoys, survey stakes, piles, and other markers placed by him under the contract.

1.06 TEMPORARY REMOVAL OF AIDS TO NAVIGATION

If removal, relocation or modification of aids to navigation is required, the Contractor shall notify the Engineer at least 21 days prior to the date that the removal or change in location of any channel markers will be required so the U.S. Coast Guard can perform the work, and also, to inform navigation interests in advance of the proposed removal or change in location. Any cost of work involving aids to navigation shall be included in the mobilization bid amount on the bid form. If aids to navigation are damaged by the Contractor, the Engineer shall be notified in writing at once. Repairs shall be paid for by the Contractor.

1.07 NOTIFICATION PRIOR TO COMMENCEMENT OF DREDGING OPERATIONS

The Contractor shall notify the regulatory offices provided in Section 01100 of Division 1, General Requirements at least 10 days prior to the commencement of dredging operations of the locations or locations at which a dredge, or dredges, will be placed on the work. This information is required in addition to the progress charts and schedules provided for in the Section 01300 – Submittals.

1.08 SUBMITTALS

Submit the following to the Engineer:

- A. Pre-dredging and post-dredging hydrographic maps, plotted cross-sections and quantity calculations.
- B. Site map showing floating pipeline route, and the landward location of dredge discharge line and spillway.
- C. Effluent sample testing.

PART 2 – PRODUCTS

2.01 BRIDGE TO BRIDGE RADIOTELEPHONE EQUIPMENT

All dredge and self-propelled attendant floating plant shall be radiotelephone equipped to comply with the provisions of the Vessel Bridge-to-Bridge Radiotelephone Act (Public Law 92-63). This will require, as a minimum, that radiotelephone equipment be capable of transmitting and receiving on 156.65 MH (Channel 13). Multichannel equipment will also require 156.8 MH (Channel 16). Dredge tugs and tenders will be considered towing vessels within the meaning of the Act.

PART 3 – EXECUTION

3.01 SPECIAL DREDGING AND DREDGED MATERIAL PLACEMENT REQUIRMENTS

- A. The dredging for this project may be accomplished by mechanical means, hydraulic means, or by a combination of the two, with the dredged material transported to and placed in the dredged material placement area shown on the plans.
- B. The dredging work will take place within and active channel adjacent to existing piling, piers, docks, and bulkheads. Overdredging of areas near structures can cause failure of or damage to these structures. Extreme caution should be used when

prosecuting the work to assure the stability of all structures within and adjacent to the work area. The Contractor shall repair at his expense any damage resulting from the moving or mooring of equipment and from dredging operations.

- C. Extraneous materials such as timber, rock, broken concrete and timber piles, scrap metal, rope, and wire cable may be encountered within the specified limits of required dredging and overdepth dredging. No separate payment will be made for the removal and disposal of this debris.
- D. The material to be removed to obtain the depths within the limits as specified in the construction drawings is composed of shoaled materials.
- E. Extreme care shall be taken when placing, maintaining and removing the dredged material discharge pipeline to avoid damaging seagrasses, oyster reefs or other sensitive environmental areas. Attention is directed to the COE permits, GLO leases/easements and special provisions included in these documents for special terms and conditions concerning protection of environmentally sensitive areas and mitigation requirements for damages thereto. The Contractor is responsible for any mitigation that is required for damages caused by his operations.

3.02 DISPOSAL OF DREDGED MATERIAL

- A. General: The Contractor shall inspect the condition of the disposal area to ensure that using the area for disposal operations will not place him in violation of any applicable Federal, State, or local statutes concerning fish and wildlife. Particular statutes which the Contractor should consider include, but are not limited to the Federal Migratory Bird Treaty Act and the Endangered Species Act of 1973.
- B. Operations: The material dredged shall be transported to and deposited in the disposal area shown on the drawings or as otherwise allowed by these specifications. Except as otherwise noted, material shall not be deposited or allowed to flow into the adjacent channel or into any stream, tributary to the waterway, or into any existing drainage outlet ditch, canal, water intake, or outlet facility; nor shall materials be allowed to flow onto any improved areas in or adjacent to the disposal areas. In the event any stream, drainage outlet, ditch, canal, water intake or outlet facility becomes shoaled as a result of the dredging or disposal operations, the Contractor shall promptly remove these shoals and the material shall be placed in the disposal areas. Dragging or washing operations to remove the shoals will not be permitted. All holes dug on the banks for deadmen or anchorage shall be filled. The Contractor shall adequately inspect his disposal operations in the disposal area daily to reduce the possibility of accidental breaching of levees and spillway with resulting spillage of dredge materials outside the area. Should levee failures occur while materials are being placed into the disposal area, dredging operations shall be stopped immediately, and the deposit of material in the area shall not be resumed until the confining structures have been restored to a condition considered satisfactory by the Engineer. Material shall be deposited in such a manner that no water will be impounded nor natural drainage constricted. The Contractor shall investigate the existing conditions and satisfy himself as to the

existence of any additional construction which may interfere with the work under these specifications.

- C. **Disposal Area:** Dredged material shall be deposited within a disposal area to be constructed and maintained by the contractor within the area designated on the plans. See Appendix 'A' at the end of these Specifications.
 - a. **Dredged Material Placement Area Construction and Maintenance:** The Contractor shall construct and maintain new levees and drainage ditches to the dimensions necessary to confine the material to be deposited within the area shown on the plans. Any breaches or low areas in the levee shall be repaired to the lines and grades of the adjacent levee. Material for construction and repair of the levees shall be obtained from within the disposal area. When borrowing material adjacent to the levee, a minimum of 15 feet shall be provided between the inside of the toe of the levee and the borrow area. Any vegetation shall be stripped from the borrow areas and levee foundations prior to levee construction and repair.
 - b. **Limits:** Dredge material shall be placed within the limits shown on the plans and shall be evenly distributed within the placement area and graded to provide positive drainage and prohibit the ponding of water or dredge slurry. The height of the dredged material shall not exceed the elevation of any adjacent levee.

3.03 DREDGE SPILL CONTINGENCY PLAN FOR CONFINED DISPOSAL AREAS

- A. The Contractor will provide and maintain an effective dredge spill contingency plan that includes the following as a minimum.
 - a. The Contractor will be required to have 24-hour a day monitoring of each disposal area during disposal operations. The personnel monitoring the levees will be in radio contact with the dredge. The number and qualifications of personnel to be used for this purpose should be included in the plan.
 - b. The Contractor will be required to identify and have available the names and phone numbers of companies having portable hydraulic dredges or vacuum pumps ready to clean up any dredge material discharged from the disposal areas.
 - c. The Contractor will be required to identify and have available the names and phone numbers of companies having silt curtains which can contain any dredged material discharged from the disposal area.
 - d. The Contractor's Dredge Spill Contingency Plan shall include the following procedures to be followed in the event of a spill:
 - i. The dredge shall cease operations in the disposal area.
 - ii. The Contractor shall immediately notify the Engineer who in turn will notify the U.S. Fish and Wildlife Service, the Texas Parks and Wildlife, and the General Land Office.
 - iii. The Contractor shall submit a specific clean-up plan to the Engineer for approval. No clean-up actions will commence until the plan has

been approved by the Engineer. The clean-up of misplaced material will be at the Contractor's expense.

- iv. The Contractor will be required to submit the Dredge Spill Contingency Plan to the Owner and Engineer.

3.04 UNAUTHORIZED DISPOSAL OF MATERIAL

- A. Any excavated material that is deposited elsewhere than in places designated or approved by the Engineer will not be paid for, and the Contractor may be required to remove such misplaced excavated material and deposit it where directed at his expense.
- B. During the progress of the work, the Contractor shall not deposit worn out discharge pipe, wire rope, scrap metal, timbers, or any other such type of rubbish or obstructive material in the disposal areas, or along the banks of the navigable waters. Such material, together with any scrap, rope, wire, cable, piles, pipe, or any other obstructive material which may be encountered during the dredging operations, shall be disposed of by the Contractor at locations approved by the Engineer, or Owner.

3.05 OVERDEPTH, SIDE, AND END SLOPES

- A. Overdepth: Overdepth dredging is not authorized and will not be measured or paid for.
- B. Side Slopes: Material actually removed from within limits as shown on the plans, but not in excess of the amounts originally above these limiting side slopes will be estimated and paid for. In computing the limiting amount of side slopes dredging, net dimensions, without allowance for overdepth, will be used. End slopes will not be paid for unless indicated otherwise in these Specifications.
- C. Excessive Dredging: Material taken from beyond the limits above, and shown on the drawings will be deducted from the total amount dredged as excessive, overdepth dredging or excessive side or end slope dredging, for which payment will not be made. The Contractor shall be responsible for damage to the adjacent property due to overdredging, and will pay for all costs associated with repairs.

3.06 REPORTING REQUIREMENT

The Contractor will be required to prepare and maintain a daily and a monthly summary report of operations and furnish legible copies thereof to the Engineer. Further instructions on the preparation of the report may be furnished at a preconstruction conference.

END OF SECTION

AGREEMENT

AGREEMENT

STATE OF TEXAS

COUNTY OF CAMERON

THIS AGREEMENT made and entered into this _____ day of _____, 2011, between the City of South Padre Island, hereinafter called the "Owner", and _____, hereinafter called the "Contractor", such Contractor being hereinafter referred to in the masculine singular pronoun, whether and individual, a partnership, or a corporation, WITNESSETH:

1.

The City of South Padre Island desires to enter into a Contract for the **Tompkins Channel Dredging – 2011** as described in the plans and specifications included herein.

2.

The Contractor has been engaged in and now does such work and represents that he is fully equipped, competent and capable of performing the work herein described; that he is familiar with the site and is ready and willing to perform such work in accordance with the provisions of the plans and specifications.

3.

It is agreed that for all and in consideration of the prices in the proposal which is a part of this Contract, the Contractor agrees to do at his own proper cost and expense all the work necessary; to furnish all supervision, labor, tools, equipment, supplies and materials to complete the work in a sound, workmanlike manner in accordance with the plans and specifications, acceptable to the Owner.

4.

The Contractor agrees to begin work within ten (10) days after the date of written Notice to Proceed from the Engineer to commence the work and to complete the work as stated in his Bid Form. Liquidated damages claimed or penalty extracted for failure to complete the work on time will be \$500.00 per calendar day if the work is not completed within the time proposed.

5.

The Contractor hereby guarantees all workmanship and new material installation for the period of one year from and after the date of final acceptance of the work by the Owner and agrees with due diligence to replace, repair or make good any defects when notified of same in writing by the Owner.

6.

All Covenants and Agreements herein shall be executed to and binding upon the successors or assigns of the Owner and successors, executors or legal representatives of the Contractor. The Contractor may not assign this Contract or any monies to become due and payable thereunder, without the written consent of the Owner.

7.

No waiver by the Owner of any breach on the part of the Contractor of any obligation herein shall constitute a waive of any other breach of the same kind or any other such obligations.

8.

The Plans and Specifications are a part of this Contract. The following are in particular, whether or not the same are attached hereto, a part of the Contract and every Covenant or undertaking therein, is fully binding upon the parties thereto as if herein set forth at length, to wit:

- A. The Instructions to Bidders, the Contractor's Bid Form, and Bid Breakdown.
- B. All other Specifications and Drawings which are referred to in the Specifications.
- C. All Addenda and Change Orders.
- D. Contractor's Surety Bonds.

This instrument shall become effective and binding upon all parties hereto as well as upon the surety on the Contractor's Performance and Payment Bonds, when it has been fully executed by or on behalf of the Contractor and by or on behalf of the Owner, regardless of the relative dates and times of their respective execution.

The accepted Contract Price is \$ _____ (in words _____), which includes: _____

_____.

IN TESTIMONY OF WHICH, this Instrument has been executed in four originals and on behalf of the undersigned Contractor on the _____ day of _____, 2011.

ATTEST: CITY OF SOUTH PADRE ISLAND

Robert N. Pinkerton , Mayor

STATE OF TEXAS

COUNTY OF CAMERON

BEFORE ME, the undersigned authority on this day personally appeared Robert N. Pinkerton, Mayor of the City of South Padre Island, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity therein stated, as the act and deed of the City of South Padre Island.

GIVEN UNDER MY HAND and seal of this office this _____ day of _____, 2011.

NOTARY PUBLIC AND FOR CAMERON COUNTY, TEXAS

ATTEST:

Contractor's Name

Address

By: _____

STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority on this day personally appeared _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity therein stated, as the act and deed of the City of South Padre Island.

GIVEN UNDER MY HAND and seal of this office this _____ day of _____, 2011.

NOTARY PUBLIC AND FOR

PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

A _____, hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

Hereinafter called Surety, are held firmly bound unto The City of South Padre Island
4601 Padre Boulevard, South Padre Island, Texas 78597 hereinafter called OWNER, in the
penal Sum of \$ _____ in lawful money of the United
States, for the payment of which sum well and truly to be made, we bind
ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain
contract with the OWNER, dated the _____ day of _____, 2011, a copy of which is
hereto attached and made a part of hereof for the Maintenance Dredging of the Tompkins
Channel – 2011.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the
undertakings, covenants, terms, conditions, and agreements of said contract during the original
term thereof, and any extensions thereof which may be granted by the OWNER, with or
without notice to the Surety and during the one year guaranty period, and if he shall satisfy all
claims and demands incurred under such contract, and shall fully indemnify and save harmless

the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the SPECIFICATIONS.

PROVIDED FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this the ____ day of _____, 2011.

ATTEST:

(Principal) Secretary

Principal

By: _____

Address

(Witness as to Principal)

Address

Surety

ATTEST:

(Surety) Secretary

(SEAL)

(Witness as to Surety)

By: _____
(Attorney-in-Fact)

(Address)

(Address)

NOTE: Date of BOND must be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

A _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held firmly and bound unto The City of South Padre Island, Texas, 4601 Padre Boulevard, South Padre Island, Texas 78597 hereinafter called OWNER, in the penal sum of _____ Dollars, \$(_____)

in lawful money of the United States, for the payment of which sum will and truly made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the ____ day of _____, 2011, a copy of which is hereto attached and made a part hereof for the construction of: the TOMPKINS CHANNEL DREDGING – 2011.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal, and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of the WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____
Counterparts, each one of which shall be deemed an original, this the ____ day of _____, 2011.

ATTEST:

(Principal) Secretary

(SEAL)

(Witness as to Principal)

(Address)

Principal

By: _____

(Address)

(Surety)

ATTEST:

By: _____
(Attorney-in-Fact)

(Witness as to Surety)

By: _____
(Address)

(Address)

NOTE: Date of BOND must be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**CONTRACTOR'S FINAL
PAYMENT AFFIDAVIT**

CONTRACTOR'S FINAL PAYMENT AFFIDAVIT

STATE OF TEXAS

Project Number _____

COUNTY OF _____

Contract Number _____

BEFORE ME THE UNDERSIGNED AUTHORITY, on this day personally appeared _____ who being duly sworn, on oath, says that he is a duly authorized representative of _____ (Contractor), and that all terms of the Contract for the completion of certain work described as the TOMPKINS CHANNEL DREDGE – 2011 have been satisfactorily completed and that ALL sums of money for payrolls, bills for material and equipment, and other indebtedness connected with the WORK for which OWNER of it's property might in any way be responsible, to the best of my knowledge and belief, have been paid or will be paid or otherwise satisfied within thirty days after receipt of final payment from the Owner, or within the period of time required by Article 601f, Vernon's Texas Civil Statutes. Payments not made in full at the date of this affidavit are listed below.

(Signature)

(Title)

Sworn to and subscribed before me this ____ day of _____, 2011.

Notary Public in and for

_____ County, Texas

Final payments pending as of the date hereof are [] none pending; [] as listed below:

Individual or Company Name	Mailing Address	Amount Owed

INSTRUCTIONS:

Affidavit must be signed by an individual owner, or partner in a partnership, or by a person authorized by by-laws or a Board of Directors to sign for a Corporation. If a Contractor is a joint venture or partnership of individuals, either may sign, but if a joint venture in which a corporation is a party, separate affidavits must be executed by each corporation and by each individual owner or partnership. In the event subcontractors, laborers, or materialmen have not been paid in full, Contractor shall list hereon the amount owed and the name and address of each subcontractor, laborer, materialman to whom such payment is owed. Add additional pages if required.

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

CONSENT OF SURETY COMPANY TO FINAL PAYMENT

OWNER _____

CONTRACT DATE _____

PROJECT NO. _____

CONTRACTOR _____

SURETY COMPANY _____

on bond of _____, Contractor, hereby approves of the final payment by Owner to Contractor on the above Contract, and agrees that final payment to the Contractor shall not relieve Surety Company of any of its obligations to Owner as set forth in said Surety Company's bond.

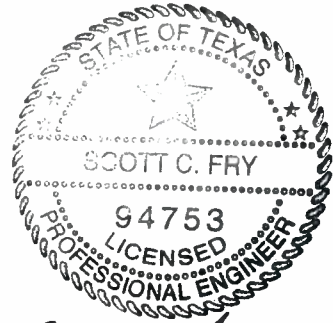
IN WITNESS WHEREOF, the Surety Company has hereunto set its hand this ____ day of _____, 2011.

Surety Company

By: _____

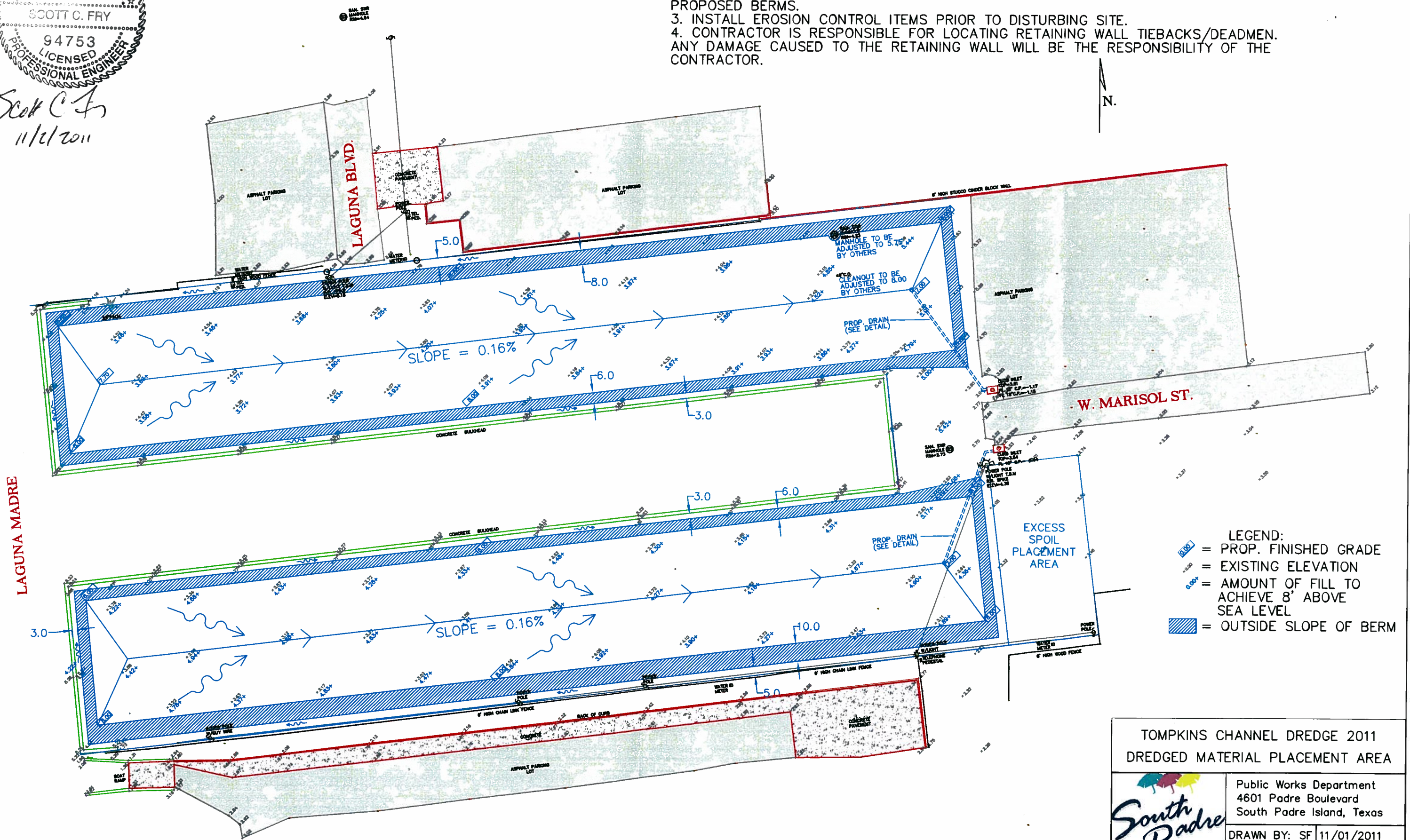
Title: _____

APPENDIX A
DREDGE MATERIAL PLACEMENT AREA PLAN
EROSION CONTROL PLAN
DMPA EXISTING SITE SURVEY



Scott C Fry
11/1/2011

- NOTES:
1. REMOVE ALL VEGETATION FROM BELOW PROPOSED BERMS BEFORE CONSTRUCTION.
 2. CUT FLOOR OF SPOIL AREA TO A MAXIMUM ELEVATION OF 3.0'. EXCESS REMOVED DIRT SHOULD BE FREE OF ANY PLANT MATERIAL AND THEN USED TO CONSTRUCT PROPOSED BERMS.
 3. INSTALL EROSION CONTROL ITEMS PRIOR TO DISTURBING SITE.
 4. CONTRACTOR IS RESPONSIBLE FOR LOCATING RETAINING WALL TIEBACKS/DEADMEN. ANY DAMAGE CAUSED TO THE RETAINING WALL WILL BE THE RESPONSIBILITY OF THE CONTRACTOR.



- LEGEND:
- = PROP. FINISHED GRADE
 - = EXISTING ELEVATION
 - = AMOUNT OF FILL TO ACHIEVE 8' ABOVE SEA LEVEL
 - = OUTSIDE SLOPE OF BERM

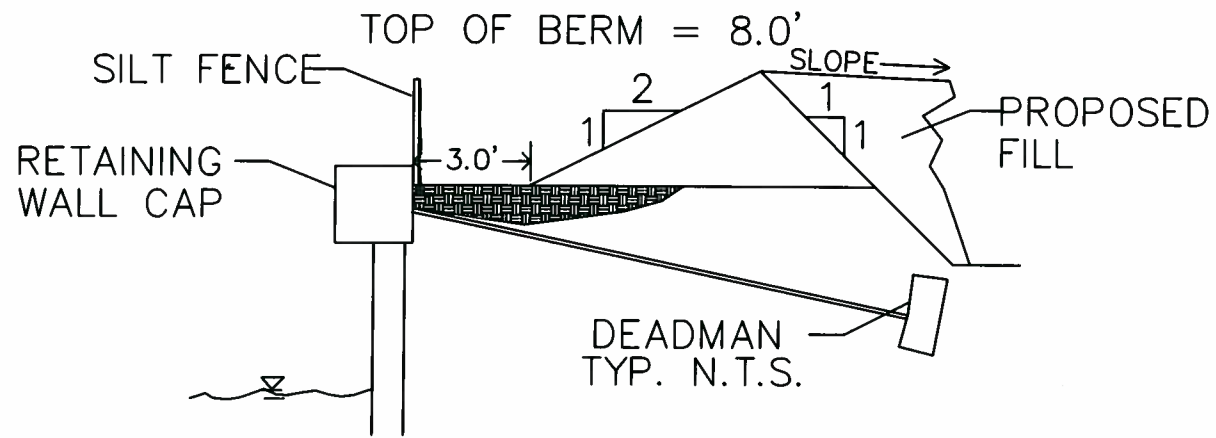
TOMPKINS CHANNEL DREDGE 2011
DREDGED MATERIAL PLACEMENT AREA

Public Works Department
4601 Padre Boulevard
South Padre Island, Texas

South Padre ISLAND

DRAWN BY: SF 11/01/2011
SCALE: 1"=50' SHEET 1 OF 3

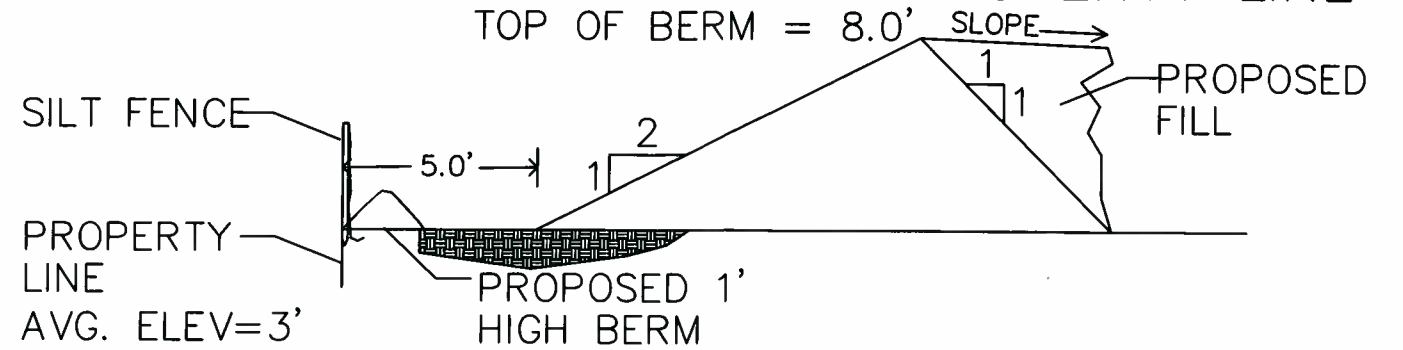
BERM DETAIL ALONG RETAINING WALL



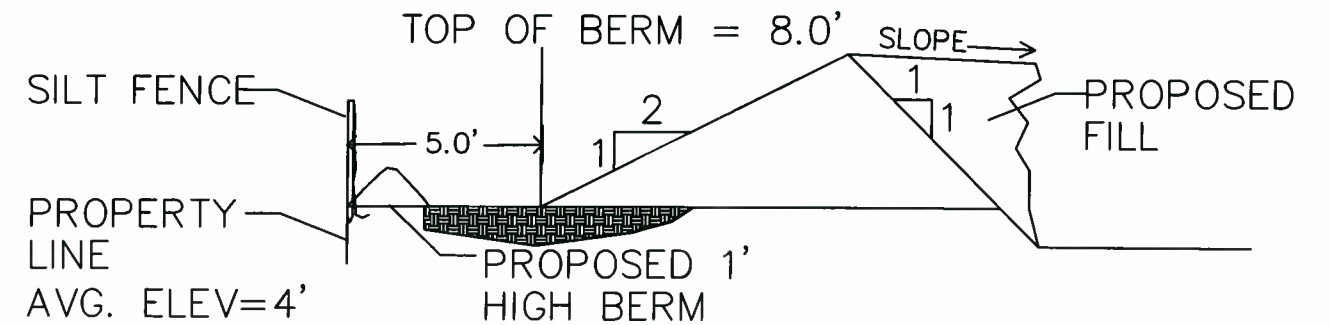
BERM CONSTRUCTION NOTES:

1. CLEAR GROUND OF ANY PLANTS OR DEBRIS PRIOR TO CONSTRUCTING BERM.
2. CUT AREA BETWEEN BERMS TO A MAXIMUM ELEVATION OF 3.0 FEET.
3. ADEQUATELY COMPACT BERM TO AVOID LATERAL MOVEMENTS.
4. DEADMAN SHOWN IS NOT TO SCALE. CONTRACTOR MUST LOCATE ANY DEAD MEN OR OTHER UNDERGROUND FEATURES PRIOR TO EXCAVATING.
5. GRADE SWALE AT TOE OF BERM TO DRAIN AS INDICATED ON PLANS.
6. PLACE HAY ON FINISHED BERM TO REDUCE EROSION.
7. BERM MAY BE CONSTRUCTED USING DIRT FROM EXISTING SITE, OR FROM SPOIL
8. NO NEW SOIL IS TO BE INTRODUCED TO THE CONSTRUCTION SITE.
9. PLANT MATERIAL AND OTHER DEBRIS REMOVED FROM SITE IS PROPERTY OF THE CONTRACTOR.

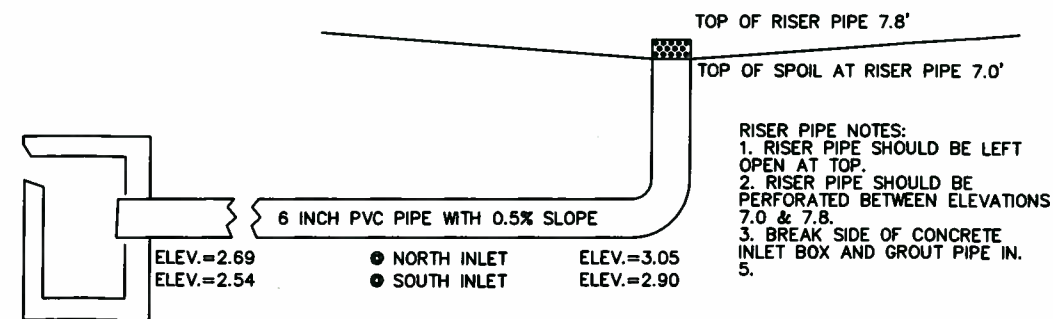
BERM DETAIL ALONG SOUTH PROPERTY LINE



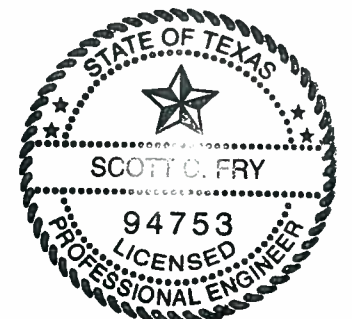
BERM DETAIL ALONG NORTH PROPERTY LINE



RISER PIPE & DRAIN DETAIL



- RISER PIPE NOTES:
1. RISER PIPE SHOULD BE LEFT OPEN AT TOP.
 2. RISER PIPE SHOULD BE PERFORATED BETWEEN ELEVATIONS 7.0 & 7.8.
 3. BREAK SIDE OF CONCRETE INLET BOX AND GROUT PIPE IN.
 - 5.



Scott O. Fry
11/2/2011

TOMPKINS CHANNEL DREDGE 2011
DREDGED MATERIAL PLACEMENT AREA



Public Works Department
4601 Padre Boulevard
South Padre Island, Texas

DRAWN BY: SF 11/01/2011
SCALE: N.T.S. SHEET 2 OF 3

TOMPKINS CHANNEL

MOONCUSSERS

LAGUNA BLVD

HOWARD JOHNSON HOTEL

STORMWATER INLETS

MARISOL ST.

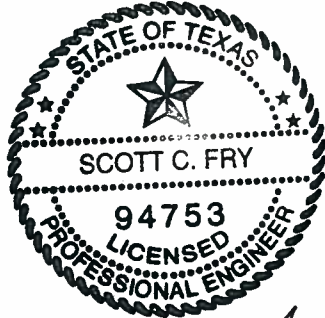
PRIMARY CONSTRUCTION ENTRANCE

SEAHORSE HARBOR MARINA

FIESTA HARBOR CONDOMINIUMS

- EROSION CONTROL NOTES:
1. SILT FENCE MUST BE PROPERLY STAKED ACCORDING TO MANUFACTURER SPECS, AND INSERTED AT LEAST 6" INTO THE GROUND.
 2. PROTECT STORMWATER INLETS ON SUNNY ISLE STREET USING HAY BALES, SILT FENCE, OR OTHER METHOD APPROVED BY THE CITY.
 3. PROTECT SANITARY SEWER MANHOLES USING SILT FENCE AT THE POINT THAT SPOIL LEVEL BECOMES 6 INCHES BELOW MANHOLE LIDS.
 4. ANY MUD TRACKED ONTO CITY STREETS MUST BE CLEANED UP BY DAY'S END.
 5. THE PRIMARY ENTRANCE SHALL HAVE A STONE CONSTRUCTION ENTRANCE THAT CONSISTS OF 4"-6" RIVER WASH ROCKS, 6 INCHES DEEP, PLACED ON TOP OF A FABRIC OR GEOGRID LINER. THE DIMENSIONS OF THE ENTRANCE SHOULD BE AT LEAST 15'X25'.
 7. ANY BREACHES OF THE SILT FENCE MUST BE CORRECTED IMMEDIATELY!
 8. PLACE HAY OR STRAW ON BERM SLOPE TO REDUCE EROSION.

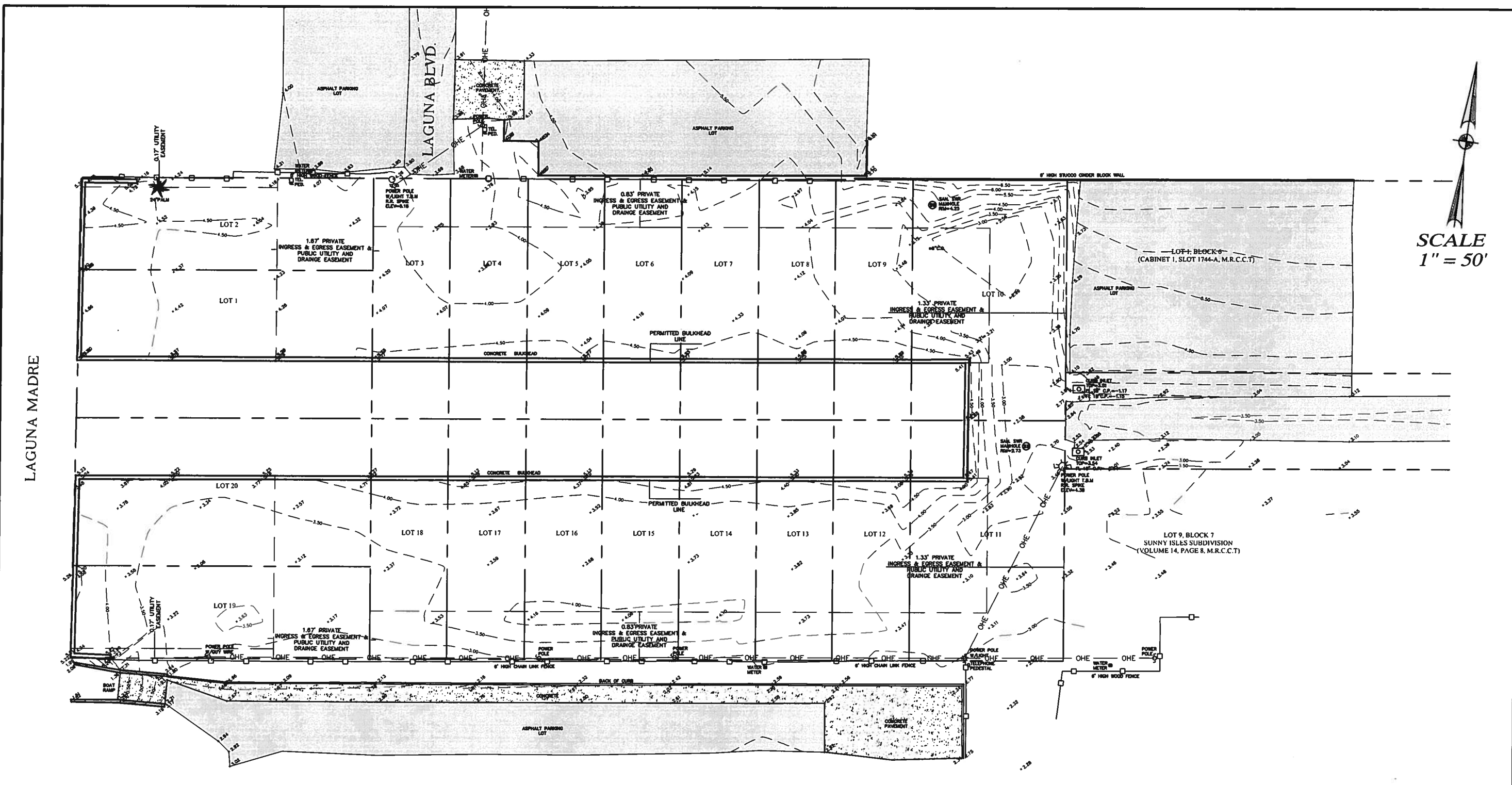
— PROPOSED SILT FENCE
 — INGRESS/EGRESS & UTILITY EASEMENT



Scott C. Fry
 11/2/2011

TOMPKINS CHANNEL DREDGE - 2011
 DREDGE MATERIAL PLACEMENT AREA
 EROSION CONTROL PLAN

TOMPKINS CHANNEL DREDGE 2011 DREDGED MATERIAL PLACEMENT AREA	
	Public Works Department 4601 Padre Boulevard South Padre Island, Texas
	DRAWN BY: SF 11/01/2011
	SCALE: 1"=50' SHEET 3 OF 3



SCALE
1" = 50'

LAGUNA MADRE

LAGUNA BEVD.

NOTE:
THE TOPOGRAPHIC SUREVEY WAS PREFORMED
ON DECEMBER 02, 2010.

TOPOGRAPHIC
SURVEY
OF
"LOTS 1 THRU 20, SEAHORSE HARBOR
SUBDIVISION" A PLANNED DEVELOPMENT
COMMUNITY, AS RECORDED IN CABINET 1, SLOT
2297-A, OF THE MAP RECORDS OF CAMERON
COUNTY, TEXAS.
SCALE 1" = 50'
DECEMBER 2010 AGH NO. 2010-0202
AGH ENGINEERING
& SURVEYING
P.O. BOX 4180 Brownsville, Texas 78523-4180 6305 Paredes Line Road 78526
Tel. (956) 574-8300 Tel. (956) 574-8305
TBPB FIRM No. F-5197
TBLIS FIRM No. 100840-00

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