

EXHIBIT D
CONTRACT REQUIRED PROVISIONS

The provisions required by the Contract to be included in this P.O. are incorporated herein by reference to the extent they relate to the supply of the Project Supplies, including, without limitation, each of the provisions set forth below. Seller shall comply with all such provisions, and Seller shall ensure that all provisions required to be included in any subcontracts are included in such sub-subcontracts and that each of its sub-subcontractors agree to comply with such provisions. Capitalized terms used in this Exhibit D shall bear the meaning attributed to them in the Contract and this P.O.

1. Seller shall perform its obligations under this P.O. in accordance with a standard of professional responsibility and commercial practice equal to the requirements of this P.O. and Good Industry Practice for supplies of similar scope and scale.
2. Seller agrees to carry out its obligations under this P.O. in accordance with the Contract, this P.O., Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.
3. Without cost to Buyer or the Owner, Seller expressly permits assignment to the Owner or its successor, assign or designee of all of the Buyer's rights under this P.O., contingent only upon delivery of request from the Owner following termination of the Contract, allowing the Owner or its successor, assign or designee to assume the benefit of the Buyer's rights with liability only for those remaining obligations of the Buyer accruing after the date of assumption, such assignment to include the benefit of all of the Seller's warranties, indemnities, guarantees and professional responsibility.
4. Seller acknowledges and agrees that any acceptance of assignment of this P.O. by the Owner or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of this P.O. by Buyer or for any amounts due and owing under this P.O. for work or services rendered prior to assumption (but without restriction on the Seller's rights to suspend work or demobilize due to Buyer's breach).
5. Seller covenants to recognize and attorn to the Owner, upon receipt of notice from the Owner that it has exercised its rights under the Contract, without necessity for consent or approval from the Buyer or to determine whether the Owner validly exercised its rights, and the Buyer hereby covenants to waive and release any claim or cause of action against Seller arising out of or relating to its recognition and attornment in reliance on any such notice.
6. Seller will: (a) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged; (b) permit audit thereof with respect to the Project or its supply under this P.O. by each of Buyer and the Owner pursuant to section 20.5 of the Contract; and (c) provide progress reports to Buyer appropriate for the type of work it is performing sufficient to enable Buyer to provide the reports it is required to furnish the Owner under the Contract.
7. Seller acknowledges that Buyer has the right to terminate this P.O. in whole or in part upon any Termination for Convenience of the Contract without liability of Buyer or the Owner for Seller's lost profits or business opportunity. In particular, in the event of a termination for convenience by Owner, Seller will
 - (i) not be entitled to any anticipatory or unearned profit, or to any payment which constitutes consequential damages on account of the termination or partial termination;
 - (ii) abide by the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience by Owner;
 - (iii) accept any assignment of this P.O. or the Seller's Warranties (as such term is defined below) to Owner; and
 - (iv) execute any documents and perform any actions necessary to give effect to the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience and comply , and allow Buyer to comply, with the provisions of section 15.1 of the Contract.
8. Seller will participate in meetings between Buyer and the Owner, upon the Owner's request, concerning matters pertaining to this P.O.; provided, however, that all direction to Seller shall be provided by Buyer, and provided further that nothing in this clause shall limit the authority of the Owner to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.
9. Seller will give evidence in any dispute resolution proceeding pursuant to section 19 of the Contract, if such participation is requested by either Buyer or the Owner.
10. Seller acknowledges that all Liens, claims and charges of Seller and its sub-subcontractors at any time shall not attach to any interest of the Owner in the Project or the Project ROW.
11. Seller covenants, which covenant shall survive termination of this P.O., to promptly execute and deliver to Owner a new contract between Seller and the Owner on the same terms and conditions as this P.O., in the event: (a) this P.O. is rejected by Buyer in bankruptcy or otherwise wrongfully terminated by Buyer and (ii) the Owner delivers request for such new contract following termination or expiration of the Contract.

12. Seller is not, and will not enter into any subcontracts with any Person that is, debarred or suspended from submitting bids by any agency of the State of Texas.
13. The Parties acknowledge and agree that they may not amend any of the foregoing provisions in this **Exhibit D – Contract Required Provisions** without the prior consent of the Owner.
14. In the performance of its obligations under the P.O., Seller at all times shall comply with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.
15. Seller shall comply and require its Subcontractors to comply with all federal requirements applicable to transportation projects that receive federal-aid funding or other federal funds or credit, including those requirements set forth in Exhibit 3 of the Contract (which is appended as Exhibit E of this PO). Seller shall deliver any certification required pursuant to such federal requirements to Buyer. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.
16. During all periods necessary for the performance of the scope of this P.O., Seller will maintain all required authority, license status, professional ability, skills and capacity to perform its scope under this P.O.
17. Seller shall comply with all requirements of all Laws applicable to the D&C Work, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended.
18. Seller shall comply with the applicable requirements of the approved Project Management Plan.
19. Seller shall at all times coordinate and cooperate with Owner and its Authorized Representative to facilitate Owner's oversight activities.
20. Seller agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances, standards, rules and regulations applicable to the scope of its obligations under this P.O. including, but not limited to, all applicable standards, rules, laws, regulations, and federal and State orders related to federal and State labor laws, occupational safety, health standards, equal employment opportunity, minority business enterprises, women's business enterprises, disadvantage business enterprises ("DBE"), Environmental Laws, Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended, and all other laws with which Seller must comply according to the P.O. Seller shall be liable to Buyer and the Owner for all loss, cost and expense attributable to any acts of commission or omission by Seller, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.
21. The Owner's DBE Special Provisions for Non-Traditional Contracts, applicable to the Project, are set forth in Exhibit 6 of the Contract (which is appended as Exhibit F of this PO). The purpose of the DBE Special Provisions for Non-Traditional Contracts is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Seller shall comply with all applicable requirements set forth in the DBE Special Provisions for Non-Traditional Contracts and the Owner's Disadvantaged Business Enterprise Program applicable to comprehensive development agreement projects and adopted pursuant to 49 CFR Part 26, and the provisions in the Buyer's approved DBE Performance Plan, set forth in Exhibit 7 of the Contract. The approved overall DBE participation goal for the Project, including construction and professional services, is established as 9% of the D&C Price. Seller shall exercise good faith efforts to achieve such DBE participation goal in the scope of this P.O. through implementation of Buyer's Owner-approved DBE Performance Plan related to the scope of this P.O. Seller shall include provisions to effectuate the requirements of this subsection 21 in every sub-subcontract (including purchase orders and in every sub-subcontract for the scope of this P.O.), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. Seller shall not cancel or terminate any sub-subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of subcontracts with DBE firms set forth in the DBE Special Provisions for Non-Traditional Contracts in Exhibit 6 of the Contract (which are appended as Exhibit F of this PO).
22. Seller shall not, and shall cause its sub-subcontractors to not, discriminate on the basis of race, color, national origin, sex, age or handicap in the performance of its obligations under this P.O. Seller shall carry out, and shall cause its sub-subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Seller to carry out these requirements is a material breach of this P.O., which may result in the termination of this P.O. and the Contract or such other remedy as Buyer deems appropriate (subject to the Seller's rights to notice and opportunity to cure set forth in this P.O.). Seller shall include the language in this subsection 22 in every sub-subcontract (including purchase orders and in every subcontract for the scope of this P.O.), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. Seller confirms for itself and all sub-subcontractors that Seller and each sub-subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, or handicap; and that Seller and each sub-subcontractor maintains no employee facilities segregated on the basis of race, color, religion, or national origin. Seller shall comply with all applicable laws relating to equal employment opportunity and nondiscrimination, including those set forth in Exhibit 3 of the Contract (which is appended as Exhibit E of this PO), and shall require its sub-subcontractors to comply with such provisions.
23. Seller hereby agrees to abide by the applicable portions of the Buyer's Job Training Plan/Small Business Opportunity Plan set

forth as Exhibit 8 to the Contract. Seller shall include this subsection 23 in every sub-subcontract (including purchase orders and task orders for the scope of this P.O.), and shall require that each sub-subcontractor include this section in all sub-subcontracts at lower tiers (including purchase orders and task orders for the scope of this P.O.), except for sub-subcontracts with the Owner or Governmental Entities, so that such provisions will be binding upon each sub-subcontractor.

24. Seller shall pay or cause to be paid to all applicable workers employed by it or its sub-subcontractors to perform its obligations under the P.O. not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3 to the Contract (which is appended as Exhibit E of this PO). Seller shall comply and cause its sub-subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with the Owner or Governmental Entities. Any issue between Buyer or Seller, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15th day after the date the Owner makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code. Seller shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.
25. Any Project Supplies supplied under this P.O. (“**Seller’s Warranties**”) shall (a) be under warranty from a period starting with the delivery of Project Supplies and ending, at least, one year after Project Final Acceptance and (b) survive all Owner inspections, tests and approvals. Seller’s Warranties shall be extended to Owner and any third parties for whom Project Supplies are supplied under this P.O.; provided however that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Owner using commercially reasonable efforts.
26. Seller shall cooperate and provide
 - (i) such information as determined necessary or desirable by Owner in connection with any Project financing;
 - (ii) such information as is necessary or requested by Owner to assist or facilitate the submission by Owner of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.
27. Seller acknowledges that, if the amount of the P.O. exceeds \$10,000,000, Seller is considered a “Major Subcontractor” under the Contract. In that case:
 - (i) Seller shall have submitted to Developer, immediately prior to executing the P.O., a copy of all documentary information used in determining its P.O. price, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;
 - (ii) Seller shall submit to Developer, immediately prior to executing each change order, a copy of all documentary information used in determining its price for Materials included in any Change Order, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;
 - (iii) Seller represents and warrants, for the benefit of Buyer and Owner, that Seller’s submission in the EPDs, constitutes all the documentary information used in establishing its P.O. price, and agrees to provide a sworn certification in favor of Buyer and Owner together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current.