

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 11
	)	
EMERGE ENERGY SERVICES LP, et al., <sup>1</sup>	)	Case No. 19-11563 (KBO)
	)	
Debtors.	)	(Jointly Administered)
<hr style="border-top: 1px dashed black;"/>		
MARKET & JOHNSON, INC.,	)	
	)	
Plaintiff,	)	
	)	Adv. Case No. 19-____ (KBO)
v.	)	
	)	
SUPERIOR SILICA SANDS LLC and	)	
HPS INVESTMENT PARTNERS, LLC,	)	
	)	
Defendants.	)	

**COMPLAINT**

Pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 and 7001(2), the Plaintiff, Market & Johnson, Inc. (“M&J” or “Plaintiff”) by and through its undersigned counsel, asserts as follows as its complaint against the Defendants, Superior Silica Sands LLC (“Superior” or “Debtor”) and HPS Investment Partners, LLC (“HPS”):

**GENERAL STATEMENT**

1. M&J is a general contractor with perfected statutory or other liens against property of Superior located in Kingfisher County, Oklahoma, and Bexar County, Texas. In this proceeding, M&J seeks determinations that it is a secured creditor whose liens are (i) valid, perfected, and unavoidable liens against the property in question and (ii) superior to the liens, if any, held by HPS

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services Operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is: 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



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and its principals against the same property such that M&J's liens constitute (x) "Senior Liens" or "Prior Permitted Liens" within the meaning of the final order approving DIP financing and the DIP financing agreement in this case and (y) "Other Secured Claims" within the meaning of the Debtors' proposed amended chapter 11 plan.

### **JURISDICTION AND VENUE**

2. The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), including Superior Silica Sands, LLC ("Superior"), each filed for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on July 15, 2019 (the "Petition Date"). Each of the Debtors have continued to operate their respective businesses and manage their respective properties as debtors-in-possession in accordance with 11 U.S.C. §§ 1107(a) and 1108.

3. This adversary proceeding has been filed pursuant to Fed. R. Bankr. P. 7001(2) and (9).

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334(b), and this is a core proceeding under 28 U.S.C. § 157(b)(2).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

6. Pursuant to Local Rule 7008-1, M&J consents to the entry of final orders or judgments in this proceeding if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

### **PARTIES AND GENERAL BACKGROUND**

7. M&J is a Wisconsin corporation with its principal place of business in Eau Claire, Wisconsin.

8. Superior is a Texas limited liability company with its principal place of business at 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas, 76109.



9. HPS is a Delaware limited liability company whose principal place of business, upon information and belief, is located at 40 West 57<sup>th</sup> Street, 33<sup>rd</sup> Floor, New York, New York 10019. HPS serves as the agent for the PrePetition Lenders and the DIP Lenders (all as are identified below).

10. The Debtors, through the operations of Superior, engage in the mining, processing, and distribution of silica sand for use in hydraulic fracturing (or “fracking”) of oil and gas wells. Superior has silica mining facilities in Wisconsin, Texas, and Oklahoma.

11. M&J is a construction management company. M&J contracted with Superior to provide construction management and general contracting services for mining facilities located in Bexar County, Texas, and Kingfisher County, Oklahoma.

12. Superior failed to pay M&J for work performed on these projects.

13. On January 3, 2019, M&J filed a lien affidavit in Bexar County, Texas, asserting a statutory and constitutional lien against the real estate and improvements associated with the Bexar County facility (the “Bexar Facility”). M&J subsequently filed amended lien affidavits. True and correct copies of the original and revised Texas lien affidavits (collectively, the “Texas Lien”) are attached as Exhibit A and incorporated by reference.

14. As reflected in the Texas Lien, M&J’s lien under Chapter 53 of the Texas Property Code and Article 16, Section 37 of the Texas Constitution secures payment of \$4,850,087.00.

15. In addition to the amounts specifically identified in the lien affidavit, M&J is owed an additional \$3,952,072.22 for work on the Bexar County facility which had not been previously billed.

16. The charges identified in the Texas Lien, and the additional charges identified above, relate only to work performed on the Bexar Facility.

17. On January 25, 2019, M&J filed a lien affidavit in Oklahoma asserting a mechanic's or materialmen's lien pursuant to 42 Okla. Stat. 141, *et seq.*, for work performed in constructing the dry plant portion of the Kingfisher County mining facility (the "Kingfisher Facility"). In its original lien claim, M&J asserted a claim for \$3,220,478.00. M&J subsequently filed a revised affidavit asserting a claim in the amount of \$3,957,088.00. True and correct copies of the original and revised Oklahoma lien affidavits (collectively, the "Oklahoma Lien") are attached as Exhibit B and incorporated by reference.

18. The charges identified in the Oklahoma Lien relate only to work performed on the Kingfisher Facility.

19. The Oklahoma Lien and the Texas Lien both represent services performed by M&J on behalf of Superior pursuant to contractual agreements between the parties.

20. The Oklahoma Lien and the Texas Lien both represent obligations which Superior has failed to pay, despite demand by M&J and repeated assurances by Superior.

21. Superior breached its agreements with M&J by failing to pay for the materials and services reflected in the Oklahoma Lien and the Texas Lien.

#### **THE BANKRUPTCY FILING AND POSTURE OF THE CASE**

22. On the Petition Date, the Debtors filed a variety of first-day motions, including a Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief [Doc. No. 20] (the "Financing Motion").

23. In the Financing Motion, Superior and the other Debtors asserted that they were parties to certain first and second lien obligations with HPS Investment Partners LLC as administrative and collateral agent on behalf of the “First Lien Prepetition Lenders” and the “Second Lien Prepetition Noteholders.” Financing Motion, ¶ 5.

24. In the Financing Motion, Superior and the other Debtors (except for Emerge Energy Services GP LLC and Emerge Energy Services Finance Corporation) asserted they owed the First Lien Prepetition Lenders “not less than \$66,710,000, plus accrued and unpaid interest and fees with respect thereto.” Id.

25. In the Financing Motion, Superior and the other Debtors (except for Emerge Energy Services GP LLC and Emerge Energy Services Finance Corporation) asserted they owed the Second Lien Prepetition Noteholders “not less than \$215,755,307, plus accrued and unpaid interest and fees with respect thereto.” Id.

26. In the Financing Motion, Superior and the other Debtors asserted that the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders (collectively, the “Prepetition Lenders”) were secured creditors holding liens on the “Prepetition Collateral” identified in the respective loan documents. Financing Motion, ¶ 6.

27. In the Financing Motion, the Debtors asserted that the Prepetition Collateral “comprises substantially all of the Debtors’ assets.” Financing Motion, ¶ 7.

28. In the Financing Motion, the Debtors sought approval of debtor-in-possession financing from the PrePetition Lenders who would, as to the post-petition loans, be identified as the DIP Lenders.

29. Jointly with other statutory lien claimants, M&J filed an objection to the Financing Motion. [Doc No. 134]. M&J asserted that its liens were superior to those of HPS on certain assets

and reserved all rights associated with its assertion of “Senior Liens” or “Prior Permitted Liens” as those terms were defined in the DIP financing agreement and order.

30. The final order granting the Financing Motion and approving the DIP financing agreement (the “Final DIP Order”) provided that HPS, on behalf of the DIP Lenders, would receive junior liens on any collateral that was subject to “valid, perfected and unavoidable liens senior to the Prepetition Liens in existence immediately prior to the Petition Date.” Final DIP Order, ¶ 13(a)(iii).

31. The DIP Financing Agreement, as approved, recognizes the possible existence of “Prior Permitted Liens” which would include certain valid, perfected, and unavoidable liens in favor of third parties. See § 7.2 of the DIP financing agreement and definitions of “Permitted Encumbrances” and “Prior Permitted Liens.”

32. M&J’s objection to the Financing Motion specifically preserved and reserved all issues as to lien priority and the extent or validity of M&J’s lien rights, as well as any valuation issues.

33. Under the Final DIP Order, the Debtors’ stipulations as to the validity and priority of the liens of the PrePetition Lenders are not binding upon M&J for a period of 75 days after entry of the interim order approving DIP financing (the “Challenge Period”) so as to permit certain “Challenges” to be lodged. These Challenges would include objections to the stipulated valuation of assets as well as issues of lien priority. Final DIP Order, ¶ 26.

34. Under the Final DIP Order, the Debtors’ stipulations as to the validity and priority of Prepetition Liens in the Prepetition Collateral are subject to Challenge if brought within the Challenge Period; otherwise, the stipulations become binding on third parties, including M&J.

35. M&J's complaint in this case constitutes a Challenge within the meaning of the Final DIP Order and has been brought within the Challenge Period in timely fashion.

36. On September 11, 2019, the Debtors filed their First Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code [Doc. No. 362] (the "Plan").

37. The Plan defines "Secured Claim" as a Claim that is secured by a Lien on property in which any of the Debtors' Estates have an interest or that is subject to setoff under section 553 of the Bankruptcy Code, to the extent of the value of the Claim holder's interest in such Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code. Plan Art. I.C.

38. The Plan defines "Other Secured Claim" as "any Secured Claim other than an Administrative Claim, DIP Credit Agreement Claim, Secured Tax Claim, or Prepetition Debt Claim." Id.

39. The Plan, as currently proposed, classifies Other Secured Claim as "Class 2." Plan Art. III.B.2.

40. The Plan provides that each holder of an allowed class 2 claim shall receive, at the election of the Debtors or Reorganized Debtors:

(A) Cash equal to the amount of such Allowed Class 2 Claim; (B) such other less favorable treatment as to which the Debtors or Reorganized Debtors, as applicable, and the Holder of such Allowed Class 2 Claim shall have agreed in writing; (C) the Collateral securing such Allowed Class 2 Claim; or (D) such other treatment such that it will not be impaired pursuant to section 1124 of the Bankruptcy Code.

41. On September 11, 2019, the Debtors filed the solicitation version of the Disclosure Statement for First Amended Joint Plan of Reorganization for Emerge Energy Services LP and Its

Affiliate Debtors Under Chapter 11 of the Bankruptcy Code. [Doc No. 363] (the “Disclosure Statement”). In regard to the treatment of construction or mechanics’ or materialmen’s liens, the Disclosure Statement provides as follows:

In some cases, vendors have asserted liens (“M&M Liens”) to secure allegedly accrued and unpaid amounts owing under prepetition contracts with the Debtors. The Debtors are aware of the assertion of M&M Liens filed against various of the Debtors’ properties at which the subject work and/or services were allegedly supplied. These properties include Debtor-owned property at Kingfisher, Oklahoma, Kosse, Texas, San Antonio, Texas, and Chippewa County, Wisconsin. The Debtors continue to examine the validity and perfection of such liens and their related claims, as well as the relative priority of any such valid and perfected liens relative to other valid and perfected liens on the affected properties. To the extent any valid and perfected M&M Liens enjoy a priority in respect of the affected property sufficient to render the related claims secured, those claims will be treated as Other Secured Claims under the Plan, while any deficiencies will be treated as General Unsecured Claims. The Debtors continue to reserve all rights in respect of the asserted M&M Liens. Disclosure Statement, Article II.C.3.

42. The Disclosure Statement further acknowledges and provides that as to the Oklahoma Facility, the Debtors are “not aware of the existence of any mortgage” in favor of the Prepetition Lenders. Disclosure Statement, Article IIC.1, 2, and 3.

**COUNT I:  
DETERMINATION OF THE VALIDITY, PRIORITY, AND EXTENT  
OF M&J’S LIEN ON KINGFISHER FACILITY**

43. M&J asserts and realleges the allegations of paragraphs 1-42 above.

44. As indicated in the Financing Motion and the declarations filed by the Debtors in support of their first day motions, the Debtors commenced work on the Kingfisher Facility in late 2018. The Debtors also assert they “discontinued” work on the Kingfisher Facility in January of 2019 after incurring approximately \$15.3 million in expenses, of which \$7.3 million (including the sums owed to M&J) remain unpaid.

45. At the time the Debtors “discontinued” construction of the Kingfisher Facility, the dry plant was virtually complete and nearly operational.

46. As of the Petition Date, there were no mortgages or other liens recorded with the Kingfisher County Clerk in favor of HPS or the Prepetition Lenders on the Kingfisher Facility. A copy of relevant title searches performed on behalf of M&J are attached as Exhibit C and incorporated by reference.

47. On information and belief, the only other liens or purported liens recorded against the Kingfisher County mine are additional mechanic’s liens whose claimants are as follows: (i) Pownall Services LLC (recorded April 5, 2019); (ii) Bollenbach Concrete (recorded on March 8, 2019); (iii) TMT Solutions (recorded on March 11, 2019); (iv) KC Electric (recorded March 21, 2019); (v) EnDeCo Engineers (recorded on April 4, 2019); and (vi) RB Scott Company (recorded May 28, 2019) (collectively, the “Additional Liens”).

48. M&J’s lien against the Kingfisher Facility was validly and properly perfected in accordance with Oklahoma law.

49. M&J’s lien against the Kingfisher Facility is prior to, and superior to, any interest of HPS or the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders, as those terms are defined in the Final DIP Order.

50. M&J’s lien against the Kingfisher Facility is a “Senior Lien” for purposes of the Final DIP Order.

51. For purposes of the Final DIP Order, the Kingfisher Facility constitutes “unencumbered property” on which the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders held no lien as of the Petition Date.

52. Any interest of HPS or the DIP Lenders in the Kingfisher County mine created as a result of the Final DIP Order is junior to M&J's lien.

53. M&J does not waive any right to challenge the validity, extent, or priority of the Additional Liens. However, to the extent any Additional Liens are in fact properly perfected and enforceable, such liens are likewise Senior Liens for purposes of the Final DIP Order.

54. On August 30, 2019, Superior filed Amended Schedules of Assets and Liabilities. [Doc. No. 281]. In its amended schedules, Superior asserted as follows:

The indicated value of collateral supporting asserted mechanics liens related to the Kingfisher, Oklahoma facility is listed as "unknown". The Debtors estimate that the total value of such collateral is \$441,000 in aggregate. The Debtors have not assessed the relative priority of such liens and, therefore, do not know the value of collateral supporting any particular lien.

Superior's Amended Schedules, Global Notes, ¶ 5(f).

55. Accordingly, Superior has asserted that the collateral securing M&J's lien (i.e., the Kingfisher Facility) is worth only \$441,000.

56. Under 11 U.S.C. § 506(a), M&J holds a secured claim to the extent "of the value of such creditor's interest in the estate's interest in such property."

57. Under 11 U.S.C. § 506(a), such value "shall be determined in light of the purpose of the valuation and the proposed disposition of the use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

58. According to the Debtors' Disclosure Statement and Plan, Superior intends to retain the Kingfisher Facility.

59. Based upon information and belief, Superior seeks to find that for purposes of the Plan, M&J's Allowed Class 2 Claim in relation to the Kingfisher Facility is limited to some portion of \$441,000.00.



60. The Debtors' proposed valuation of the Kingfisher Facility, and correspondingly of M&J's secured claim, is inconsistent with the proposed disposition and use of the property securing the claim.

61. Based upon information and belief, M&J contends that an appropriate valuation of the Kingfisher Facility, in light of the Debtors' proposed use and disposition, is far more in line with what has been expended upon construction to date (i.e., approximately \$15 million).

62. Given the foregoing, there is an actual controversy between M&J and the Defendants as to the validity, priority, and extent of M&J's lien against the Kingfisher Facility.

63. A judicial determination of the validity, extent, and priority of M&J's lien on the Kingfisher County mine is necessary to the proper administration of these estates.

**COUNT II:**  
**DETERMINATION OF EXTENT, VALIDITY, AND PRIORITY OF**  
**M&J'S LIEN ON THE BEXAR COUNTY, TEXAS MINE**

64. M&J asserts and realleges paragraphs 1-63 above.

65. As of the Petition Date, there were three deeds of trust (the "Deeds of Trust") recorded against the Bexar Facility in favor of the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders.

66. M&J commenced work on the Bexar Facility shortly after the Deeds of Trust were recorded in the real property records of Bexar County.

67. In the performance of the services reflected in the Texas Lien, M&J installed "removables" on the real property associated with the Bexar Facility.

68. Under Texas law, a "removable" is an improvement that can be removed without material injury to the land, pre-existing improvements, or to the improvement itself.

69. Under Texas law, the holder of a properly perfected mechanic's or materialmen's lien is granted preference over the holder of any previously filed deed of trust as to any "removables" located on the real property.

70. M&J's Texas Lien was properly perfected and is enforceable.

71. M&J's Texas Lien therefore has priority over the Deeds of Trust as to any "removables" located on the real estate associated with the Bexar Facility.

72. M&J's interest in "removables" located at the Bexar Facility is a "Senior Lien" for purposes of the Final DIP Order.

73. M&J's lien against the Bexar Facility is prior to, and superior to, any interest of HPS or the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders, as those terms are defined in the Final DIP Order.

74. Any interest of HPS or the DIP Lenders in the Bexar Facility created as a result of the Final DIP Order is junior to M&J's lien on "removables."

75. The Debtors' amended plan does not specifically propose to pay M&J anything of value for its interest in "removables" at the Bexar Facility.

76. According to the Debtors' Plan, Superior intends to retain the Bexar Facility and all "removables" located on the property.

77. Under 11 U.S.C. § 506(a), M&J holds a secured claim in the "removables" to the extent "of the value of such creditor's interest in the estate's interest in such property."

78. Under 11 U.S.C. § 506(a), such value "shall be determined in light of the purpose of the valuation and the proposed disposition of the use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

79. The “removables” must be valued in light of Superior’s proposed disposition or use of the property (i.e., retention).

80. Given the foregoing, there is an actual controversy between M&J and the Defendants as to the validity, priority, and extent of M&J’s lien against “removables” located at the Bexar Facility.

81. A judicial determination of the validity, extent, and priority of M&J’s lien on “removables” located at the Bexar Facility is necessary to the proper administration of these estates.

**COUNT III:  
DECLARATORY JUDGMENT**

82. M&J J asserts and realleges paragraphs 1-81 above.

83. M&J’s Oklahoma Lien and Texas Lien constitute valid, perfected, and unavoidable prepetition liens upon the Kingfisher Facility and the Bexar Facility, respectively.

84. The Oklahoma Lien is a “Senior Lien” within the meaning of the Final DIP Order as to the Kingfisher Facility.

85. The PrePetition Lenders did not hold a lien against the Kingfisher Facility as of the Petition Date.

86. Any liens granted to HPS or the DIP Lenders pursuant to the Final DIP Order are junior to M&J’s Oklahoma Lien.

87. The Texas Lien is a “Senior Lien” within the meaning of the Final DIP Order on any removables, as defined under Texas law, which are located at the Bexar Facility.

88. M&J’s interest in any removables located at the Bexar Facility is superior to the rights or interests of the PrePetition Lenders.

89. Any liens granted to HPS or the DIP Lenders pursuant to the Final DIP Order are junior to M&J's interest in any removables located at the Bexar Facility.

90. A judicial determination and declaration of the respective rights of the parties is essential to the proper administration of these estates.

91. A judicial determination and declaration of the priority, validity, and extent of M&J's lien, together with a determination of the value of M&J's interest in the interest of the Debtors in the collateral securing its claim, is required to determine the appropriate treatment of M&J's Allowed Class 2 Claim for purposes of the Plan.

WHEREFORE, M&J requests entry of judgment against the Defendants as follows:

A. Declaring that (i) M&J's lien on the Kingfisher Facility is a valid, perfected, and unavoidable prepetition lien; (ii) neither HPS nor the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders held a lien against the Kingfisher Facility as of the Petition Date; (iii) the Additional Liens are the only other liens or encumbrances which appear of record against the Kingfisher Facility; (iv) M&J's lien against the Kingfisher Facility is a "Senior Lien" within the meaning of the Final DIP Order and any lien of the DIP Lenders is junior and subordinate to that lien;

B. Determining the extent of M&J's lien in the Kingfisher Facility in accordance with 11 U.S.C. § 506(a);

C. Declaring that (i) M&J's lien on the Bexar Facility is a valid, perfected, and unavoidable prepetition lien; (ii) M&J's interest in all "removables" as defined by Texas law and located on the Bexar Facility was superior to the liens of the First Lien Prepetition Lenders and the Second Lien Prepetition Noteholders as of the Petition Date; (iii) M&J's lien against

“removables” located at the Bexar Facility is a “Senior Lien” within the meaning of the Final DIP Order and any lien of the DIP Lenders is junior and subordinate to that lien;

D. Determining the extent of M&J’s lien in the “removables” located at the Bexar Facility in accordance with 11 U.S.C. § 506(a);

E. Awarding M&J pre- and post-judgment interest, attorneys’ fees and expenses incurred in connection with this adversary proceeding, any contested matter before this Court, and any other proceeding relating to these matters; and

F. Awarding such other and further relief as the Court deems equitable and proper.

Date: October 25, 2019  
Wilmington, DE

**SULLIVAN · HAZELTINE · ALLINSON LLC**

/s/ E.E. Allinson III

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*Attorneys for Market & Johnson, Inc.*

# Exhibit A

**SCANNED**

**AFFIDAVIT CLAIMING A STATUTORY AND CONSTITUTIONAL LIEN**

THE STATE OF TEXAS    }  
                                     }  
COUNTY OF BEXAR       }

Before me, the undersigned authority, personally appeared **Jason Plante**, who, being by me duly sworn, stated as follows:

1. My name is Jason Plante. I am the Vice President of Market & Johnson, Inc., a Wisconsin corporation (hereafter referred to as “Contractor” or “Claimant”). I am over 18 years of age, have personal knowledge of the facts set forth below, and am of sound mind and am capable of making this affidavit. I make this sworn affidavit for the purpose of perfecting a lien on the real property and improvements owned by Superior Silica Sands, LLC (“Owner”) to secure the amount of Claimant’s claim as described below as provided under Section 53.054 of the Texas Property Code
2. Claimant’s principal office is located at 2350 Galloway Street, Eau Claire, WI 54703. Claimant’s mailing address is the same as the principal office noted above.
3. Pursuant to certain design/build contracts (the “Contract”) between Claimant and Owner, copies of which are attached as Exhibit A hereto, Claimant has served as general contractor for the construction of a dry sand processing plant, a wet plant, and a reclaim system on Owner’s real property as is more particularly described in Exhibit B hereto (the “Property”). The work performed by Claimant is described with greater particularity in the Contract.
4. The materials, labor, and/or equipment of Claimant were provided to Owner for the construction of the improvements on the Property. The Owner or reputed Owner of the real property and improvements on which Claimant asserts a lien is Superior Silica Sands, LLC. The last known addresses of the Owner are as follows:


Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, Texas 76109  
Attention: Rick Shearer, President and CEO

With a copy to:

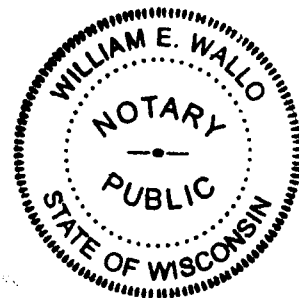
Superior Silica Sands LLC  
1400 Civic Place, Suite 250  
Southlake, Texas 76092  
Attention: General Counsel

5. After allowing all just credits, offsets, and payments, the amount of \$5,050,000.00 remains unpaid and said sum is due and owing to Claimant under said Contract. Owner has not paid Claimant as required under the Contract. The amount claimed is just and correct and constitutes the reasonable value of the materials furnished and labor performed. Claimant claims a statutory lien on said property and improvements under the provisions of Chapter 53 of the Texas Property Code and a constitutional lien on said property and improvements under the provisions of Article 16, Section 37 of the Texas Constitution to secure payment of the above amount. This amount does not include any attorney's fees, interest or costs which may be recovered at law.
6. The Claimant provided the unpaid labor, material, and/or equipment to the Owner during 2018. As of December 31, 2018, the project has yet to be completed, and Claimant continues to perform work under the Contract.

Dated: 12-31-18

  
\_\_\_\_\_  
Jason Plante  
Vice President, Market & Johnson, Inc.

## ACKNOWLEDGMENT

[illegible]

Personally came before me this 31 day of December, 2018, the above-named Jason Plante, Vice President of Market & Johnson, Inc., and to me known to be the person who executed the foregoing instrument and acknowledged the same.

Name: WILLIAM S. WALLS William S. Walls  
Notary Public, State of Wisconsin  
My Commission: permanent

## Certificate of Delivery

I, \_\_\_\_\_, certify that on \_\_\_\_\_, I delivered a true and correct copy of the above instrument to Superior Silica Sands, LLC at the addresses identified above by certified/registered mail, postage prepaid.

Print Name \_\_\_\_\_



# **EXHIBIT A**

## **CONTRACTS**

**Execution Version**

**SUPERIOR SILICA SANDS LLC**

**- and -**

**MARKET & JOHNSON, INC.**

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**DESIGN/BUILD CONTRACT**

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**January 8, 2018**

**FOR**

**A DRY SAND PROCESSING PLANT**

**AT THE SAN ANTONIO TEXAS SITE**

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## DESIGN/BUILD CONTRACT

THIS DESIGN/BUILD CONTRACT (this "Contract") is made and entered into as of January 8, 2018 by and between Superior Silica Sands LLC (the "Owner"), a Texas limited liability company, and Market & Johnson, Inc. (the "Contractor"), a corporation with its principal office located at 2350 Galloway Street, Eau Claire, WI 54702-0630.

### WHEREAS:

- A. Owner desires to engage Contractor to undertake certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, commissioning, start-up, testing, permitting, training for operation, supervision, project management, and related services for the Project (as defined herein); and
- B. Contractor desires and, together with its subcontractors and suppliers, has the requisite personnel, equipment, and expertise to undertake the certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, commissioning, start-up, testing, permitting, training for operation, supervision, project management, and related services for the Project (as defined herein).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS & INTERPRETATION

### 1.1 Defined Terms.

Unless otherwise required by the context in which a term appears, capitalized terms (whether stated in the singular or plural, present, future, or past tense) shall have the meaning specified in Exhibit A.

### 1.2 Interpretation.

Unless the context requires otherwise, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. Unless the context requires otherwise: (i) any reference contained herein to this Contract or any other agreement or any appendix, schedule, exhibit or attachment hereto or thereto shall mean this Contract or such other agreement and such schedules, exhibits and attachments as amended, supplemented or otherwise stated, (ii) any reference in this Contract to any Person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any Person succeeding to its functions and capacities, and (iii) any reference in this Contract to any Section, Article, or Exhibit shall mean and refer to the Section or Article contained in or the Exhibit attached to this Contract. The words "include" and "including" shall mean to include, without limitation.

**1.3 Force of Exhibits.**

The Exhibits to this Contract shall be deemed to form and shall be read and construed as part of this Contract.

**ARTICLE 2  
RESPONSIBILITIES OF CONTRACTOR**

**2.1 Work to be Performed.**

Except as otherwise expressly set forth herein as being the responsibility of Owner, Contractor shall perform or cause to be performed all of the Work. Without limiting the foregoing, as part of the Work, Contractor shall provide the following services:

- 2.1.1. Design and Engineering. Contractor shall perform detailed design and engineering of the Facility including appropriate specification of equipment, materials and systems to be incorporated into the Facility and incorporating any information, specifications, preferences or other input provided by Owner. Electronic design files will be provided to Owner at the completion of the Work and will be available to Owner during the project. Contractor's engineering services shall include the preparation of drawings, specifications, schedules, calculations, documents, and estimates, and coordination with the engineering efforts of Subcontractors.
- 2.1.2. Procurement. Contractor shall procure and make payment for all materials, equipment, supplies, and services to be furnished by Subcontractors or Suppliers. Contractor shall also perform such inspection, expediting, quality surveillance, and traffic services as Contractor deems necessary in connection with such procurement.
- 2.1.3. Construction. Contractor shall perform services to construct the Facility, furnishing management, qualified labor (including a full-time on-site safety manager, equipment, tools, and temporary facilities necessary for such construction. Contractor shall handle and warehouse materials, supplies, and equipment required for such construction.
- 2.1.4. Owner-Supplied Equipment. Contractor shall receive and take possession of the Owner-Supplied Equipment and cause it to be installed on the Facility.
- 2.1.5. Start-Up, Testing, and Initial Operation. With regard to the Facility, Contractor shall perform the start-up of components, calibration of instruments and relays, functional verification tests, and other necessary start-up functions; shall be responsible for the initial charge of equipment lubricants; shall conduct the Performance Tests as described in this Contract; shall supervise and be responsible for the operation of the Facility until Substantial Completion as described in this Contract; shall compile catalogs and manufacturer's data and prepare brief descriptions and instructions for operation of building mechanical and electrical systems, for the information and guidance of personnel who will operate the Facility on its completion.
- 2.1.6. Training and Supervision. Contractor shall conduct a training program, as reasonably required by the Owner, for operations and maintenance sufficient to operate and

maintain the Facility. Contractor shall supervise all individuals on the Site undergoing training until Substantial Completion.

- 2.1.7. Spare Parts. Contractor shall promptly recondition, if Owner agrees, or replace at its expense any spare parts Contractor or any Subcontractor uses from Owner's inventory.
- 2.1.8. Securing Governmental Approvals. Except as to be provided by Owner, Contractor shall secure all Governmental Approvals required in connection with the construction of the Facility or the performance of the Work, including all Governmental Approvals as are indicated to be obtained by Contractor in Exhibit H, and as may be hereafter identified by agreement of the Parties. Contractor shall on a timely basis provide all customary and reasonably necessary support to Owner in connection with Owner's securing of Governmental Approvals under Section 3.7 of this Contract.
- 2.1.9. Project Management. Contractor will be responsible for overall project management. Contractor will plan and manage the activities that make up Contractor's Work and be the primary point of contact for the Owner. Contractor's responsibilities will include, among other things, managing, monitoring and reporting progress, deployment of a project administration team responsible for project cost controls, accounting and invoicing, and overall project administration functions.

## **2.2 Standard for Performance of the Work.**

Contractor shall perform and prosecute the Work in accordance with the terms and conditions of this Contract and in compliance with all Governmental Approvals and Governmental Rules applicable to the prosecution of the Work, using methods and equipment that satisfy Design/Build Contractor Standards. Contractor shall design, install, test and operate all equipment and systems and otherwise perform the Work in a safe manner, using qualified, competent, and where necessary, licensed personnel.

## **2.3 Grade of Materials**

All equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the applicable industries, shall be free from defects in design, material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

## **2.4 Independent Contractor.**

Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between Owner and Owner's Representative and Contractor's employees. Except as expressly limited in this Contract, Contractor shall be entitled to exercise the right to hire, discharge, promote and transfer its employees; to select and remove foremen or other persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to

perform a task; and to establish, maintain, and enforce rules and regulations conducive to efficient and productive operations.

**2.5 Labor-Related Delays.**

Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the performance of the Work by Contractor or by any Subcontractor.

**2.6 Responsibility for Subcontractors and Agents.**

Contractor may subcontract portions of the Work to any Person without further approval by Owner; *provided, however* that Owner shall have the right to reject any proposed Subcontractor or Supplier, except to the extent pre-approved by Owner as specified in Exhibit D. Owner's acceptance of any proposed Subcontractor or Supplier shall not constitute an approval of any portion of the Work or a waiver of any of Owner's rights hereunder or reduce Contractor's responsibilities hereunder. Contractor shall not be entitled to relief for any portion of the Work that is incomplete or for any delay due in whole or in part to any disagreement between or among Subcontractors or between any Subcontractor and Contractor. Contractor has complete and sole responsibility as principal for its agents and all others it hires to perform or assist in performing the Work.

**2.7 Appointment of Key Personnel.**

- 2.7.1. Contractor shall identify to Owner a project manager (Patrick Sullivan and Tim Esselman, each a "Project Manager"), subject to Owner's approval.
- 2.7.2. Notwithstanding Section 2.4, Contractor shall not change the Project Manager, without prior written consent of Owner, which shall not be unreasonably withheld.

**2.8 Project Manager.**

- 2.8.1. Project Manager shall have the authority to commit Contractor to any course of action within the rights and obligations of Contractor under the provisions of this Contract. All notifications, information and decisions from Project Manager shall be as if from Contractor and shall bind Contractor.
- 2.8.2. Project Manager may delegate any of his responsibilities to any nominated deputy, the terms of which delegation shall be the subject of prior consent of Owner, such consent not being unreasonably withheld. Notifications, information and decisions from any such nominated deputy shall be as if from Project Manager.
- 2.8.3. A notice delivered to Project Manager shall be deemed to be notification to Contractor.
- 2.8.4. While the Work is being performed, Project Manager or his nominated deputy shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work and shall be readily available to discharge Contractor's responsibilities in accordance with this Contract.

**2.9 Cooperation and Coordination.**

Contractor shall cooperate with Owner during the performance of the Work to assist in the review of the design of the Facility, the conduct of inspections, and other matters relating to the Facility. Contractor shall provide such information as is reasonably requested by Owner relating to the Facility in dealing with the Owner, and/or any Governmental Unit, including information reasonably required to support Owner's compliance with applicable Governmental Approvals. Contractor shall provide Owner with written notice reasonably in advance of all significant scheduled meetings with Governmental Units and shall provide Owner with a reasonable opportunity to attend such meetings where practicable.

**2.10 Progress Reports.**

2.10.1. Following commencement of the Work and until Final Completion, the Contractor shall deliver a Progress Report no later than the twelfth day of each month.

2.10.2. If the Contractor falls behind the Schedule, it shall immediately take, and cause its subcontractors to take, such action as may be necessary to remedy the delay, and shall submit to Owner a recovery schedule or progress chart demonstrating the manner in which the delay will be remedied.

**2.11 Assurance Regarding Payment.**

Upon request from time to time, Contractor shall provide to Owner such assurances as Owner may reasonably request as to the status of payments from Owner to Contractor and from Contractor to Subcontractors.

**2.12 Publicity.**

Contractor shall obtain Owner's prior written approval of the text of any external announcement, publication, or other type of public communication concerning the Work or the Facility prior to the release of the same by Contractor. Contractor shall provide that a similar obligation is imposed on Subcontractors.

**2.13 Hazardous Wastes and Materials.**

Contractor shall remove, transport, and dispose of any Hazardous Materials transported onto the Site by Contractor or any Subcontractor or created, used, or handled as part of Contractor's or any Subcontractor's construction activities at the Site or on off-site rights of way and easements furnished by Owner.

**2.14 Safety.**

Contractor will promote and will be responsible for the safety and health of its and its Subcontractor's and Supplier's employees. Contractor will also ascertain and comply with all Governmental Rules, including all applicable occupational safety and health standards and other state and local requirements relating to safety and health, accident or injury to its employees on, about, or adjacent to the premises where the Work is being performed. Contractor shall ensure

that all employees including subcontractors are MSHA certified. Any training time and cost for MSHA certification will be the responsibility of the Contractor. The Contractor shall also take all necessary precautions for the safety of all persons on the Site, and shall erect and properly maintain at all times, as required by job conditions and progress of the Work, all necessary safeguards for the protection of its and its Subcontractors' and Suppliers' employees and the public; shall post danger signs warning against the hazards created by such features of construction as protruding nails, bad hoists, well holes, hatchways, scaffolding, window openings, stairways and dangers from falling materials; shall not load or permit any part of the Work to be loaded so as to endanger its safety. The Contractor shall designate a responsible member of his organization on the Work whose duty shall include the prevention of accidents. In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of such emergency work shall be determined in accordance with the provisions of this Contract.

#### **2.15 Site Requirements.**

Contractor shall comply with and shall require Subcontractors and Suppliers to comply with the Site Requirements.

#### **2.16 Reporting Accidents.**

Contractor will notify Owner in the event that it or its Subcontractor's or Supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Work done under the Contract. Contractor will also submit to Owner a written follow-up accident report, available from Owner, within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Contractor will also furnish Owner with a copy of all claims submitted to its insurance companies.

#### **2.17 Security.**

- 2.17.1. Contractor may furnish security personnel at the Site to control access, patrol yards and buildings, maintain order and enforce security regulations. The Contractor shall be obligated to replace or pay for all materials and equipment including items furnished by the Owner, damaged or stolen prior to completion of the Work. The presence or absence of such security services shall not be construed to modify the responsibility of the Contractor for loss and/or damages to persons or property within its custody or control.
- 2.17.2. Certain items are prohibited from the Site under all conditions. These items include alcoholic beverages, controlled substances, drugs, firearms, cameras and hunting devices. Owner's, or Owner's designated representative's, security personnel may conduct periodic, random inspections of vehicles, lunch boxes, coolers, cartons or other containers brought on to the Site.
- 2.17.3. Contractor employees in violation of the above provisions shall be subject to immediate removal from the Site and not allowed to continue the Work.

**2.18 Use of Owner's Equipment, Personnel and Facilities.**

- 2.18.1. Circumstances may arise where Contractor will request that Owner make available to Contractor certain equipment or facilities and operators for the performance of Work. If Owner agrees to such request (which it is under no circumstances obligated to do), the equipment or facilities will be for Contractor's account at rates specified by Owner and subject to such terms and conditions (which may be in addition to those set forth in this Contract) as Owner may require.
- 2.18.2. The Contractor will assure itself of the condition of such equipment and facilities before use and will assume all risks and responsibilities in its use of the facilities and equipment. Contractor will indemnify and hold Owner harmless against any damages or claims that may arise from such use. It is the responsibility of the Contractor to substantiate, before returning such equipment and facilities to Owner, that no part of the equipment or facilities loaned to the Contractor has been over-stressed or damaged in any way as a result of its use.
- 2.18.3. In the event such equipment is furnished with an operator, it is understood that such operator will perform his services under the complete direction and control of Contractor and will be considered Contractor's employee for all purposes other than the payment of wages, worker's compensation or other benefits paid directly to such employee by Owner.

**2.19 Site Conditions.**

The Contractor has sole responsibility for satisfying itself concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials, including lay down areas; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the Site; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed prior to and during performance of the Work; and all other matters which can in any way affect performance of the Work or the cost associated with such performance. The failure of the Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating the difficulty, and cost for successfully performing the Work. If Owner furnishes any data or other information concerning surface or subsurface conditions, any reliance on or use of such data or information by Contractor is at Contractor's sole risk.

**2.20 Contractor's Employees and Management.**

- 2.20.1. Contractor will perform the Work diligently and will maintain at all times a sufficient number of competent and fit workers with adequate supervision to complete the Work properly, skillfully, in a workmanlike and timely manner.
- 2.20.2. At Owner's request the Contractor will remove any employee whom Owner deems unacceptable for any reason.

- 2.20.3. Contractor will not, in any event, admit to the Site any person who does not have proper credentials sufficient to establish that such person has a legitimate purpose for being on or about the Site. In the event of any doubt, Contractor is to contact Owner for clarification or further instructions.

**2.21 Cleanup and Waste Disposal.**

- 2.21.1. The Contractor will, at all times, keep the Site in a neat, clean, and safe condition.
- 2.21.2. Upon completion of any stage of the Work, the Contractor will promptly remove all of its equipment, temporary structures, waste and surplus construction and other materials and ancillary facilities not to be used at or near the same location during later stages of the Work. Before final payment is made, the Contractor will, at its expense, satisfactorily dispose of all plant, ancillary facilities buildings, rubbish, waste, unused materials and other equipment and materials belonging to it or used in the performance of Work, and the Contractor will leave the work areas and premises in a neat, clean and safe condition.
- 2.21.3. The Contractor will ascertain and comply with the Government Rule applicable to the use, resale, storage, transportation and disposal of any materials including, but not limited to, any materials classified as hazardous. If the Contractor fails to comply with any of the foregoing, the same may be accomplished by Owner at the Contractor's expense.

**2.22 Delivery and Storage.**

- 2.22.1. Contractor shall receive, unload, store, warehouse, protect against loss or damage from every source, handle and maintain all materials, tools and equipment whether supplied by it, or its Subcontractors or Suppliers for Contractor's use.
- 2.22.2. The Contractor shall not use any portion of the Site as a lay down area or for storage except as otherwise provided in this Contract.
- 2.22.3. The Contractor shall not use any portion of the Site without express written consent of the Owner.

**2.23 Protection of Owner's Property and Equipment.**

- 2.23.1. The Contractor will at all times take adequate precautions, to Owner's satisfaction, to protect Owner's property and adjoining property from damage.
- 2.23.2. Unless otherwise specified in the Contract, all Work is to be performed without interruption of service or production of Owner, and consistent with Owner's safety rules and practices. If, in the Contractor's opinion, it will be necessary to interrupt Owner's service or production, Contractor will advise Owner as soon as possible in advance of the anticipated interruption. If Owner determines, in its sole discretion, that the interruption is necessary, it will make all arrangements therefor and will advise



Contractor of all arrangements made. If Owner determines it is not necessary, Contractor will proceed with the Work without such interruption.

- 2.23.3. Public utility facilities, such as plant generating equipment, communications and power lines, gas and water mains, telephone and other cables and structures and the like, are not to be moved or otherwise tampered with until suitable arrangements with the company owning or operating such facilities are completed. Contractor will notify Owner reasonably in advance of commencing any Work in the vicinity of such facilities and is to make all necessary arrangements without loss of time or interference with Owner's schedules.

**2.24 Limited Notice to Proceed.**

All work undertaken pursuant to the Limited Notice to Proceed shall be incorporated as part of the Work and, from the date of execution of this Contract, deemed to have been performed under this Contract.

**ARTICLE 3  
RESPONSIBILITIES OF OWNER**

**3.1 Cooperation with Contractor.**

Owner shall cooperate with Contractor during the performance of this Contract. Such cooperation shall include timely supply of all those items, personnel, services, and information required to be supplied by Owner under this Contract; no material interference with Contractor's agents, employees or Subcontractor; and timely administration of all of Owner's obligations under this Contract.

**3.2 Site Access.**

Owner shall furnish access to the Site. Owner shall assure reasonable rights of ingress to and egress from the Site to Contractor, Subcontractors, and Suppliers sufficient for the performance of the Work.

**3.3 Property Rights.**

Owner shall be responsible for obtaining necessary real property rights and other real estate rights for performance of the Work. This obligation shall apply with regard to the Site.

**3.4 Services and Utilities.**

- 3.4.1. Owner shall provide on the Site at no cost or expense to Contractor the following services and utilities: electricity and natural gas; *provided, however*, that such utilities and services shall only be used in connection with Contractor's performance of its obligations under this Contract. Owner shall have no responsibilities to provide water, phone service, transportation, sewer, compressed air, or any other utility or service.

- 3.4.2. Electricity shall be available as of the Required On-Site Construction Date and natural gas shall be available as of Mechanical Completion (failure of which shall be a Change and lead to a day-for-day adjustment to the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date in accordance with Section 14.6).

**3.5 Lay Down Area**

Owner shall provide reasonably sufficient space on the Site to lay down materials and to conduct the Work, and such areas shall be within reasonable proximity to the Site.

**3.6 Owner's Representative.**

- 3.6.1. Owner shall designate and identify by written notice to Contractor its Owner's Representative, who shall act as Contractor's primary point of contact with Owner with respect to the prosecution of the Work. Owner hereby designates Jim Sadowski as the initial Owner's Representative.
- 3.6.2. Owner may designate a replacement Owner's Representative at any time by delivery of notice of such replacement to Contractor.

**3.7 Governmental Approvals.**

- 3.7.1. Owner shall secure the Governmental Approvals listed in Exhibit 1. Owner shall not be considered to have delayed in meeting this obligation to the extent any such delay is due to a failure or delay of Contractor to provide timely support to Owner as required under Article 2.
- 3.7.2. Owner shall on a timely basis provide all customary and reasonably necessary support to Contractor in connection with Contractor's securing of Governmental Approvals under Section 2.4.

**3.8 Technical Data.**

- 3.8.1. Owner shall supply all available geological, utility, and other Site data, but Contractor shall not rely on such data.
- 3.8.2. Upon reasonable request by Contractor, Owner shall cooperate with Contractor in obtaining such additional technical data as may be necessary for Contractor to perform the Work.

**3.9 Time and Manner of Owner's Performance.**

Owner shall carry out the responsibilities described in this Article 3 at no cost to Contractor and in accordance with the provisions of this Contract and the Schedule.

**ARTICLE 4  
PAYMENT TERMS**

**4.1     Contract Price.**

- 4.1.1. Owner shall pay to Contractor the Contract Price for the performance of the Work in accordance with this Contract.
- 4.1.2. The Contract Price is a fixed, turn-key price and is not subject to change other than as provided in this Contract.

**4.2     Progress Payments.**

- 4.2.1. Immediately upon issuance of the Notice to Proceed, Contractor will invoice the Owner for a down payment equal to the amount indicated in the first row of Exhibit L, which amount is intended to cover initial long-lead items and Work completed in advance of the issuance of the Notice to Proceed. Owner shall make payment to Contractor for 100% of such invoice amount no later than fifteen (15) days following delivery of the invoice; provided, however, the Parties acknowledge that Owner has paid \$200,000 in advance of the Notice to Proceed, and such amount shall reduce the amount payable by the Owner hereunder. Contractor shall apply such sums on a Work completed basis.
- 4.2.2. Following the initial invoice, at the end of each month during the performance of the Work, Contractor shall provide the Owner with an invoice based upon the cost of the Work completed. Notwithstanding the foregoing, no invoice in any given month shall exceed the amount ("Monthly Cap") set forth on Exhibit L.
- 4.2.3. Each invoice shall be delivered together with (a) supporting documentation substantiating the completion of the Work reflected on such invoice and (b) duly executed lien waivers by Contractor and each Subcontractor for the Work reflected in such invoice, which lien waivers are substantially in the form attached hereto as Exhibit M (in relation to each progress payment up to and including the payment for achieving Substantial Completion) and as attached hereto as Exhibit N (in relation to the payment for Final Completion). Each invoice shall constitute the certification of Contractor that the Work to date is in accordance with this Contract.
- 4.2.4. Within ten (10) Business Days (or such other period to the extent so noted in Exhibit L) following the delivery of an invoice and the supporting documentation described in Section 4.2.3, Owner shall pay 100% of amounts due as reflected on such invoice. If Owner disputes any portion of an invoice, then Owner shall provide written notice to Contractor indicating the reason Owner is withholding any amount and shall pay the undisputed portion of the invoice in accordance with this Section 4.2. No payment by Owner of any invoice shall be deemed Owner's acceptance of the Work reflected thereon. The Parties shall resolve disputes relating to any invoices in accordance with the procedures set forth in Article 29.

**4.3     Updates.**

Contractor shall upon request of the Owner provide to the Owner any cost information or backup requested, including all Subcontractor and Supplier invoices.

**4.4 Lien Waivers.**

Submission of a duly executed lien waiver as provided in Section 4.2.1 shall be a condition of Contractor's right to receive each progress payment.

**ARTICLE 5  
SECURITY**

**5.1 Performance Guarantee.**

At the Owner's request, Contractor shall furnish to Owner on or prior to the date first set forth above security in the form set forth in Exhibit J as a guarantee of all performance, payment, indemnity, warranty and other obligations of Contractor under this Contract. Owner shall reimburse Contractor the actual cost of such guarantee paid to the issuer thereof, up to a cap of one percent (1%) of the Contract Price.

**ARTICLE 6  
ACCOUNTING AND AUDIT CONTROL**

**6.1 Accounting Systems and Records.**

The Contractor shall carefully check, and prepare and maintain, detailed accounting records of all materials, labor and other items entering into the Work. Such accounting, as well as all other systems of filing, accounting, and financial controls pertaining to the Work, employed by the Contractor, or any of his subcontractors performing under guaranteed maximum price or cost reimbursable subcontracts must be of such accuracy and detail as to permit the Owner to fully assess and protect its financial interest. The Contractor shall preserve all records at his sole cost and expense for a period of at least five (5) years following final payments by the Owner under this Contract.

**6.2 Documents and Forms.**

The Contractor shall submit to the Owner, as and when required below, the following:

- (a) Contractor's purchase order and subcontract forms, for approval prior to their first use in connection with the Work, such forms to provide for material specifications, unit price, delivery promise, tax status, shipping and discount terms;
- (b) Copies of all subcontracts and purchase orders including all applicable change orders and amendments, promptly upon their issuance;
- (c) Job organization chart(s) and listing of all supervisory, technical and clerical personnel of the Contractor and each subcontractor performing under a guaranteed maximum price or cost reimbursable contract, giving full description

of responsibilities, rates of pay, overtime, vacation, sickness and other allowances, for Owner's approval prior to start of the Work;

- (d) Copy of the Contractor's daily labor report showing each field employee's name, badge number and hours worked, at the end of each working day;
- (e) Analysis of the Contract Price using cost breakdown schedule forms provided by the Owner, such analysis to represent reasonable and appropriate estimates suitable for the Owner's accounting, equipment control and tax records to be submitted no later than sixty (60) days after receipt of such schedule forms from Owner.

## **ARTICLE 7 COMMENCEMENT AND COMPLETION DATES**

### **7.1 Limited Notice to Proceed and Notice to Proceed.**

Upon receipt of a Limited Notice to Proceed, Contractor shall commence limited portions of the Work, the scope of which shall be specified in the Limited Notice to Proceed. Contractor shall commence all portions of the Work promptly upon delivery to Contractor of a Notice to Proceed.

### **7.2 Guaranteed Completion Dates.**

Contractor shall pursue the Work with all due diligence and shall achieve

- (a) Substantial Completion by the Guaranteed Substantial Completion Date; and
- (b) Final Completion by the Guaranteed Final Completion Date.

## **ARTICLE 8 MECHANICAL COMPLETION**

### **8.1 Mechanical Completion.**

The Contractor shall have achieved "Mechanical Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following, except for minor items of Work that would not affect the performance or operation of the Facility such as painting, would not require shutdown of the Facility to complete and would affect any guarantee, each of the items listed in Section (a) through Section (ff) have been achieved; *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Mechanical Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Substantial Completion.

- (a) The entire Facility, or applicable part thereof, has been inspected for completeness using project drawings, data, and specifications as the base;

- (b) Contractor has completed conducting hydrostatic, pneumatic, and other field tests of pipe and other materials and emptying material lines after such tests where necessary;
- (c) All safety and fire protection requirements have been met;
- (d) All vendors' and manufacturers' instructions and drawings for materials furnished by Contractor have been transmitted to Owner;
- (e) Safety tools and other items necessary for a safe plant startup of the Facility are available to Owner.
- (f) All approved tests, inspection certificates, and reports applicable to Contractors' Work have been submitted to Owner;
- (g) Clean up has been completed and accepted to the point that it does not interfere with commissioning and start-up activities.
- (h) Insulation (and fireproofing if required) of all equipment, piping, valves, instruments, and other parts of the Facility for heat conservation and personnel protection has been completed so that shutdown of equipment or the Facility is not required to complete the insulation work;
- (i) Painting (to the extent provided for in scope of work or standard industry practice) is complete enough so that completion of the painting work does not require shutdown of the equipment or the Facility and shall not hinder operators during operation of the Facility;
- (j) All rust preventatives and oils used to protect the Facility during the construction period must be removed whenever these protective materials will be detrimental to operations.
- (k) The initial charge of all lubricant has been installed, except as restricted by commissioning activity;
- (l) All mechanical seals, permanent packing, and accessories have been installed as required, except as restricted by commissioning activity.
- (m) All temporary supports, bracing, or other foreign objects that were installed in vessels, transformers, rotating machinery or other equipment to prevent damage during shipment, storage and erection have been removed.
- (n) Rotating machinery has been checked for correct direction of rotation and for freedom of moving parts before connecting the driver.
- (o) Cold alignment of all rotating portions of the Facility have been made to the manufacturers' tolerances.

- (p) All accessories have been installed as required, except as restricted by commissioning activity;
- (q) All system piping, electrical and controls tie-ins have been made and verified, except as restricted by commissioning activity;
- (r) A list of proper settings for all safety devices has been provided to Owner;
- (s) All mechanical safety devices have been tested, adjusted and installed by Contractors;
- (t) All systems have been cleared and are free of trash and construction debris;
- (u) Contractor has provided to Owner all vendor manuals containing vendor recommended spare parts, except for a portion of the Facility supplied by Owner;
- (v) All materials and equipment have been installed substantially in accordance with the requirements of the Scope of Work, and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity;
- (w) All systems required to be installed by Contractor have been installed in a manner consistent with applicable codes and standards and equipment manufacturers' recommendations and in a manner that does not void any Subcontractor equipment or system warranties;
- (x) Contractor has performed all operational tightness testing, including hydrostatic or pneumatic testing of all piping, as required by the drawings and specifications;
- (y) Temporary strainers are provided and have been installed as required by the commissioning procedures.
- (z) All blinds required for testing or flushing have been removed from the systems.
- (aa) All inner packing materials such as sand, gravel, etc. have been procured and installed in vessels as specified.
- (bb) All materials other than materials specifically noted elsewhere such as chemicals, resins, desiccants, catalysts and other similar material, have been installed in vessels as specified.
- (cc) All mixed beds containing chemicals, resins, desiccants, catalysts, or other operating materials and inner packing materials such as sand, gravel, balls and saddles, have been installed as specified.
- (dd) Contractor has cleaned all lines of loose material by flushing or blowing out except those lines which must be blown by running permanent pumps or

compressors, and any other special cleaning or preparation of individual lines that is called for in the drawings and specifications;

- (ee) Contractor certifies and Owner agrees that all the equipment and systems can be operated in a safe and prudent manner; and
- (ff) Contractor has obtained all Governmental Approvals and any other items required by Government Rule necessary for achieving Mechanical Completion under this Section and for conducting Performance Tests under Section 9.1.

## **8.2 Mechanical Completion Incremental.**

It is understood that Mechanical Completion can be accomplished in incremental steps, the sum total of which, after notice in accordance with Section 8.3, shall constitute Mechanical Completion of the Facility.

## **8.3 Notice of Mechanical Completion.**

- 8.3.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Mechanical Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Mechanical Completion has been achieved, Contractor shall issue to Owner a Notice of Mechanical Completion. Within five (5) Business Days after delivery of the Notice of Mechanical Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Mechanical Completion or (ii) a notice rejecting Contractor's achievement of Mechanical Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Mechanical Completion submitted to Owner.
- 8.3.2. To be valid, a Notice of Mechanical Completion must set forth the date upon which each of the conditions necessary to achieve Mechanical Completion was satisfied.
- 8.3.3. The date of Mechanical Completion shall be the date upon which all of the conditions set forth in Section 8.1 have been satisfied.

# **ARTICLE 9 PERFORMANCE TESTS**

## **9.1 Commencement of Facility Performance Tests.**

Contractor shall commence the Performance Tests after all requirements under Section 8.1 have been satisfied; *provided, however*, Contractor may commence the Performance Tests after each of the following conditions have been satisfied:

- (a) the Facility can be operated in a safe and reliable manner;



- (b) all equipment and systems that are directly related to the Facility and interconnections thereto are mechanically complete, including all Owner-Supplied Equipment;
- (c) any temporary equipment, system or operating practice used to sustain operation shall be replaced with the permanent equipment, system or operating practice prior to Final Completion;
- (d) the absence of any permanent equipment, system or operating practice, will not have any material adverse impact on Owner's costs or on the accuracy or reliability of the test data; and
- (c) Owner agrees in writing with such testing.

**9.2 Tests to be Performed.**

- 9.2.1. The "Performance Tests" shall consist of tests set forth in Exhibit O.
- 9.2.2. Each one of the Performance Tests may be run concurrently or in the order chosen by Contractor.
- 9.2.3. Contractor shall furnish reasonable advance notices of such Performance Tests and shall permit Owner and Owner's representatives to witness all Performance Tests.
- 9.2.4. Contractor shall maintain qualified personnel on the Site to supervise the activities of operating personnel regarding the operation and maintenance of the Facility until Substantial Completion.
- 9.2.5. During any Performance Test, the Facility shall be in full compliance with the requirements of the Contract, Governmental Rules, and Governmental Approvals.

**9.3 Reporting Results; Diagnosing Defects.**

- 9.3.1. Promptly after completion of a successful Performance Test (or any re-run of such test), Contractor shall advise Owner in writing of the results of the Performance Test.
- 9.3.2. If a Performance Test was unsuccessful, Contractor shall consult with the Owner and all relevant Subcontractors and Suppliers to diagnose the defect or deficiency as quickly as possible. If Contractor reasonably determines that the defect or deficiency results from either (i) an Existing Owner-Supplied Equipment Defect, or (ii) Below Spec Wet Sand, Contractor shall immediately (and in any event on the same Business Day) orally notify Owner of such determination and shall promptly (and in any event within two (2) Business Days) deliver a written notice explaining the cause and stating the grounds for its belief that the defect is the result of (i) an Existing Owner-Supplied Equipment Defect, or (ii) Below Spec Wet Sand.
- 9.3.3. If a Performance Test was unsuccessful because, in Contractor's reasonable view, of either (i) an Existing Owner-Supplied Equipment Defect, or (ii) Below Spec Wet Sand,

Contractor shall not, except with Owner's written approval, take any action that would prevent the Owner or any other Person from examining the nature and cause of the defect or deficiency and from independently determining the cause of the defect or deficiency.

- 9.3.4. Any dispute concerning whether a defect or deficiency is a result of an Existing Owner-Supplied Equipment Defect or Below Spec Wet Sand shall be resolved pursuant to Article 29.

**9.4 Correction of Defects.**

- 9.4.1. In the event a Performance Test was unsuccessful for reason other than (i) an Existing Owner-Supplied Equipment Defect, or (ii) Below Spec Wet Sand, Contractor shall, at its sole cost and expense, correct such defects and deficiencies and promptly provide notice to Owner certifying such correction, specifying the measures taken and, if such defects or deficiencies require re-running of those tests, setting forth the date on which the Facility will be ready for the respective deficient Performance Test to be re-run.

- 9.4.2. In the event the Performance Test was unsuccessful because of an Existing Owner-Supplied Equipment Defect or because of Below Spec Wet Sand, Contractor shall act in accordance with Article 10 and Article 14.

**9.5 Re-Run of Performance Tests.**

A failed Performance Test shall thereafter be re-run promptly and the procedure set forth in this Article 9 shall be repeated until all Performance Tests have been satisfactorily completed and all such defects and/or deficiencies have been corrected. Notwithstanding this provision, Contractor may re-perform all Performance Tests at any time after reasonable notice to Owner.

**9.6 Effect of Temporary Equipment.**

If in the reasonable determination of the Owner the replacement of temporary with permanent equipment, systems or operating practices could materially and adversely affect the Facility's performance in the Performance Tests, Contractor shall re-perform the affected Performance Test prior to and as a condition of Final Completion using the permanent equipment, systems or operating practices. The performance of the Performance Test prior to Mechanical Completion shall in no way diminish Contractor's obligation to achieve Mechanical Completion as contemplated by this Contract.

**ARTICLE 10  
EXISTING DEFECTS**

Contractor shall request a Change Order to address an Existing Owner-Supplied Equipment Defect discovered in the Owner-Supplied Equipment or Below Spec Wet Sand provided for the Performance Tests. To the extent that Owner fails to grant such Change Order or otherwise commence repair of the Existing Owner-Supplied Equipment Defect or correction of Below Spec Wet Sand within 180 days, Owner shall be deemed to have terminated this Contract for convenience in accordance with Section 17.1 and Contractor shall not be liable for damages for

failure to satisfy any obligations under this Contract that it is not able to perform as a result of the Existing Owner-Supplied Equipment Defect or Below Spec Wet Sand.

## ARTICLE 11 SUBSTANTIAL AND FINAL COMPLETION

### 11.1 Substantial Completion.

The Contractor shall have achieved "Substantial Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of requirements set forth in Section (a) through Section (k); *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Substantial Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Final Completion.

- (a) Contractor has successfully completed the Performance Tests successfully;
- (b) Contractor has delivered to Owner all final Governmental Approvals required to be obtained by Contractor as described in Section 2.1.8 and listed in Exhibit H;
- (c) Contractor has delivered to Owner all drawings and specifications (except final "as-built" drawings of the Facility, but including red-lined "as-built" drawings of the Facility), test data, and other technical information required hereunder for Owner to start up, operate and maintain the Facility;
- (d) Contractor has delivered to Owner all preliminary operations, maintenance, and spare parts manuals and instruction books necessary to operate the Facility in a safe, efficient and effective manner;
- (e) Contractor has completed all training as may be reasonably requested by the Owner;
- (f) Contractor has performed all other provisions of and delivered all items (other than those on the Punchlist) required by this Contract then to be performed or delivered in a manner reasonably satisfactory to Owner;
- (g) Contractor has delivered to Owner a certificate certifying the satisfaction of each of the requirements set forth in Section (a) through Section (f).
- (h) Contractor has certified that the Facility is ready for daily operations, is ready for normal continuous and safe operation, and has been designed and constructed and is operating in accordance with the Scope of Work;
- (i) Contractor has certified that it has performed all of its obligations under this Contract then to be performed;

- (j) Contractor has paid all amounts to Owner then due and payable under this Contract or has posted a letter of credit, in form and substance acceptable to Owner (in its sole discretion), securing in full the payment of these amounts;
- (k) Contractor has delivered an accurate and complete Punchlist to Owner.

**11.2 Notice of Substantial Completion.**

- 11.2.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Substantial Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Substantial Completion has been achieved, Contractor shall issue to Owner a Notice of Substantial Completion. Within five (5) Business Days after delivery of the Notice of Substantial Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Substantial Completion or (ii) a notice rejecting Contractor's achievement of Substantial Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Substantial Completion submitted to Owner.
- 11.2.2. To be valid, a Notice of Substantial Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Substantial Completion and must set forth the date upon which each of the conditions necessary to achieve Substantial Completion was satisfied.

**11.3 Facility Turnover.**

Upon Substantial Completion, Owner shall take custody and control of the Facility and shall thereafter be solely responsible for its day-to-day security, operation, and maintenance. Contractor and its Subcontractors shall have such access to the Facility following Substantial Completion as may be necessary or desirable to complete any unfinished Work, including Punchlist Items, to make modifications or repairs at Contractor's discretion to improve Facility performance, to perform further Performance Tests, to carry out warranty obligations, or otherwise to fulfill Contractor's obligation under this Contract. Contractor shall minimize disruption of Facility operations.

**11.4 Final Completion.**

The Contractor shall have achieved "Final Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following:

- (a) Contractor has achieved Mechanical Completion;
- (b) Contractor has achieved Substantial Completion;
- (c) Contractor has paid all amounts that are payable to Owner;
- (d) Contractor has delivered to Owner all final "as-built" drawings and specifications of the Facility.

(c) Contractor has completed all items on the Punchlist.

**11.5 Notice of Final Completion.**

- 11.5.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Final Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Final Completion has been achieved, Contractor shall issue to Owner a Notice of Final Completion. Within five (5) Business Days after delivery of the Notice of Final Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Final Completion or (ii) a notice rejecting Contractor's achievement of Final Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Final Completion submitted to Owner.
- 11.5.2. To be valid, a Notice of Final Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Final Completion and must set forth the date upon which each of the conditions necessary to achieve Final Completion was satisfied.

**ARTICLE 12  
SCHEDULE**

**12.1 Substantial Completion Guarantees.**

- 12.1.1. Contractor hereby guarantees that Contractor will achieve Substantial Completion on or before the Guaranteed Substantial Completion Date; *provided, however*, Contractor's guarantee shall not apply to the extent that an Existing Owner-Supplied Equipment Defect or Below Spec Wet Sand prevents Contractor from achieving Substantial Completion on or before the Guaranteed Substantial Completion Date.

**12.2 Construction Milestones**

- 12.2.1. Contractor shall achieve each of the milestones set forth in Exhibit E (each a "Construction Milestone" and, collectively the "Construction Milestones") within the time period prescribed thereof in Exhibit E.
- 12.2.2. Contractor shall notify Owner promptly of the failure to meet a Construction Milestone and, not later than five (5) Business Days following such notice, shall provide Owner with Contractor's plan to regain any lost time, and Contractor shall take all reasonable steps to regain such lost time.

**ARTICLE 13  
TIME AND DELAYS**

**13.1 Time and Delays**

Time is of the essence for this Contract. If the Contractor is delayed in the performance of the Work by:

- (a) the act or omission of Owner or its representatives, or
- (b) the act or omission of any other contractor, supplier or subcontractor (other than Subcontractors and Suppliers); or any other event affecting Contractor (including Subcontractors and Suppliers), Owner, other contractors, or subcontractors which could not be reasonably foreseen and guarded against and is without the fault or negligence and is beyond the control of the party affected;

then the Contractor shall initiate a recovery plan to minimize its effect on the completion dates. The Contractor recognizes that a delay in any one phase of the Work does not necessarily result in any delay or a delay of equal duration in completion of the entire Work. In the event it is not possible to develop a plan adequate to permit achieving the above completion dates without incurring additional costs which the Owner is not willing to assume, the Owner and Contractor shall agree on extending such completion date or dates as may be necessary, but for no greater period than the period of the unavoidable delay; *provided, however*, that such extension of time granted shall be the Contractor's exclusive remedy in event of such delay, no matter how or by whom caused; and, *provided further* that Contractor has complied with the following:

- (i) Immediately upon the onset of the delay, give written notice to Owner.
- (ii) As soon as possible, Contractor will provide Owner with a detailed description and probable duration of the delay and the specific portion of the Work affected.
- (iii) As soon as practicable, the Contractor will, in writing, request an extension of time. If the parties cannot agree upon the right to or amount of the extension, Contractor shall proceed in accordance with Owner's decision and the dispute will be resolved in accordance with the provisions of the Contract.

Failure to provide such notices and request will be a waiver of any claims of the Contractor arising from such delay.

## ARTICLE 14 CHANGES

### 14.1 Change; Change Orders.

- 14.1.1. A Change shall result from an Owner-Directed Change pursuant to Section 14.2 or a Contractor-Required Change pursuant to Section 14.3. No Change shall be made except in accordance with a duly issued Change Order executed in writing by both Parties in accordance with this Article 14. Each Change Order shall contain details of the Change, and any adjustments of the design documents, the Contract Price, the Schedule, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date with the Change Orders setting forth the specific Section(s) of this Contract to be affected thereby.

- 14.1.2. A Change Order may be executed only by an officer of Owner, and the Owner's Representative shall not be duly authorized to execute a Change Order or to otherwise authorize a Change.

**14.2 Owner-Directed Changes.**

Owner, at any time, by notice to Contractor, may direct Changes in the Work consisting of additions, deletions, modifications or substitutions within the general scope of this Contract (any such notice, an "Owner-Directed Change"), subject to any adjustments to the Contract Price and/or the Schedule in accordance with Sections 14.5 and 14.6.

**14.3 Contractor-Required Changes.**

Contractor shall be entitled to adjustments to the Contract Price and/or the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) in accordance with Sections 14.5 and 14.6 by a Change Order ("Contractor-Required Change") resulting from the following circumstances: (a) a Force Majeure Event; (b) as provided in connection with a suspension of the Work pursuant to Article 18; or (c) the existence of Hazardous Materials at the Site (other than as caused by Contractor) that prevent Contractor from performing the Work; provided however, that such circumstance is not in connection with a Contractor event of default, and in each such case (x) to the extent of any impact on Contractor's performance of the Work or on the Contract Price or the Schedule, (y) subject to Contractor's obligation to identify and implement reasonable mitigation of such impacts and (z) in accordance with and subject to the applicable provisions of Sections 14.4, 14.5 and 14.6.

**14.4 Notice to Owner.**

- 14.4.1. Contractor shall give timely notice to Owner of any event or circumstance that Contractor believes is or will give rise to a Contractor-Required Change. Such notice shall be in writing and shall include information on the event or circumstance that gives rise to a Contractor-Required Change; provided that, each such notice shall be issued as promptly as possible but in no event later than twenty (20) days following Contractor's (or any Subcontractor's) actual knowledge of any such event or circumstance.
- 14.4.2. In the case of any Contractor-Required Change, Contractor shall promptly prepare and submit to Owner an estimate (on a fixed-price basis) of the increase or decrease, if any, in the Contract Price in accordance with Section 14.5 and the lengthening or shortening, if any, of the Schedule or extension of the Guaranteed Substantial Completion Date required to complete the Change and the remaining portion of the Work in accordance with Section 14.6, together with an explanation of the basis for the estimates and including the effect of available mitigation of such impact, and the related amendments to any provision of this Contract. Upon Owner's approval of such Change, Contractor shall prepare the Change Order for the Parties to execute and, upon its execution and delivery by both Parties, proceed with the implementation of the Change.
- 14.4.3. Within fifteen (15) Business Days of receipt of any notice of a Contractor-Required Change and all supplemental supporting documentation reasonably necessary for Owner to evaluate the Contractor-Required Change, or such longer period as Owner

may reasonably require to secure necessary approvals, Owner shall notify Contractor of its approval or proposed changes to the Contractor-Required Change. If Owner disputes Contractor's entitlement to or the proposed terms of a Contractor-Required Change, then, subject to Section 14.7, either Party may invoke the provisions of Article 29 to resolve the dispute.

#### **14.5 Adjustments to Contract Price.**

The price of any Work required or modified by a Change shall be on a lump-sum fixed price agreed to by the Parties; provided that, if the Parties are unable to agree on a fixed price for such Change, then Contractor shall perform the Work associated with the Change on a cost-plus basis using rates to be reasonably agreed upon at the time of the Change including an eight percent (8%) profit component. The basis for a Change to the Contract Price shall include: (a) the relevant cost information regarding the portion of the Contract Price that is affected by the Change; (b) the pricing for the cost of equipment modified by the Change; (c) estimated quantities of equipment, materials and labor modified by the Change; and (d) relevant information concerning other factors affecting costs and price. Contractor shall bear the burden of proof in establishing its entitlement to an adjustment in the Contract Price to be provided under such Change and shall use commercially reasonable efforts to mitigate the cost and price impact of any Change.

#### **14.6 Adjustments to Schedule.**

Adjustments to the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) as a result of a Change shall be equal to the actual amount of delay incurred by Contractor on the critical path of the performance of the Work, subject to adjustments to the Work or to the methods or sequence of performing the Work that can be implemented by Contractor to mitigate the delay. Contractor shall use reasonable efforts to mitigate delays; provided however, that if such mitigation would cause a material increase in the costs of performing the Work, Contractor shall not pursue such efforts unless so requested by Owner, in which case Contractor shall be entitled to a related Change in the Contract Price. Contractor shall bear the burden of proof in establishing its entitlement to any adjustments provided for in this Section 14.6.

#### **14.7 Continuation of Work Pending Resolution of Dispute.**

In the event of a dispute in connection with a Contractor-Required Change or an Owner-Directed Change, during the period prior to the resolution of the dispute, Contractor shall perform the Work (including such Work subject to the Change) and may invoice Owner the cost of performing the Change on a time and materials basis in accordance with Contractor's established accounting practices including agreed allocation of overhead costs.

#### **14.8 Other Provisions Unaffected.**

Except to the extent the Parties specifically modify any of the provisions of this Contract as part of an executed Change Order, all provisions of this Contract shall apply to all Changes, and no Change, amendment or waiver shall be implied as a result of any other Change.



## ARTICLE 15 WARRANTIES

### 15.1 Warranties.

- 15.1.1. Contractor warrants the Work (including any Changes) and warrants that the Work (including any Changes) will be
- (a) performed in accordance with the terms and conditions of this Contract,
  - (b) free from defects in design and workmanship, and
  - (c) in compliance with Governmental Rules.
- 15.1.2. Contractor does not warrant anything that is outside the scope of its Work.
- 15.1.3. Contractor warrants that all permanent plant equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the power plant engineering and construction industries, shall be free from defects in design, material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

### 15.2 Remedies.

Upon proper notice received from Owner during the Warranty Period, Contractor shall, without additional compensation:

- (a) Design and Engineering: Re-perform correctly any engineering or design Work that is found to be defective in that it fails to meet the warranties set out in Section 15.1 and perform or cause to be performed remedial construction work or rework that is required to effect such re-performed engineering or design Work;
- (b) Construction: Re-perform or cause to be re-performed any construction Work that is found to be defective in that it fails to meet the warranties of workmanship set out in Section 15.1; and
- (c) Equipment and Materials: Take such steps as may be necessary to repair or replace any equipment or materials found to be defective due to failure to meet the warranties set out in Section 15.1.

### 15.3 Warranty Period.

Contractor's obligations and liabilities under this Article 15 shall cease upon the termination of the "Warranty Period," defined as the period extending for one (1) year after the date of Substantial Completion; *provided, however*, that any Work which is not complete on the date of Substantial Completion shall be warranted for one (1) year after the completion date of such

Work; and *provided* further that any re-performance, repair, or replacement work performed prior to Final Completion shall be re-warranted for one (1) year after the completion date of such work, and any re-performance, repair, or replacement work performed during the Warranty Period shall be re-warranted for one (1) year after the completion date of such work.

#### **15.4 Notice.**

Contractor's warranty obligations and liabilities are conditioned on Owner's delivering notice of an alleged deficiency or defect within a reasonable time after actual discovery thereof by Owner; *provided, however*, that Owner's failure to give such notice during such period shall not relieve Contractor of its warranty obligations and liabilities except to the extent Contractor is prejudiced by such failure. Any such notice of deficiency or defect shall state with reasonable specificity the date of occurrence or observation of the deficiency or defect and the reasons supporting Owner's belief concerning the alleged deficiency or defect. Contractor shall respond to any such notice not later than seven (7) Business Days after receipt of any such notice, and if the notice correctly invokes Contractor's warranty obligations, Contractor shall promptly commence the appropriate re-performance, repair, or replacement, consistent with Section 15.3.

#### **15.5 Assignment of Subcontractor Warranties.**

Contractor shall cause all Subcontractor warranties to be assignable (and shall be assigned) to Owner or Owner's designee upon the expiration of the Warranty Period.

#### **15.6 Warranty Enforcement Remedies.**

Except in cases of an emergency requiring immediate corrective action by Contractor, promptly upon receipt by Contractor of a notice from Owner specifying a failure of any of the Work to satisfy Contractor's warranties, Contractor and Owner shall mutually agree when and how Contractor shall remedy such deficiencies with due regard for the involvement of applicable Subcontractors; *provided, however*, that in case of an emergency (such as unplanned Facility outages) requiring immediate corrective action, Contractor and Owner shall so agree on such remedy as soon as practicable after notice by Owner of such emergency. If Contractor does not use its best efforts to proceed to complete such remedy within the time agreed, or, should Contractor and Owner fail to reach such an agreement, within a reasonable period (or as soon as practicable in the case of emergency conditions), Owner, after notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy and the costs thereof shall be borne by Contractor.

#### **15.7 Provisions of Clear Title.**

15.7.1. Contractor warrants that title to all materials, equipment, tools and supplies furnished by it and its Subcontractors that become part of the Facility or are purchased by Contractor for Owner for the operation, maintenance or repair thereof shall be merchantable and free and clear of any liens and claims. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner upon the later of

- (a) incorporation into the Facility; or

- (b) payment by Owner to Contractor under Article 4 hereof of invoiced amounts pertaining thereto.
- 15.7.2. Notwithstanding passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the earlier of the Substantial Completion or the termination of this Contract.
- 15.7.3. In order to protect Owner's interest in all materials, equipment, tools and supplies with respect to which title has passed to Owner but which remain in the possession of a third party, Contractor shall take or cause to be taken all steps necessary under the laws of appropriate jurisdiction (s) to perfect and maintain Owner's title and to protect Owner against claims by other parties with respect thereto.

## **ARTICLE 16**

### **INSPECTION OF THE WORK**

#### **16.1 Right of Access.**

Owner's authorized representatives and permitted assigns and such other Persons as Owner may designate with Contractor's consent, which shall not be unreasonably withheld, shall have the right at all reasonable times during performance of the Work, upon reasonable prior notice to Contractor, to inspect the Work and the Facility and any item of equipment, material, design, engineering, service or the workmanship associated therewith including observations of start-up and performance testing but not including access to cost or pricing data associated therewith. Contractor shall, at the request of Owner, cooperate with the arrangements for any such inspection of equipment or material on the Site, and at the point of significant fabrication. Contractor shall submit to Owner, as soon as practical, the manufacturer's schedule for typical inspection and hold points for materials being manufactured in relation to the Work.

#### **16.2 Rejection of Work.**

To the extent that any portion of the Work will not be able to be reviewed during the Mechanical Completion inspection process discussed in Section 8.3, Owner shall have the right on a timely basis to reject any portion of the Work that does not meet the standards of the Work set forth in Section 15.1. Upon such rejection and before such portion of the Work is covered so as not to be able to be reviewed during such Mechanical Completion inspection, Contractor shall remedy, at its sole cost and expense, all conditions giving rise to such rejection.

#### **16.3 No Acceptance of Work.**

Any rights asserted by Owner under this Article 16 shall in no way affect or reduce Contractor's obligations under this Contract and will not be deemed to constitute an acceptance by Owner with respect to such Work.

## ARTICLE 17 TERMINATION

### 17.1 Termination for Owner's Convenience.

- 17.1.1. Right. Owner may at any time, for any reason, terminate this Contract, in whole or in part, upon ten (10) days written notice to the Contractor.
- 17.1.2. Contractor's Obligation. Upon receipt of such notice, Contractor will discontinue work on the date and to the extent specified in the notice and will thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect materials, plant and equipment at the Site or in transit to the Site. In addition, Contractor shall transfer or assign, as applicable, to Owner, or to any replacement contractor designated by Owner, without any right to additional compensation (a) title to all affected Work not already owned by Owner; (b) all subcontracts and other agreements (including warranties) as may be designated by Owner; (c) to the extent assignable or transferable, all Governmental Approvals, if any, then held by Contractor pertaining to the Facility; and (d) to the extent assignable or transferable, any license agreements from suppliers or other third parties for license of intellectual property for the Facility; provided that, Owner assumes all liability under such assigned contracts for obligations first arising following such assignment, and Contractor, if requested by Owner, shall provide Owner, any replacement contractor or any financing party, at Owner's expense, with the right to continue to use any and all such intellectual property and other patented and/or proprietary information that Contractor has rights to use not otherwise assigned hereunder, if any, which Owner deems necessary to complete the Facility. Contractor shall incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.

### 17.2 Termination Payment for Termination for Convenience.

- 17.2.1. In the event of termination by Owner under Section 17.1, then, subject to Section 17.2.2, Owner shall pay to Contractor a cancellation fee (the "Termination Payment"). Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Contract pursuant to Section 17.1. The Termination Payment shall consist of:
- (a) amounts due, but not yet paid, for Work performed prior to the effective date of termination;
  - (b) reasonable cancellation costs payable to Subcontractors;
  - (c) direct costs paid, contracted or for which Contractor is liable, in accordance with this Contract or as required by Governmental Rule, at the time of termination that are in addition to amounts otherwise paid or due as of the effective date of termination;

- (d) costs reasonably incurred by Contractor in protecting the Work;
- (e) costs reasonably incurred by Contractor in performance of the items enumerated in Section 17.1.2;
- (f) an additional payment equal to eight percent (8%) of the aggregate amount of Section 17.2.1(c), Section (d), and Section (e); and
- (g) an amount equal to eight percent (8%) of the Contract Price;

provided however that, no such additional payment in Section (f) and Section (g) shall be due or payable in the event that such termination for convenience is due to a Force Majeure Event. It is understood and agreed by the Parties that Contractor would be damaged by Owner's termination of this Contract for convenience and that (i) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (ii) the termination fee described in Section (g) above is in the nature of liquidated damages and not a penalty and is fair and reasonable; and (iii) such payment represents a reasonable estimate of fair compensation to Contractor for the losses that may reasonably be anticipated from such termination and serves as the sole remedy to Contractor in the event of termination for convenience.

17.2.2. Deductions from Termination Payment. Owner shall not be required to pay any portion of the Termination Payment, and (because of subsequently discovered evidence or subsequent observations) may make a demand for repayment of any portion of the Termination Payment previously made to Contractor, to the extent of amounts paid or costs incurred by Owner in respect of:

- (a) liens filed against the Facility or the Site, or any portion thereof, by Subcontractors or any other Person entitled to payment from Contractor or a Subcontractor; provided that, Owner has paid all amounts due hereunder to Contractor;
- (b) failure or refusal of Contractor to make payments to any Subcontractor when due; provided that, Owner has paid all amounts due hereunder to Contractor; and
- (c) any representation or certification of Contractor made in this Contract to Owner that proves to be materially false and that materially and adversely affects the Facility or the operations thereof.

17.2.3. Verification of the Termination Payment. Contractor shall, within thirty (30) days of any termination of this Contract for convenience, submit to Owner invoices and other documentation as is sufficient to enable Owner to verify the amount of Contractor's costs in the performance of the Work so that Owner and Contractor may determine the amount of the Termination Payment.

17.2.4. Payment of the Termination Payment. Owner shall pay the entire Termination Payment to Contractor within thirty (30) days of Owner's receipt of the Contractor's invoice therefor and Contractor's provision of supporting information.

- 17.2.5. Subcontractors and Suppliers. Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**17.3 Termination by Owner for Contractor Default.**

- 17.3.1. Contractor Default. Contractor will be in default if it at any time it:

- (a) refuses, neglects or fails in any respect to prosecute the Work hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein;
- (b) refuses, neglects or fails to perform any other obligations under this Contract;
- (c) falls thirty (30) or more days behind the Schedule as based on the Construction Milestones or it becomes manifest that Contractor will miss the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date by more than 30 days.
- (d) goes into liquidation other than as part of a corporate reorganization;
- (e) fails to achieve Final Completion by the Guaranteed Final Completion Date;
- (f) enters into composition with its creditors; or
- (g) becomes insolvent.

- 17.3.2. Notice of Default. Owner may, but is not required to, notify Contractor in writing of any default. Upon receipt of any such written notice of default, the Contractor will, at its expense, preserve all construction materials, equipment and plant, and undertake immediate steps to remedy such default. If the Contractor fails to remedy such default within thirty (30) calendar days after receipt by it of such written notice of default, Owner may, in writing, and without notice to the Contractor's sureties, if any, terminate the Contractor's right to proceed with the Work, *provided, however*, that such failure to remedy a non-monetary default will not be deemed a default if, promptly after notice Contractor commences in good faith and thereafter diligently prosecutes measures which may reasonably be expected to be effective to result in a cure of such failure in such a way and by such a time, not to exceed an additional 30 day period as shall avoid any material adverse effect on Owner's rights under this Contract, the Work, or Contractor's ability to achieve the Guaranteed Substantial Completion Date and *provided* further that Contractor shall not be entitled to any cure period under this Section 17.3.2 for the defaults described in subparagraphs (3), (4), and (5) of Section 17.3.

- 17.3.3. Contractor's Obligations. Upon receipt of any such written notice of termination of right to proceed, the Contractor will at its expense:

- (a) Provide a written, detailed inventory of all materials and equipment in storage at the Site, en route to the Site, in storage or manufacture away from the Site, and on order from its Suppliers.
- (b) Assign to Owner all or some of its Subcontractor or Supplier agreements and equipment rental agreements as designated by Owner. Contractor will incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.
- (c) Remove from the Site only such construction materials, equipment and plant listed in the inventory which are designated in writing by Owner not to be used by Owner in completing the Work.

**17.4 Owner's Rights on Default.**

In the event of such termination, Owner may enter upon the premises and into places of manufacture of Contractor, Subcontractors and Suppliers (Contractor will incorporate this right in its agreements with Subcontractors and Suppliers) and, for the purpose of completing the Work or enforcing these provisions, take possession of all materials, equipment, tools and appliances thereon belonging to or under the control of Contractor and may use them or may finish the Work by whatever method it may deem expedient, including the hiring of another contractor(s) or subcontractor(s) under such form of contract as Owner may deem advisable; or Owner may itself provide any labor or materials and perform any part of the Work. In such case Contractor will not be entitled to receive any further payment until the Work is completed. If the unpaid balance of Contractor's compensation hereunder exceeds the sum of the expense of finishing the Work plus compensation to Owner for its additional managerial and administrative services and such other costs and damages as Owner may suffer, such excess will be paid to Contractor. If such expense, compensation, costs, and damages exceed such unpaid balance, Contractor and its sureties, if any, will be liable for and will pay the excess to Owner.

**17.5 Additional Rights and Remedies.**

Such right to terminate is not Owner's exclusive remedy and is in addition to any other rights and remedies it may have under this Contract or by law. Failure of Owner to exercise any of its rights under this Section 17.5 will not excuse Contractor from compliance with the provisions of this Contract nor prejudice rights of Owner to recover damages for such default.

**17.6 Termination by Contractor for Owner's Default.**

Contractor may terminate this Contract in the event Owner (1) refuses, neglects or fails to perform any material obligation under this Contract, (2) goes into liquidation other than as part of a corporate reorganization, (3) enters into a composition with its creditors or (4) becomes insolvent, by giving notice of termination to Owner. Owner shall have the right to cure such default within Thirty (30) days, in which case such notice of termination shall be void and of no effect. Contractor shall promptly submit to Owner a progress report detailing Work progress to date and an accounting of costs associated with the termination itself. Owner shall pay Contractor, not later than thirty (30) days after receipt of Contractor's progress report and

accounting, for progress to date plus the costs reasonably incurred due to the termination, *provided, however*, that in no case shall the total amount paid to Contractor hereunder be greater than the Contract Price.

## **ARTICLE 18 SUSPENSION**

### **18.1 Notice of Suspension.**

Owner may at any time for any reason order the Contractor, upon one (1) day's written notice, unless otherwise specified in the Contract, to suspend, extend the time of performance, or interrupt ("Suspend" or "Suspension") all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of Owner. Upon receipt of such notice, the Contractor will Suspend Work on the date and to the extent specified in the notice.

### **18.2 Adjustment.**

18.2.1. If the performance of all or any part of the Work is Suspended by Owner, an adjustment will be made for any increase in the cost and time of performance of this Contract necessarily caused by such Suspension, as set forth in this Section 18.2. However, no adjustment will be made under this clause for any Suspension to the extent (1) that performance would have been so Suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) which is provided for or excluded under any other provision of this Contract.

18.2.2. Upon such Suspension, Contractor waives all claims for damages, including, but not limited to, loss of anticipated profits, idle equipment, labor and facilities, and any claims of Subcontractors and Suppliers, and will accept the following as sole and complete compensation for such Suspension:

- (a) reasonable costs associated with demobilization of Contractor's plant, forces and equipment;
- (b) reasonable costs incurred by Contractor in connection with its efforts to suspend orders, subcontracts and rental agreements;
- (c) reasonable costs of maintaining and protecting the Work;
- (d) a reasonable standby charge to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the Work on a standby basis.

### **18.3 Resumption of Suspended Work.**

Upon receipt of notice to resume Suspended Work, the Contractor will resume performance of the Suspended Work to the extent required in the notice and within ten (10) days submit to Owner for review a revised Schedule.



**18.3.1. Upon such resumption, Contractor shall receive:**

- (a) Reasonable mobilization costs consistent with the extent of remobilization, if not otherwise specified in the Contract; and
- (b) An adjustment in the compensation provisions of this Contract to compensate Contractor for any costs of performance that were increased as a result of the Suspension. These adjustments shall be limited to such matters as cost increases required under labor, Subcontractor or Supplier agreements in effect on the date of Suspension.

18.3.2. The Schedule shall be adjusted to account for the effect of the period of Suspension.

**18.4 Request for Relief.**

No claim under this clause will be allowed unless the claim, in an amount stated, is asserted in writing to Owner as soon as practicable after the termination of such Suspension but not later than twenty (20) days from the date Work is resumed or if not resumed, the date this Contract is terminated. In the event that Contractor and Owner cannot agree on the compensation and Schedule adjustment, the Contractor shall proceed with the Work as directed by Owner and the dispute will be resolved in accordance with the provisions of the Contract.

**18.5 Subcontractors and Suppliers.**

The Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**ARTICLE 19  
FORCE MAJEURE EVENT**

**19.1 Excuse from Performance for Force Majeure Event.**

Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if, and to the extent that, its failure of or delay in performance is due to a Force Majeure Event, and both parties shall use reasonable efforts and due diligence to mitigate such an event.

**19.2 Notice of Force Majeure Event.**

If either Party's ability to perform its obligations hereunder is affected by a Force Majeure Event, such Party shall, promptly, but in any event within ten (10) days, upon learning of such event, give notice to the other Party stating the nature of the event, its potential effect and the anticipated duration thereof, and any action being taken to avoid or minimize its effect. The burden of proof shall be on the Party claiming Force Majeure Event.

**19.3 Relief for Force Majeure Event.**

The suspension of performance due to a Force Majeure Event shall be of no greater scope and no longer duration than reasonably required. The party suffering the Force Majeure Event shall use its best efforts and due diligence to partially or fully remedy any inability to perform arising from such a Force Majeure Event. If such suspension shall have occurred, the Guaranteed Substantial Completion Date shall be extended by a period equal to the amount of time (including a reasonable period for demobilization and remobilization) as demonstrated by Contractor to be necessary for Contractor to make up for the delay. The Schedule affected by such delay shall be adjusted as appropriate to reflect the new Guaranteed Substantial Completion Date.

**19.4 No Excuse of Obligations to Pay Money.**

Notwithstanding the foregoing, the obligation to pay money in a timely manner for Work actually performed shall not be excused due to a Force Majeure Event and shall not be subject to suspension.

**19.5 Owner Self-Help.**

If within a reasonable time after a Force Majeure Event occurrence that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event occurrence or its direct or indirect effects, Owner may, in its sole discretion and after written notice to Contractor, at Owner's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event occurrence or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. The existence of Owner's remedy under this Section 19.5 shall not prejudice any other remedies available to Owner under this Contract.

**ARTICLE 20  
INSURANCE**

**20.1 Contractor Provided Insurance.**

During the performance of the Site, the Contractor shall maintain or cause to be maintained the following types of insurance:

- 20.1.1. Worker's Compensation Insurance. As required by state laws, including employer's liability insurance for all employees of the Contractor in the amount required by statute.
- 20.1.2. All Risk Builder's Risk Insurance. To provide coverage on an "all risk" basis including coverage against damage or loss caused by earth movement, flood and operational testing. Such insurance shall be for the replacement value of the Facility as described below. The policy shall also provide coverage for:
  - (a) removal of debris;
  - (b) material in transit, including ocean marine, if applicable;

- (c) off-site storage;
- (d) theft;
- (e) expediting expense;
- (f) demolition and increased cost of construction;
- (g) water damage; and
- (h) cold and hot (operational) testing.

The deductible for all such physical damage shall not exceed (i) \$100,000 for operational testing coverage, (j) \$250,000 or five percent (5%) of the value of the damaged property at the time of loss for earth movement coverage, whichever amount is less, and (k) \$25,000 for all other losses. No co-insurance shall be applicable.

- 20.1.3. **Commercial General Liability Insurance.** To provide coverage against claims for third party personal injury (including bodily injury and death) and third party property damage. Such insurance shall provide coverage for products-completed operations (which coverage shall remain in effect for a period of two years following Substantial Completion), blanket contractual, independent contractors, explosion, collapse and underground hazards, broad form property damage and personal injury, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and a \$2,000,000 aggregate annual limit.
- 20.1.4. **Excess Insurance.** Excess liability insurance on an "occurrence" basis pursuant to an "umbrella" policy or policies covering claims in excess of and following the terms of Comprehensive General Liability and Comprehensive Automobile Liability Insurance described herein with a \$10,000,000 minimum limit per occurrence and a \$10,000,000 project aggregate limit.
- 20.1.5. **Comprehensive Automobile Liability.** To provide coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles used in the construction of the Facility hereunder with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.
- 20.1.6. **Professional Liability Insurance.** To provide coverage against liability arising out of active malfunctioning of systems resulting from defective design, with a minimum limit per occurrence of \$ 5,000,000. This insured amount should be excluded from the overall Contractor's liability cap.

## **20.2 Insurance Policies/Certificates.**

Contractor shall furnish Owner with evidence of the insurance required to be provided by Contractor hereunder, in the form of insurance certificates reasonably satisfactory to the Owner. All such insurance certificates shall include, but not be limited to, the type of insurance, the

limits of insurance, the policy term, the names(s) of the insurance company (or companies), and a list of the applicable endorsements.

**20.3 Applicable Endorsements.**

- 20.3.1. All policies of property insurance shall: (i) Provide for waivers of subrogation in favor of the Owner and its respective officers and employees; and (ii) name Owner as an additional insured.
- 20.3.2. All policies of liability insurance shall: (i) provide a severability of interests or cross liability clause and (ii) name the Owner as an additional insured.
- 20.3.3. All policies shall be primary and not excess to or on a contributing basis with any insurance or self-insurance maintained by the Contractor.
- 20.3.4. All policies shall include a rider providing that they may not be canceled, non-renewed or changed without thirty (30) days prior written notice sent by registered mail to Owner.

**ARTICLE 21  
INDEMNIFICATION**

**21.1 Indemnity by Contractor.**

Contractor covenants and agrees that it will indemnify and hold Owner, and all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement, judgment (including interest thereon), defense or costs of litigation (including attorney's fees) whether to any person (including employees of Contractor, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with Contractor's or any of its Subcontractor's or Supplier's performance of the Contract or in connection with the performance of the Work, to which Owner, or any of its officers, agents or employees may be subject or put. Without limiting the foregoing, said obligation includes claims involving Contractor's, Supplier's or Subcontractor's employees injured while going to and from the Site. Contractor will not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of Owner, or any of its officers, agents or employees.

**21.2 Indemnity by Owner.**

Owner covenants and agrees that it will indemnify and hold Contractor and all of its officers, agents and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement or judgment (including interest thereon) whether to any person (including employees of Owner, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with the performance of the Work caused or resulting from the sole negligence of the Owner, or any of its officers, agents or employees to which Contractor, or any of its officers, agents or employees may be subject or put. Owner will not be liable under this section for damages arising out of claim, injury or

damage to persons or property directly caused or resulting from the sole negligence of Contractor, or any of its officers, agents or employees.

### **21.3 Defense.**

The indemnifying Party under this Contract ("Indemnitor") shall have the sole right to control the defense of any suit or proceeding with its choice of counsel based on any claim, demand, loss, damage, cause of action, suit or liability for which Indemnitor is responsible under any such indemnification. Indemnitor shall not settle any claim without the prior written consent of the indemnified Party ("Indemnitee") if such settlement (a) does not include an irrevocable release of all claims against the Indemnitee; (b) materially diminishes any of Indemnitee's rights under this Contract or seeks to impose additional obligations on Indemnitee; (c) modifies the Facility or the operation or maintenance of the Facility; or (d) contains a stipulation or admission or acknowledgement of any liability or wrongdoing on the part of Indemnitee. Indemnitee shall give the Indemnitor such assistance as the Indemnitor may reasonably require in such defense, at Indemnitor's expense. Indemnitee shall have the right to be represented in such defense and settlement by counsel of its own choice at its own expense. If the Indemnitor fails to defend diligently such suit or proceeding, the Indemnitee may, in its reasonable discretion, either defend such suit or proceeding or settle the claim which is the basis thereof, without the consent of the Indemnitor, but with prior notice to the Indemnitor, without relieving the Indemnitor of its indemnification obligations hereunder and in each case the Indemnitor shall reimburse the Indemnitee for the settlement payment, expenses, court costs and reasonable attorneys' fees.

### **21.4 Survival.**

The provisions of this Article 21 shall survive the termination of this Contract to the extent any claim, loss, damage, cost, charge, expense, lien, settlement, judgment (including interest therein), defense or costs of litigation (including attorney's fees) arose as a result of the performance of this Contract.

## **ARTICLE 22 LAWS, REGULATIONS AND PERMITS**

### **22.1 Obligation to Inform.**

The Contractor shall keep itself fully informed of and will observe and comply with all Governmental Rules including, but not limited to, environmental and pollution control laws which in any manner affect those engaged or employed on any Work, or the materials and equipment used in any Work, or the performance of any Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. If any discrepancy or inconsistency should be discovered between the Contract and any such law, ordinance, code, regulation, order or decree, the Contractor will immediately report the same by notice to Owner. The Contractor will be responsible for the compliance by Subcontractors and Suppliers of all tiers with the above provisions. Contractor and Subcontractors and Suppliers of all tiers will be responsible and liable for all fines levied in violation of any Governmental Rules.

## **ARTICLE 23 PATENTS, TRADEMARKS AND PROPRIETARY RIGHTS**

### **23.1     General.**

Contractor warrants that all materials, equipment and processes used or supplied and services performed are free from any infringement of any patent, trademark or other proprietary right.

### **23.2     Indemnity.**

Contractor will indemnify and defend any action brought against Owner all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees based on a claim that any process used, equipment or material supplied or service performed pursuant to the Contract constitutes an infringement or violation of any patent, trademark or other proprietary right. Owner will at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor will pay all of Owner's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, equipment, material or service is enjoined, Contractor will, at its own expense and at Owner's option either

- (a)     procure for Owner the right to continue using said process, equipment, material or service;
- (b)     replace it with noninfringing process, equipment, materials or service acceptable to Owner; or
- (c)     modify it in a manner acceptable to Owner so that it becomes noninfringing.

The provisions of this Section 23.2 shall survive the termination of this Contract, to the extent that any claim arose as a result of performance under the Contract.

### **23.3     Royalties and License Fees.**

Contractor will pay all royalties and license fees necessary for the proper performance of the Work.

## **ARTICLE 24 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

All original tracings of the drawings and specifications prepared by the Contractor shall become Owner's property and shall be delivered to Owner upon payment therefore as provided herein, upon completion of the Work, or upon termination, abandonment or postponement of the Work, and Owner thereafter shall have full right to use such drawings, designs, specifications or instruments for any purpose in connection with its own properties without any claim on Contractor's part for additional compensation by reason of such use.

## ARTICLE 25 CONFIDENTIAL INFORMATION

### 25.1 Confidentiality

- 25.1.1. This terms of this Contract and all information expressly designated by a Party as confidential information and all information that by its nature is sensitive or proprietary shall be treated as confidential and, subject to this Article 25 such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- 25.1.2. This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Contract or has been, or could have been, lawfully acquired by the Party.
- 25.1.3. Notwithstanding the provisions of this Article 25, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- (a) to directors and employees and affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such affiliates keep the disclosed information confidential on the same terms as are provided in this Article 25;
  - (b) to persons professionally engaged by or on behalf of such Party; provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
  - (c) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure or as necessary to obtain any permits or other governmental approvals required in connection with the Work ; or
  - (d) to: (1) any lending or other financial institution in connection with the financing of such Party's operations; or (2) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Contract, but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Article 25;
  - (e) to any expert appointed pursuant to and under the terms of this Contract.

## ARTICLE 26 LIENS

### 26.1 Obligation to Keep Free of Liens.

- 26.1.1. Contractor shall keep the Facility, all real property related thereto, and all materials, equipment, structures, and tools furnished by it or its Subcontractors free and clear of all liens, claims, security interests, and other encumbrances.
- 26.1.2. Contractor will pay each Subcontractor within ten days after Contractor receives payment from the Owner for any subcontracted Work.
- 26.1.3. Upon request by Owner, Contractor shall provide the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Work, together with the amount due or to become due for such work. Owner shall have the right to contact these Subcontractors and suppliers at any time to verify payment of amounts due. Owner retains the right to take whatever steps it deems necessary to ensure that progress and final payments will be utilized to pay potential lien claimants, including the issuance of joint checks or making payment directly to any claimant after notice to Contractor.

**26.2 Discharging of Liens.**

- 26.2.1. Contractor shall take prompt steps to discharge any lien, security interest, claim, or other encumbrance filed against the Facility, or upon any materials, equipment or structures encompassed therein, or upon the premises upon which they are located by any subcontractor based on a claim for payment in connection with the Work; *provided, however,* Contractor may in lieu thereof provide to Owner a bond, in the amount of such lien in form and substance satisfactory to Owner.
- 26.2.2. If Contractor fails to satisfy its obligations under Section 26.2.1, Owner shall have the right to (i) consider the amount of the lien or encumbrance as presumptively correct, (ii) withhold from any payment to Contractor then due, or thereafter to become due (including the final request for payment), an amount sufficient to completely indemnify Owner against such lien or encumbrance, (iii) pay the amount of such lien or encumbrance and pursue recovery actions against Contractor and (iv) retain out of the amount withheld an amount sufficient to compensate Owner for its expenses (including actual attorneys' fees) in the matter

**26.3 Indemnification.**

- 26.3.1. Contractor shall indemnify and hold harmless Owner, all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees from, and defend their interests against any and all liens, defense, costs of litigation (including attorney's fees) or similar claims against the Facility filed by a Subcontractor in connection with the Work including all expenses and attorney's fees incurred in discharging any liens or similar encumbrances.
- 26.3.2. Contractor's obligations with respect to liens and claims covered by this Article 26 are subject to the conditions that:
  - (a) the indemnitee gives Contractor reasonably prompt notice of any such liens or similar claim;



- (b) the indemnitee cooperates in the defense of any such lien or similar claim; and
  - (c) Contractor has sole control of the defense and settlement to the extent of the Contractor's liability for any such lien or similar claim, *provided, however,* that Contractor shall confirm in writing its obligation to indemnify the indemnitee with respect to all costs and expenses with respect to such lien or similar claim.
- 26.3.3. The provisions of this Section 26.3 shall survive the termination of this Contract, to the extent that any lien, defense, costs of litigation (including attorney's fees) or similar claim arose as a result of the performance of this Contract.

## ARTICLE 27 NOTICES AND COMMUNICATIONS

### 27.1 Notices.

Any notice pursuant to the terms and conditions of this Contract shall be in writing to the addresses specified in Exhibit P, and either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt requested; or (d) sent by facsimile transfer and acknowledged by recipient.

### 27.2 Effect of Notices.

Notices shall be effective when received by the Party to whom addressed.

## ARTICLE 28 LIMITATIONS OF LIABILITY

### 28.1 Remedies Exclusive.

The remedies expressly afforded by this Contract are intended to be the sole and exclusive remedies of the Parties to this Contract for the liabilities of such Parties arising out of or in connection with the Work or this Contract, notwithstanding any remedy otherwise available at law or in equity.

### 28.2 Consequential Damages.

In no event, except to the extent of amounts paid to third parties as described in Article 21 and as may be construed to cover such damages, whether as a result of breach of contract, warranty, guarantee, indemnity, tort, including negligence, strict liability or otherwise, shall either Party hereto or any Subcontractor be liable for indirect, special, incidental, consequential or exemplary damages, including but not limited to, the loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, down time costs, costs in excess of estimates loss of opportunity, loss of data, loss of goodwill, cost of purchased or replacement power, governmental penalties or sanctions imposed on Owner and/or claims of customers of the other Party for such damages; and Owner hereby releases Contractor and all Subcontractors and Contractor hereby releases Owner therefrom.

## ARTICLE 29 DISPUTE RESOLUTION

### 29.1 Applicability of Resolution Procedures.

All claims, disputes or other matters in question between the Parties arising out of or relating in any way to this Contract ("Disputes") will be resolved pursuant to this Article 29.

### 29.2 Management Discussions.

The Parties agree to make a diligent, good-faith attempt to resolve all Disputes. If the Parties are unable to resolve a Dispute arising under this Contract within three (3) Business Days after notice from one Party to the other, such Dispute will be submitted promptly to the senior executive officers of the Parties, who will meet, in person or by telephone, not later than ten (10) days after the date such Dispute was submitted to them. In the event that the officers cannot resolve the Dispute within five (5) Business Days after the matter is submitted to them, then, unless otherwise agreed, the Parties will refer such Dispute to mediation proceedings under Section 29.3.

### 29.3 Litigation

All disputes between the Parties arising out of or relating to this Contract and not otherwise resolved by the Parties shall be decided by judicial resolution or pursuant to the rights of the Parties under law.

### 29.4 Obligations Continue.

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under the Contract.

### 29.5 Injunctive Relief.

Notwithstanding anything in this Contract to the contrary, nothing in this Contract is intended to, nor shall it, prevent the Parties from seeking injunctive relief at any time as may be available under law or in equity.

### 29.6 Survival.

The provisions of this Article 29 will survive the termination of this Contract.

## ARTICLE 30 REPRESENTATIONS AND WARRANTIES

### 30.1 Representations and Warranties of Contractor.

Contractor hereby represents and warrants to Owner as follows:

- 30.1.1. Due Organization of Contractor. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the state in which it was formed and has

the requisite corporate power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas and in any other jurisdiction in which the transaction of its business makes such qualification necessary.

- 30.1.2. Due Authorization of Contractor; Binding Obligation. Contractor has full power and authority to execute and deliver this Contract and to perform its obligations hereunder, and the execution, delivery and performance of this Contract by Contractor have been duly authorized by the necessary corporate action on the part of Contractor; this Contract has been duly executed and delivered by Contractor and is the valid and binding obligation of Contractor enforceable in accordance with its terms.
- 30.1.3. Non-Contravention. The execution, delivery and performance of this Contract by Contractor and the consummation of the transactions contemplated hereby do not and will not contravene the certificate of incorporation or by-laws of Contractor and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Contractor is a party or by which it or any of its properties is bound or affected.
- 30.1.4. Regulatory Approvals. Governmental or other authorizations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract by Contractor have been obtained or will be obtained in due course.
- 30.1.5. Site Conditions. Contractor represents and warrants that it has inspected the Site and surrounding locations, including both surface and subsurface conditions in accordance with prudent engineering practices (including use of subsurface radar to detect utility lines and other installations), and is familiar with the physical requirements of the Work and accepts them for such performance. It is further understood and agreed that this representation and warranty shall not be deemed to cover any matters relating to the existence of Hazardous Materials or the existence of subsurface conditions that could not reasonably have been discovered by Contractor with the exercise of prudent engineering practice, which are the responsibility of Owner.

## **30.2 Representation and Warranties of Owner.**

Owner hereby represents and warrants to Contractor as follows:

- 30.2.1. Due Organization of Owner. Owner is a limited liability company duly organized and validly existing and in good standing under the laws of the state in which it was formed and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas.
- 30.2.2. Due Authorization of Owner; Binding Obligation. Owner has full power and authority to execute and deliver this Contract and to perform its obligations hereunder and the execution, delivery and performance of this Contract by Owner have been duly authorized by the necessary company actions on the part of Owner; this Contract has

been duly executed and delivered by Owner and is the valid and binding obligation of Owner enforceable in accordance with its terms.

- 30.2.3. Non-Contravention. The execution, delivery and performance of this Contract by Owner and the consummation of the transactions contemplated hereby do not and will not contravene the articles of organization of Owner and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Owner is a party or by which it or any of its properties is bound or affected.

## **ARTICLE 31 MISCELLANEOUS**

### **31.1 Effect of Invalid Provisions.**

The invalidity or unenforceability of any portion or provision of this Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract. The parties shall negotiate an equitable adjustment in such portions or provisions of this Contract to effect the underlying purposes of this Contract.

### **31.2 Governing Law.**

The Contract, and the rights, obligations and liabilities of the parties thereto will be construed in accordance with the law of the State of Texas.

### **31.3 Third Party Beneficiaries.**

No third party shall be deemed to be a third-party beneficiary under this Contract, except as expressly set forth herein.

### **31.4 Entire Contract.**

This Contract sets forth and forms the entire agreement between Owner and the Contractor for the Work. All prior, other and collateral agreements, representations, warranties, promises and conditions relating to the subject matter of the contract are superseded by this Contract. The table of contents and section headings included in this document are for reference only and do not form a part of this Contract. No changes, amendments or modifications of this Contract will be valid unless made pursuant to a written amendment signed by both Parties.

### **31.5 Purpose and Intent of the Contract.**

It is the intent of the parties that all rights and obligations of Owner and Contractor with regard to performance of the Work are fully set forth in this Contract. All parts of this Contract are intended to be correlative and complementary. Any Work required by one part and not mentioned in other parts will be performed to the same extent and purpose as though mentioned in all parts. The misplacement, addition, or omission of a word or a character will not change the meaning or intent of any part of the Contract from that set forth by the Contract as a whole.

**31.6 Standards and Codes.**

Wherever references are made in the Contract to standards and codes in accordance with which Work is to be performed or tested, the edition or revision of such standards and codes in effect on the date of the Contractor's bid or the date of this Contract, whichever is earlier, will apply unless otherwise expressly set forth in the Contract. Unless otherwise specified in the Contract, reference to such standards and codes is solely for technical information. In case of conflict among any such referenced standards and codes or between any such standard(s) or code(s) and the requirements of the Contract, Contractor will give notice to the Owner of such conflict and Owner will determine which shall govern.

**31.7 Non-waiver.**

None of the provisions of the Contract will be considered waived by Owner or Contractor unless such waiver is given in writing by Owner or Contractor, as the case may be. No such waiver will be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Contract unless expressly set forth in such waiver.

**31.8 Survival.**

Except for such obligations as are necessarily affected by termination, cancellation or expiration of this Contract, termination, cancellation or expiration will not relieve Contractor of any obligations arising under this Contract prior to termination, cancellation or expiration including but not by way of limitation, warranties and indemnity obligations.

**31.9 Successors and Assigns.**

This Contract and every covenant, condition and provision of the Contract shall work to the benefit of and be binding upon the Owner and the Contractor, and each of their respective partners, heirs, and legal representatives, successors and permitted assigns. The Contractor shall not assign, transfer or sublet his interest in or obligations hereunder without the express written consent of the Owner.

**31.10 Set-Off.**

Any amount owing at any time from Contractor or its subcontractors to Owner or any of its affiliated companies may be set-off against amounts due and payable by the Owner to the Contractor for Work supplied under this Contract. Contractor agrees to specify in all subcontracts entered into by it in furtherance of the Work contemplated hereby that amounts payable by it thereunder shall be subject to set-off by it in behalf of the Owner for amounts owing by the subcontractors to the Owner or any of its affiliated companies.

**31.11 Assignment.**

Contractor may assign as collateral its interest hereunder to a lender or any other person in connection with the exercise of collateral rights of the lender. This Contract shall not be assigned by the Contractor to any other party without the prior written consent of the Owner.

[Signature page follows.]

IN WITNESS WHEREOF, the Owner and the Contractor have made and executed this Contract as of the day and year first written above.


**SUPERIOR SILICA SANDS LLC**

Signature 

By RICHARD J. SHEARER

Title PRESIDENT & CEO

**MARKET & JOHNSON, INC.**

Signature 

By Jason Plante

Title Vice President

**SUPERIOR SILICA SANDS LLC**

**- and -**

**MARKET & JOHNSON, INC.**

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**CONSTRUCTION CONTRACT**

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**2018**

**FOR**

**A WET SAND PROCESSING PLANT**

**AT THE SAN ANTONIO TEXAS SITE**



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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (this “Contract”) is made and entered into as of March \_\_\_, 2018 by and between Superior Silica Sands LLC (the “Owner”), a Texas limited liability company, and Market & Johnson, Inc. (the “Contractor”), a corporation with its principal office located at 2350 Galloway Street, Eau Claire, WI 54702-0630.

### WHEREAS:

- A. Owner desires to engage Contractor to undertake certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, permitting, supervision, project management, and related services for the Project (as defined herein); and
- B. Contractor desires and, together with its subcontractors and suppliers, has the requisite personnel, equipment, and expertise to undertake the certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, permitting, supervision, project management, and related services for the Project (as defined herein).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS & INTERPRETATION

### 1.1 Defined Terms.

Unless otherwise required by the context in which a term appears, capitalized terms (whether stated in the singular or plural, present, future, or past tense) shall have the meaning specified in Exhibit A.

### 1.2 Interpretation.

Unless the context requires otherwise, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. Unless the context requires otherwise: (i) any reference contained herein to this Contract or any other agreement or any appendix, schedule, exhibit or attachment hereto or thereto shall mean this Contract or such other agreement and such schedules, exhibits and attachments as amended, supplemented or otherwise stated, (ii) any reference in this Contract to any Person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any Person succeeding to its functions and capacities, and (iii) any reference in this Contract to any Section, Article, or Exhibit shall mean and refer to the Section or Article contained in or the Exhibit attached to this Contract. The words “include” and “including” shall mean to include, without limitation.

**1.3 Force of Exhibits.**

The Exhibits to this Contract shall be deemed to form and shall be read and construed as part of this Contract.

**ARTICLE 2  
RESPONSIBILITIES OF CONTRACTOR**

**2.1 Work to be Performed.**

Except as otherwise expressly set forth herein as being the responsibility of Owner, Contractor shall perform or cause to be performed all of the Work. Without limiting the foregoing, as part of the Work, Contractor shall provide the following services:

- 2.1.1. Structural/Civil Design. Contractor shall perform detailed design and engineering, excluding any design and engineering work not within the Contractor's scope, of the Facility Site ("Design and Engineering Work"). Contractor's engineering services shall include the preparation of drawings, specification, schedules, calculations, documents, and estimates, and coordination with the engineering efforts of Subcontractors.
- 2.1.2. Procurement. Contractor shall procure and make payment for all materials, equipment, supplies, and services to be furnished by Subcontractors or Suppliers. Contractor shall also perform such inspection, expediting, quality surveillance, and traffic services as Contractor deems necessary in connection with such procurement.
- 2.1.3. Construction. Contractor shall perform services to construct the Facility, furnishing management, qualified labor (including a full-time on-site safety manager, equipment, tools, and temporary facilities necessary for such construction. Contractor shall handle and warehouse materials, supplies, and equipment required for such construction.
- 2.1.4. Owner-Supplied Equipment. Contractor shall receive and take possession of the Owner-Supplied Equipment and cause it to be installed on the Facility.
- 2.1.5. Reserved.
- 2.1.6. Spare Parts. Contractor shall promptly recondition, if Owner agrees, or replace at its expense any spare parts Contractor or any Subcontractor uses from Owner's inventory.
- 2.1.7. Securing Governmental Approvals. Except as to be provided by Owner, Contractor shall secure all Governmental Approvals required in connection with the construction of the Facility or the performance of the Work, including all Governmental Approvals as are indicated to be obtained by Contractor in Exhibit H, and as may be hereafter identified by agreement of the Parties. Contractor shall on a timely basis provide all customary and reasonably necessary support to Owner in connection with Owner's securing of Governmental Approvals under Section 3.8 of this Contract.
- 2.1.8. Project Management. Contractor will be responsible for overall project management. Contractor will plan and manage the activities that make up Contractor's Work and be

the primary point of contact for the Owner. Contractor's responsibilities will include, among other things, managing, monitoring and reporting progress, deployment of a project administration team responsible for project cost controls, accounting and invoicing, and overall project administration functions.

## **2.2 Standard for Performance of the Work.**

Contractor shall perform and prosecute the Work in accordance with the terms and conditions of this Contract, the Process Design Work, and in compliance with all Governmental Approvals and Governmental Rules applicable to the prosecution of the Work, using methods and equipment that satisfy Construction Contractor Standards. Contractor shall install, test and operate all equipment and systems and otherwise perform the Work in a safe manner, using qualified, competent, and where necessary, licensed personnel.

## **2.3 Grade of Materials**

All equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the applicable industries, shall be free from defects in material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

## **2.4 Independent Contractor.**

Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between Owner and Owner's Representative and Contractor's employees. Except as expressly limited in this Contract, Contractor shall be entitled to exercise the right to hire, discharge, promote and transfer its employees; to select and remove foremen or other persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to perform a task; and to establish, maintain, and enforce rules and regulations conducive to efficient and productive operations.

## **2.5 Labor-Related Delays.**

Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the performance of the Work by Contractor or by any Subcontractor.

## **2.6 Responsibility for Subcontractors and Agents.**

Contractor may subcontract portions of the Work to any Person without further approval by Owner; *provided, however* that Owner shall have the right to reject any proposed Subcontractor or Supplier, except to the extent pre-approved by Owner as specified in Exhibit D. Owner's acceptance of any proposed Subcontractor or Supplier shall not constitute an approval of any portion of the Work or a waiver of any of Owner's rights hereunder or reduce Contractor's

responsibilities hereunder. Contractor shall not be entitled to relief for any portion of the Work that is incomplete or for any delay due in whole or in part to any disagreement between or among Subcontractors or between any Subcontractor and Contractor. Contractor has complete and sole responsibility as principal for its agents and all others it hires to perform or assist in performing the Work.

**2.7 Appointment of Key Personnel.**

- 2.7.1. Contractor shall identify to Owner a project manager (Patrick Sullivan and Tim Esselman, each a "Project Manager"), subject to Owner's approval.
- 2.7.2. Notwithstanding Section 2.4, Contractor shall not change the Project Manager, without prior written consent of Owner, which shall not be unreasonably withheld.

**2.8 Project Manager.**

- 2.8.1. Project Manager shall have the authority to commit Contractor to any course of action within the rights and obligations of Contractor under the provisions of this Contract. All notifications, information and decisions from Project Manager shall be as if from Contractor and shall bind Contractor.
- 2.8.2. Project Manager may delegate any of his responsibilities to any nominated deputy, the terms of which delegation shall be the subject of prior consent of Owner, such consent not being unreasonably withheld. Notifications, information and decisions from any such nominated deputy shall be as if from Project Manager.
- 2.8.3. A notice delivered to Project Manager shall be deemed to be notification to Contractor.
- 2.8.4. While the Work is being performed, Project Manager or his nominated deputy shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work and shall be readily available to discharge Contractor's responsibilities in accordance with this Contract.

**2.9 Cooperation and Coordination.**

Contractor shall cooperate with Owner during the performance of the Work to assist in the conduct of inspections, and other matters relating to the Facility. Contractor shall provide such information as is reasonably requested by Owner relating to the Facility in dealing with the Owner, and/or any Governmental Unit, including information reasonably required to support Owner's compliance with applicable Governmental Approvals. Contractor shall provide Owner with written notice reasonably in advance of all significant scheduled meetings with Governmental Units and shall provide Owner with a reasonable opportunity to attend such meetings where practicable.

**2.10 Progress Reports.**

- 2.10.1. Following commencement of the Work and until Final Completion, the Contractor shall deliver a Progress Report no later than the twelfth day of each month.



- 2.10.2. If the Contractor falls behind the Schedule, it shall immediately take, and cause its subcontractors to take, such action as may be necessary to remedy the delay, and shall submit to Owner a recovery schedule or progress chart demonstrating the manner in which the delay will be remedied.

**2.11 Assurance Regarding Payment.**

Upon request from time to time, Contractor shall provide to Owner such assurances as Owner may reasonably request as to the status of payments from Owner to Contractor and from Contractor to Subcontractors.

**2.12 Publicity.**

Contractor shall obtain Owner's prior written approval of the text of any external announcement, publication, or other type of public communication concerning the Work or the Facility prior to the release of the same by Contractor. Contractor shall provide that a similar obligation is imposed on Subcontractors.

**2.13 Hazardous Wastes and Materials.**

Contractor shall remove, transport, and dispose of any Hazardous Materials transported onto the Site by Contractor or any Subcontractor or created, used, or handled as part of Contractor's or any Subcontractor's construction activities at the Site or on off-site rights of way and easements furnished by Owner.

**2.14 Safety.**

Contractor will promote and will be responsible for the safety and health of its and its Subcontractor's and Supplier's employees. Contractor will also ascertain and comply with all Governmental Rules, including all applicable occupational safety and health standards and other state and local requirements relating to safety and health, accident or injury to its employees on, about, or adjacent to the premises where the Work is being performed. Contractor shall ensure that all employees including subcontractors are MSHA certified. Any training time and cost for MSHA certification will be the responsibility of the Contractor. The Contractor shall also take all necessary precautions for the safety of all persons on the Site, and shall erect and properly maintain at all times, as required by job conditions and progress of the Work, all necessary safeguards for the protection of its and its Subcontractors' and Suppliers' employees and the public; shall post danger signs warning against the hazards created by such features of construction as protruding nails, bad hoists, well holes, hatchways, scaffolding, window openings, stairways and dangers from falling materials; shall not load or permit any part of the Work to be loaded so as to endanger its safety. The Contractor shall designate a responsible member of his organization on the Work whose duty shall include the prevention of accidents. In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of such emergency work shall be determined in accordance with the provisions of this Contract.

**2.15 Site Requirements.**

Contractor shall comply with and shall require Subcontractors and Suppliers to comply with the Site Requirements.

**2.16 Reporting Accidents.**

Contractor will notify Owner in the event that it or its Subcontractor's or Supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Work done under the Contract. Contractor will also submit to Owner a written follow-up accident report, available from Owner, within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Contractor will also furnish Owner with a copy of all claims submitted to its insurance companies.

**2.17 Security.**

- 2.17.1. Contractor may furnish security personnel at the Site to control access, patrol yards and buildings, maintain order and enforce security regulations. The Contractor shall be obligated to replace or pay for all materials and equipment including items furnished by the Owner, damaged or stolen prior to completion of the Work. The presence or absence of such security services shall not be construed to modify the responsibility of the Contractor for loss and/or damages to persons or property within its custody or control.
- 2.17.2. Certain items are prohibited from the Site under all conditions. These items include alcoholic beverages, controlled substances, drugs, firearms, cameras and hunting devices. Owner's, or Owner's designated representative's, security personnel may conduct periodic, random inspections of vehicles, lunch boxes, coolers, cartons or other containers brought on to the Site.
- 2.17.3. Contractor employees in violation of the above provisions shall be subject to immediate removal from the Site and not allowed to continue the Work.

**2.18 Use of Owner's Equipment, Personnel and Facilities.**

- 2.18.1. Circumstances may arise where Contractor will request that Owner make available to Contractor certain equipment or facilities and operators for the performance of Work. If Owner agrees to such request (which it is under no circumstances obligated to do), the equipment or facilities will be for Contractor's account at rates specified by Owner and subject to such terms and conditions (which may be in addition to those set forth in this Contract) as Owner may require.
- 2.18.2. The Contractor will assure itself of the condition of such equipment and facilities before use and will assume all risks and responsibilities in its use of the facilities and equipment. Contractor will indemnify and hold Owner harmless against any damages or claims that may arise from such use. It is the responsibility of the Contractor to substantiate, before returning such equipment and facilities to Owner, that no part of the

equipment or facilities loaned to the Contractor has been over-stressed or damaged in any way as a result of its use.

- 2.18.3. In the event such equipment is furnished with an operator, it is understood that such operator will perform his services under the complete direction and control of Contractor and will be considered Contractor's employee for all purposes other than the payment of wages, worker's compensation or other benefits paid directly to such employee by Owner.

## **2.19 Site Conditions.**

The Contractor has sole responsibility for satisfying itself concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials, including lay down areas; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the Site; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed prior to and during performance of the Work; and all other matters which can in any way affect performance of the Work or the cost associated with such performance. The failure of the Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating the difficulty, and cost for successfully performing the Work. If Owner furnishes any data or other information concerning surface or subsurface conditions, any reliance on or use of such data or information by Contractor is at Contractor's sole risk.

## **2.20 Contractor's Employees and Management.**

- 2.20.1. Contractor will perform the Work diligently and will maintain at all times a sufficient number of competent and fit workers with adequate supervision to complete the Work properly, skillfully, in a workmanlike and timely manner.
- 2.20.2. At Owner's request the Contractor will remove any employee whom Owner deems unacceptable for any reason.
- 2.20.3. Contractor will not, in any event, admit to the Site any person who does not have proper credentials sufficient to establish that such person has a legitimate purpose for being on or about the Site. In the event of any doubt, Contractor is to contact Owner for clarification or further instructions.

## **2.21 Cleanup and Waste Disposal.**

- 2.21.1. The Contractor will, at all times, keep the Site in a neat, clean, and safe condition.
- 2.21.2. Upon completion of any stage of the Work, the Contractor will promptly remove all of its equipment, temporary structures, waste and surplus construction and other materials and ancillary facilities not to be used at or near the same location during later stages of the Work. Before final payment is made, the Contractor will, at its expense, satisfactorily dispose of all plant, ancillary facilities buildings, rubbish, waste, unused

materials and other equipment and materials belonging to it or used in the performance of Work, and the Contractor will leave the work areas and premises in a neat, clean and safe condition.

- 2.21.3. The Contractor will ascertain and comply with the Government Rule applicable to the use, resale, storage, transportation and disposal of any materials including, but not limited to, any materials classified as hazardous. If the Contractor fails to comply with any of the foregoing, the same may be accomplished by Owner at the Contractor's expense.

**2.22 Delivery and Storage.**

- 2.22.1. Contractor shall receive, unload, store, warehouse, protect against loss or damage from every source, handle and maintain all materials, tools and equipment whether supplied by it, or its Subcontractors or Suppliers for Contractor's use.
- 2.22.2. The Contractor shall not use any portion of the Site as a lay down area or for storage except as otherwise provided in this Contract.
- 2.22.3. The Contractor shall not use any portion of the Site without express written consent of the Owner.

**2.23 Protection of Owner's Property and Equipment.**

- 2.23.1. The Contractor will at all times take adequate precautions, to Owner's satisfaction, to protect Owner's property and adjoining property from damage.
- 2.23.2. Unless otherwise specified in the Contract, all Work is to be performed without interruption of service or production of Owner, and consistent with Owner's safety rules and practices. If, in the Contractor's opinion, it will be necessary to interrupt Owner's service or production, Contractor will advise Owner as soon as possible in advance of the anticipated interruption. If Owner determines, in its sole discretion, that the interruption is necessary, it will make all arrangements therefor and will advise Contractor of all arrangements made. If Owner determines it is not necessary, Contractor will proceed with the Work without such interruption.
- 2.23.3. Public utility facilities, such as plant generating equipment, communications and power lines, gas and water mains, telephone and other cables and structures and the like, are not to be moved or otherwise tampered with until suitable arrangements with the company owning or operating such facilities are completed. Contractor will notify Owner reasonably in advance of commencing any Work in the vicinity of such facilities and is to make all necessary arrangements without loss of time or interference with Owner's schedules.

**2.24 Limited Notice to Proceed.**

All work undertaken pursuant to a Limited Notice to Proceed shall be incorporated as part of the Work and, from the date of execution of this Contract, deemed to have been performed under this Contract.

**2.25 Sand Stock Pile Area.**

- 2.25.1. Contractor shall have exclusive responsibility for the construction of the sand stock pile areas on the Site.

**ARTICLE 3  
RESPONSIBILITIES OF OWNER**

**3.1 Design.**

Owner shall furnish the detailed process design of the Facility including appropriate specifications of equipment, materials and systems to be incorporated into the Facility (the "Process Design Work").

**3.2 Cooperation with Contractor.**

Owner shall cooperate with Contractor during the performance of this Contract. Such cooperation shall include timely supply of all those items, personnel, services, and information required to be supplied by Owner under this Contract; no material interference with Contractor's agents, employees or Subcontractor; and timely administration of all of Owner's obligations under this Contract.

**3.3 Site Access.**

Owner shall furnish access to the Site. Owner shall assure reasonable rights of ingress to and egress from the Site to Contractor, Subcontractors, and Suppliers sufficient for the performance of the Work.

**3.4 Property Rights.**

Owner shall be responsible for obtaining necessary real property rights and other real estate rights for performance of the Work. This obligation shall apply with regard to the Site.

**3.5 Services and Utilities.**

- 3.5.1. Owner shall provide on the Site at no cost or expense to Contractor electricity; *provided, however*, that such electricity shall only be used in connection with Contractor's performance of its obligations under this Contract. Owner shall have no responsibilities to provide gas, phone service, transportation, sewer, compressed air, or any other utility or service.
- 3.5.2. Electricity shall be available as of the date necessary for construction purposes.

**3.6 Lay Down Area**

Owner shall provide reasonably sufficient space on the Site to lay down materials and to conduct the Work, and such areas shall be within reasonable proximity to the Site.

**3.7 Owner's Representative.**

3.7.1. Owner shall designate and identify by written notice to Contractor its Owner's Representative, who shall act as Contractor's primary point of contact with Owner with respect to the prosecution of the Work. Owner hereby designates Jim Sadowski as the initial Owner's Representative.

3.7.2. Owner may designate a replacement Owner's Representative at any time by delivery of notice of such replacement to Contractor.

**3.8 Governmental Approvals.**

3.8.1. Owner shall secure the Governmental Approvals listed in Exhibit I. Owner shall not be considered to have delayed in meeting this obligation to the extent any such delay is due to a failure or delay of Contractor to provide timely support to Owner as required under Article 2.

3.8.2. Owner shall on a timely basis provide all customary and reasonably necessary support to Contractor in connection with Contractor's securing of Governmental Approvals under Section 2.1.7.

**3.9 Grading.**

3.9.1. Owner shall at no cost to Contractor be responsible for grading the wash plant site, Owner shall do so in accordance with applicable Construction Contractor Standards and shall complete such Site grading prior to the issuance of the Notice to Proceed.

**3.10 Technical Data.**

3.10.1. Owner shall supply all available geological, utility, and other Site data, but Contractor shall not rely on such data.

3.10.2. Upon reasonable request by Contractor, Owner shall cooperate with Contractor in obtaining such additional technical data as may be necessary for Contractor to perform the Work.

**3.11 Time and Manner of Owner's Performance.**

Owner shall carry out the responsibilities described in this Article 3 at no cost to Contractor and in accordance with the provisions of this Contract and the Schedule.

**3.12 Testing.**

Owner shall perform that Performance Test as specified in Article 9.

## **ARTICLE 4 PAYMENT TERMS**

### **4.1      Contract Price.**

- 4.1.1. Owner shall pay to Contractor the Contract Price for the performance of the Work in accordance with this Contract.
- 4.1.2. The Contract Price is a fixed, turn-key price and is not subject to change other than as provided in this Contract.

### **4.2      Progress Payments.**

- 4.2.1. Following the initial invoice, at the end of each month during the performance of the Work, Contractor shall provide the Owner with an invoice based upon the cost of the Work completed as set forth on Exhibit L. Notwithstanding the foregoing, no invoice in any given month shall exceed the amount ("Monthly Cap") set forth on Exhibit L.
- 4.2.2. Each invoice shall be delivered together with (a) supporting documentation substantiating the completion of the Work reflected on such invoice and (b) duly executed lien waivers by Contractor and each Subcontractor for the Work reflected in such invoice, which lien waivers are substantially in the form attached hereto as Exhibit M (in relation to each progress payment up to and including the payment for achieving Substantial Completion) and as attached hereto as Exhibit N (in relation to the payment for Final Completion). Each invoice shall constitute the certification of Contractor that the Work to date is in accordance with this Contract.
- 4.2.3. Within ten (10) Business Days (or such other period to the extent so noted in Exhibit L) following the delivery of an invoice and the supporting documentation described in Section 4.2.3, Owner shall pay 100% of amounts due as reflected on such invoice. If Owner disputes any portion of an invoice, then Owner shall provide written notice to Contractor indicating the reason Owner is withholding any amount and shall pay the undisputed portion of the invoice in accordance with this Section 4.2. No payment by Owner of any invoice shall be deemed Owner's acceptance of the Work reflected thereon. The Parties shall resolve disputes relating to any invoices in accordance with the procedures set forth in Article 29.

### **4.3      Updates.**

Contractor shall upon request of the Owner provide to the Owner any cost information or backup requested, including all Subcontractor and Supplier invoices.

### **4.4      Lien Waivers.**

Submission of a duly executed lien waiver as provided in Section 4.2.3 shall be a condition of Contractor's right to receive each progress payment.

## **ARTICLE 5 SECURITY**

### **5.1      Performance Guarantee.**

At the Owner's request, Contractor shall furnish to Owner on or prior to the date first set forth above security in the form set forth in Exhibit J as a guarantee of all performance, payment, indemnity, warranty and other obligations of Contractor under this Contract. Owner shall reimburse Contractor the actual cost of such guarantee paid to the issuer thereof, up to a cap of one percent (1%) of the Contract Price.

## **ARTICLE 6 ACCOUNTING AND AUDIT CONTROL**

### **6.1      Accounting Systems and Records.**

The Contractor shall carefully check, and prepare and maintain, detailed accounting records of all materials, labor and other items entering into the Work. Such accounting, as well as all other systems of filing, accounting, and financial controls pertaining to the Work, employed by the Contractor, or any of his subcontractors performing under guaranteed maximum price or cost reimbursable subcontracts must be of such accuracy and detail as to permit the Owner to fully assess and protect its financial interest. The Contractor shall preserve all records at his sole cost and expense for a period of at least five (5) years following final payments by the Owner under this Contract.

### **6.2      Documents and Forms.**

The Contractor shall submit to the Owner, as and when required below, the following:

- (a) Contractor's purchase order and subcontract forms, for approval prior to their first use in connection with the Work, such forms to provide for material specifications, unit price, delivery promise, tax status, shipping and discount terms;
- (b) Copies of all subcontracts and purchase orders including all applicable change orders and amendments, promptly upon their issuance;
- (c) Job organization chart(s) and listing of all supervisory, technical and clerical personnel of the Contractor and each subcontractor performing under a guaranteed maximum price or cost reimbursable contract, giving full description of responsibilities, rates of pay, overtime, vacation, sickness and other allowances, for Owner's approval prior to start of the Work;
- (d) Copy of the Contractor's daily labor report showing each field employee's name, badge number and hours worked, at the end of each working day;
- (e) Analysis of the Contract Price using cost breakdown schedule forms provided by the Owner, such analysis to represent reasonable and appropriate estimates



suitable for the Owner's accounting, equipment control and tax records to be submitted no later than sixty (60) days after receipt of such schedule forms from Owner.

## **ARTICLE 7 COMMENCEMENT AND COMPLETION DATES**

### **7.1 Limited Notice to Proceed and Notice to Proceed.**

Upon receipt of a Limited Notice to Proceed, Contractor shall commence limited portions of the Work, the scope of which shall be specified in the Limited Notice to Proceed. Contractor shall commence all portions of the Work promptly upon delivery to Contractor of a Notice to Proceed.

### **7.2 Guaranteed Completion Dates.**

Contractor shall pursue the Work with all due diligence and shall achieve

- (a) Substantial Completion by the Guaranteed Substantial Completion Date; and
- (b) Final Completion by the Guaranteed Final Completion Date.

## **ARTICLE 8 MECHANICAL COMPLETION**

### **8.1 Mechanical Completion.**

The Contractor shall have achieved "Mechanical Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following, except for minor items of Work that would not affect the performance or operation of the Facility such as painting, would not require shutdown of the Facility to complete and would affect any guarantee, each of the items listed in Section (a) through Section (ff) have been achieved; *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Mechanical Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Substantial Completion.

- (a) The entire Facility, or applicable part thereof, has been inspected for completeness using project drawings, data, and specifications as the base;
- (b) Contractor has completed conducting hydrostatic, pneumatic, and other field tests of pipe and other materials and emptying material lines after such tests where necessary;
- (c) All safety and fire protection requirements have been met;
- (d) All vendors' and manufacturers' instructions and drawings for materials furnished by Contractor have been transmitted to Owner;

- (e) Safety tools and other items necessary for a safe plant startup of the Facility are available to Owner.
- (f) All approved tests, inspection certificates, and reports applicable to Contractors' Work have been submitted to Owner;
- (g) Clean up has been completed and accepted to the point that it does not interfere with commissioning and start-up activities.
- (h) Insulation (and fireproofing if required) of all equipment, piping, valves, instruments, and other parts of the Facility for heat conservation and personnel protection has been completed so that shutdown of equipment or the Facility is not required to complete the insulation work;
- (i) Painting (to the extent provided for in scope of work or standard industry practice) is complete enough so that completion of the painting work does not require shutdown of the equipment or the Facility and shall not hinder operators during operation of the Facility;
- (j) All rust preventatives and oils used to protect the Facility during the construction period must be removed whenever these protective materials will be detrimental to operations.
- (k) The initial charge of all lubricant has been installed, except as restricted by commissioning activity;
- (l) All mechanical seals, permanent packing, and accessories have been installed as required, except as restricted by commissioning activity.
- (m) All temporary supports, bracing, or other foreign objects that were installed in vessels, transformers, rotating machinery or other equipment to prevent damage during shipment, storage and erection have been removed.
- (n) Rotating machinery has been checked for correct direction of rotation and for freedom of moving parts before connecting the driver.
- (o) Cold alignment of all rotating portions of the Facility have been made to the manufacturers' tolerances.
- (p) All accessories have been installed as required, except as restricted by commissioning activity;
- (q) All system piping, electrical and controls tie-ins have been made and verified, except as restricted by commissioning activity;
- (r) A list of proper settings for all safety devices has been provided to Owner;

- (s) All mechanical safety devices have been tested, adjusted and installed by Contractors;
- (t) All systems have been cleared and are free of trash and construction debris;
- (u) Contractor has provided to Owner all vendor manuals containing vendor recommended spare parts, except for a portion of the Facility supplied by Owner;
- (v) All materials and equipment have been installed substantially in accordance with the requirements of the Scope of Work, and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity;
- (w) All systems required to be installed by Contractor have been installed in a manner consistent with applicable codes and standards and equipment manufacturers' recommendations and in a manner that does not void any Subcontractor equipment or system warranties;
- (x) Contractor has performed all operational tightness testing, including hydrostatic or pneumatic testing of all piping, as required by the drawings and specifications;
- (y) Temporary strainers are provided and have been installed as required by the commissioning procedures.
- (z) All blinds required for testing or flushing have been removed from the systems.
- (aa) All inner packing materials such as sand, gravel, etc. have been procured and installed in vessels as specified.
- (bb) All materials other than materials specifically noted elsewhere such as chemicals, resins, desiccants, catalysts and other similar material, have been installed in vessels as specified.
- (cc) All mixed beds containing chemicals, resins, desiccants, catalysts, or other operating materials and inner packing materials such as sand, gravel, balls and saddles, have been installed as specified.
- (dd) Contractor has cleaned all lines of loose material by flushing or blowing out except those lines which must be blown by running permanent pumps or compressors, and any other special cleaning or preparation of individual lines that is called for in the drawings and specifications;
- (ee) Contractor certifies and Owner agrees that all the equipment and systems can be operated in a safe and prudent manner; and

- (ff) Contractor has obtained all Governmental Approvals and any other items required by Government Rule necessary for achieving Mechanical Completion under this Section and for conducting Performance Tests under Section 9.1.

## **8.2 Mechanical Completion Incremental.**

It is understood that Mechanical Completion can be accomplished in incremental steps, the sum total of which, after notice in accordance with Section 8.3, shall constitute Mechanical Completion of the Facility.

## **8.3 Notice of Mechanical Completion.**

- 8.3.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Mechanical Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Mechanical Completion has been achieved, Contractor shall issue to Owner a Notice of Mechanical Completion. Within five (5) Business Days after delivery of the Notice of Mechanical Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Mechanical Completion or (ii) a notice rejecting Contractor's achievement of Mechanical Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Mechanical Completion submitted to Owner.
- 8.3.2. To be valid, a Notice of Mechanical Completion must set forth the date upon which each of the conditions necessary to achieve Mechanical Completion was satisfied.
- 8.3.3. The date of Mechanical Completion shall be the date upon which all of the conditions set forth in Section 8.1 have been satisfied.

# **ARTICLE 9 PERFORMANCE TESTS**

## **9.1 Commencement of Facility Performance Tests.**

Owner shall commence the Performance Tests after all requirements under Section 8.1 have been satisfied; *provided, however*, Owner may commence the Performance Tests after each of the following conditions have been satisfied:

- (a) the Facility can be operated in a safe and reliable manner; and
- (b) all equipment and systems that are directly related to the Facility and interconnections thereto are mechanically complete, including all Owner-Supplied Equipment.

## **9.2 Tests to be Performed.**

- 9.2.1. The "Performance Tests" shall consist of tests set forth in Exhibit O.

9.2.2. Each one of the Performance Tests may be run concurrently or in the order chosen by the Owner.

9.2.3. During any Performance Test, the Facility shall be in full compliance with the requirements of the Contract, Governmental Rules, and Governmental Approvals.

**9.3 Diagnosing Defects.**

9.3.1. If a Performance Test was unsuccessful, Owner shall consult with the Contractor and all relevant Subcontractors and Suppliers to diagnose the defect or deficiency as quickly as possible. If Owner reasonably determines that the defect or deficiency is not a result of (i) the Process Design Work or (ii) an Existing Owner-Supplied Equipment Defect, Contractor shall correct such defect or deficiency in accordance with Section 9.4.

9.3.2. Any dispute concerning whether a defect or deficiency is a result of the Process Design Work or an Existing Owner-Supplied Equipment Defect shall be resolved pursuant to Article 29.

**9.4 Correction of Defects.**

9.4.1. In the event a Performance Test was unsuccessful for reasons other than the causes described in Section 9.3.1, Contractor shall, at its sole cost and expense, correct such defects and deficiencies and promptly provide notice to Owner certifying such correction, specifying the measures taken and, if such defects or deficiencies require re-running of those tests, setting forth the date on which the Facility will be ready for the respective deficient Performance Test to be re-run.

9.4.2. In the event the Performance Test was unsuccessful as a result of the causes described in Section 9.3.1, Owner, at its sole cost and expense, shall be responsible for correcting such defects or deficiencies.

**9.5 Re-Run of Performance Tests.**

9.5.1. A failed Performance Test shall thereafter be re-run promptly and the procedure set forth in this Article 9 shall be repeated until all Performance Tests have been satisfactorily completed and all such defects and/or deficiencies have been corrected. .

**ARTICLE 10  
EXISTING DEFECTS**

Contractor shall request a Change Order to address any defect or deficiency in the Process Design Work or an Existing Owner-Supplied Equipment Defect discovered in the Owner-Supplied Equipment. To the extent that Owner fails to grant such Change Order or otherwise commence remediation of the Process Design Work or repair of the Existing Owner-Supplied Equipment Defect within one-hundred eighty (180) days, Owner shall be deemed to have terminated this Contract for convenience in accordance with Section 17.1 and Contractor shall not be liable for damages for failure to satisfy any obligations under this Contract that it is not

able to perform as a result of the defect or deficiency in the Process Design Work or the Existing Owner-Supplied Equipment Defect.

## ARTICLE 11 SUBSTANTIAL AND FINAL COMPLETION

### 11.1 Substantial Completion.

The Contractor shall have achieved “Substantial Completion” on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of requirements set forth in Section (a) through Section (k); *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Substantial Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Final Completion.

- (a) Contractor has delivered to Owner all final Governmental Approvals required to be obtained by Contractor as described in Section 2.1.7 and listed in Exhibit H;
- (b) Contractor has delivered to Owner all drawings and specifications (except final “as-built” drawings of the Facility, but including red-lined “as-built” drawings of the Facility), test data, and other technical information required hereunder for Owner to start up, operate and maintain the Facility;
- (c) RESERVED;
- (d) Contractor has performed all other provisions of and delivered all items (other than those on the Punchlist) required by this Contract then to be performed or delivered in a manner reasonably satisfactory to Owner;
- (e) Contractor has delivered to Owner a certificate certifying the satisfaction of each of the requirements set forth in Section (a) through Section (d).
- (f) Contractor has certified that the Facility has been constructed in accordance with the Scope of Work;
- (g) Contractor has certified that it has performed all of its obligations under this Contract then to be performed;
- (h) Contractor has paid all amounts to Owner then due and payable under this Contract or has posted a letter of credit, in form and substance acceptable to Owner (in its sole discretion), securing in full the payment of these amounts; and
- (i) Contractor has delivered an accurate and complete Punchlist to Owner.

**11.2 Notice of Substantial Completion.**

- 11.2.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Substantial Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Substantial Completion has been achieved, Contractor shall issue to Owner a Notice of Substantial Completion. Within five (5) Business Days after delivery of the Notice of Substantial Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Substantial Completion or (ii) a notice rejecting Contractor's achievement of Substantial Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Substantial Completion submitted to Owner.
- 11.2.2. To be valid, a Notice of Substantial Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Substantial Completion and must set forth the date upon which each of the conditions necessary to achieve Substantial Completion was satisfied.

**11.3 Facility Turnover.**

Upon Substantial Completion, Owner shall take custody and control of the Facility and shall thereafter be solely responsible for its day-to-day security, operation, and maintenance. Contractor and its Subcontractors shall have such access to the Facility following Substantial Completion as may be necessary or desirable to complete any unfinished Work, including Punchlist Items, to make modifications or repairs at Contractor's discretion to improve Facility performance, to perform further Performance Tests, to carry out warranty obligations, or otherwise to fulfill Contractor's obligation under this Contract. Contractor shall minimize disruption of Facility operations.

**11.4 Final Completion.**

The Contractor shall have achieved "Final Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following:

- (a) Contractor has achieved Mechanical Completion;
- (b) Contractor has achieved Substantial Completion;
- (c) Contractor has paid all amounts that are payable to Owner;
- (d) Contractor has delivered to Owner all final "as-built" drawings and specifications of the Facility;
- (e) Contractor has completed all items on the Punchlist.

**11.5 Notice of Final Completion.**

- 11.5.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Final Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Final Completion has been achieved, Contractor shall issue to Owner a Notice of Final Completion. Within five (5) Business Days after delivery of the Notice of Final Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Final Completion or (ii) a notice rejecting Contractor's achievement of Final Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Final Completion submitted to Owner.
- 11.5.2. To be valid, a Notice of Final Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Final Completion and must set forth the date upon which each of the conditions necessary to achieve Final Completion was satisfied.

**ARTICLE 12  
SCHEDULE**

**12.1 Substantial Completion Guarantees.**

- 12.1.1. Contractor hereby guarantees that Contractor will achieve Substantial Completion on or before the Guaranteed Substantial Completion Date; *provided, however*, Contractor's guarantee shall not apply to the extent that a defect or deficiency in the Engineering Work or an Existing Owner-Supplied Equipment Defect prevents Contractor from achieving Substantial Completion on or before the Guaranteed Substantial Completion Date.

**12.2 Construction Milestones**

- 12.2.1. Contractor shall achieve each of the milestones set forth in Exhibit E (each a "Construction Milestone" and, collectively the "Construction Milestones") within the time period prescribed thereof in Exhibit E.
- 12.2.2. Contractor shall notify Owner promptly of the failure to meet a Construction Milestone and, not later than five (5) Business Days following such notice, shall provide Owner with Contractor's plan to regain any lost time, and Contractor shall take all reasonable steps to regain such lost time.

**ARTICLE 13  
TIME AND DELAYS**

**13.1 Time and Delays**

Time is of the essence for this Contract. If the Contractor is delayed in the performance of the Work by:



- (a) the act or omission of Owner or its representatives, or
- (b) the act or omission of any other contractor, supplier or subcontractor (other than Subcontractors and Suppliers); or any other event affecting Contractor (including Subcontractors and Suppliers), Owner, other contractors, or subcontractors which could not be reasonably foreseen and guarded against and is without the fault or negligence and is beyond the control of the party affected;

then the Contractor shall initiate a recovery plan to minimize its effect on the completion dates. The Contractor recognizes that a delay in any one phase of the Work does not necessarily result in any delay or a delay of equal duration in completion of the entire Work. In the event it is not possible to develop a plan adequate to permit achieving the above completion dates without incurring additional costs which the Owner is not willing to assume, the Owner and Contractor shall agree on extending such completion date or dates as may be necessary, but for no greater period than the period of the unavoidable delay; *provided, however*, that such extension of time granted shall be the Contractor's exclusive remedy in event of such delay, no matter how or by whom caused; and, *provided further* that Contractor has complied with the following:

- (i) Immediately upon the onset of the delay, give written notice to Owner.
- (ii) As soon as possible, Contractor will provide Owner with a detailed description and probable duration of the delay and the specific portion of the Work affected.
- (iii) As soon as practicable, the Contractor will, in writing, request an extension of time. If the parties cannot agree upon the right to or amount of the extension, Contractor shall proceed in accordance with Owner's decision and the dispute will be resolved in accordance with the provisions of the Contract.

Failure to provide such notices and request will be a waiver of any claims of the Contractor arising from such delay.

## ARTICLE 14 CHANGES

### 14.1 Change; Change Orders.

- 14.1.1. A Change shall result from an Owner-Directed Change pursuant to Section 14.2 or a Contractor-Required Change pursuant to Section 14.3. No Change shall be made except in accordance with a duly issued Change Order executed in writing by both Parties in accordance with this Article 14. Each Change Order shall contain details of the Change, and any adjustments of the design documents, the Contract Price, the Schedule, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date with the Change Orders setting forth the specific Section(s) of this Contract to be affected thereby.

- 14.1.2. A Change Order may be executed only by an officer of Owner, and the Owner's Representative shall not be duly authorized to execute a Change Order or to otherwise authorize a Change.

**14.2 Owner-Directed Changes.**

Owner, at any time, by notice to Contractor, may direct Changes in the Work consisting of additions, deletions, modifications or substitutions within the general scope of this Contract (any such notice, an "Owner-Directed Change"), subject to any adjustments to the Contract Price and/or the Schedule in accordance with Sections 14.5 and 14.6.

**14.3 Contractor-Required Changes.**

Contractor shall be entitled to adjustments to the Contract Price and/or the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) in accordance with Sections 14.5 and 14.6 by a Change Order ("Contractor-Required Change") resulting from the following circumstances: (a) a Force Majeure Event; (b) as provided in connection with a suspension of the Work pursuant to Article 18; or (c) the existence of Hazardous Materials at the Site (other than as caused by Contractor) that prevent Contractor from performing the Work; provided however, that such circumstance is not in connection with a Contractor event of default, and in each such case (x) to the extent of any impact on Contractor's performance of the Work or on the Contract Price or the Schedule, (y) subject to Contractor's obligation to identify and implement reasonable mitigation of such impacts and (z) in accordance with and subject to the applicable provisions of Sections 14.4, 14.5 and 14.6.

**14.4 Notice to Owner.**

- 14.4.1. Contractor shall give timely notice to Owner of any event or circumstance that Contractor believes is or will give rise to a Contractor-Required Change. Such notice shall be in writing and shall include information on the event or circumstance that gives rise to a Contractor-Required Change; provided that, each such notice shall be issued as promptly as possible but in no event later than twenty (20) days following Contractor's (or any Subcontractor's) actual knowledge of any such event or circumstance.
- 14.4.2. In the case of any Contractor-Required Change, Contractor shall promptly prepare and submit to Owner an estimate (on a fixed-price basis) of the increase or decrease, if any, in the Contract Price in accordance with Section 14.5 and the lengthening or shortening, if any, of the Schedule or extension of the Guaranteed Substantial Completion Date required to complete the Change and the remaining portion of the Work in accordance with Section 14.6, together with an explanation of the basis for the estimates and including the effect of available mitigation of such impact, and the related amendments to any provision of this Contract. Upon Owner's approval of such Change, Contractor shall prepare the Change Order for the Parties to execute and, upon its execution and delivery by both Parties, proceed with the implementation of the Change.
- 14.4.3. Within fifteen (15) Business Days of receipt of any notice of a Contractor-Required Change and all supplemental supporting documentation reasonably necessary for Owner to evaluate the Contractor-Required Change, or such longer period as Owner

may reasonably require to secure necessary approvals, Owner shall notify Contractor of its approval or proposed changes to the Contractor-Required Change. If Owner disputes Contractor's entitlement to or the proposed terms of a Contractor-Required Change, then, subject to Section 14.7, either Party may invoke the provisions of Article 29 to resolve the dispute.

#### **14.5 Adjustments to Contract Price.**

The price of any Work required or modified by a Change shall be on a lump-sum fixed price agreed to by the Parties; provided that, if the Parties are unable to agree on a fixed price for such Change, then Contractor shall perform the Work associated with the Change on a cost-plus basis using rates to be reasonably agreed upon at the time of the Change including an eight percent (8%) profit component. The basis for a Change to the Contract Price shall include: (a) the relevant cost information regarding the portion of the Contract Price that is affected by the Change; (b) the pricing for the cost of equipment modified by the Change; (c) estimated quantities of equipment, materials and labor modified by the Change; and (d) relevant information concerning other factors affecting costs and price. Contractor shall bear the burden of proof in establishing its entitlement to an adjustment in the Contract Price to be provided under such Change and shall use commercially reasonable efforts to mitigate the cost and price impact of any Change.

#### **14.6 Adjustments to Schedule.**

Adjustments to the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) as a result of a Change shall be equal to the actual amount of delay incurred by Contractor on the critical path of the performance of the Work, subject to adjustments to the Work or to the methods or sequence of performing the Work that can be implemented by Contractor to mitigate the delay. Contractor shall use reasonable efforts to mitigate delays; provided however, that if such mitigation would cause a material increase in the costs of performing the Work, Contractor shall not pursue such efforts unless so requested by Owner, in which case Contractor shall be entitled to a related Change in the Contract Price. Contractor shall bear the burden of proof in establishing its entitlement to any adjustments provided for in this Section 14.6.

#### **14.7 Continuation of Work Pending Resolution of Dispute.**

In the event of a dispute in connection with a Contractor-Required Change or an Owner-Directed Change, during the period prior to the resolution of the dispute, Contractor shall perform the Work (including such Work subject to the Change) and may invoice Owner the cost of performing the Change on a time and materials basis in accordance with Contractor's established accounting practices including agreed allocation of overhead costs.

#### **14.8 Other Provisions Unaffected.**

Except to the extent the Parties specifically modify any of the provisions of this Contract as part of an executed Change Order, all provisions of this Contract shall apply to all Changes, and no Change, amendment or waiver shall be implied as a result of any other Change.

## **ARTICLE 15 WARRANTIES**

### **15.1     Warranties.**

- 15.1.1. Contractor warrants the Work (including any Changes) and warrants that the Work (including any Changes) will be
- (a) performed in accordance with the terms and conditions of this Contract, including in compliance with the Process Design Work;
  - (b) free from defects in workmanship, and
  - (c) in compliance with Governmental Rules.
- 15.1.2. Contractor does not warrant anything that is outside the scope of its Work.
- 15.1.3. Contractor warrants that all permanent plant equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the power plant construction industries, shall be free from defects in material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

### **15.2     Remedies.**

Upon proper notice received from Owner during the Warranty Period, Contractor shall, without additional compensation:

- (a) Civil and Other Design and Engineering: Re-perform correctly any engineering or design Work, excluding the Process Design Work and any engineering and design Work not within the scope, that is found to be defective in that it fails to meet the warranties set out in Section 15.1 and perform or cause to be performed remedial construction work or rework that is required to effect such re-performed engineering or design Work;
- (b) Construction: Re-perform or cause to be re-performed any construction Work that is found to be defective in that it fails to meet the warranties of workmanship set out in Section 15.1; and
- (c) Equipment and Materials: Take such steps as may be necessary to repair or replace any equipment or materials found to be defective due to failure to meet the warranties set out in Section 15.1.

### **15.3     Warranty Period.**

Contractor's obligations and liabilities under this Article 15 shall cease upon the termination of the "Warranty Period," defined as the period extending for one (1) year after the date of

Substantial Completion; *provided, however*, that any Work which is not complete on the date of Substantial Completion shall be warranted for one (1) year after the completion date of such Work; and *provided* further that any re-performance, repair, or replacement work performed prior to Final Completion shall be re-warranted for one (1) year after the completion date of such work, and any re-performance, repair, or replacement work performed during the Warranty Period shall be re-warranted for one (1) year after the completion date of such work.

#### **15.4 Notice.**

Contractor's warranty obligations and liabilities are conditioned on Owner's delivering notice of an alleged deficiency or defect within a reasonable time after actual discovery thereof by Owner; *provided, however*, that Owner's failure to give such notice during such period shall not relieve Contractor of its warranty obligations and liabilities except to the extent Contractor is prejudiced by such failure. Any such notice of deficiency or defect shall state with reasonable specificity the date of occurrence or observation of the deficiency or defect and the reasons supporting Owner's belief concerning the alleged deficiency or defect. Contractor shall respond to any such notice not later than seven (7) Business Days after receipt of any such notice, and if the notice correctly invokes Contractor's warranty obligations, Contractor shall promptly commence the appropriate re-performance, repair, or replacement, consistent with Section 15.2.

#### **15.5 Assignment of Subcontractor Warranties.**

Contractor shall cause all Subcontractor warranties to be assignable (and shall be assigned) to Owner or Owner's designee upon the expiration of the Warranty Period.

#### **15.6 Warranty Enforcement Remedies.**

Except in cases of an emergency requiring immediate corrective action by Contractor, promptly upon receipt by Contractor of a notice from Owner specifying a failure of any of the Work to satisfy Contractor's warranties, Contractor and Owner shall mutually agree when and how Contractor shall remedy such deficiencies with due regard for the involvement of applicable Subcontractors; *provided, however*, that in case of an emergency (such as unplanned Facility outages) requiring immediate corrective action, Contractor and Owner shall so agree on such remedy as soon as practicable after notice by Owner of such emergency. If Contractor does not use its best efforts to proceed to complete such remedy within the time agreed, or, should Contractor and Owner fail to reach such an agreement, within a reasonable period (or as soon as practicable in the case of emergency conditions), Owner, after notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy and the costs thereof shall be borne by Contractor.

#### **15.7 Provisions of Clear Title.**

15.7.1. Contractor warrants that title to all materials, equipment, tools and supplies furnished by it and its Subcontractors that become part of the Facility or are purchased by Contractor for Owner for the operation, maintenance or repair thereof shall be merchantable and free and clear of any liens and claims. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner upon the later of

- (a) incorporation into the Facility; or
  - (b) payment by Owner to Contractor under Article 4 hereof of invoiced amounts pertaining thereto.
- 15.7.2. Notwithstanding passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the earlier of the Substantial Completion or the termination of this Contract.
- 15.7.3. In order to protect Owner's interest in all materials, equipment, tools and supplies with respect to which title has passed to Owner but which remain in the possession of a third party, Contractor shall take or cause to be taken all steps necessary under the laws of appropriate jurisdiction (s) to perfect and maintain Owner's title and to protect Owner against claims by other parties with respect thereto.

## **ARTICLE 16**

### **INSPECTION OF THE WORK**

#### **16.1 Right of Access.**

Owner's authorized representatives and permitted assigns and such other Persons as Owner may designate with Contractor's consent, which shall not be unreasonably withheld, shall have the right at all reasonable times during performance of the Work, upon reasonable prior notice to Contractor, to inspect the Work and the Facility and any item of equipment, material, design, service or the workmanship associated therewith including observations of start-up and performance testing but not including access to cost or pricing data associated therewith. Contractor shall, at the request of Owner, cooperate with the arrangements for any such inspection of equipment or material on the Site, and at the point of significant fabrication. Contractor shall submit to Owner, as soon as practical, the manufacturer's schedule for typical inspection and hold points for materials being manufactured in relation to the Work.

#### **16.2 Rejection of Work.**

To the extent that any portion of the Work will not be able to be reviewed during the Mechanical Completion inspection process discussed in Section 8.3, Owner shall have the right on a timely basis to reject any portion of the Work that does not meet the standards of the Work set forth in Section 15.1. Upon such rejection and before such portion of the Work is covered so as not to be able to be reviewed during such Mechanical Completion inspection, Contractor shall remedy, at its sole cost and expense, all conditions giving rise to such rejection.

#### **16.3 No Acceptance of Work.**

Any rights asserted by Owner under this Article 16 shall in no way affect or reduce Contractor's obligations under this Contract and will not be deemed to constitute an acceptance by Owner with respect to such Work.

## ARTICLE 17 TERMINATION

### 17.1 Termination for Owner's Convenience.

- 17.1.1. Right. Owner may at any time, for any reason, terminate this Contract, in whole or in part, upon ten (10) days written notice to the Contractor.
- 17.1.2. Contractor's Obligation. Upon receipt of such notice, Contractor will discontinue work on the date and to the extent specified in the notice and will thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect materials, plant and equipment at the Site or in transit to the Site. In addition, Contractor shall transfer or assign, as applicable, to Owner, or to any replacement contractor designated by Owner, without any right to additional compensation (a) title to all affected Work not already owned by Owner; (b) all subcontracts and other agreements (including warranties) as may be designated by Owner; (c) to the extent assignable or transferable, all Governmental Approvals, if any, then held by Contractor pertaining to the Facility; and (d) to the extent assignable or transferable, any license agreements from suppliers or other third parties for license of intellectual property for the Facility; provided that, Owner assumes all liability under such assigned contracts for obligations first arising following such assignment, and Contractor, if requested by Owner, shall provide Owner, any replacement contractor or any financing party, at Owner's expense, with the right to continue to use any and all such intellectual property and other patented and/or proprietary information that Contractor has rights to use not otherwise assigned hereunder, if any, which Owner deems necessary to complete the Facility. Contractor shall incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.

### 17.2 Termination Payment for Termination for Convenience.

- 17.2.1. In the event of termination by Owner under Section 17.1, then, subject to Section 17.2.2, Owner shall pay to Contractor a cancellation fee (the "Termination Payment"). Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Contract pursuant to Section 17.1. The Termination Payment shall consist of:
- (a) amounts due, but not yet paid, for Work performed prior to the effective date of termination;
  - (b) reasonable cancellation costs payable to Subcontractors;
  - (c) direct costs paid, contracted or for which Contractor is liable, in accordance with this Contract or as required by Governmental Rule, at the time of termination that are in addition to amounts otherwise paid or due as of the effective date of termination;

- (d) costs reasonably incurred by Contractor in protecting the Work;
- (e) costs reasonably incurred by Contractor in performance of the items enumerated in Section 17.1.2;
- (f) an additional payment equal to eight percent (8%) of the aggregate amount of Section 17.2.1(c), Section (d), and Section (e); and
- (g) an amount equal to eight percent (8%) of the Contract Price;

provided however that, no such additional payment in Section (f) and Section (g) shall be due or payable in the event that such termination for convenience is due to a Force Majeure Event. It is understood and agreed by the Parties that Contractor would be damaged by Owner's termination of this Contract for convenience and that (i) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (ii) the termination fee described in Section (g) above is in the nature of liquidated damages and not a penalty and is fair and reasonable; and (iii) such payment represents a reasonable estimate of fair compensation to Contractor for the losses that may reasonably be anticipated from such termination and serves as the sole remedy to Contractor in the event of termination for convenience.

17.2.2. Deductions from Termination Payment. Owner shall not be required to pay any portion of the Termination Payment, and (because of subsequently discovered evidence or subsequent observations) may make a demand for repayment of any portion of the Termination Payment previously made to Contractor, to the extent of amounts paid or costs incurred by Owner in respect of:

- (a) liens filed against the Facility or the Site, or any portion thereof, by Subcontractors or any other Person entitled to payment from Contractor or a Subcontractor; provided that, Owner has paid all amounts due hereunder to Contractor;
- (b) failure or refusal of Contractor to make payments to any Subcontractor when due; provided that, Owner has paid all amounts due hereunder to Contractor; and
- (c) any representation or certification of Contractor made in this Contract to Owner that proves to be materially false and that materially and adversely affects the Facility or the operations thereof.

17.2.3. Verification of the Termination Payment. Contractor shall, within thirty (30) days of any termination of this Contract for convenience, submit to Owner invoices and other documentation as is sufficient to enable Owner to verify the amount of Contractor's costs in the performance of the Work so that Owner and Contractor may determine the amount of the Termination Payment.

17.2.4. Payment of the Termination Payment. Owner shall pay the entire Termination Payment to Contractor within thirty (30) days of Owner's receipt of the Contractor's invoice therefor and Contractor's provision of supporting information.



17.2.5. Subcontractors and Suppliers. Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**17.3 Termination by Owner for Contractor Default.**

17.3.1. Contractor Default. Contractor will be in default if it at any time it:

- (a) refuses, neglects or fails in any respect to prosecute the Work hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein;
- (b) refuses, neglects or fails to perform any other obligations under this Contract;
- (c) falls thirty (30) or more days behind the Schedule as based on the Construction Milestones or it becomes manifest that Contractor will miss the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date by more than 30 days.
- (d) goes into liquidation other than as part of a corporate reorganization;
- (e) fails to achieve Final Completion by the Guaranteed Final Completion Date;
- (f) enters into composition with its creditors; or
- (g) becomes insolvent.

17.3.2. Notice of Default. Owner may, but is not required to, notify Contractor in writing of any default. Upon receipt of any such written notice of default, the Contractor will, at its expense, preserve all construction materials, equipment and plant, and undertake immediate steps to remedy such default. If the Contractor fails to remedy such default within thirty (30) calendar days after receipt by it of such written notice of default, Owner may, in writing, and without notice to the Contractor's sureties, if any, terminate the Contractor's right to proceed with the Work, *provided, however*, that such failure to remedy a non-monetary default will not be deemed a default if, promptly after notice Contractor commences in good faith and thereafter diligently prosecutes measures which may reasonably be expected to be effective to result in a cure of such failure in such a way and by such a time, not to exceed an additional thirty (30) day period as shall avoid any material adverse effect on Owner's rights under this Contract, the Work, or Contractor's ability to achieve the Guaranteed Substantial Completion Date and *provided* further that Contractor shall not be entitled to any cure period under this Section 17.3.2 for the defaults described in subparagraphs (c) – (g) Section 17.3.1.

17.3.3. Contractor's Obligations. Upon receipt of any such written notice of termination of right to proceed, the Contractor will at its expense:

- (a) Provide a written, detailed inventory of all materials and equipment in storage at the Site, en route to the Site, in storage or manufacture away from the Site, and on order from its Suppliers.

- (b) Assign to Owner all or some of its Subcontractor or Supplier agreements and equipment rental agreements as designated by Owner. Contractor will incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.
- (c) Remove from the Site only such construction materials, equipment and plant listed in the inventory which are designated in writing by Owner not to be used by Owner in completing the Work.

#### **17.4 Owner's Rights on Default.**

In the event of such termination, Owner may enter upon the premises and into places of manufacture of Contractor, Subcontractors and Suppliers (Contractor will incorporate this right in its agreements with Subcontractors and Suppliers) and, for the purpose of completing the Work or enforcing these provisions, take possession of all materials, equipment, tools and appliances thereon belonging to or under the control of Contractor and may use them or may finish the Work by whatever method it may deem expedient, including the hiring of another contractor(s) or subcontractor(s) under such form of contract as Owner may deem advisable; or Owner may itself provide any labor or materials and perform any part of the Work. In such case Contractor will not be entitled to receive any further payment until the Work is completed. If the unpaid balance of Contractor's compensation hereunder exceeds the sum of the expense of finishing the Work plus compensation to Owner for its additional managerial and administrative services and such other costs and damages as Owner may suffer, such excess will be paid to Contractor. If such expense, compensation, costs, and damages exceed such unpaid balance, Contractor and its sureties, if any, will be liable for and will pay the excess to Owner.

#### **17.5 Additional Rights and Remedies.**

Such right to terminate is not Owner's exclusive remedy and is in addition to any other rights and remedies it may have under this Contract or by law. Failure of Owner to exercise any of its rights under this Section 17.5 will not excuse Contractor from compliance with the provisions of this Contract nor prejudice rights of Owner to recover damages for such default.

#### **17.6 Termination by Contractor for Owner's Default.**

Contractor may terminate this Contract in the event Owner (1) refuses, neglects or fails to perform any material obligation under this Contract, (2) goes into liquidation other than as part of a corporate reorganization, (3) enters into a composition with its creditors or (4) becomes insolvent, by giving notice of termination to Owner. Owner shall have the right to cure such default within thirty (30) days, in which case such notice of termination shall be void and of no effect. Contractor shall promptly submit to Owner a progress report detailing Work progress to date and an accounting of costs associated with the termination itself. Owner shall pay Contractor, not later than thirty (30) days after receipt of Contractor's progress report and accounting, for progress to date plus the costs reasonably incurred due to the termination, *provided, however*, that in no case shall the total amount paid to Contractor hereunder be greater than the Contract Price.

## **ARTICLE 18 SUSPENSION**

### **18.1     Notice of Suspension.**

Owner may at any time for any reason order the Contractor, upon one (1) day's written notice, unless otherwise specified in the Contract, to suspend, extend the time of performance, or interrupt ("Suspend" or "Suspension") all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of Owner. Upon receipt of such notice, the Contractor will Suspend Work on the date and to the extent specified in the notice.

### **18.2     Adjustment.**

18.2.1. If the performance of all or any part of the Work is Suspended by Owner, an adjustment will be made for any increase in the cost and time of performance of this Contract necessarily caused by such Suspension, as set forth in this Section 18.2. However, no adjustment will be made under this clause for any Suspension to the extent (1) that performance would have been so Suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) which is provided for or excluded under any other provision of this Contract.

18.2.2. Upon such Suspension, Contractor waives all claims for damages, including, but not limited to, loss of anticipated profits, idle equipment, labor and facilities, and any claims of Subcontractors and Suppliers, and will accept the following as sole and complete compensation for such Suspension:

- (a) reasonable costs associated with demobilization of Contractor's plant, forces and equipment;
- (b) reasonable costs incurred by Contractor in connection with its efforts to suspend orders, subcontracts and rental agreements;
- (c) reasonable costs of maintaining and protecting the Work;
- (d) a reasonable standby charge to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the Work on a standby basis.

### **18.3     Resumption of Suspended Work.**

Upon receipt of notice to resume Suspended Work, the Contractor will resume performance of the Suspended Work to the extent required in the notice and within ten (10) days submit to Owner for review a revised Schedule.

#### **18.3.1.   Upon such resumption, Contractor shall receive:**

- (a) Reasonable mobilization costs consistent with the extent of remobilization, if not otherwise specified in the Contract; and

- (b) An adjustment in the compensation provisions of this Contract to compensate Contractor for any costs of performance that were increased as a result of the Suspension. These adjustments shall be limited to such matters as cost increases required under labor, Subcontractor or Supplier agreements in effect on the date of Suspension.

18.3.2. The Schedule shall be adjusted to account for the effect of the period of Suspension.

**18.4 Request for Relief.**

No claim under this clause will be allowed unless the claim, in an amount stated, is asserted in writing to Owner as soon as practicable after the termination of such Suspension but not later than twenty (20) days from the date Work is resumed or if not resumed, the date this Contract is terminated. In the event that Contractor and Owner cannot agree on the compensation and Schedule adjustment, the Contractor shall proceed with the Work as directed by Owner and the dispute will be resolved in accordance with the provisions of the Contract.

**18.5 Subcontractors and Suppliers.**

The Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**ARTICLE 19  
FORCE MAJEURE EVENT**

**19.1 Excuse from Performance for Force Majeure Event.**

Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if, and to the extent that, its failure of or delay in performance is due to a Force Majeure Event, and both parties shall use reasonable efforts and due diligence to mitigate such an event.

**19.2 Notice of Force Majeure Event.**

If either Party's ability to perform its obligations hereunder is affected by a Force Majeure Event, such Party shall, promptly, but in any event within ten (10) days, upon learning of such event, give notice to the other Party stating the nature of the event, its potential effect and the anticipated duration thereof, and any action being taken to avoid or minimize its effect. The burden of proof shall be on the Party claiming Force Majeure Event.

**19.3 Relief for Force Majeure Event.**

The suspension of performance due to a Force Majeure Event shall be of no greater scope and no longer duration than reasonably required. The party suffering the Force Majeure Event shall use its best efforts and due diligence to partially or fully remedy any inability to perform arising from such a Force Majeure Event. If such suspension shall have occurred, the Guaranteed Substantial Completion Date shall be extended by a period equal to the amount of time (including a reasonable period for demobilization and remobilization) as demonstrated by Contractor to be

necessary for Contractor to make up for the delay. The Schedule affected by such delay shall be adjusted as appropriate to reflect the new Guaranteed Substantial Completion Date.

**19.4 No Excuse of Obligations to Pay Money.**

Notwithstanding the foregoing, the obligation to pay money in a timely manner for Work actually performed shall not be excused due to a Force Majeure Event and shall not be subject to suspension.

**19.5 Owner Self-Help.**

If within a reasonable time after a Force Majeure Event occurrence that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event occurrence or its direct or indirect effects, Owner may, in its sole discretion and after written notice to Contractor, at Owner's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event occurrence or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. The existence of Owner's remedy under this Section 19.5 shall not prejudice any other remedies available to Owner under this Contract.

**ARTICLE 20  
INSURANCE**

**20.1 Contractor Provided Insurance.**

During the performance of the Site, the Contractor shall maintain or cause to be maintained the following types of insurance:

- 20.1.1. Worker's Compensation Insurance. As required by state laws, including employer's liability insurance for all employees of the Contractor in the amount required by statute.
- 20.1.2. All Risk Builder's Risk Insurance. To provide coverage on an "all risk" basis including coverage against damage or loss caused by earth movement, flood and operational testing. Such insurance shall be for the replacement value of the Facility as described below. The policy shall also provide coverage for:
  - (a) removal of debris;
  - (b) material in transit, including ocean marine, if applicable;
  - (c) off-site storage;
  - (d) theft;
  - (e) expediting expense;

- (f) demolition and increased cost of construction;
- (g) water damage; and
- (h) cold and hot (operational) testing.

The deductible for all such physical damage shall not exceed (i) \$100,000 for operational testing coverage, (j) \$250,000 or five percent (5%) of the value of the damaged property at the time of loss for earth movement coverage, whichever amount is less, and (k) \$25,000 for all other losses. No co-insurance shall be applicable.

- 20.1.3. Commercial General Liability Insurance. To provide coverage against claims for third party personal injury (including bodily injury and death) and third party property damage. Such insurance shall provide coverage for products-completed operations (which coverage shall remain in effect for a period of two years following Substantial Completion), blanket contractual, independent contractors, explosion, collapse and underground hazards, broad form property damage and personal injury, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and a \$2,000,000 aggregate annual limit.
- 20.1.4. Excess Insurance. Excess liability insurance on an "occurrence" basis pursuant to an "umbrella" policy or policies covering claims in excess of and following the terms of Comprehensive General Liability and Comprehensive Automobile Liability Insurance described herein with a \$10,000,000 minimum limit per occurrence and a \$10,000,000 project aggregate limit.
- 20.1.5. Comprehensive Automobile Liability. To provide coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles used in the construction of the Facility hereunder with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.
- 20.1.6. Professional Liability Insurance. To provide coverage against liability arising out of active malfunctioning of systems resulting from defective design, with a minimum limit per occurrence of \$ 5,000,000. This insured amount should be excluded from the overall Contractor's liability cap.

## **20.2 Insurance Policies/Certificates.**

Contractor shall furnish Owner with evidence of the insurance required to be provided by Contractor hereunder, in the form of insurance certificates reasonably satisfactory to the Owner. All such insurance certificates shall include, but not be limited to, the type of insurance, the limits of insurance, the policy term, the names(s) of the insurance company (or companies), and a list of the applicable endorsements.

**20.3 Applicable Endorsements.**

- 20.3.1. All policies of property insurance shall: (i) Provide for waivers of subrogation in favor of the Owner and its respective officers and employees; and (ii) name Owner as an additional insured.
- 20.3.2. All policies of liability insurance shall: (i) provide a severability of interests or cross liability clause and (ii) name the Owner as an additional insured.
- 20.3.3. All policies shall be primary and not excess to or on a contributing basis with any insurance or self-insurance maintained by the Contractor.
- 20.3.4. All policies shall include a rider providing that they may not be canceled, non-renewed or changed without thirty (30) days prior written notice sent by registered mail to Owner.

**ARTICLE 21  
INDEMNIFICATION**

**21.1 Indemnity by Contractor.**

Contractor covenants and agrees that it will indemnify and hold Owner, and all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement, judgment (including interest thereon), defense or costs of litigation (including attorney's fees) whether to any person (including employees of Contractor, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with Contractor's or any of its Subcontractor's or Supplier's performance of the Contract or in connection with the performance of the Work, to which Owner, or any of its officers, agents or employees may be subject or put. Without limiting the foregoing, said obligation includes claims involving Contractor's, Supplier's or Subcontractor's employees injured while going to and from the Site. Contractor will not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of Owner, or any of its officers, agents or employees.

**21.2 Indemnity by Owner.**

Owner covenants and agrees that it will indemnify and hold Contractor and all of its officers, agents and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement or judgment (including interest thereon) whether to any person (including employees of Owner, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with the performance of the Work caused or resulting from the sole negligence of the Owner, or any of its officers, agents or employees to which Contractor, or any of its officers, agents or employees may be subject or put. Owner will not be liable under this section for damages arising out of claim, injury or damage to persons or property directly caused or resulting from the sole negligence of Contractor, or any of its officers, agents or employees.

### **21.3 Defense.**

The indemnifying Party under this Contract (“Indemnitor”) shall have the sole right to control the defense of any suit or proceeding with its choice of counsel based on any claim, demand, loss, damage, cause of action, suit or liability for which Indemnitor is responsible under any such indemnification. Indemnitor shall not settle any claim without the prior written consent of the indemnified Party (“Indemnatee”) if such settlement (a) does not include an irrevocable release of all claims against the Indemnatee; (b) materially diminishes any of Indemnatee’s rights under this Contract or seeks to impose additional obligations on Indemnatee; (c) modifies the Facility or the operation or maintenance of the Facility; or (d) contains a stipulation or admission or acknowledgement of any liability or wrongdoing on the part of Indemnatee. Indemnatee shall give the Indemnitor such assistance as the Indemnitor may reasonably require in such defense, at Indemnitor’s expense. Indemnatee shall have the right to be represented in such defense and settlement by counsel of its own choice at its own expense. If the Indemnitor fails to defend diligently such suit or proceeding, the Indemnatee may, in its reasonable discretion, either defend such suit or proceeding or settle the claim which is the basis thereof, without the consent of the Indemnitor, but with prior notice to the Indemnitor, without relieving the Indemnitor of its indemnification obligations hereunder and in each case the Indemnitor shall reimburse the Indemnatee for the settlement payment, expenses, court costs and reasonable attorneys’ fees.

### **21.4 Survival.**

The provisions of this Article 21 shall survive the termination of this Contract to the extent any claim, loss, damage, cost, charge, expense, lien, settlement, judgment (including interest therein), defense or costs of litigation (including attorney’s fees) arose as a result of the performance of this Contract.

## **ARTICLE 22 LAWS, REGULATIONS AND PERMITS**

### **22.1 Obligation to Inform.**

The Contractor shall keep itself fully informed of and will observe and comply with all Governmental Rules including, but not limited to, environmental and pollution control laws which in any manner affect those engaged or employed on any Work, or the materials and equipment used in any Work, or the performance of any Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. If any discrepancy or inconsistency should be discovered between the Contract and any such law, ordinance, code, regulation, order or decree, the Contractor will immediately report the same by notice to Owner. The Contractor will be responsible for the compliance by Subcontractors and Suppliers of all tiers with the above provisions. Contractor and Subcontractors and Suppliers of all tiers will be responsible and liable for all fines levied in violation of any Governmental Rules.



## **ARTICLE 23 PATENTS, TRADEMARKS AND PROPRIETARY RIGHTS**

### **23.1     General.**

Contractor warrants that all materials, equipment and processes used or supplied and services performed are free from any infringement of any patent, trademark or other proprietary right.

### **23.2     Indemnity.**

Contractor will indemnify and defend any action brought against Owner all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees based on a claim that any process used, equipment or material supplied or service performed pursuant to the Contract constitutes an infringement or violation of any patent, trademark or other proprietary right. Owner will at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor will pay all of Owner's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, equipment, material or service is enjoined, Contractor will, at its own expense and at Owner's option either

- (a) procure for Owner the right to continue using said process, equipment, material or service;
- (b) replace it with noninfringing process, equipment, materials or service acceptable to Owner; or
- (c) modify it in a manner acceptable to Owner so that it becomes noninfringing.

The provisions of this Section 23.2 shall survive the termination of this Contract, to the extent that any claim arose as a result of performance under the Contract.

### **23.3     Royalties and License Fees.**

Contractor will pay all royalties and license fees necessary for the proper performance of the Work.

## **ARTICLE 24 OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

All original tracings of the drawings and specifications prepared by the Contractor shall become Owner's property and shall be delivered to Owner upon payment therefore as provided herein, upon completion of the Work, or upon termination, abandonment or postponement of the Work, and Owner thereafter shall have full right to use such drawings, designs, specifications or instruments for any purpose in connection with its own properties without any claim on Contractor's part for additional compensation by reason of such use.

**ARTICLE 25  
CONFIDENTIAL INFORMATION**

**25.1 Confidentiality**

- 25.1.1. This terms of this Contract and all information expressly designated by a Party as confidential information and all information that by its nature is sensitive or proprietary shall be treated as confidential and, subject to this Article 25 such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- 25.1.2. This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Contract or has been, or could have been, lawfully acquired by the Party.
- 25.1.3. Notwithstanding the provisions of this Article 25, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- (a) to directors and employees and affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such affiliates keep the disclosed information confidential on the same terms as are provided in this Article 25;
  - (b) to persons professionally engaged by or on behalf of such Party; provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
  - (c) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure or as necessary to obtain any permits or other governmental approvals required in connection with the Work ; or
  - (d) to: (1) any lending or other financial institution in connection with the financing of such Party's operations; or (2) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Contract, but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Article 25;
  - (e) to any expert appointed pursuant to and under the terms of this Contract.

**ARTICLE 26**  
**LIENS**

**26.1     Obligation to Keep Free of Liens.**

- 26.1.1. Contractor shall keep the Facility, all real property related thereto, and all materials, equipment, structures, and tools furnished by it or its Subcontractors free and clear of all liens, claims, security interests, and other encumbrances.
- 26.1.2. Contractor will pay each Subcontractor within ten days after Contractor receives payment from the Owner for any subcontracted Work.
- 26.1.3. Upon request by Owner, Contractor shall provide the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Work, together with the amount due or to become due for such work. Owner shall have the right to contact these Subcontractors and suppliers at any time to verify payment of amounts due. Owner retains the right to take whatever steps it deems necessary to ensure that progress and final payments will be utilized to pay potential lien claimants, including the issuance of joint checks or making payment directly to any claimant after notice to Contractor.

**26.2     Discharging of Liens.**

- 26.2.1. Contractor shall take prompt steps to discharge any lien, security interest, claim, or other encumbrance filed against the Facility, or upon any materials, equipment or structures encompassed therein, or upon the premises upon which they are located by any subcontractor based on a claim for payment in connection with the Work; *provided, however*, Contractor may in lieu thereof provide to Owner a bond, in the amount of such lien in form and substance satisfactory to Owner.
- 26.2.2. If Contractor fails to satisfy its obligations under Section 26.2.1, Owner shall have the right to (i) consider the amount of the lien or encumbrance as presumptively correct, (ii) withhold from any payment to Contractor then due, or thereafter to become due (including the final request for payment), an amount sufficient to completely indemnify Owner against such lien or encumbrance, (iii) pay the amount of such lien or encumbrance and pursue recovery actions against Contractor and (iv) retain out of the amount withheld an amount sufficient to compensate Owner for its expenses (including actual attorneys' fees) in the matter

**26.3     Indemnification.**

- 26.3.1. Contractor shall indemnify and hold harmless Owner, all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees from, and defend their interests against any and all liens, defense, costs of litigation (including attorney's fees) or similar claims against the Facility filed by a Subcontractor in connection with the Work including all expenses and attorney's fees incurred in discharging any liens or similar encumbrances.

- 26.3.2. Contractor's obligations with respect to liens and claims covered by this Article 26 are subject to the conditions that:
- (a) the indemnitee gives Contractor reasonably prompt notice of any such liens or similar claim;
  - (b) the indemnitee cooperates in the defense of any such lien or similar claim; and
  - (c) Contractor has sole control of the defense and settlement to the extent of the Contractor's liability for any such lien or similar claim, *provided, however*, that Contractor shall confirm in writing its obligation to indemnify the indemnitee with respect to all costs and expenses with respect to such lien or similar claim.
- 26.3.3. The provisions of this Section 26.3 shall survive the termination of this Contract, to the extent that any lien, defense, costs of litigation (including attorney's fees) or similar claim arose as a result of the performance of this Contract.

## ARTICLE 27

### NOTICES AND COMMUNICATIONS

## 27.1 Notices.

Any notice pursuant to the terms and conditions of this Contract shall be in writing to the addresses specified in Exhibit P, and either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt requested; or (d) sent by facsimile transfer and acknowledged by recipient.

## 27.2 Effect of Notices.

Notices shall be effective when received by the Party to whom addressed.

## ARTICLE 28

### LIMITATIONS OF LIABILITY

## 28.1 Remedies Exclusive.

The remedies expressly afforded by this Contract are intended to be the sole and exclusive remedies of the Parties to this Contract for the liabilities of such Parties arising out of or in connection with the Work or this Contract, notwithstanding any remedy otherwise available at law or in equity.

## 28.2 Consequential Damages.

In no event, except to the extent of amounts paid to third parties as described in Article 21 and as may be construed to cover such damages, whether as a result of breach of contract, warranty, guarantee, indemnity, tort, including negligence, strict liability or otherwise, shall either Party hereto or any Subcontractor be liable for indirect, special, incidental, consequential or exemplary damages, including but not limited to, the loss of profits or revenue, loss of use of the equipment

or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, down time costs, costs in excess of estimates loss of opportunity, loss of data, loss of goodwill, cost of purchased or replacement power, governmental penalties or sanctions imposed on Owner and/or claims of customers of the other Party for such damages; and Owner hereby releases Contractor and all Subcontractors and Contractor hereby releases Owner therefrom.

## ARTICLE 29

### DISPUTE RESOLUTION

### **29.1 Applicability of Resolution Procedures.**

All claims, disputes or other matters in question between the Parties arising out of or relating in any way to this Contract ("Disputes") will be resolved pursuant to this Article 29.

## 29.2 Management Discussions.

The Parties agree to make a diligent, good-faith attempt to resolve all Disputes. If the Parties are unable to resolve a Dispute arising under this Contract within three (3) Business Days after notice from one Party to the other, such Dispute will be submitted promptly to the senior executive officers of the Parties, who will meet, in person or by telephone, not later than ten (10) days after the date such Dispute was submitted to them. In the event that the officers cannot resolve the Dispute within five (5) Business Days after the matter is submitted to them, then, unless otherwise agreed, the Parties will proceed according to Section 29.3.

### 29.3 Litigation

All disputes between the Parties arising out of or relating to this Contract and not otherwise resolved by the Parties shall be decided by judicial resolution or pursuant to the rights of the Parties under law.

### 29.4 Obligations Continue.

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under the Contract.

### 29.5 Injunctive Relief.

Notwithstanding anything in this Contract to the contrary, nothing in this Contract is intended to, nor shall it, prevent the Parties from seeking injunctive relief at any time as may be available under law or in equity.

## 29.6 Survival.

The provisions of this Article 29 will survive the termination of this Contract.

**ARTICLE 30  
REPRESENTATIONS AND WARRANTIES**

**30.1     Representations and Warranties of Contractor.**

Contractor hereby represents and warrants to Owner as follows:

- 30.1.1.   Due Organization of Contractor. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the state in which it was formed and has the requisite corporate power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas and in any other jurisdiction in which the transaction of its business makes such qualification necessary.
- 30.1.2.   Due Authorization of Contractor; Binding Obligation. Contractor has full power and authority to execute and deliver this Contract and to perform its obligations hereunder, and the execution, delivery and performance of this Contract by Contractor have been duly authorized by the necessary corporate action on the part of Contractor; this Contract has been duly executed and delivered by Contractor and is the valid and binding obligation of Contractor enforceable in accordance with its terms.
- 30.1.3.   Non-Contravention. The execution, delivery and performance of this Contract by Contractor and the consummation of the transactions contemplated hereby do not and will not contravene the certificate of incorporation or by-laws of Contractor and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Contractor is a party or by which it or any of its properties is bound or affected.
- 30.1.4.   Regulatory Approvals. Governmental or other authorizations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract by Contractor have been obtained or will be obtained in due course.
- 30.1.5.   Site Conditions. Contractor represents and warrants that it has inspected the Site and surrounding locations, including both surface and subsurface conditions in accordance with prudent engineering practices (including use of subsurface radar to detect utility lines and other installations), and is familiar with the physical requirements of the Work and accepts them for such performance. It is further understood and agreed that this representation and warranty shall not be deemed to cover any matters relating to the existence of Hazardous Materials or the existence of subsurface conditions that could not reasonably have been discovered by Contractor with the exercise of prudent engineering practice, which are the responsibility of Owner.

**30.2     Representation and Warranties of Owner.**

Owner hereby represents and warrants to Contractor as follows:

- 30.2.1.   Due Organization of Owner. Owner is a limited liability company duly organized and validly existing and in good standing under the laws of the state in which it was formed

and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas.

- 30.2.2. Due Authorization of Owner; Binding Obligation. Owner has full power and authority to execute and deliver this Contract and to perform its obligations hereunder and the execution, delivery and performance of this Contract by Owner have been duly authorized by the necessary company actions on the part of Owner; this Contract has been duly executed and delivered by Owner and is the valid and binding obligation of Owner enforceable in accordance with its terms.
- 30.2.3. Non-Contravention. The execution, delivery and performance of this Contract by Owner and the consummation of the transactions contemplated hereby do not and will not contravene the articles of organization of Owner and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Owner is a party or by which it or any of its properties is bound or affected.

## **ARTICLE 31 MISCELLANEOUS**

### **31.1 Effect of Invalid Provisions.**

The invalidity or unenforceability of any portion or provision of this Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract. The parties shall negotiate an equitable adjustment in such portions or provisions of this Contract to effect the underlying purposes of this Contract.

### **31.2 Governing Law.**

The Contract, and the rights, obligations and liabilities of the parties thereto will be construed in accordance with the law of the State of Texas.

### **31.3 Third Party Beneficiaries.**

No third party shall be deemed to be a third-party beneficiary under this Contract, except as expressly set forth herein.

### **31.4 Entire Contract.**

This Contract sets forth and forms the entire agreement between Owner and the Contractor for the Work. All prior, other and collateral agreements, representations, warranties, promises and conditions relating to the subject matter of the contract are superseded by this Contract. The table of contents and section headings included in this document are for reference only and do not form a part of this Contract. No changes, amendments or modifications of this Contract will be valid unless made pursuant to a written amendment signed by both Parties.

**31.5 Purpose and Intent of the Contract.**

It is the intent of the parties that all rights and obligations of Owner and Contractor with regard to performance of the Work are fully set forth in this Contract. All parts of this Contract are intended to be correlative and complementary. Any Work required by one part and not mentioned in other parts will be performed to the same extent and purpose as though mentioned in all parts. The misplacement, addition, or omission of a word or a character will not change the meaning or intent of any part of the Contract from that set forth by the Contract as a whole.

**31.6 Standards and Codes.**

Wherever references are made in the Contract to standards and codes in accordance with which Work is to be performed or tested, the edition or revision of such standards and codes in effect on the date of the Contractor's bid or the date of this Contract, whichever is earlier, will apply unless otherwise expressly set forth in the Contract. Unless otherwise specified in the Contract, reference to such standards and codes is solely for technical information. In case of conflict among any such referenced standards and codes or between any such standard(s) or code(s) and the requirements of the Contract, Contractor will give notice to the Owner of such conflict and Owner will determine which shall govern.

**31.7 Non-waiver.**

None of the provisions of the Contract will be considered waived by Owner or Contractor unless such waiver is given in writing by Owner or Contractor, as the case may be. No such waiver will be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Contract unless expressly set forth in such waiver.

**31.8 Survival.**

Except for such obligations as are necessarily affected by termination, cancellation or expiration of this Contract, termination, cancellation or expiration will not relieve Contractor of any obligations arising under this Contract prior to termination, cancellation or expiration including but not by way of limitation, warranties and indemnity obligations.

**31.9 Successors and Assigns.**

This Contract and every covenant, condition and provision of the Contract shall work to the benefit of and be binding upon the Owner and the Contractor, and each of their respective partners, heirs, and legal representatives, successors and permitted assigns. The Contractor shall not assign, transfer or sublet his interest in or obligations hereunder without the express written consent of the Owner.

**31.10 Set-Off.**

Any amount owing at any time from Contractor or its subcontractors to Owner or any of its affiliated companies may be set-off against amounts due and payable by the Owner to the Contractor for Work supplied under this Contract. Contractor agrees to specify in all subcontracts entered into by it in furtherance of the Work contemplated hereby that amounts



payable by it thereunder shall be subject to set-off by it in behalf of the Owner for amounts owing by the subcontractors to the Owner or any of its affiliated companies.

### 31.11 Assignment.

Owner may assign as collateral its interest hereunder and under the dry plant design/build contract between Owner and Contractor, dated December 2017, to a lender or any other person in connection with the exercise of collateral rights of the lender. This Contract shall not be assigned by the Contractor to any other party without the prior written consent of the Owner.

[Signature page follows.]

IN WITNESS WHEREOF, the Owner and the Contractor have made and executed this Contract as of the day and year first written above.

**SUPERIOR SILICA SANDS LLC**

**MARKET & JOHNSON, INC.**

Signature

Signature

By

By

Title

Title

**SUPERIOR SILICA SANDS LLC**

**- and -**

**MARKET & JOHNSON, INC.**

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**CONSTRUCTION CONTRACT**

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**April 5, 2018**

**FOR**

**TRIPPER CONVEYOR AND RECOVERY SYSTEM**

**AT THE SAN ANTONIO TEXAS SITE**

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## CONSTRUCTION CONTRACT

THIS CONSTRUCTION CONTRACT (this "Contract") is made and entered into as of April \_\_\_, 2018 by and between Superior Silica Sands LLC (the "Owner"), a Texas limited liability company, and Market & Johnson, Inc. (the "Contractor"), a corporation with its principal office located at 2350 Galloway Street, Eau Claire, WI 54702-0630.

### WHEREAS:

- A. Owner desires to engage Contractor to undertake certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, permitting, supervision, project management, and related services for the Project (as defined herein); and
- B. Contractor desires and, together with its subcontractors and suppliers, has the requisite personnel, equipment, and expertise to undertake the certain engineering, design, procurement, dismantling, transportation, storage, refurbishment, construction, upgrade, installation, interconnection, permitting, supervision, project management, and related services for the Project (as defined herein).

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS & INTERPRETATION

### 1.1 Defined Terms.

Unless otherwise required by the context in which a term appears, capitalized terms (whether stated in the singular or plural, present, future, or past tense) shall have the meaning specified in Exhibit A.

### 1.2 Interpretation.

Unless the context requires otherwise, words singular or plural in number shall be deemed to include the other and pronouns having a masculine or feminine gender shall be deemed to include the other. Unless the context requires otherwise: (i) any reference contained herein to this Contract or any other agreement or any appendix, schedule, exhibit or attachment hereto or thereto shall mean this Contract or such other agreement and such schedules, exhibits and attachments as amended, supplemented or otherwise stated, (ii) any reference in this Contract to any Person shall include its permitted successors and assigns and, in the case of any governmental instrumentality, any Person succeeding to its functions and capacities, and (iii) any reference in this Contract to any Section, Article, or Exhibit shall mean and refer to the Section or Article contained in or the Exhibit attached to this Contract. The words "include" and "including" shall mean to include, without limitation.



### **1.3 Force of Exhibits.**

The Exhibits to this Contract shall be deemed to form and shall be read and construed as part of this Contract.

## ARTICLE 2

### RESPONSIBILITIES OF CONTRACTOR

### 2.1 Work to be Performed.

Except as otherwise expressly set forth herein as being the responsibility of Owner, Contractor shall perform or cause to be performed all of the Work. Without limiting the foregoing, as part of the Work, Contractor shall provide the following services:

- 2.1.1. Structural/Civil Design. Contractor shall perform detailed design and engineering, excluding any design and engineering work not within the Contractor's scope, of the Facility Site ("Design and Engineering Work"). Contractor's engineering services shall include the preparation of drawings, specification, schedules, calculations, documents, and estimates, and coordination with the engineering efforts of Subcontractors.
- 2.1.2. Procurement. Contractor shall procure and make payment for all materials, equipment, supplies, and services to be furnished by Subcontractors or Suppliers. Contractor shall also perform such inspection, expediting, quality surveillance, and traffic services as Contractor deems necessary in connection with such procurement.
- 2.1.3. Construction. Contractor shall perform services to construct the Facility, furnishing management, qualified labor (including a full-time on-site safety manager, equipment, tools, and temporary facilities necessary for such construction. Contractor shall handle and warehouse materials, supplies, and equipment required for such construction.
- 2.1.4. Owner-Supplied Equipment. Contractor shall receive and take possession of the Owner-Supplied Equipment and cause it to be installed on the Facility.
- 2.1.5. Reserved.
- 2.1.6. Spare Parts. Contractor shall promptly recondition, if Owner agrees, or replace at its expense any spare parts Contractor or any Subcontractor uses from Owner's inventory.
- 2.1.7. Securing Governmental Approvals. Except as to be provided by Owner, Contractor shall secure all Governmental Approvals required in connection with the construction of the Facility or the performance of the Work, including all Governmental Approvals as are indicated to be obtained by Contractor in Exhibit H, and as may be hereafter identified by agreement of the Parties. Contractor shall on a timely basis provide all customary and reasonably necessary support to Owner in connection with Owner's securing of Governmental Approvals under Section 3.8 of this Contract.
- 2.1.8. Project Management. Contractor will be responsible for overall project management. Contractor will plan and manage the activities that make up Contractor's Work and be

the primary point of contact for the Owner. Contractor's responsibilities will include, among other things, managing, monitoring and reporting progress, deployment of a project administration team responsible for project cost controls, accounting and invoicing, and overall project administration functions.

## **2.2 Standard for Performance of the Work.**

Contractor shall perform and prosecute the Work in accordance with the terms and conditions of this Contract, the Process Design Work, and in compliance with all Governmental Approvals and Governmental Rules applicable to the prosecution of the Work, using methods and equipment that satisfy Construction Contractor Standards. Contractor shall install, test and operate all equipment and systems and otherwise perform the Work in a safe manner, using qualified, competent, and where necessary, licensed personnel.

## **2.3 Grade of Materials**

All equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the applicable industries, shall be free from defects in material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

## **2.4 Independent Contractor.**

Contractor is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, nor shall it be construed as creating any relationship whatsoever between Owner and Owner's Representative and Contractor's employees. Except as expressly limited in this Contract, Contractor shall be entitled to exercise the right to hire, discharge, promote and transfer its employees; to select and remove foremen or other persons at other levels of supervision; to establish and enforce reasonable standards of production; to introduce, to the extent feasible, labor saving equipment and materials; to determine the number of craftsmen necessary to perform a task; and to establish, maintain, and enforce rules and regulations conducive to efficient and productive operations.

## **2.5 Labor-Related Delays.**

Contractor shall advise Owner promptly, in writing, of any actual, anticipated, or threatened labor dispute that might affect the performance of the Work by Contractor or by any Subcontractor.

## **2.6 Responsibility for Subcontractors and Agents.**

Contractor may subcontract portions of the Work to any Person without further approval by Owner; *provided, however* that Owner shall have the right to reject any proposed Subcontractor or Supplier, except to the extent pre-approved by Owner as specified in Exhibit D. Owner's acceptance of any proposed Subcontractor or Supplier shall not constitute an approval of any portion of the Work or a waiver of any of Owner's rights hereunder or reduce Contractor's

responsibilities hereunder. Contractor shall not be entitled to relief for any portion of the Work that is incomplete or for any delay due in whole or in part to any disagreement between or among Subcontractors or between any Subcontractor and Contractor. Contractor has complete and sole responsibility as principal for its agents and all others it hires to perform or assist in performing the Work.

## **2.7 Appointment of Key Personnel.**

- 2.7.1. Contractor shall identify to Owner a project manager (Patrick Sullivan and Tim Esselman, each a "Project Manager"), subject to Owner's approval.
- 2.7.2. Notwithstanding Section 2.4, Contractor shall not change the Project Manager, without prior written consent of Owner, which shall not be unreasonably withheld.

## **2.8 Project Manager.**

- 2.8.1. Project Manager shall have the authority to commit Contractor to any course of action within the rights and obligations of Contractor under the provisions of this Contract. All notifications, information and decisions from Project Manager shall be as if from Contractor and shall bind Contractor.
- 2.8.2. Project Manager may delegate any of his responsibilities to any nominated deputy, the terms of which delegation shall be the subject of prior consent of Owner, such consent not being unreasonably withheld. Notifications, information and decisions from any such nominated deputy shall be as if from Project Manager.
- 2.8.3. A notice delivered to Project Manager shall be deemed to be notification to Contractor.
- 2.8.4. While the Work is being performed, Project Manager or his nominated deputy shall act as Owner's primary point of contact with Contractor with respect to prosecution of the Work and shall be readily available to discharge Contractor's responsibilities in accordance with this Contract.

## **2.9 Cooperation and Coordination.**

Contractor shall cooperate with Owner during the performance of the Work to assist in the conduct of inspections, and other matters relating to the Facility. Contractor shall provide such information as is reasonably requested by Owner relating to the Facility in dealing with the Owner, and/or any Governmental Unit, including information reasonably required to support Owner's compliance with applicable Governmental Approvals. Contractor shall provide Owner with written notice reasonably in advance of all significant scheduled meetings with Governmental Units and shall provide Owner with a reasonable opportunity to attend such meetings where practicable.

## **2.10 Progress Reports.**

- 2.10.1. Following commencement of the Work and until Final Completion, the Contractor shall deliver a Progress Report no later than the twelfth day of each month.

- 2.10.2. If the Contractor falls behind the Schedule, it shall immediately take, and cause its subcontractors to take, such action as may be necessary to remedy the delay, and shall submit to Owner a recovery schedule or progress chart demonstrating the manner in which the delay will be remedied.

**2.11 Assurance Regarding Payment.**

Upon request from time to time, Contractor shall provide to Owner such assurances as Owner may reasonably request as to the status of payments from Owner to Contractor and from Contractor to Subcontractors.

**2.12 Publicity.**

Contractor shall obtain Owner's prior written approval of the text of any external announcement, publication, or other type of public communication concerning the Work or the Facility prior to the release of the same by Contractor. Contractor shall provide that a similar obligation is imposed on Subcontractors.

**2.13 Hazardous Wastes and Materials.**

Contractor shall remove, transport, and dispose of any Hazardous Materials transported onto the Site by Contractor or any Subcontractor or created, used, or handled as part of Contractor's or any Subcontractor's construction activities at the Site or on off-site rights of way and easements furnished by Owner.

**2.14 Safety.**

Contractor will promote and will be responsible for the safety and health of its and its Subcontractor's and Supplier's employees. Contractor will also ascertain and comply with all Governmental Rules, including all applicable occupational safety and health standards and other state and local requirements relating to safety and health, accident or injury to its employees on, about, or adjacent to the premises where the Work is being performed. Contractor shall ensure that all employees including subcontractors are MSHA certified. Any training time and cost for MSHA certification will be the responsibility of the Contractor. The Contractor shall also take all necessary precautions for the safety of all persons on the Site, and shall erect and properly maintain at all times, as required by job conditions and progress of the Work, all necessary safeguards for the protection of its and its Subcontractors' and Suppliers' employees and the public; shall post danger signs warning against the hazards created by such features of construction as protruding nails, bad hoists, well holes, hatchways, scaffolding, window openings, stairways and dangers from falling materials; shall not load or permit any part of the Work to be loaded so as to endanger its safety. The Contractor shall designate a responsible member of his organization on the Work whose duty shall include the prevention of accidents. In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of such emergency work shall be determined in accordance with the provisions of this Contract.

**2.15 Site Requirements.**

Contractor shall comply with and shall require Subcontractors and Suppliers to comply with the Site Requirements.

**2.16 Reporting Accidents.**

Contractor will notify Owner in the event that it or its Subcontractor's or Supplier's employee(s) sustain a serious personal injury (any injury which requires admittance to a hospital) or a fatality occurs arising out of the Work done under the Contract. Contractor will also submit to Owner a written follow-up accident report, available from Owner, within 24 hours after the occurrence, as well as a written accident report in all other cases requiring more than first aid treatment. Contractor will also furnish Owner with a copy of all claims submitted to its insurance companies.

**2.17 Security.**

- 2.17.1. Contractor may furnish security personnel at the Site to control access, patrol yards and buildings, maintain order and enforce security regulations. The Contractor shall be obligated to replace or pay for all materials and equipment including items furnished by the Owner, damaged or stolen prior to completion of the Work. The presence or absence of such security services shall not be construed to modify the responsibility of the Contractor for loss and/or damages to persons or property within its custody or control.
- 2.17.2. Certain items are prohibited from the Site under all conditions. These items include alcoholic beverages, controlled substances, drugs, firearms, cameras and hunting devices. Owner's, or Owner's designated representative's, security personnel may conduct periodic, random inspections of vehicles, lunch boxes, coolers, cartons or other containers brought on to the Site.
- 2.17.3. Contractor employees in violation of the above provisions shall be subject to immediate removal from the Site and not allowed to continue the Work.

**2.18 Use of Owner's Equipment, Personnel and Facilities.**

- 2.18.1. Circumstances may arise where Contractor will request that Owner make available to Contractor certain equipment or facilities and operators for the performance of Work. If Owner agrees to such request (which it is under no circumstances obligated to do), the equipment or facilities will be for Contractor's account at rates specified by Owner and subject to such terms and conditions (which may be in addition to those set forth in this Contract) as Owner may require.
- 2.18.2. The Contractor will assure itself of the condition of such equipment and facilities before use and will assume all risks and responsibilities in its use of the facilities and equipment. Contractor will indemnify and hold Owner harmless against any damages or claims that may arise from such use. It is the responsibility of the Contractor to substantiate, before returning such equipment and facilities to Owner, that no part of the

equipment or facilities loaned to the Contractor has been over-stressed or damaged in any way as a result of its use.

- 2.18.3. In the event such equipment is furnished with an operator, it is understood that such operator will perform his services under the complete direction and control of Contractor and will be considered Contractor's employee for all purposes other than the payment of wages, worker's compensation or other benefits paid directly to such employee by Owner.

## **2.19 Site Conditions.**

The Contractor has sole responsibility for satisfying itself concerning the nature and location of Work and the general and local conditions, and particularly, but without limitation, with respect to the following: those affecting transportation, access, disposal, handling and storage of materials, including lay down areas; availability and quality of labor, water and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the Site; topography and ground surface conditions; subsurface geology, and nature and quantity of surface and subsurface materials to be encountered; equipment and facilities needed prior to and during performance of the Work; and all other matters which can in any way affect performance of the Work or the cost associated with such performance. The failure of the Contractor to acquaint itself with any applicable condition will not relieve it from the responsibility for properly estimating the difficulty, and cost for successfully performing the Work. If Owner furnishes any data or other information concerning surface or subsurface conditions, any reliance on or use of such data or information by Contractor is at Contractor's sole risk.

## **2.20 Contractor's Employees and Management.**

- 2.20.1. Contractor will perform the Work diligently and will maintain at all times a sufficient number of competent and fit workers with adequate supervision to complete the Work properly, skillfully, in a workmanlike and timely manner.
- 2.20.2. At Owner's request the Contractor will remove any employee whom Owner deems unacceptable for any reason.
- 2.20.3. Contractor will not, in any event, admit to the Site any person who does not have proper credentials sufficient to establish that such person has a legitimate purpose for being on or about the Site. In the event of any doubt, Contractor is to contact Owner for clarification or further instructions.

## **2.21 Cleanup and Waste Disposal.**

- 2.21.1. The Contractor will, at all times, keep the Site in a neat, clean, and safe condition.
- 2.21.2. Upon completion of any stage of the Work, the Contractor will promptly remove all of its equipment, temporary structures, waste and surplus construction and other materials and ancillary facilities not to be used at or near the same location during later stages of the Work. Before final payment is made, the Contractor will, at its expense, satisfactorily dispose of all plant, ancillary facilities buildings, rubbish, waste, unused

materials and other equipment and materials belonging to it or used in the performance of Work, and the Contractor will leave the work areas and premises in a neat, clean and safe condition.

- 2.21.3. The Contractor will ascertain and comply with the Government Rule applicable to the use, resale, storage, transportation and disposal of any materials including, but not limited to, any materials classified as hazardous. If the Contractor fails to comply with any of the foregoing, the same may be accomplished by Owner at the Contractor's expense.

**2.22 Delivery and Storage.**

- 2.22.1. Contractor shall receive, unload, store, warehouse, protect against loss or damage from every source, handle and maintain all materials, tools and equipment whether supplied by it, or its Subcontractors or Suppliers for Contractor's use.
- 2.22.2. The Contractor shall not use any portion of the Site as a lay down area or for storage except as otherwise provided in this Contract.
- 2.22.3. The Contractor shall not use any portion of the Site without express written consent of the Owner.

**2.23 Protection of Owner's Property and Equipment.**

- 2.23.1. The Contractor will at all times take adequate precautions, to Owner's satisfaction, to protect Owner's property and adjoining property from damage.
- 2.23.2. Unless otherwise specified in the Contract, all Work is to be performed without interruption of service or production of Owner, and consistent with Owner's safety rules and practices. If, in the Contractor's opinion, it will be necessary to interrupt Owner's service or production, Contractor will advise Owner as soon as possible in advance of the anticipated interruption. If Owner determines, in its sole discretion, that the interruption is necessary, it will make all arrangements therefor and will advise Contractor of all arrangements made. If Owner determines it is not necessary, Contractor will proceed with the Work without such interruption.
- 2.23.3. Public utility facilities, such as plant generating equipment, communications and power lines, gas and water mains, telephone and other cables and structures and the like, are not to be moved or otherwise tampered with until suitable arrangements with the company owning or operating such facilities are completed. Contractor will notify Owner reasonably in advance of commencing any Work in the vicinity of such facilities and is to make all necessary arrangements without loss of time or interference with Owner's schedules.

**2.24 Limited Notice to Proceed.**

All work undertaken pursuant to a Limited Notice to Proceed shall be incorporated as part of the Work and, from the date of execution of this Contract, deemed to have been performed under this Contract.

**2.25 Sand Stock Pile Area.**

- 2.25.1. Contractor shall have exclusive responsibility for the construction of the sand stock pile areas on the Site.

**ARTICLE 3  
RESPONSIBILITIES OF OWNER**

**3.1 Design.**

Owner shall furnish the detailed process design of the Facility including appropriate specifications of equipment, materials and systems to be incorporated into the Facility (the "Process Design Work").

**3.2 Cooperation with Contractor.**

Owner shall cooperate with Contractor during the performance of this Contract. Such cooperation shall include timely supply of all those items, personnel, services, and information required to be supplied by Owner under this Contract; no material interference with Contractor's agents, employees or Subcontractor; and timely administration of all of Owner's obligations under this Contract.

**3.3 Site Access.**

Owner shall furnish access to the Site. Owner shall assure reasonable rights of ingress to and egress from the Site to Contractor, Subcontractors, and Suppliers sufficient for the performance of the Work.

**3.4 Property Rights.**

Owner shall be responsible for obtaining necessary real property rights and other real estate rights for performance of the Work. This obligation shall apply with regard to the Site.

**3.5 Services and Utilities.**

- 3.5.1. Owner shall provide on the Site at no cost or expense to Contractor electricity; *provided, however*, that such electricity shall only be used in connection with Contractor's performance of its obligations under this Contract. Owner shall have no responsibilities to provide gas, phone service, transportation, sewer, compressed air, or any other utility or service.
- 3.5.2. Electricity shall be available as of the date necessary for construction purposes.



**3.6 Lay Down Area**

Owner shall provide reasonably sufficient space on the Site to lay down materials and to conduct the Work, and such areas shall be within reasonable proximity to the Site.

**3.7 Owner's Representative.**

3.7.1. Owner shall designate and identify by written notice to Contractor its Owner's Representative, who shall act as Contractor's primary point of contact with Owner with respect to the prosecution of the Work. Owner hereby designates Jim Sadowski as the initial Owner's Representative.

3.7.2. Owner may designate a replacement Owner's Representative at any time by delivery of notice of such replacement to Contractor.

**3.8 Governmental Approvals.**

3.8.1. Owner shall secure the Governmental Approvals listed in Exhibit I. Owner shall not be considered to have delayed in meeting this obligation to the extent any such delay is due to a failure or delay of Contractor to provide timely support to Owner as required under Article 2.

3.8.2. Owner shall on a timely basis provide all customary and reasonably necessary support to Contractor in connection with Contractor's securing of Governmental Approvals under Section 2.1.7.

**3.9 Grading.**

3.9.1. Owner shall at no cost to Contractor be responsible for grading the tripper conveyor site, Owner shall do so in accordance with applicable Construction Contractor Standards and shall complete such Site grading prior to the issuance of the Notice to Proceed.

**3.10 Technical Data.**

3.10.1. Owner shall supply all available geological, utility, and other Site data, but Contractor shall not rely on such data.

3.10.2. Upon reasonable request by Contractor, Owner shall cooperate with Contractor in obtaining such additional technical data as may be necessary for Contractor to perform the Work.

**3.11 Time and Manner of Owner's Performance.**

Owner shall carry out the responsibilities described in this Article 3 at no cost to Contractor and in accordance with the provisions of this Contract and the Schedule.

**3.12 Testing.**

Owner shall perform that Performance Test as specified in Article 9.

## ARTICLE 4

### PAYMENT TERMS

#### 4.1 Contract Price.

- 4.1.1. Owner shall pay to Contractor the Contract Price for the performance of the Work in accordance with this Contract.
- 4.1.2. The Contract Price is a fixed, turn-key price and is not subject to change other than as provided in this Contract.

## 4.2 Progress Payments.

- 4.2.1. Following the initial invoice, at the end of each month during the performance of the Work, Contractor shall provide the Owner with an invoice based upon the cost of the Work completed as set forth on Exhibit L. Notwithstanding the foregoing, no invoice in any given month shall exceed the amount (“Monthly Cap”) set forth on Exhibit L.
- 4.2.2. Each invoice shall be delivered together with (a) supporting documentation substantiating the completion of the Work reflected on such invoice and (b) duly executed lien waivers by Contractor and each Subcontractor for the Work reflected in such invoice, which lien waivers are substantially in the form attached hereto as Exhibit M (in relation to each progress payment up to and including the payment for achieving Substantial Completion) and as attached hereto as Exhibit N (in relation to the payment for Final Completion). Each invoice shall constitute the certification of Contractor that the Work to date is in accordance with this Contract.
- 4.2.3. Within ten (10) Business Days (or such other period to the extent so noted in Exhibit L) following the delivery of an invoice and the supporting documentation described in Section 4.2.3, Owner shall pay 100% of amounts due as reflected on such invoice. If Owner disputes any portion of an invoice, then Owner shall provide written notice to Contractor indicating the reason Owner is withholding any amount and shall pay the undisputed portion of the invoice in accordance with this Section 4.2. No payment by Owner of any invoice shall be deemed Owner’s acceptance of the Work reflected thereon. The Parties shall resolve disputes relating to any invoices in accordance with the procedures set forth in Article 29.

### 4.3 Updates.

Contractor shall upon request of the Owner provide to the Owner any cost information or backup requested, including all Subcontractor and Supplier invoices.

#### 4.4 Lien Waivers.

Submission of a duly executed lien waiver as provided in Section 4.2.3 shall be a condition of Contractor's right to receive each progress payment.

## **ARTICLE 5 SECURITY**

### **5.1 Performance Guarantee.**

At the Owner's request, Contractor shall furnish to Owner on or prior to the date first set forth above security in the form set forth in Exhibit J as a guarantee of all performance, payment, indemnity, warranty and other obligations of Contractor under this Contract. Owner shall reimburse Contractor the actual cost of such guarantee paid to the issuer thereof, up to a cap of one percent (1%) of the Contract Price.

## **ARTICLE 6 ACCOUNTING AND AUDIT CONTROL**

### **6.1 Accounting Systems and Records.**

The Contractor shall carefully check, and prepare and maintain, detailed accounting records of all materials, labor and other items entering into the Work. Such accounting, as well as all other systems of filing, accounting, and financial controls pertaining to the Work, employed by the Contractor, or any of his subcontractors performing under guaranteed maximum price or cost reimbursable subcontracts must be of such accuracy and detail as to permit the Owner to fully assess and protect its financial interest. The Contractor shall preserve all records at his sole cost and expense for a period of at least five (5) years following final payments by the Owner under this Contract.

### **6.2 Documents and Forms.**

The Contractor shall submit to the Owner, as and when required below, the following:

- (a) Contractor's purchase order and subcontract forms, for approval prior to their first use in connection with the Work, such forms to provide for material specifications, unit price, delivery promise, tax status, shipping and discount terms;
- (b) Copies of all subcontracts and purchase orders including all applicable change orders and amendments, promptly upon their issuance;
- (c) Job organization chart(s) and listing of all supervisory, technical and clerical personnel of the Contractor and each subcontractor performing under a guaranteed maximum price or cost reimbursable contract, giving full description of responsibilities, rates of pay, overtime, vacation, sickness and other allowances, for Owner's approval prior to start of the Work;
- (d) Copy of the Contractor's daily labor report showing each field employee's name, badge number and hours worked, at the end of each working day;
- (e) Analysis of the Contract Price using cost breakdown schedule forms provided by the Owner, such analysis to represent reasonable and appropriate estimates

suitable for the Owner's accounting, equipment control and tax records to be submitted no later than sixty (60) days after receipt of such schedule forms from Owner.

## **ARTICLE 7 COMMENCEMENT AND COMPLETION DATES**

### **7.1 Limited Notice to Proceed and Notice to Proceed.**

Upon receipt of a Limited Notice to Proceed, Contractor shall commence limited portions of the Work, the scope of which shall be specified in the Limited Notice to Proceed. Contractor shall commence all portions of the Work promptly upon delivery to Contractor of a Notice to Proceed.

### **7.2 Guaranteed Completion Dates.**

Contractor shall pursue the Work with all due diligence and shall achieve

- (a) Substantial Completion by the Guaranteed Substantial Completion Date; and
- (b) Final Completion by the Guaranteed Final Completion Date.

## **ARTICLE 8 MECHANICAL COMPLETION**

### **8.1 Mechanical Completion.**

The Contractor shall have achieved "Mechanical Completion" on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following, except for minor items of Work that would not affect the performance or operation of the Facility such as painting, would not require shutdown of the Facility to complete and would affect any guarantee, each of the items listed in Section (a) through Section (ff) have been achieved; *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Mechanical Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Substantial Completion.

- (a) The entire Facility, or applicable part thereof, has been inspected for completeness using project drawings, data, and specifications as the base;
- (b) Contractor has completed conducting hydrostatic, pneumatic, and other field tests of pipe and other materials and emptying material lines after such tests where necessary;
- (c) All safety and fire protection requirements have been met;
- (d) All vendors' and manufacturers' instructions and drawings for materials furnished by Contractor have been transmitted to Owner;

- (e) Safety tools and other items necessary for a safe plant startup of the Facility are available to Owner.
- (f) All approved tests, inspection certificates, and reports applicable to Contractors' Work have been submitted to Owner;
- (g) Clean up has been completed and accepted to the point that it does not interfere with commissioning and start-up activities.
- (h) Insulation (and fireproofing if required) of all equipment, piping, valves, instruments, and other parts of the Facility for heat conservation and personnel protection has been completed so that shutdown of equipment or the Facility is not required to complete the insulation work;
- (i) Painting (to the extent provided for in scope of work or standard industry practice) is complete enough so that completion of the painting work does not require shutdown of the equipment or the Facility and shall not hinder operators during operation of the Facility;
- (j) All rust preventatives and oils used to protect the Facility during the construction period must be removed whenever these protective materials will be detrimental to operations.
- (k) The initial charge of all lubricant has been installed, except as restricted by commissioning activity;
- (l) All mechanical seals, permanent packing, and accessories have been installed as required, except as restricted by commissioning activity.
- (m) All temporary supports, bracing, or other foreign objects that were installed in vessels, transformers, rotating machinery or other equipment to prevent damage during shipment, storage and erection have been removed.
- (n) Rotating machinery has been checked for correct direction of rotation and for freedom of moving parts before connecting the driver.
- (o) Cold alignment of all rotating portions of the Facility have been made to the manufacturers' tolerances.
- (p) All accessories have been installed as required, except as restricted by commissioning activity;
- (q) All system piping, electrical and controls tie-ins have been made and verified, except as restricted by commissioning activity;
- (r) A list of proper settings for all safety devices has been provided to Owner;

- (s) All mechanical safety devices have been tested, adjusted and installed by Contractors;
- (t) All systems have been cleared and are free of trash and construction debris;
- (u) Contractor has provided to Owner all vendor manuals containing vendor recommended spare parts, except for a portion of the Facility supplied by Owner;
- (v) All materials and equipment have been installed substantially in accordance with the requirements of the Scope of Work, and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity;
- (w) All systems required to be installed by Contractor have been installed in a manner consistent with applicable codes and standards and equipment manufacturers' recommendations and in a manner that does not void any Subcontractor equipment or system warranties;
- (x) Contractor has performed all operational tightness testing, including hydrostatic or pneumatic testing of all piping, as required by the drawings and specifications;
- (y) Temporary strainers are provided and have been installed as required by the commissioning procedures.
- (z) All blinds required for testing or flushing have been removed from the systems.
- (aa) All inner packing materials such as sand, gravel, etc. have been procured and installed in vessels as specified.
- (bb) All materials other than materials specifically noted elsewhere such as chemicals, resins, desiccants, catalysts and other similar material, have been installed in vessels as specified.
- (cc) All mixed beds containing chemicals, resins, desiccants, catalysts, or other operating materials and inner packing materials such as sand, gravel, balls and saddles, have been installed as specified.
- (dd) Contractor has cleaned all lines of loose material by flushing or blowing out except those lines which must be blown by running permanent pumps or compressors, and any other special cleaning or preparation of individual lines that is called for in the drawings and specifications;
- (ee) Contractor certifies and Owner agrees that all the equipment and systems can be operated in a safe and prudent manner; and

- (ff) Contractor has obtained all Governmental Approvals and any other items required by Government Rule necessary for achieving Mechanical Completion under this Section and for conducting Performance Tests under Section 9.1.

## **8.2 Mechanical Completion Incremental.**

It is understood that Mechanical Completion can be accomplished in incremental steps, the sum total of which, after notice in accordance with Section 8.3, shall constitute Mechanical Completion of the Facility.

## **8.3 Notice of Mechanical Completion.**

- 8.3.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Mechanical Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Mechanical Completion has been achieved, Contractor shall issue to Owner a Notice of Mechanical Completion. Within five (5) Business Days after delivery of the Notice of Mechanical Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Mechanical Completion or (ii) a notice rejecting Contractor's achievement of Mechanical Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Mechanical Completion submitted to Owner.
- 8.3.2. To be valid, a Notice of Mechanical Completion must set forth the date upon which each of the conditions necessary to achieve Mechanical Completion was satisfied.
- 8.3.3. The date of Mechanical Completion shall be the date upon which all of the conditions set forth in Section 8.1 have been satisfied.

# **ARTICLE 9 PERFORMANCE TESTS**

## **9.1 Commencement of Facility Performance Tests.**

Owner shall commence the Performance Tests after all requirements under Section 8.1 have been satisfied; *provided, however*, Owner may commence the Performance Tests after each of the following conditions have been satisfied:

- (a) the Facility can be operated in a safe and reliable manner; and
- (b) all equipment and systems that are directly related to the Facility and interconnections thereto are mechanically complete, including all Owner-Supplied Equipment.

## **9.2 Tests to be Performed.**

- 9.2.1. The "Performance Tests" shall consist of tests set forth in Exhibit O.

9.2.2. Each one of the Performance Tests may be run concurrently or in the order chosen by the Owner.

9.2.3. During any Performance Test, the Facility shall be in full compliance with the requirements of the Contract, Governmental Rules, and Governmental Approvals.

**9.3 Diagnosing Defects.**

9.3.1. If a Performance Test was unsuccessful, Owner shall consult with the Contractor and all relevant Subcontractors and Suppliers to diagnose the defect or deficiency as quickly as possible. If Owner reasonably determines that the defect or deficiency is not a result of (i) the Process Design Work or (ii) an Existing Owner-Supplied Equipment Defect, Contractor shall correct such defect or deficiency in accordance with Section 9.4.

9.3.2. Any dispute concerning whether a defect or deficiency is a result of the Process Design Work or an Existing Owner-Supplied Equipment Defect shall be resolved pursuant to Article 29.

**9.4 Correction of Defects.**

9.4.1. In the event a Performance Test was unsuccessful for reasons other than the causes described in Section 9.3.1, Contractor shall, at its sole cost and expense, correct such defects and deficiencies and promptly provide notice to Owner certifying such correction, specifying the measures taken and, if such defects or deficiencies require re-running of those tests, setting forth the date on which the Facility will be ready for the respective deficient Performance Test to be re-run.

9.4.2. In the event the Performance Test was unsuccessful as a result of the causes described in Section 9.3.1, Owner, at its sole cost and expense, shall be responsible for correcting such defects or deficiencies.

**9.5 Re-Run of Performance Tests.**

9.5.1. A failed Performance Test shall thereafter be re-run promptly and the procedure set forth in this Article 9 shall be repeated until all Performance Tests have been satisfactorily completed and all such defects and/or deficiencies have been corrected. .

**ARTICLE 10  
EXISTING DEFECTS**

Contractor shall request a Change Order to address any defect or deficiency in the Process Design Work or an Existing Owner-Supplied Equipment Defect discovered in the Owner-Supplied Equipment. To the extent that Owner fails to grant such Change Order or otherwise commence remediation of the Process Design Work or repair of the Existing Owner-Supplied Equipment Defect within one-hundred eighty (180) days, Owner shall be deemed to have terminated this Contract for convenience in accordance with Section 17.1 and Contractor shall not be liable for damages for failure to satisfy any obligations under this Contract that it is not



able to perform as a result of the defect or deficiency in the Process Design Work or the Existing Owner-Supplied Equipment Defect.

## ARTICLE 11

### SUBSTANTIAL AND FINAL COMPLETION

### 11.1 Substantial Completion.

The Contractor shall have achieved “Substantial Completion” on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of requirements set forth in Section (a) through Section (k); *provided, however*, Owner may, in its sole discretion, waive any such requirement for achieving Substantial Completion or may, in its sole discretion, transfer such requirement to the list of items that must be completed for the Contractor to achieve Final Completion.

- (a) Contractor has delivered to Owner all final Governmental Approvals required to be obtained by Contractor as described in Section 2.1.7 and listed in Exhibit H;
- (b) Contractor has delivered to Owner all drawings and specifications (except final “as-built” drawings of the Facility, but including red-lined “as-built” drawings of the Facility), test data, and other technical information required hereunder for Owner to start up, operate and maintain the Facility;
- (c) RESERVED;
- (d) Contractor has performed all other provisions of and delivered all items (other than those on the Punchlist) required by this Contract then to be performed or delivered in a manner reasonably satisfactory to Owner;
- (e) Contractor has delivered to Owner a certificate certifying the satisfaction of each of the requirements set forth in Section (a) through Section (d).
- (f) Contractor has certified that the Facility has been constructed in accordance with the Scope of Work;
- (g) Contractor has certified that it has performed all of its obligations under this Contract then to be performed;
- (h) Contractor has paid all amounts to Owner then due and payable under this Contract or has posted a letter of credit, in form and substance acceptable to Owner (in its sole discretion), securing in full the payment of these amounts; and
- (i) Contractor has delivered an accurate and complete Punchlist to Owner.

## 11.2 Notice of Substantial Completion.

- 11.2.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Substantial Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Substantial Completion has been achieved, Contractor shall issue to Owner a Notice of Substantial Completion. Within five (5) Business Days after delivery of the Notice of Substantial Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Substantial Completion or (ii) a notice rejecting Contractor's achievement of Substantial Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Substantial Completion submitted to Owner.
- 11.2.2. To be valid, a Notice of Substantial Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Substantial Completion and must set forth the date upon which each of the conditions necessary to achieve Substantial Completion was satisfied.

### 11.3 Facility Turnover.

Upon Substantial Completion, Owner shall take custody and control of the Facility and shall thereafter be solely responsible for its day-to-day security, operation, and maintenance. Contractor and its Subcontractors shall have such access to the Facility following Substantial Completion as may be necessary or desirable to complete any unfinished Work, including Punchlist Items, to make modifications or repairs at Contractor's discretion to improve Facility performance, to perform further Performance Tests, to carry out warranty obligations, or otherwise to fulfill Contractor's obligation under this Contract. Contractor shall minimize disruption of Facility operations.

### 11.4 Final Completion.

The Contractor shall have achieved “Final Completion” on the date on which the Contractor has satisfactorily demonstrated to the Owner achievement of each of the following:

- (a) Contractor has achieved Mechanical Completion;
- (b) Contractor has achieved Substantial Completion;
- (c) Contractor has paid all amounts that are payable to Owner;
- (d) Contractor has delivered to Owner all final “as-built” drawings and specifications of the Facility;
- (e) Contractor has completed all items on the Punchlist.

**11.5 Notice of Final Completion.**

- 11.5.1. Contractor shall give Owner advance notice of no fewer than five (5) Business Days prior to the date Contractor expects to achieve Final Completion. Promptly (and within one (1) Business Day in any event) after, in Contractor's judgment, Final Completion has been achieved, Contractor shall issue to Owner a Notice of Final Completion. Within five (5) Business Days after delivery of the Notice of Final Completion, Owner shall deliver to Contractor either (i) a notice accepting achievement of Final Completion or (ii) a notice rejecting Contractor's achievement of Final Completion and identifying any deficiencies, which deficiencies shall be promptly corrected by Contractor and a new Notice of Final Completion submitted to Owner.
- 11.5.2. To be valid, a Notice of Final Completion must include (to the extent not already delivered) report(s) in reasonable detail of the results of any Performance Test required to achieve Final Completion and must set forth the date upon which each of the conditions necessary to achieve Final Completion was satisfied.

**ARTICLE 12  
SCHEDULE**

**12.1 Substantial Completion Guarantees.**

- 12.1.1. Contractor hereby guarantees that Contractor will achieve Substantial Completion on or before the Guaranteed Substantial Completion Date; *provided, however*, Contractor's guarantee shall not apply to the extent that a defect or deficiency in the Engineering Work or an Existing Owner-Supplied Equipment Defect prevents Contractor from achieving Substantial Completion on or before the Guaranteed Substantial Completion Date.

**12.2 Construction Milestones**

- 12.2.1. Contractor shall achieve each of the milestones set forth in Exhibit E (each a "Construction Milestone" and, collectively the "Construction Milestones") within the time period prescribed thereof in Exhibit E.
- 12.2.2. Contractor shall notify Owner promptly of the failure to meet a Construction Milestone and, not later than five (5) Business Days following such notice, shall provide Owner with Contractor's plan to regain any lost time, and Contractor shall take all reasonable steps to regain such lost time.

**ARTICLE 13  
TIME AND DELAYS**

**13.1 Time and Delays**

Time is of the essence for this Contract. If the Contractor is delayed in the performance of the Work by:

- (a) the act or omission of Owner or its representatives, or
- (b) the act or omission of any other contractor, supplier or subcontractor (other than Subcontractors and Suppliers); or any other event affecting Contractor (including Subcontractors and Suppliers), Owner, other contractors, or subcontractors which could not be reasonably foreseen and guarded against and is without the fault or negligence and is beyond the control of the party affected;

then the Contractor shall initiate a recovery plan to minimize its effect on the completion dates. The Contractor recognizes that a delay in any one phase of the Work does not necessarily result in any delay or a delay of equal duration in completion of the entire Work. In the event it is not possible to develop a plan adequate to permit achieving the above completion dates without incurring additional costs which the Owner is not willing to assume, the Owner and Contractor shall agree on extending such completion date or dates as may be necessary, but for no greater period than the period of the unavoidable delay; *provided, however*, that such extension of time granted shall be the Contractor's exclusive remedy in event of such delay, no matter how or by whom caused; and, *provided further* that Contractor has complied with the following:

- (i) Immediately upon the onset of the delay, give written notice to Owner.
- (ii) As soon as possible, Contractor will provide Owner with a detailed description and probable duration of the delay and the specific portion of the Work affected.
- (iii) As soon as practicable, the Contractor will, in writing, request an extension of time. If the parties cannot agree upon the right to or amount of the extension, Contractor shall proceed in accordance with Owner's decision and the dispute will be resolved in accordance with the provisions of the Contract.

Failure to provide such notices and request will be a waiver of any claims of the Contractor arising from such delay.

## ARTICLE 14 CHANGES

### 14.1 Change; Change Orders.

- 14.1.1. A Change shall result from an Owner-Directed Change pursuant to Section 14.2 or a Contractor-Required Change pursuant to Section 14.3. No Change shall be made except in accordance with a duly issued Change Order executed in writing by both Parties in accordance with this Article 14. Each Change Order shall contain details of the Change, and any adjustments of the design documents, the Contract Price, the Schedule, the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date with the Change Orders setting forth the specific Section(s) of this Contract to be affected thereby.

- 14.1.2. A Change Order may be executed only by an officer of Owner, and the Owner's Representative shall not be duly authorized to execute a Change Order or to otherwise authorize a Change.

**14.2 Owner-Directed Changes.**

Owner, at any time, by notice to Contractor, may direct Changes in the Work consisting of additions, deletions, modifications or substitutions within the general scope of this Contract (any such notice, an "Owner-Directed Change"), subject to any adjustments to the Contract Price and/or the Schedule in accordance with Sections 14.5 and 14.6.

**14.3 Contractor-Required Changes.**

Contractor shall be entitled to adjustments to the Contract Price and/or the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) in accordance with Sections 14.5 and 14.6 by a Change Order ("Contractor-Required Change") resulting from the following circumstances: (a) a Force Majeure Event; (b) as provided in connection with a suspension of the Work pursuant to Article 18; or (c) the existence of Hazardous Materials at the Site (other than as caused by Contractor) that prevent Contractor from performing the Work; provided however, that such circumstance is not in connection with a Contractor event of default, and in each such case (x) to the extent of any impact on Contractor's performance of the Work or on the Contract Price or the Schedule, (y) subject to Contractor's obligation to identify and implement reasonable mitigation of such impacts and (z) in accordance with and subject to the applicable provisions of Sections 14.4, 14.5 and 14.6.

**14.4 Notice to Owner.**

- 14.4.1. Contractor shall give timely notice to Owner of any event or circumstance that Contractor believes is or will give rise to a Contractor-Required Change. Such notice shall be in writing and shall include information on the event or circumstance that gives rise to a Contractor-Required Change; provided that, each such notice shall be issued as promptly as possible but in no event later than twenty (20) days following Contractor's (or any Subcontractor's) actual knowledge of any such event or circumstance.
- 14.4.2. In the case of any Contractor-Required Change, Contractor shall promptly prepare and submit to Owner an estimate (on a fixed-price basis) of the increase or decrease, if any, in the Contract Price in accordance with Section 14.5 and the lengthening or shortening, if any, of the Schedule or extension of the Guaranteed Substantial Completion Date required to complete the Change and the remaining portion of the Work in accordance with Section 14.6, together with an explanation of the basis for the estimates and including the effect of available mitigation of such impact, and the related amendments to any provision of this Contract. Upon Owner's approval of such Change, Contractor shall prepare the Change Order for the Parties to execute and, upon its execution and delivery by both Parties, proceed with the implementation of the Change.
- 14.4.3. Within fifteen (15) Business Days of receipt of any notice of a Contractor-Required Change and all supplemental supporting documentation reasonably necessary for Owner to evaluate the Contractor-Required Change, or such longer period as Owner

may reasonably require to secure necessary approvals, Owner shall notify Contractor of its approval or proposed changes to the Contractor-Required Change. If Owner disputes Contractor's entitlement to or the proposed terms of a Contractor-Required Change, then, subject to Section 14.7, either Party may invoke the provisions of Article 29 to resolve the dispute.

#### **14.5 Adjustments to Contract Price.**

The price of any Work required or modified by a Change shall be on a lump-sum fixed price agreed to by the Parties; provided that, if the Parties are unable to agree on a fixed price for such Change, then Contractor shall perform the Work associated with the Change on a cost-plus basis using rates to be reasonably agreed upon at the time of the Change including an eight percent (8%) profit component. The basis for a Change to the Contract Price shall include: (a) the relevant cost information regarding the portion of the Contract Price that is affected by the Change; (b) the pricing for the cost of equipment modified by the Change; (c) estimated quantities of equipment, materials and labor modified by the Change; and (d) relevant information concerning other factors affecting costs and price. Contractor shall bear the burden of proof in establishing its entitlement to an adjustment in the Contract Price to be provided under such Change and shall use commercially reasonable efforts to mitigate the cost and price impact of any Change.

#### **14.6 Adjustments to Schedule.**

Adjustments to the Schedule (including the Guaranteed Substantial Completion Date and Guaranteed Final Completion Date) as a result of a Change shall be equal to the actual amount of delay incurred by Contractor on the critical path of the performance of the Work, subject to adjustments to the Work or to the methods or sequence of performing the Work that can be implemented by Contractor to mitigate the delay. Contractor shall use reasonable efforts to mitigate delays; provided however, that if such mitigation would cause a material increase in the costs of performing the Work, Contractor shall not pursue such efforts unless so requested by Owner, in which case Contractor shall be entitled to a related Change in the Contract Price. Contractor shall bear the burden of proof in establishing its entitlement to any adjustments provided for in this Section 14.6.

#### **14.7 Continuation of Work Pending Resolution of Dispute.**

In the event of a dispute in connection with a Contractor-Required Change or an Owner-Directed Change, during the period prior to the resolution of the dispute, Contractor shall perform the Work (including such Work subject to the Change) and may invoice Owner the cost of performing the Change on a time and materials basis in accordance with Contractor's established accounting practices including agreed allocation of overhead costs.

#### **14.8 Other Provisions Unaffected.**

Except to the extent the Parties specifically modify any of the provisions of this Contract as part of an executed Change Order, all provisions of this Contract shall apply to all Changes, and no Change, amendment or waiver shall be implied as a result of any other Change.

## ARTICLE 15

### WARRANTIES

## 15.1 Warranties.

- 15.1.1. Contractor warrants the Work (including any Changes) and warrants that the Work (including any Changes) will be
- (a) performed in accordance with the terms and conditions of this Contract, including in compliance with the Process Design Work;
  - (b) free from defects in workmanship, and
  - (c) in compliance with Governmental Rules.
- 15.1.2. Contractor does not warrant anything that is outside the scope of its Work.
- 15.1.3. Contractor warrants that all permanent plant equipment and materials supplied under this Contract shall conform to the standard of material and workmanship prevailing in the power plant construction industries, shall be free from defects in material and workmanship, and shall conform in all respects to the Scope of Work and terms of this Contract, and shall be new and of good quality if not otherwise expressly specified in the Scope of Work or approved by Owner.

## 15.2 Remedies.

Upon proper notice received from Owner during the Warranty Period, Contractor shall, without additional compensation:

- (a) Civil and Other Design and Engineering: Re-perform correctly any engineering or design Work, excluding the Process Design Work and any engineering and design Work not within the scope, that is found to be defective in that it fails to meet the warranties set out in Section 15.1 and perform or cause to be performed remedial construction work or rework that is required to effect such re-performed engineering or design Work;
- (b) Construction: Re-perform or cause to be re-performed any construction Work that is found to be defective in that it fails to meet the warranties of workmanship set out in Section 15.1; and
- (c) Equipment and Materials: Take such steps as may be necessary to repair or replace any equipment or materials found to be defective due to failure to meet the warranties set out in Section 15.1.

### 15.3 Warranty Period.

Contractor's obligations and liabilities under this Article 15 shall cease upon the termination of the "Warranty Period," defined as the period extending for one (1) year after the date of

Substantial Completion; *provided, however*, that any Work which is not complete on the date of Substantial Completion shall be warranted for one (1) year after the completion date of such Work; and *provided* further that any re-performance, repair, or replacement work performed prior to Final Completion shall be re-warranted for one (1) year after the completion date of such work, and any re-performance, repair, or replacement work performed during the Warranty Period shall be re-warranted for one (1) year after the completion date of such work.

#### **15.4 Notice.**

Contractor's warranty obligations and liabilities are conditioned on Owner's delivering notice of an alleged deficiency or defect within a reasonable time after actual discovery thereof by Owner; *provided, however*, that Owner's failure to give such notice during such period shall not relieve Contractor of its warranty obligations and liabilities except to the extent Contractor is prejudiced by such failure. Any such notice of deficiency or defect shall state with reasonable specificity the date of occurrence or observation of the deficiency or defect and the reasons supporting Owner's belief concerning the alleged deficiency or defect. Contractor shall respond to any such notice not later than seven (7) Business Days after receipt of any such notice, and if the notice correctly invokes Contractor's warranty obligations, Contractor shall promptly commence the appropriate re-performance, repair, or replacement, consistent with Section 15.2.

#### **15.5 Assignment of Subcontractor Warranties.**

Contractor shall cause all Subcontractor warranties to be assignable (and shall be assigned) to Owner or Owner's designee upon the expiration of the Warranty Period.

#### **15.6 Warranty Enforcement Remedies.**

Except in cases of an emergency requiring immediate corrective action by Contractor, promptly upon receipt by Contractor of a notice from Owner specifying a failure of any of the Work to satisfy Contractor's warranties, Contractor and Owner shall mutually agree when and how Contractor shall remedy such deficiencies with due regard for the involvement of applicable Subcontractors; *provided, however*, that in case of an emergency (such as unplanned Facility outages) requiring immediate corrective action, Contractor and Owner shall so agree on such remedy as soon as practicable after notice by Owner of such emergency. If Contractor does not use its best efforts to proceed to complete such remedy within the time agreed, or, should Contractor and Owner fail to reach such an agreement, within a reasonable period (or as soon as practicable in the case of emergency conditions), Owner, after notice to Contractor, shall have the right to perform or have performed by third parties the necessary remedy and the costs thereof shall be borne by Contractor.

#### **15.7 Provisions of Clear Title.**

- 15.7.1. Contractor warrants that title to all materials, equipment, tools and supplies furnished by it and its Subcontractors that become part of the Facility or are purchased by Contractor for Owner for the operation, maintenance or repair thereof shall be merchantable and free and clear of any liens and claims. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner upon the later of



- (a) incorporation into the Facility; or
  - (b) payment by Owner to Contractor under Article 4 hereof of invoiced amounts pertaining thereto.
- 15.7.2. Notwithstanding passage of title, Contractor shall retain sole care, custody and control of such materials, equipment, tools and supplies and shall exercise due care with respect thereto until the earlier of the Substantial Completion or the termination of this Contract.
- 15.7.3. In order to protect Owner's interest in all materials, equipment, tools and supplies with respect to which title has passed to Owner but which remain in the possession of a third party, Contractor shall take or cause to be taken all steps necessary under the laws of appropriate jurisdiction (s) to perfect and maintain Owner's title and to protect Owner against claims by other parties with respect thereto.

## ARTICLE 16 INSPECTION OF THE WORK

### 16.1 Right of Access.

Owner's authorized representatives and permitted assigns and such other Persons as Owner may designate with Contractor's consent, which shall not be unreasonably withheld, shall have the right at all reasonable times during performance of the Work, upon reasonable prior notice to Contractor, to inspect the Work and the Facility and any item of equipment, material, design, service or the workmanship associated therewith including observations of start-up and performance testing but not including access to cost or pricing data associated therewith. Contractor shall, at the request of Owner, cooperate with the arrangements for any such inspection of equipment or material on the Site, and at the point of significant fabrication. Contractor shall submit to Owner, as soon as practical, the manufacturer's schedule for typical inspection and hold points for materials being manufactured in relation to the Work.

## 16.2 Rejection of Work.

To the extent that any portion of the Work will not be able to be reviewed during the Mechanical Completion inspection process discussed in Section 8.3, Owner shall have the right on a timely basis to reject any portion of the Work that does not meet the standards of the Work set forth in Section 15.1. Upon such rejection and before such portion of the Work is covered so as not to be able to be reviewed during such Mechanical Completion inspection, Contractor shall remedy, at its sole cost and expense, all conditions giving rise to such rejection.

### **16.3 No Acceptance of Work.**

Any rights asserted by Owner under this Article 16 shall in no way affect or reduce Contractor's obligations under this Contract and will not be deemed to constitute an acceptance by Owner with respect to such Work.

## ARTICLE 17

### TERMINATION

**17.1 Termination for Owner's Convenience.**

- 17.1.1. Right. Owner may at any time, for any reason, terminate this Contract, in whole or in part, upon ten (10) days written notice to the Contractor.
- 17.1.2. Contractor's Obligation. Upon receipt of such notice, Contractor will discontinue work on the date and to the extent specified in the notice and will thereafter do only such work as may be necessary to preserve and protect the Work already in progress and to protect materials, plant and equipment at the Site or in transit to the Site. In addition, Contractor shall transfer or assign, as applicable, to Owner, or to any replacement contractor designated by Owner, without any right to additional compensation (a) title to all affected Work not already owned by Owner; (b) all subcontracts and other agreements (including warranties) as may be designated by Owner; (c) to the extent assignable or transferable, all Governmental Approvals, if any, then held by Contractor pertaining to the Facility; and (d) to the extent assignable or transferable, any license agreements from suppliers or other third parties for license of intellectual property for the Facility; provided that, Owner assumes all liability under such assigned contracts for obligations first arising following such assignment, and Contractor, if requested by Owner, shall provide Owner, any replacement contractor or any financing party, at Owner's expense, with the right to continue to use any and all such intellectual property and other patented and/or proprietary information that Contractor has rights to use not otherwise assigned hereunder, if any, which Owner deems necessary to complete the Facility. Contractor shall incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.

## **17.2 Termination Payment for Termination for Convenience.**

- 17.2.1. In the event of termination by Owner under Section 17.1, then, subject to Section 17.2.2, Owner shall pay to Contractor a cancellation fee (the “Termination Payment”). Payment of the Termination Payment shall be the sole and exclusive liability of Owner, and the sole and exclusive remedy of Contractor, with respect to termination of this Contract pursuant to Section 17.1. The Termination Payment shall consist of:
- (a) amounts due, but not yet paid, for Work performed prior to the effective date of termination;
  - (b) reasonable cancellation costs payable to Subcontractors;
  - (c) direct costs paid, contracted or for which Contractor is liable, in accordance with this Contract or as required by Governmental Rule, at the time of termination that are in addition to amounts otherwise paid or due as of the effective date of termination;

- (d) costs reasonably incurred by Contractor in protecting the Work;
- (e) costs reasonably incurred by Contractor in performance of the items enumerated in Section 17.1.2;
- (f) an additional payment equal to eight percent (8%) of the aggregate amount of Section 17.2.1(c), Section (d), and Section (e); and
- (g) an amount equal to eight percent (8%) of the Contract Price;

provided however that, no such additional payment in Section (f) and Section (g) shall be due or payable in the event that such termination for convenience is due to a Force Majeure Event. It is understood and agreed by the Parties that Contractor would be damaged by Owner's termination of this Contract for convenience and that (i) it would be impracticable or extremely difficult to fix the actual damages resulting therefrom; (ii) the termination fee described in Section (g) above is in the nature of liquidated damages and not a penalty and is fair and reasonable; and (iii) such payment represents a reasonable estimate of fair compensation to Contractor for the losses that may reasonably be anticipated from such termination and serves as the sole remedy to Contractor in the event of termination for convenience.

17.2.2. Deductions from Termination Payment. Owner shall not be required to pay any portion of the Termination Payment, and (because of subsequently discovered evidence or subsequent observations) may make a demand for repayment of any portion of the Termination Payment previously made to Contractor, to the extent of amounts paid or costs incurred by Owner in respect of:

- (a) liens filed against the Facility or the Site, or any portion thereof, by Subcontractors or any other Person entitled to payment from Contractor or a Subcontractor; provided that, Owner has paid all amounts due hereunder to Contractor;
- (b) failure or refusal of Contractor to make payments to any Subcontractor when due; provided that, Owner has paid all amounts due hereunder to Contractor; and
- (c) any representation or certification of Contractor made in this Contract to Owner that proves to be materially false and that materially and adversely affects the Facility or the operations thereof.

17.2.3. Verification of the Termination Payment. Contractor shall, within thirty (30) days of any termination of this Contract for convenience, submit to Owner invoices and other documentation as is sufficient to enable Owner to verify the amount of Contractor's costs in the performance of the Work so that Owner and Contractor may determine the amount of the Termination Payment.

17.2.4. Payment of the Termination Payment. Owner shall pay the entire Termination Payment to Contractor within thirty (30) days of Owner's receipt of the Contractor's invoice therefor and Contractor's provision of supporting information.

17.2.5. Subcontractors and Suppliers. Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**17.3 Termination by Owner for Contractor Default.**

17.3.1. Contractor Default. Contractor will be in default if it at any time it:

- (a) refuses, neglects or fails in any respect to prosecute the Work hereunder or any portion thereof with promptness, diligence or in accordance with any of the provisions set forth herein;
- (b) refuses, neglects or fails to perform any other obligations under this Contract;
- (c) falls thirty (30) or more days behind the Schedule as based on the Construction Milestones or it becomes manifest that Contractor will miss the Guaranteed Substantial Completion Date or the Guaranteed Final Completion Date by more than 30 days.
- (d) goes into liquidation other than as part of a corporate reorganization;
- (e) fails to achieve Final Completion by the Guaranteed Final Completion Date;
- (f) enters into composition with its creditors; or
- (g) becomes insolvent.

17.3.2. Notice of Default. Owner may, but is not required to, notify Contractor in writing of any default. Upon receipt of any such written notice of default, the Contractor will, at its expense, preserve all construction materials, equipment and plant, and undertake immediate steps to remedy such default. If the Contractor fails to remedy such default within thirty (30) calendar days after receipt by it of such written notice of default, Owner may, in writing, and without notice to the Contractor's sureties, if any, terminate the Contractor's right to proceed with the Work, *provided, however*, that such failure to remedy a non-monetary default will not be deemed a default if, promptly after notice Contractor commences in good faith and thereafter diligently prosecutes measures which may reasonably be expected to be effective to result in a cure of such failure in such a way and by such a time, not to exceed an additional thirty (30) day period as shall avoid any material adverse effect on Owner's rights under this Contract, the Work, or Contractor's ability to achieve the Guaranteed Substantial Completion Date and *provided* further that Contractor shall not be entitled to any cure period under this Section 17.3.2 for the defaults described in subparagraphs (c) – (g) Section 17.3.1.

17.3.3. Contractor's Obligations. Upon receipt of any such written notice of termination of right to proceed, the Contractor will at its expense:

- (a) Provide a written, detailed inventory of all materials and equipment in storage at the Site, en route to the Site, in storage or manufacture away from the Site, and on order from its Suppliers.

- (b) Assign to Owner all or some of its Subcontractor or Supplier agreements and equipment rental agreements as designated by Owner. Contractor will incorporate the right to make such assignments into all of its Subcontractor and Supplier agreements, equipment rental agreements or other agreements applicable to the Work.
- (c) Remove from the Site only such construction materials, equipment and plant listed in the inventory which are designated in writing by Owner not to be used by Owner in completing the Work.

#### **17.4 Owner's Rights on Default.**

In the event of such termination, Owner may enter upon the premises and into places of manufacture of Contractor, Subcontractors and Suppliers (Contractor will incorporate this right in its agreements with Subcontractors and Suppliers) and, for the purpose of completing the Work or enforcing these provisions, take possession of all materials, equipment, tools and appliances thereon belonging to or under the control of Contractor and may use them or may finish the Work by whatever method it may deem expedient, including the hiring of another contractor(s) or subcontractor(s) under such form of contract as Owner may deem advisable; or Owner may itself provide any labor or materials and perform any part of the Work. In such case Contractor will not be entitled to receive any further payment until the Work is completed. If the unpaid balance of Contractor's compensation hereunder exceeds the sum of the expense of finishing the Work plus compensation to Owner for its additional managerial and administrative services and such other costs and damages as Owner may suffer, such excess will be paid to Contractor. If such expense, compensation, costs, and damages exceed such unpaid balance, Contractor and its sureties, if any, will be liable for and will pay the excess to Owner.

## 17.5 Additional Rights and Remedies.

Such right to terminate is not Owner's exclusive remedy and is in addition to any other rights and remedies it may have under this Contract or by law. Failure of Owner to exercise any of its rights under this Section 17.5 will not excuse Contractor from compliance with the provisions of this Contract nor prejudice rights of Owner to recover damages for such default.

### **17.6 Termination by Contractor for Owner's Default.**

Contractor may terminate this Contract in the event Owner (1) refuses, neglects or fails to perform any material obligation under this Contract, (2) goes into liquidation other than as part of a corporate reorganization, (3) enters into a composition with its creditors or (4) becomes insolvent, by giving notice of termination to Owner. Owner shall have the right to cure such default within thirty (30) days, in which case such notice of termination shall be void and of no effect. Contractor shall promptly submit to Owner a progress report detailing Work progress to date and an accounting of costs associated with the termination itself. Owner shall pay Contractor, not later than thirty (30) days after receipt of Contractor's progress report and accounting, for progress to date plus the costs reasonably incurred due to the termination, *provided, however*, that in no case shall the total amount paid to Contractor hereunder be greater than the Contract Price.

## **ARTICLE 18 SUSPENSION**

### **18.1     Notice of Suspension.**

Owner may at any time for any reason order the Contractor, upon one (1) day's written notice, unless otherwise specified in the Contract, to suspend, extend the time of performance, or interrupt ("Suspend" or "Suspension") all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of Owner. Upon receipt of such notice, the Contractor will Suspend Work on the date and to the extent specified in the notice.

### **18.2     Adjustment.**

18.2.1. If the performance of all or any part of the Work is Suspended by Owner, an adjustment will be made for any increase in the cost and time of performance of this Contract necessarily caused by such Suspension, as set forth in this Section 18.2. However, no adjustment will be made under this clause for any Suspension to the extent (1) that performance would have been so Suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or (2) which is provided for or excluded under any other provision of this Contract.

18.2.2. Upon such Suspension, Contractor waives all claims for damages, including, but not limited to, loss of anticipated profits, idle equipment, labor and facilities, and any claims of Subcontractors and Suppliers, and will accept the following as sole and complete compensation for such Suspension:

- (a) reasonable costs associated with demobilization of Contractor's plant, forces and equipment;
- (b) reasonable costs incurred by Contractor in connection with its efforts to suspend orders, subcontracts and rental agreements;
- (c) reasonable costs of maintaining and protecting the Work;
- (d) a reasonable standby charge to compensate Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the Work on a standby basis.

### **18.3     Resumption of Suspended Work.**

Upon receipt of notice to resume Suspended Work, the Contractor will resume performance of the Suspended Work to the extent required in the notice and within ten (10) days submit to Owner for review a revised Schedule.

#### **18.3.1.   Upon such resumption, Contractor shall receive:**

- (a) Reasonable mobilization costs consistent with the extent of remobilization, if not otherwise specified in the Contract; and

- (b) An adjustment in the compensation provisions of this Contract to compensate Contractor for any costs of performance that were increased as a result of the Suspension. These adjustments shall be limited to such matters as cost increases required under labor, Subcontractor or Supplier agreements in effect on the date of Suspension.

18.3.2. The Schedule shall be adjusted to account for the effect of the period of Suspension.

**18.4 Request for Relief.**

No claim under this clause will be allowed unless the claim, in an amount stated, is asserted in writing to Owner as soon as practicable after the termination of such Suspension but not later than twenty (20) days from the date Work is resumed or if not resumed, the date this Contract is terminated. In the event that Contractor and Owner cannot agree on the compensation and Schedule adjustment, the Contractor shall proceed with the Work as directed by Owner and the dispute will be resolved in accordance with the provisions of the Contract.

**18.5 Subcontractors and Suppliers.**

The Contractor will incorporate a like Article in its agreements with Subcontractors and Suppliers.

**ARTICLE 19  
FORCE MAJEURE EVENT**

**19.1 Excuse from Performance for Force Majeure Event.**

Each Party shall be excused from performance and shall not be considered to be in default with respect to any obligation hereunder, if, and to the extent that, its failure of or delay in performance is due to a Force Majeure Event, and both parties shall use reasonable efforts and due diligence to mitigate such an event.

**19.2 Notice of Force Majeure Event.**

If either Party's ability to perform its obligations hereunder is affected by a Force Majeure Event, such Party shall, promptly, but in any event within ten (10) days, upon learning of such event, give notice to the other Party stating the nature of the event, its potential effect and the anticipated duration thereof, and any action being taken to avoid or minimize its effect. The burden of proof shall be on the Party claiming Force Majeure Event.

**19.3 Relief for Force Majeure Event.**

The suspension of performance due to a Force Majeure Event shall be of no greater scope and no longer duration than reasonably required. The party suffering the Force Majeure Event shall use its best efforts and due diligence to partially or fully remedy any inability to perform arising from such a Force Majeure Event. If such suspension shall have occurred, the Guaranteed Substantial Completion Date shall be extended by a period equal to the amount of time (including a reasonable period for demobilization and remobilization) as demonstrated by Contractor to be

necessary for Contractor to make up for the delay. The Schedule affected by such delay shall be adjusted as appropriate to reflect the new Guaranteed Substantial Completion Date.

**19.4 No Excuse of Obligations to Pay Money.**

Notwithstanding the foregoing, the obligation to pay money in a timely manner for Work actually performed shall not be excused due to a Force Majeure Event and shall not be subject to suspension.

**19.5 Owner Self-Help.**

If within a reasonable time after a Force Majeure Event occurrence that has caused Contractor to suspend or delay performance of the Work, action to be undertaken at the expense of Owner has been identified and recommended to Contractor, and Contractor has failed to take such action as Contractor could lawfully and reasonably initiate to remove or relieve either the Force Majeure Event occurrence or its direct or indirect effects, Owner may, in its sole discretion and after written notice to Contractor, at Owner's expense, initiate such reasonable measures as will be designed to remove or relieve such Force Majeure Event occurrence or its direct or indirect effects and thereafter require Contractor to resume full or partial performance of the Work. The existence of Owner's remedy under this Section 19.5 shall not prejudice any other remedies available to Owner under this Contract.

**ARTICLE 20  
INSURANCE**

**20.1 Contractor Provided Insurance.**

During the performance of the Site, the Contractor shall maintain or cause to be maintained the following types of insurance:

- 20.1.1. Worker's Compensation Insurance. As required by state laws, including employer's liability insurance for all employees of the Contractor in the amount required by statute.
- 20.1.2. All Risk Builder's Risk Insurance. To provide coverage on an "all risk" basis including coverage against damage or loss caused by earth movement, flood and operational testing. Such insurance shall be for the replacement value of the Facility as described below. The policy shall also provide coverage for:
  - (a) removal of debris;
  - (b) material in transit, including ocean marine, if applicable;
  - (c) off-site storage;
  - (d) theft;
  - (e) expediting expense;



- (f) demolition and increased cost of construction;
- (g) water damage; and
- (h) cold and hot (operational) testing.

The deductible for all such physical damage shall not exceed (i) \$100,000 for operational testing coverage, (j) \$250,000 or five percent (5%) of the value of the damaged property at the time of loss for earth movement coverage, whichever amount is less, and (k) \$25,000 for all other losses. No co-insurance shall be applicable.

- 20.1.3. Commercial General Liability Insurance. To provide coverage against claims for third party personal injury (including bodily injury and death) and third party property damage. Such insurance shall provide coverage for products-completed operations (which coverage shall remain in effect for a period of two years following Substantial Completion), blanket contractual, independent contractors, explosion, collapse and underground hazards, broad form property damage and personal injury, with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage and a \$2,000,000 aggregate annual limit.
- 20.1.4. Excess Insurance. Excess liability insurance on an "occurrence" basis pursuant to an "umbrella" policy or policies covering claims in excess of and following the terms of Comprehensive General Liability and Comprehensive Automobile Liability Insurance described herein with a \$10,000,000 minimum limit per occurrence and a \$10,000,000 project aggregate limit.
- 20.1.5. Comprehensive Automobile Liability. To provide coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles used in the construction of the Facility hereunder with a \$1,000,000 minimum limit per occurrence for combined bodily injury and property damage.
- 20.1.6. Professional Liability Insurance. To provide coverage against liability arising out of active malfunctioning of systems resulting from defective design, with a minimum limit per occurrence of \$ 5,000,000. This insured amount should be excluded from the overall Contractor's liability cap.

## 20.2 Insurance Policies/Certificates.

Contractor shall furnish Owner with evidence of the insurance required to be provided by Contractor hereunder, in the form of insurance certificates reasonably satisfactory to the Owner. All such insurance certificates shall include, but not be limited to, the type of insurance, the limits of insurance, the policy term, the names(s) of the insurance company (or companies), and a list of the applicable endorsements.

### **20.3 Applicable Endorsements.**

- 20.3.1. All policies of property insurance shall: (i) Provide for waivers of subrogation in favor of the Owner and its respective officers and employees; and (ii) name Owner as an additional insured.
- 20.3.2. All policies of liability insurance shall: (i) provide a severability of interests or cross liability clause and (ii) name the Owner as an additional insured.
- 20.3.3. All policies shall be primary and not excess to or on a contributing basis with any insurance or self-insurance maintained by the Contractor.
- 20.3.4. All policies shall include a rider providing that they may not be canceled, non-renewed or changed without thirty (30) days prior written notice sent by registered mail to Owner.

## **ARTICLE 21 INDEMNIFICATION**

### **21.1 Indemnity by Contractor.**

Contractor covenants and agrees that it will indemnify and hold Owner, and all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement, judgment (including interest thereon), defense or costs of litigation (including attorney's fees) whether to any person (including employees of Contractor, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with Contractor's or any of its Subcontractor's or Supplier's performance of the Contract or in connection with the performance of the Work, to which Owner, or any of its officers, agents or employees may be subject or put. Without limiting the foregoing, said obligation includes claims involving Contractor's, Supplier's or Subcontractor's employees injured while going to and from the Site. Contractor will not be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of Owner, or any of its officers, agents or employees.

### **21.2 Indemnity by Owner.**

Owner covenants and agrees that it will indemnify and hold Contractor and all of its officers, agents and employees harmless for any claim, loss, damage, cost, charge expense, lien, settlement or judgment (including interest thereon) whether to any person (including employees of Owner, its Subcontractors and Suppliers) or property or both (including a claim by any Governmental Unit) arising directly or indirectly out of or in connection with the performance of the Work caused or resulting from the sole negligence of the Owner, or any of its officers, agents or employees to which Contractor, or any of its officers, agents or employees may be subject or put. Owner will not be liable under this section for damages arising out of claim, injury or damage to persons or property directly caused or resulting from the sole negligence of Contractor, or any of its officers, agents or employees.

### **21.3 Defense.**

The indemnifying Party under this Contract (“Indemnitor”) shall have the sole right to control the defense of any suit or proceeding with its choice of counsel based on any claim, demand, loss, damage, cause of action, suit or liability for which Indemnitor is responsible under any such indemnification. Indemnitor shall not settle any claim without the prior written consent of the indemnified Party (“Indemnatee”) if such settlement (a) does not include an irrevocable release of all claims against the Indemnatee; (b) materially diminishes any of Indemnatee’s rights under this Contract or seeks to impose additional obligations on Indemnatee; (c) modifies the Facility or the operation or maintenance of the Facility; or (d) contains a stipulation or admission or acknowledgement of any liability or wrongdoing on the part of Indemnatee. Indemnatee shall give the Indemnitor such assistance as the Indemnitor may reasonably require in such defense, at Indemnitor’s expense. Indemnatee shall have the right to be represented in such defense and settlement by counsel of its own choice at its own expense. If the Indemnitor fails to defend diligently such suit or proceeding, the Indemnatee may, in its reasonable discretion, either defend such suit or proceeding or settle the claim which is the basis thereof, without the consent of the Indemnitor, but with prior notice to the Indemnitor, without relieving the Indemnitor of its indemnification obligations hereunder and in each case the Indemnitor shall reimburse the Indemnatee for the settlement payment, expenses, court costs and reasonable attorneys’ fees.

### **21.4 Survival.**

The provisions of this Article 21 shall survive the termination of this Contract to the extent any claim, loss, damage, cost, charge, expense, lien, settlement, judgment (including interest therein), defense or costs of litigation (including attorney’s fees) arose as a result of the performance of this Contract.

## **ARTICLE 22 LAWS, REGULATIONS AND PERMITS**

### **22.1 Obligation to Inform.**

The Contractor shall keep itself fully informed of and will observe and comply with all Governmental Rules including, but not limited to, environmental and pollution control laws which in any manner affect those engaged or employed on any Work, or the materials and equipment used in any Work, or the performance of any Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work. If any discrepancy or inconsistency should be discovered between the Contract and any such law, ordinance, code, regulation, order or decree, the Contractor will immediately report the same by notice to Owner. The Contractor will be responsible for the compliance by Subcontractors and Suppliers of all tiers with the above provisions. Contractor and Subcontractors and Suppliers of all tiers will be responsible and liable for all fines levied in violation of any Governmental Rules.

**ARTICLE 23**  
**PATENTS, TRADEMARKS AND PROPRIETARY RIGHTS**

**23.1     General.**

Contractor warrants that all materials, equipment and processes used or supplied and services performed are free from any infringement of any patent, trademark or other proprietary right.

**23.2     Indemnity.**

Contractor will indemnify and defend any action brought against Owner all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees based on a claim that any process used, equipment or material supplied or service performed pursuant to the Contract constitutes an infringement or violation of any patent, trademark or other proprietary right. Owner will at Contractor's expense give such information and assistance as it may deem appropriate for the defense of same, and Contractor will pay all of Owner's actual costs and expenses of such action, including any damages awarded. If an infringement or violation is determined or held to exist and the use of such process, equipment, material or service is enjoined, Contractor will, at its own expense and at Owner's option either

- (a)     procure for Owner the right to continue using said process, equipment, material or service;
- (b)     replace it with noninfringing process, equipment, materials or service acceptable to Owner; or
- (c)     modify it in a manner acceptable to Owner so that it becomes noninfringing.

The provisions of this Section 23.2 shall survive the termination of this Contract, to the extent that any claim arose as a result of performance under the Contract.

**23.3     Royalties and License Fees.**

Contractor will pay all royalties and license fees necessary for the proper performance of the Work.

**ARTICLE 24**  
**OWNERSHIP OF DRAWINGS AND SPECIFICATIONS**

All original tracings of the drawings and specifications prepared by the Contractor shall become Owner's property and shall be delivered to Owner upon payment therefore as provided herein, upon completion of the Work, or upon termination, abandonment or postponement of the Work, and Owner thereafter shall have full right to use such drawings, designs, specifications or instruments for any purpose in connection with its own properties without any claim on Contractor's part for additional compensation by reason of such use.

**ARTICLE 25**  
**CONFIDENTIAL INFORMATION**

**25.1 Confidentiality**

- 25.1.1. This terms of this Contract and all information expressly designated by a Party as confidential information and all information that by its nature is sensitive or proprietary shall be treated as confidential and, subject to this Article 25 such information shall not be disclosed in whole or in part by either Party without the prior consent of the other Party.
- 25.1.2. This obligation does not apply to information that (when used or disclosed) has been made public other than through a breach of this Contract or has been, or could have been, lawfully acquired by the Party.
- 25.1.3. Notwithstanding the provisions of this Article 25, neither Party shall be required to obtain the prior consent of the other in respect of disclosure of information:
- (a) to directors and employees and affiliates of such Party, provided that such Party shall use reasonable endeavors to ensure that such affiliates keep the disclosed information confidential on the same terms as are provided in this Article 25;
  - (b) to persons professionally engaged by or on behalf of such Party; provided that such Persons shall be required by such Party to undertake to keep such information confidential and that such Party shall use reasonable endeavors to secure compliance with such undertaking;
  - (c) to any government department or any governmental or regulatory agency having jurisdiction over such Party but only to the extent that such Party is required by law to make such disclosure or as necessary to obtain any permits or other governmental approvals required in connection with the Work ; or
  - (d) to: (1) any lending or other financial institution in connection with the financing of such Party's operations; or (2) any bona fide intended assignee or transferee of the whole or any part of the rights and interests of the disclosing Party under this Contract, but (in either case) only to the extent required in connection with obtaining such finance or in respect of such proposed assignment and subject to such institution or intended assignee or transferee first agreeing with such Party to be bound by confidentiality provisions substantially the same as those contained in this Article 25;
  - (e) to any expert appointed pursuant to and under the terms of this Contract.

## ARTICLE 26

### LIENS

### **26.1 Obligation to Keep Free of Liens.**

- 26.1.1. Contractor shall keep the Facility, all real property related thereto, and all materials, equipment, structures, and tools furnished by it or its Subcontractors free and clear of all liens, claims, security interests, and other encumbrances.
- 26.1.2. Contractor will pay each Subcontractor within ten days after Contractor receives payment from the Owner for any subcontracted Work.
- 26.1.3. Upon request by Owner, Contractor shall provide the names and addresses of all entities who have furnished or may furnish labor, materials, and/or equipment for the Work, together with the amount due or to become due for such work. Owner shall have the right to contact these Subcontractors and suppliers at any time to verify payment of amounts due. Owner retains the right to take whatever steps it deems necessary to ensure that progress and final payments will be utilized to pay potential lien claimants, including the issuance of joint checks or making payment directly to any claimant after notice to Contractor.

## 26.2 Discharging of Liens.

- 26.2.1. Contractor shall take prompt steps to discharge any lien, security interest, claim, or other encumbrance filed against the Facility, or upon any materials, equipment or structures encompassed therein, or upon the premises upon which they are located by any subcontractor based on a claim for payment in connection with the Work; *provided, however*, Contractor may in lieu thereof provide to Owner a bond, in the amount of such lien in form and substance satisfactory to Owner.
- 26.2.2. If Contractor fails to satisfy its obligations under Section 26.2.1, Owner shall have the right to (i) consider the amount of the lien or encumbrance as presumptively correct, (ii) withhold from any payment to Contractor then due, or thereafter to become due (including the final request for payment), an amount sufficient to completely indemnify Owner against such lien or encumbrance, (iii) pay the amount of such lien or encumbrance and pursue recovery actions against Contractor and (iv) retain out of the amount withheld an amount sufficient to compensate Owner for its expenses (including actual attorneys' fees) in the matter

### 26.3 Indemnification.

- 26.3.1. Contractor shall indemnify and hold harmless Owner, all of its officers, agents, financing parties, shareholders, consultants, affiliates, other contractors and employees from, and defend their interests against any and all liens, defense, costs of litigation (including attorney's fees) or similar claims against the Facility filed by a Subcontractor in connection with the Work including all expenses and attorney's fees incurred in discharging any liens or similar encumbrances.

- 26.3.2. Contractor's obligations with respect to liens and claims covered by this Article 26 are subject to the conditions that:
- (a) the indemnitee gives Contractor reasonably prompt notice of any such liens or similar claim;
  - (b) the indemnitee cooperates in the defense of any such lien or similar claim; and
  - (c) Contractor has sole control of the defense and settlement to the extent of the Contractor's liability for any such lien or similar claim, *provided, however*, that Contractor shall confirm in writing its obligation to indemnify the indemnitee with respect to all costs and expenses with respect to such lien or similar claim.
- 26.3.3. The provisions of this Section 26.3 shall survive the termination of this Contract, to the extent that any lien, defense, costs of litigation (including attorney's fees) or similar claim arose as a result of the performance of this Contract.

## ARTICLE 27

### NOTICES AND COMMUNICATIONS

## 27.1 Notices.

Any notice pursuant to the terms and conditions of this Contract shall be in writing to the addresses specified in Exhibit P, and either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt requested; or (d) sent by facsimile transfer and acknowledged by recipient.

## 27.2 Effect of Notices.

Notices shall be effective when received by the Party to whom addressed.

## ARTICLE 28

### LIMITATIONS OF LIABILITY

**28.1 Remedies Exclusive.**

The remedies expressly afforded by this Contract are intended to be the sole and exclusive remedies of the Parties to this Contract for the liabilities of such Parties arising out of or in connection with the Work or this Contract, notwithstanding any remedy otherwise available at law or in equity.

## 28.2 Consequential Damages.

In no event, except to the extent of amounts paid to third parties as described in Article 21 and as may be construed to cover such damages, whether as a result of breach of contract, warranty, guarantee, indemnity, tort, including negligence, strict liability or otherwise, shall either Party hereto or any Subcontractor be liable for indirect, special, incidental, consequential or exemplary damages, including but not limited to, the loss of profits or revenue, loss of use of the equipment

or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, down time costs, costs in excess of estimates loss of opportunity, loss of data, loss of goodwill, cost of purchased or replacement power, governmental penalties or sanctions imposed on Owner and/or claims of customers of the other Party for such damages; and Owner hereby releases Contractor and all Subcontractors and Contractor hereby releases Owner therefrom.

## **ARTICLE 29 DISPUTE RESOLUTION**

### **29.1     Applicability of Resolution Procedures.**

All claims, disputes or other matters in question between the Parties arising out of or relating in any way to this Contract ("Disputes") will be resolved pursuant to this Article 29.

### **29.2     Management Discussions.**

The Parties agree to make a diligent, good-faith attempt to resolve all Disputes. If the Parties are unable to resolve a Dispute arising under this Contract within three (3) Business Days after notice from one Party to the other, such Dispute will be submitted promptly to the senior executive officers of the Parties, who will meet, in person or by telephone, not later than ten (10) days after the date such Dispute was submitted to them. In the event that the officers cannot resolve the Dispute within five (5) Business Days after the matter is submitted to them, then, unless otherwise agreed, the Parties will proceed according to Section 29.3.

### **29.3     Litigation**

All disputes between the Parties arising out of or relating to this Contract and not otherwise resolved by the Parties shall be decided by judicial resolution or pursuant to the rights of the Parties under law.

### **29.4     Obligations Continue.**

The pendency of a Dispute shall not in and of itself relieve either Party of its duty to perform under the Contract.

### **29.5     Injunctive Relief.**

Notwithstanding anything in this Contract to the contrary, nothing in this Contract is intended to, nor shall it, prevent the Parties from seeking injunctive relief at any time as may be available under law or in equity.

### **29.6     Survival.**

The provisions of this Article 29 will survive the termination of this Contract.



**ARTICLE 30  
REPRESENTATIONS AND WARRANTIES**

**30.1 Representations and Warranties of Contractor.**

Contractor hereby represents and warrants to Owner as follows:

- 30.1.1. Due Organization of Contractor. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the state in which it was formed and has the requisite corporate power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas and in any other jurisdiction in which the transaction of its business makes such qualification necessary.
- 30.1.2. Due Authorization of Contractor; Binding Obligation. Contractor has full power and authority to execute and deliver this Contract and to perform its obligations hereunder, and the execution, delivery and performance of this Contract by Contractor have been duly authorized by the necessary corporate action on the part of Contractor; this Contract has been duly executed and delivered by Contractor and is the valid and binding obligation of Contractor enforceable in accordance with its terms.
- 30.1.3. Non-Contravention. The execution, delivery and performance of this Contract by Contractor and the consummation of the transactions contemplated hereby do not and will not contravene the certificate of incorporation or by-laws of Contractor and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Contractor is a party or by which it or any of its properties is bound or affected.
- 30.1.4. Regulatory Approvals. Governmental or other authorizations, approvals, orders or consents required in connection with the execution, delivery and performance of this Contract by Contractor have been obtained or will be obtained in due course.
- 30.1.5. Site Conditions. Contractor represents and warrants that it has inspected the Site and surrounding locations, including both surface and subsurface conditions in accordance with prudent engineering practices (including use of subsurface radar to detect utility lines and other installations), and is familiar with the physical requirements of the Work and accepts them for such performance. It is further understood and agreed that this representation and warranty shall not be deemed to cover any matters relating to the existence of Hazardous Materials or the existence of subsurface conditions that could not reasonably have been discovered by Contractor with the exercise of prudent engineering practice, which are the responsibility of Owner.

**30.2 Representation and Warranties of Owner.**

Owner hereby represents and warrants to Contractor as follows:

- 30.2.1. Due Organization of Owner. Owner is a limited liability company duly organized and validly existing and in good standing under the laws of the state in which it was formed

and has the requisite power and authority to own and operate its business and properties and to carry on its business as such business is now being conducted and is duly qualified to do business in Texas.

- 30.2.2. Due Authorization of Owner; Binding Obligation. Owner has full power and authority to execute and deliver this Contract and to perform its obligations hereunder and the execution, delivery and performance of this Contract by Owner have been duly authorized by the necessary company actions on the part of Owner; this Contract has been duly executed and delivered by Owner and is the valid and binding obligation of Owner enforceable in accordance with its terms.
- 30.2.3. Non-Contravention. The execution, delivery and performance of this Contract by Owner and the consummation of the transactions contemplated hereby do not and will not contravene the articles of organization of Owner and do not and will not conflict with or result in a breach of or default under any indenture, mortgage, lease, agreement, instrument, judgment, decree, order or ruling to which Owner is a party or by which it or any of its properties is bound or affected.

### **ARTICLE 31 MISCELLANEOUS**

#### **31.1 Effect of Invalid Provisions.**

The invalidity or unenforceability of any portion or provision of this Contract shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract. The parties shall negotiate an equitable adjustment in such portions or provisions of this Contract to effect the underlying purposes of this Contract.

#### **31.2 Governing Law.**

The Contract, and the rights, obligations and liabilities of the parties thereto will be construed in accordance with the law of the State of Texas.

#### **31.3 Third Party Beneficiaries.**

No third party shall be deemed to be a third-party beneficiary under this Contract, except as expressly set forth herein.

#### **31.4 Entire Contract.**

This Contract sets forth and forms the entire agreement between Owner and the Contractor for the Work. All prior, other and collateral agreements, representations, warranties, promises and conditions relating to the subject matter of the contract are superseded by this Contract. The table of contents and section headings included in this document are for reference only and do not form a part of this Contract. No changes, amendments or modifications of this Contract will be valid unless made pursuant to a written amendment signed by both Parties.

**31.5 Purpose and Intent of the Contract.**

It is the intent of the parties that all rights and obligations of Owner and Contractor with regard to performance of the Work are fully set forth in this Contract. All parts of this Contract are intended to be correlative and complementary. Any Work required by one part and not mentioned in other parts will be performed to the same extent and purpose as though mentioned in all parts. The misplacement, addition, or omission of a word or a character will not change the meaning or intent of any part of the Contract from that set forth by the Contract as a whole.

**31.6 Standards and Codes.**

Wherever references are made in the Contract to standards and codes in accordance with which Work is to be performed or tested, the edition or revision of such standards and codes in effect on the date of the Contractor's bid or the date of this Contract, whichever is earlier, will apply unless otherwise expressly set forth in the Contract. Unless otherwise specified in the Contract, reference to such standards and codes is solely for technical information. In case of conflict among any such referenced standards and codes or between any such standard(s) or code(s) and the requirements of the Contract, Contractor will give notice to the Owner of such conflict and Owner will determine which shall govern.

**31.7 Non-waiver.**

None of the provisions of the Contract will be considered waived by Owner or Contractor unless such waiver is given in writing by Owner or Contractor, as the case may be. No such waiver will be a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Contract unless expressly set forth in such waiver.

**31.8 Survival.**

Except for such obligations as are necessarily affected by termination, cancellation or expiration of this Contract, termination, cancellation or expiration will not relieve Contractor of any obligations arising under this Contract prior to termination, cancellation or expiration including but not by way of limitation, warranties and indemnity obligations.

**31.9 Successors and Assigns.**

This Contract and every covenant, condition and provision of the Contract shall work to the benefit of and be binding upon the Owner and the Contractor, and each of their respective partners, heirs, and legal representatives, successors and permitted assigns. The Contractor shall not assign, transfer or sublet his interest in or obligations hereunder without the express written consent of the Owner.

**31.10 Set-Off.**

Any amount owing at any time from Contractor or its subcontractors to Owner or any of its affiliated companies may be set-off against amounts due and payable by the Owner to the Contractor for Work supplied under this Contract. Contractor agrees to specify in all subcontracts entered into by it in furtherance of the Work contemplated hereby that amounts

payable by it thereunder shall be subject to set-off by it in behalf of the Owner for amounts owing by the subcontractors to the Owner or any of its affiliated companies.

**31.11 Assignment.**

Owner may assign as collateral its interest hereunder and under the dry plant design/build contract between Owner and Contractor, dated December 2017, to a lender or any other person in connection with the exercise of collateral rights of the lender. This Contract shall not be assigned by the Contractor to any other party without the prior written consent of the Owner.

[Signature page follows.]

IN WITNESS WHEREOF, the Owner and the Contractor have made and executed this Contract as of the day and year first written above.

**SUPERIOR SILICA SANDS LLC**

**MARKET & JOHNSON, INC.**

Signature

Signature

By

By

Title

Title

**EXHIBIT B**

**TRACT 1:**

**FIELD NOTES OF A 3.62 ACRE (157737 SQUARE FEET MORE OR LESS) TRACT OF LAND, SITUATED IN BEXAR COUNTY, TEXAS OUT OF THE J.S. MOORING SURVEY NO. 1386A, ABSTRACT NO. 1086, THE C. THIEME SURVEY NO 1386A, ABSTRACT NO. 754 AND THE J. TAYLOR SURVEY NO. 1386, ABSTRACT NO. 761 AND BEING ALL OF THE REMAINDER OF TRACT A, ALL OF TRACT B AND ALL OF THE REMAINDER OF TRACT C AS CONVEYED TO FRED A. AND NANCY L. MAIR OF RECORD IN VOLUME 6461, PAGE 654, DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: NOTE: (BASIS OF BEARING IS TEXAS SOUTH CENTRAL ZONE, NAD83.)**

BEGINNING: At a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of the Union Pacific Rail Road Company (100' R.O.W.) for the southwest corner of a 12.1 acre tract, called Second Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas the northwest corner of the remainder of Tract C, This Tract and the POINT OF BEGINNING, from which a 5/8" iron rod found bears N 28°40'16" W, a distance of 5.10 feet and from said 5/8" iron rod found, a 5/8" iron rod found bears N 84°19'28" E, a distance of 2.12 feet;

THENCE: Departing the east Right-of-Way line of U.P.R.R.Co., with the south line of the 12.1 acre tract, the north line of the remainder of Tract C and This Tract, the following calls and distances:

S 89°46'34" E, a distance of 122.40 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in concrete for an angle point;

N 83°13'26" E, a distance of 42.00 feet to a leaning 5/8" iron rod found in the west line of Tract B, for the southeast corner of the 12.1 acre tract, the northeast corner of the remainder of Tract C and an interior corner of This Tract;

THENCE: N 11°06'30" W, with the east line of the 12.1 acre tract, the west line of Tract B and This Tract, a distance of 142.50 feet to a 1/2" iron rod found for the west corner of a 44.5 acre tract, called First Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas, the north corner of Tract B and This Tract;

THENCE: S 65°37'27" E, with the southwest line of the 44.5 acre tract, the northeast line of Tract B, the remainder of Tract A and This Tract, a distance of 580.12 feet to a 1/2" iron rod found for the north corner of an 8.381 acre tract as conveyed to Osburn Sand Company of record in Volume 7885, Page 743, Deed Records of Bexar County, Texas, the east corner of the remainder of Tract A and This Tract;

THENCE: S 24°22'35" W, with the northwest line of the 8.381 acre tract, a southeast line of the remainder of Tract A and This Tract, a distance of 170.62 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the northeast line of a 27 acre tract as conveyed to Osburn Sand Company of record in Volume 4369, Page 536, Deed Records of Bexar County,

Texas for the west corner of the 8.381 acre tract, the south corner of the remainder of Tract A and This Tract;

THENCE: N 47° 40' 59" W, with the northeast line of the 27 acre tract, the southwest line of the remainder of Tract A and This Tract, a distance of 87.36 feet to a 1/2" iron rod found for a north corner of the 27 acre tract, the east corner of Tract B and an interior corner of This Tract;

THENCE: S 77° 09' 47" W, with the northwest line of the 27 acre tract, a 0.699 acre tract as conveyed to Osburn Sand Company of record in Volume 7865, Page 743, Deed Records of Bexar County, Texas, a southeast line of Tract B and the remainder of Tract C and This Tract, a distance of 455.08 feet to a 'A" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of U.P.R.R.Co. for the west corner of the 0.699 acre tract, the southwest corner of the remainder of Tract C and This Tract;

THENCE: With the east Right-of-Way line of U.P.R.R.Co., the west line of the remainder of Tract C and This Tract, the following calls and distances:

N 16°39'00" W, a distance of 189.64 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set for a point of Tangency;

Northwesterly, with an arc of a curve to the right, having a radius of 5670.87 feet, a delta angle of 01° 10' 07", an arc length of 115.66 feet and a chord that bears N 16° 03' 57" W, a distance of 115.66 feet to the POINT OF BEGINNING and containing 3.62 acres of land in Bexar County, Texas, according to a survey on the ground on March 21, 2016 by Rickman Land Surveying.

Bexar County Property Tax ID: 180107.

## **TRACT 2:**

### **Lot A:**

Lots 97, 98, 99, 100, 101 and 102, Block 8, OAK HILL RANCHES, in Bexar County, Texas, according to plat thereof recorded in Volume 5580, Pages 48-49, Deed and Plat Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473.

### **Lot B:**

A tract of land containing 8.381 acres, being out of J. S. Mooring Survey No. 1386 3/4 , Abstract No. 1086, County Block Four Thousand One Hundred Sixty Three (4,163), being more particularly described as follows:

BEGINNING at an iron pin found at the most southerly corner of the Robert V. Smith and Henry Feille, Sr. Survey No. 1387, Abstract No. 1261, County Block 4175, Bexar County, Texas, said corner being a reentrant corner of said J. S. Mooring Survey No. 1386 %, Abstract No. 754, and the most easterly corner of this tract.

THENCE S. 27° 39' 37" W. along a northwest line of said Survey No. 1386 % and of Oak Hill Ranches, recorded in Volume 5580, Pages 48 and 49, Bexar County Plat Records, a distance of 517.59 feet to an iron pin found at a fence corner on the common line of said Christopher Thieme Survey No. 1386 1/2 and said J. S. Mooring Survey No, 1386 %, for the most southerly corner of this tract.

THENCE N. 44° 26' 29" W., along said common line, a distance of 1116.90 feet to an iron pin set for the most westerly corner of this tract.

THENCE N. 27° 23' 12" E. a distance of 169.25 feet to an iron pin set in a barbed-wire fence on the southwest line of said Robert V. Smith and Henry Feille, Sr. Survey No. 1387 for the most northerly corner of this tract; said corner being on the northeast line of said J. S. Mooring Survey No. 1386 %.

THENCE S. 62° 36' 48" E. partially along a barbed-wire fence on the common line between said Surveys No. 1387 and 1386% a distance of 1418.46 feet to the point of beginning, and containing 8.381 acres of land.

Portion of Bexar County Property Tax ID: 348473

**Lot C:**

A tract of land containing 0.699 acres, being out of Christopher Thieme Survey No. 1386 1/2, Abstract No. 754, County Block Four Thousand One Hundred Sixty Nine (4,169), being more particularly described as follows:

BEGINNING at an iron pin set at a fence corner for the northeast corner of this tract, said corner being the following courses from the most westerly corner of the above described 8.381 acre tract; S. 44° 35' 17" E. along the common line between said Surveys No. 1386 1/2 and 1386 % a distance of 285.37 feet to an iron pin set at a fence corner; and S. 80° 21' 40" W. along a barbed-wire fence line a distance of 331.94 feet.

THENCE S. 05° 57' 03" E. along a barbed-wire fence line a distance of 311.15 feet to an iron pin found at a fence corner, for the southeast corner of this tract.

THENCE S. 79° 45' 59" W. along a barbed-wire fence line a distance of 68.00 feet to an iron pin found at a fence corner on the east line of the Missouri-Pacific Railroad 100-foot right-of-way, for the southwest corner of this tract.

THENCE northerly along a barbed-wire fence on the east right-of-way line of said Railroad right-of-way the following courses: N. 17° 40' 48" W. a distance of 196.02 feet to an iron pin found at an angle point; and N. 14° 22' 28" E. a distance of 114.07 feet to an iron pin set at a fence corner, for the northwest corner of this tract.

THENCE N. 78° 46' 54" E. along a barbed-wire fence line a distance of 124.90 feet to the point of beginning, and containing 0.699 acre of land.

Portion of Bexar County Property Tax ID: 348473.



**TRACT 3:**

**Lot A:**

- Those three (3) certain tracts of land designated as Tract No. One (1), Tract Number Two (2) and Tract Number Three (3), each containing Twenty-seven (27) acres of land, all out of a survey or subdivision of land of Two Hundred Sixteen (216) acres out of the C. Thieme Survey Number 1386-1/2, made and platted for the heirs of Antonio Huron, husband of Josefa G. Huron, by F. E. Grothouse, Surveyor, located in Bexar County, Texas, which plat is duly recorded in Vol. 927, pages 42-45, of the Deed Records of Bexar County, Texas, to which reference is here made, said three (3) tracts containing in all Eighty-one (81) acres of land; being the same land described in that certain deed from Dave Lehr, Inc., to B. J. Osburn dated January 15, 1947, and recorded in Volume 2335, pages 40-41, Deed Records of Bexar County, Texas;
- That certain tract containing twenty-seven (27) acres of land, more or less, out of Survey Number 1386-1/2, originally granted to C. Thieme in Bexar County, about 18 miles south of San Antonio, Texas. The said tract herein conveyed being known as Tract Number Four set apart to Alfredo Huron in a partition as shown on plat recorded in Volume 927, page 42 of the Deed Records of Bexar County, to which reference is hereby made for a full and more particular description of said twenty-seven (27) acres of land. And being the same property as described in deed dated August 3, 1933, from Alfredo Huron and wife, Vincenta Huron, to Lawrence F. Sultenfuss, which deed was filed for record in Volume 1363, Pages 570-71, of the Deed Records of Bexar County, Texas; and being the same land described in that certain deed from Lawrence F. Sultenfuss and wife, Laura L. Sultenfuss, to B. J. Osburn dated February 13, 1952, and recorded in Volume 3137, pages 547-548, Deed Records of Bexar County, Texas; and
- That certain tract or parcel of land in Bexar County, Texas, same being Tract No. Five (5) of a partition of the Estate of Antonio Huron, said partition being out of Surveys Nos. 1386-1/2 and 1386-1/4, in the name of C. Thieme, as same appears of record in Volume 927, pages 42 to 45, Deed Records of Bexar County, and more particularly described by metes and bounds as follows:

BEGINNING at the most eastern corner of Tract No. Four (4), and also the most northern corner of this tract; Thence S. 43° 30' W. 2422 feet to a stake in the East line of the old Pleasanton Road for a corner of this tract; Thence along the east side of said road, S. 11° 15' E. 313 feet and

S. 8° 30' E. 253 feet to a stake for the most southern corner of said Tract No. Five (5); Thence N. 43° 30' E. 2757 feet to a stake for the most eastern corner of Tract No. Five (5); Thence N. 46° 30' W. 455 feet to the place of beginning and containing 27 acres of land; being the same land described in that certain deed from Clarence Edward Sultenfuss to B. J. Osburn dated December 8, 1956, and recorded in Volume 3961, pages 85-87, Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473 & 348474.

**Lot B:**

A tract of land containing 27 acres, more or less, designated as Tract #6, out of the Huron Subdivision, being an original tract of 216 acres, out of the C. Thieme Original Grantee Survey No. 1386 1/4 and Survey No. 1386 1/2, situated within County Block 5686, according to the Plat Records of the County Assessor's Office, of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**Lot C:**

Tract 7, County Block 4168, and Tract 8, County Block 4169, each containing 27 acres, more or less, out of a subdivision of 216 acres made by F.E. Grothaus for the heirs of Antonio Huron out of the C. Thieme Survey 1386 1/2 and 1386 1/4, Abstracts 754 and 755, and shown by play of partition and proof of heirship of the Estate of Antonio Huron, Sr., Deceased, recorded in Volume 927, Page 42, of the Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**TRACT 4:**

**Lot A:**

Field notes of a 15.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of Lot No. 1 and 4.868 acres out of the north part of Lot No. 2 of the Carver Park Subdivision Unit No. Three according to a plat of record in Volume 3975, Page 176 of the Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the north east corner of said Lot No. 1 and being the north end of Hardwich Drive.

Thence N. 41° 57' 45" W. 1304.57 feet with line of fence and the north line of said Lot No. 1 to an iron pin set at corner of fence for the north west corner of this tract and being the north west corner of Lot No. 1.

Thence S 43° 21' 29" W. 572.35 feet with the north east line of Lot No. 1 to an iron pin found for the south west corner of Lot No. 1 and the north west corner of Lot No. 2.

Thence S 43° 33' 24" W. 176.31 feet with the north east line of Lot No. 2 to an iron pin set for the south west corner of this tract.

Thence S 63° 54' 43" E. 1469.33 feet to an iron pin set in the west line of Hardwich Road for the south east corner of this tract.

Thence N 16° 57' 41" E. with the west line of Hardwich Drive, at 100.00 feet the north east corner of Lot No. 2 and the south east corner of Lot No. 1, in all 230.00 feet to the place of beginning and containing 15,00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot B:**

Field Notes of a 6.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 1, said point being S 16° 57' 41" W. 230.00 feet from the north end of Hardwich Drive and being N 16° 57' 41" E. 323.00 feet from the south east corner of lot 2.

Thence N 63° 54' 43" W. 1469.33 feet with the south line of tract 1 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 1.

Thence S 43° 33' 24" W. 239.57 feet with the west line of lot 2 to an iron pin set for the south west corner of this tract and being the north west corner of tract 2-A.

Thence S 67° 56' 46" E. 1564.15 feet with the north line of tract 2-A to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 2-A.

Thence N 16° 57' 41" E. 120.00 feet with the west line of Hardwich Drive to the place of beginning and containing 6.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot C:**

Field notes of a 10.318 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 2, said point being S 16° 57' 41" W. 553.00 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 203.00 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of tract 2.

Thence N 67° 56' 46" W. 1564.15 feet with the south line of tract 2 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 2.

Thence S 43° 33' 24" W. 373.45 feet with the west line of lot 2 to an iron pin found for the south west corner of this tract and being the south west corner of lot 2 and north west corner of lot 3.

Thence S 72° 58' 38" E. 1712.80 feet with the south line of lot 2 and the north line of lot 3 to the place of beginning and containing 10.318 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot D:**

Field notes of a 20.720 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 3 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly of described by metes and bounds as follows:

Beginning at an iron pin set for the north east corner of this tract and being the north east corner of lot 3 and south east corner of lot 2 and tract 2-A.

Thence N 72° 58' 38" W. 1712.80 feet with the north line of lot 3 and the south line of lot 2 and tract 2-A to an iron pin found for the north west corner of this tract and lot 3 and being the south west corner of lot 2 and tract 2-A.

Thence S 43° 00' 20" W. 548.39 feet with the west line of lot 3 to an iron pin found for the south west corner of this tract and lot 3 and the north west corner of lot 4 and tract 4.

Thence S 73° 00' 41" E. 1953.58 feet with the south line of lot 3 and the north line of lot 4 and tract 4 to an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and lot 3 and the north east corner of lot 4 and tract 4.

Thence N 16° 57' 41" E. 491.80 feet with the west line of Hardwich Dr. to the place of beginning and containing 20.720 acres of land, according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot E:**

Field notes of a 20.793 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 4 of the Carver Park Subdivision Unit No. 3 according to a plat of record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 440.00 feet with the west line of Hardwich Dr. to an iron pin found for the north east corner of this tract and lot 4 and the south east corner of lot 3 and tract 3.

Thence N. 73° 00' 41" W. 1953.58 feet with the south line of tract 3 and lot 3 and the north line of lot 4 to an iron pin found for the north west corner of this tract and lot 4 and the south west corner of lot 3 and tract 3.

Thence S. 43° 01' 45" W. 488.47 feet with the west line of lot 4 to an iron pin found for the south west corner of this tract and lot 4 and the north east corner of lot 5 and tract 5.

Thence S 72° 58' 50" E. 2168.23 feet with the south line of lot 4 and the north line of lot 5 and tract 5 to the place of beginning and containing 20.793 acres of land, according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot F:**

Field notes of a 12.635 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 4, said point being S 16° 57'41" W. 1424.80 feet from the north end of Hardwich Drive and being the south east corner of lot 4 and the north east corner of lot 5.

Thence N 72°58' 50" W. 2168.23 feet with the south line of tract 4 and lot 4 to an iron pin set for the north west corner of this tract and being the south west corner of tract 4 and lot 4 and the north west corner of lot 5.

Thence S 43° 01' 45" W. 446.00 feet with the west line of lot 5 to an iron pin set for the south west corner of this tract and being the south west corner of lot 5 and the north west corner of lot 6.

Thence S 72° 58' 23" E. 1313.71 feet with the north line of lot 6 to an iron pin set for the south east corner of this tract and being the south west corner of tract 5-A.

Thence N 17° 01' 37" E. 341.43 feet to an iron pin set for a corner of this tract.

Thence S 72° 57' 35" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive.

Thence N 16° 57' 41" E. 60.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 12.635 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot G:**

Being all of Tract No. 5-A out of the Carver Park Subdivision No. 3, as per map or plat of said subdivision appearing of record in Vol. 3975, page 176, Deed or Plat Records, Bexar County, Texas, said Tract 5-A containing 3,168 acres of land, more or less, and being described as follows:

Field notes of a 3.168 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 5, said point being N 16° 57' 41" E. 596.46 feet from the end of Hardwich Drive.

Thence N 72° 58' 23" W. 1050.22 feet with the south line of lot 5 to an iron pin set for the south west corner of this tract and being the south east corner of tract 5,

Thence N 17° 01' 37" E. 131.43 feet with the west line of tract 5 to an iron pin set for the north west corner of this tract.

Thence S 72° 58' 23" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive for the north east corner of this tract.

Thence S 16° 57' 41" W. 131.43 feet with the west line of Hardwich Dr. to the place of beginning and containing 3.168 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot H:**

Field notes of a 13.504 acre tract of land situated in Bexar County, Texas out of the C Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 5-A and lot 5, said point being N 16° 57' 41" E. 596.40 feet from the south end of Hardwich Drive and being the north east corner of lot 6.

Thence N 72° 58' 23" W. 2363.93 feet with the south line or tract 5-A and 5 to an iron pin set for the north west corner of this tract and being the south west corner of tract 5.

Thence S 43° 01' 00" W. 270.05 feet with the west line of lot 6 to an iron pin set for the south west corner of this tract and being the north west corner of tract 7.

Thence S 72° 58' 23" E. 2482.75 feet with the north line of tract 7 to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 7.

Thence N 16° 57' 41" E. 242.74 feet with the west line of Hardwich Dr. to the place of beginning and containing 13.504 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot I:**

Being all of Tract Number Seven (7), containing 7.212 acres of land, more or less, out of the Carver Park Subdivision No. 3, in Bexar County, Texas, as per map or plat of said Subdivision appearing of record in Vol. 3975, Page 176, Deed or Plat Records, Bexar County, Texas;

Field notes of a 7.212 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 6, said point being N 16° 57' 41" E. 228.66 feet from the south end of Hardwich Drive, being the south east corner of lot 6.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of lot 6 to an iron pin set for the south west corner of this tract and being the south west corner of lot 6.

Thence N 43° 01' 00" E. 139.06 feet with the west line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of tract 6.

Thence S 72° 58' 23" E. 2482.75 feet with the south line of tract 6 to an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 6.

Thence S 16° 57' 41" W. 125.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 7.212 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot J:**

Field notes of a 13.740 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey being a part of a 271 acre tract described in Deed Recorded in Volume 1281, page 442 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive at the south end of Hardwich Drive for the south east corner of this tract, said point being S 16° 57' 41" W. 228.66 feet from the south east corner of Carver Park Subdivision Unit No. 3.

Thence N 16° 57' 41" E. 228.66 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of lot 6 of the Carver Park Subdivision.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of said lot 6.

Thence S 43° 01' 00" W. 257.77 feet to an iron pin set for the south west corner of this tract.

Thence S 73° 02' 19" E. 2657.05 feet with line of fence and the north line of a 74.0 acre tract described in Deed of Trust recorded in Volume 3340, page 290, Deed of Trust Records of Bexar County, Texas to the place of beginning and containing 13.740 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot K:**

A 75.76 acre tract out of the south part of a 271.00 acre tract, recorded in Volume 3340, Page 290, Deed of Trust, Bexar County, Texas, said 75.76 acres being 8.06 acres out of the J. Kafka Survey 710, Abstract 1210, County Block 4170, and 67.70 acres out of the C. Thieme Survey Number





THENCE; S 71° 46' 54" E, 2698.87 feet along the south line of a 13.74 acre tract recorded in Volume 2856, Page 476, Deed Records, Bexar County, Texas, to the POINT OF BEGINNING and containing 75.76 acres of land.

Portion of Bexar County Property Tax ID: 181780.

**Lot L:**

A 4.871 acre tract of land, more or less out of the A.Y. Ojeda Survey No. N494, Abstract No. 1246, County Block 4162, situated in Bexar County, Texas, and being more particularly described as follows, to wit:

BEGINNING: at the Northwest corner of Tract 23, Halliday Acres Subdivision, recorded in Volume 2222 Page 341, of the plat Records of Bexar County, Texas;

THENCE: Northerly 205.0' with the West line of Tract 24 in said Halliday Acres Subdivision, to a point in same, an iron pin set for the Northwest corner of the herein described tract, said point being Southerly 5.0" measured along the West line of said Tract 24, from the Northwest corner of Tract 24;

THENCE: Westerly 992.86' with the North line of the herein described tract, and making an angle from South to West of 90° with the last previously described line, to its intersection with the fence line on the Southwest side of a tract of land known as the Hair tract, same being the Northeast side of the C.H. Thieme, O.S. 1386 1/4, an iron pin set for the Northwest corner of the herein described tract;

THENCE: Southeasterly 352.48' with said fence line, and making an angle from East to South of 44° 02' with the last previously described line, to a point in same, an iron pin set, for the Southwest corner of the herein described tract;

THENCE: Easterly 739.16' with the South line of the herein described tract, and making an angle from Northwest to East of 135° 58' with the last previously described line, to its intersection with the West line of said Tract 23, Halliday Acres Subdivision, an iron pin set, for the Southeast corner of the herein described tract;

THENCE: Northerly 40.0' with the West line of said Tract 23, and making an angle from West to North of 90° with the last previously described line, to the PLACE OF BEGINNING. Containing: 4.871 acres of land, more or less.

Portion of Bexar County Property Tax ID: 181780.

**Lot M:**

Field notes of a 1.8939 acre tract of land situated in Bexar County, Texas, out of the A. Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being part of that tract described in Deed conveyed to Thomas N. Moore, dated August 16, 1983, and recorded in Volume 7167, Page 1,

Deed Records of Bexar County, Texas, and part of that tract described in Deed conveyed to Thomas N. Moore, dated November 7, 1963, as recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Highway 281, for the southeast corner of this tract and being N 04° 08' 58" E. 105.39 feet along said right-of-way line from its intersection with the cutoff to the north right-of-way line of Mogford Road.

Thence with fence along the southwest line of this tract and the northeast lines of Lots 1-7 of Carver Park Subdivision Unit 1, Plat recorded in Volume 3850, Page 155, part of Duke Drive, a 10.635 acre tract, Hardwich Drive and part of Tract 1, of Carver Park Subdivision Unit 3, Plat recorded in Volume 3975, Page 176, Nat Records of Records of Bexar County, Texas as follows:

N 42° 53' 00" W. 320.78 feet to an iron pin found at an angle point.

N 42° 27' 17" W. 561.37 feet to an iron pin found at the northwest corner of Duke Drive for an angle in this line.

N 42° 29' 56" W. 492.01 feet to an iron pin set at an angle being the south corner of the tract recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas.

N 42° 23' 59" W. 320.79 feet to an iron pin set for the northwest corner of this tract being in the north line of Tract 1, Carver Park Subdivision Unit 3,

Thence S 80° 25' 57" E. 233.06 feet along the north line of this tract to an iron pin set in the west line of Lot 21 of the Halliday Acres Subdivision recorded in Volume 2222, Page 341, Plat Records of Bexar County, Texas, for the northeast corner of this tract.

Thence S 03° 54' 03" W. 125.72 feet with fence along the west line of Lots 21 and 20 of said Halliday Acres Subdivision to an iron pin set at the north corner of the tract recorded in Volume 7167, Page 1, being a corner of Lot 20 and the interior corner of this tract.

Thence along the southwest line of Lots 20, 19, 18, 17 and 16 of Halliday Acres Subdivision as follows:

S 41° 34' 10" E. 863.35 feet to an iron pin at the southwest corner of Lot 18 and the northwest corner of Lot 17, being an angle in this line.

S 42° 26' 41" E. 304.16 feet to an iron pin found at the southwest corner of Lot 17 and the west corner of Lot 16.

S 43° 18' 36" E. 219.40 feet along the southwest line of Lot 16 to an iron pin set in the west right-of-way line of U.S. Highway 281 for a northeast corner of this tract.

Thence S 04° 08' 58" W. 54.85 feet along the west right-of-way line of U.S. Highway 281 to the place of beginning and containing 1.8939 acres of land according to a survey on the ground on January 2, 1986, by Baker Surveying, Inc.

### SAVE AND EXCEPT:

Field notes of a 1.1279 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 1.8939 acre tract recorded in Volume 4322, Page 362, Real Property records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Hwy. 281 at the east corner of this tract and the 1.8939 acre tract, being at the south corner of Lot 16, Halliday Acres Subdivision.

Thence S 04° 08' 58" W. 54.85 feet along the west line of U.S. Hwy. 281 to an iron pin found for the southeast corner of the 1.8939 acre tract and this tract.

Thence N 42° 52' 28" W. 320.78 feet along the southwest line of the 1.8939 acre tract to an iron pin found at an angle point and N 42° 27' 35" W. 901.33 feet to an iron pin set at the west corner of this tract being the northeast corner of a 1.0179 acre tract this day surveyed;

Thence S 86° 05' 29" E. 70.26 feet along the north line of this tract across the 1.8939 acre tract to an iron pin set for the north corner of this tract.

Thence along the northeast line of the 1.8939 acre tract as follows:

S 41° 31' 11" E. 610.10 feet to an iron pin found at an angle point; S 42° 26' 41" E. 304.16 feet to an iron pin found at an angle point;

S 43° 18' 36" E. 219.40 feet to the place of beginning and containing 1.1279 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot N:**

Field notes of a 1.0179 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 10.635 acre tract recorded in Volume 4048, Page 1444, Real Property Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the east line of Hardwich Drive at its northeast corner being the northwest corner of this tract and the 10.635 acre tract and being N 42° 53' 00" W. 320.78 feet and N 42° 27' 35" W. 1284.08 feet from a point in the west line of U.S. Hwy. 281.

Thence S 42° 27' 35" E. 382.75 feet along the northeast line of the 10.635 acre tract to an iron pin set for the east corner of this tract, being the west corner of a 1.1279 acre tract on this day surveyed.

Thence N 86° 05' 29" W. 335.77 feet along the south line of this tract to an iron pin set in the east line of Hardwich Drive for the southwest corner of this tract.

Thence N 16° 26' 50" E. 270.56 feet along the east line of Hardwich Drive to the place of beginning and containing 1.0179 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot O:**

Lot 20, HALLIDAY ACRES SUBDIVISION in Bexar County, Texas, according to plat recorded in Vol. 2222, p. 341, Deed and Plat Records, Bexar County, Texas; SAVE AND EXCEPT that portion conveyed to the State of Texas by Deed recorded in Vol. 5447, p. 318, Deed Records, Bexar County, Texas.

Portion of Bexar County Property Tax ID: 181780.

**Lot P:**

BEING that certain 0.4225 acre of land, more or less, out of the A. Y. Ojeda Sur. No. 94, Abstract 1251, County Block 5944, being a portion of Hardwich Drive, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

**BEGINNING** at an iron pin found at the northeast corner of Hardwich Drive at the northwest corner of a 1.0179 acre tract conveyed to Robert L. Tooke;

THENCE S. 16° 26' 50" W. 270.56 feet along the east line of said Hardwich Drive to an iron pin found at the southwest corner of said 1.0179 acre tract, for the southeast corner of this tract;

THENCE N. 86° 05' 29" W. 60.76 feet across Hardwich Drive to a point on its west line for the southwest corner of this tract;

THENCE N. 12° 58' 05" E. 332.29 feet along the west line of Hardwich Drive to a point for its northwest corner;

THENCE S. 42° 23' 59" E. 72.92 feet along the north line of said Hardwich Drive to the place or BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot Q:**

Field notes of a 3.233 acre tract of land situated in Bexar County, Texas, being the same land conveyed in Warranty Deed recorded in Volume 689, Page 406, of the Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows: (Note: All iron pins set are ½" rebar with a yellow plastic cap stamped "Baker Surveying").

Beginning at a 1 1/2" iron pipe found in the east right-of-way line of the Missouri Pacific Railroad at the southwest corner of this tract, the most westerly northwest corner of a 25.92 acre tract of land conveyed to Osburn Sand Company recorded in Volume 6944, Page 1400 of the Official Records of Bexar County, Texas, from which the north right-of-way line of Hume Road bears

Thence N 08°26'31" W., 286.62 feet with the west line of this tract, the east right-of-way line of Missouri Pacific Railroad to an iron pin set for the northwest corner of this tract, the southwest corner of an 8.06 acre tract conveyed to Osburn Sand Company recorded in Volume 4977, Page 199 of the Official Records of Bexar County, Texas.

Thence S 89°11' 00" E., 520.90 feet with the north line of this tract, the south line of said 8.06 acre tract to a 1/2" iron pin found for the northeast corner of this tract an angle point of said 8.06 acre tract and the most northerly northwest corner of said 25.92 acre tract.

Thence S 00°49'00" W., 282.89 feet with the east line of this tract and an interior line of the 25.92 acre tract to a 1 1/2" iron pipe found for the southeast corner of this tract and an interior corner of said 25.92 acre tract.

Thence N 89°11'00" W., 474.79 feet with the south line of this tract and the most southerly north line of said 25.92 acre tract to the place of beginning and containing 3.233 acres of land according to a survey made on the ground on June 25, 1998 by Baker Surveying & Engineering, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot R:**

A certain tract of land containing TWENTY-FIVE AND NINETY-TWO (25.92) HUNDREDTHS ACRES comprising the North Part of the Curtis Bell Tract of 45.908 acres described in Deed from Robert Hausser, et ux, to Curtis Bell, dated May 16, 1972, and recorded in Vol. 6813, p. 787, Deed Records of Bexar County, Texas. The said 25.92 acres is out of the South One-Half (1/2) of A.Y. Ojeda Survey 94, Abstract 1247, County Block 4162 in Bexar County, Texas. The said 25.92 acres fronts on the west side of Sunset Road and extends westward to the east right-of-way line of S.A.U. & O. Railroad, being about sixteen miles in a southerly direction from the Court House in Bexar County, Texas.

BEGINNING at an iron pipe on the east right-of-way line of S.A.U. & O. Railroad for the Southwest corner of said 25.92 acres, and being the Northwest corner of a tract of 20.00 acres; said Point of Beginning being 1333.58 feet North 8 deg., 30' West from the north line of Hume Road;

THENCE with fence along the east right-of-way line of S.A.U. & O. Railroad, North 8 deg. 30' West, 611.30 feet to an iron pipe, the Northwest corner of this tract;

THENCE with fence South 89 deg. 11' East, 474.79 feet to an iron pipe for an interior corner;

THENCE with fence North 00 deg. 34' East, 282.89 feet to an iron pipe for a corner;

THENCE with fence North 71 deg. 21' East, 175.35 feet to an iron pipe, the most northerly corner of this tract;

THENCE with fence South 42 deg. 24' East, 1421.18 feet to an iron pipe for an interior corner of this tract;

THENCE with fence North 47 deg. 05' East, 173.57 feet to an iron pipe for a corner;

THENCE with fence South 8 deg. 33' West, 413.10 feet to an iron pipe on west line of Sunset Road, the southeast corner of this tract;

THENCE with fence along the south line of said 25.92 acres, being the north line of said 20.00 acres; North 75 deg. 40' West, 1628.00 feet to the PLACE OF BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot S:**

19.09 acres, being Tracts 1, 2, 3, 4, and 9, out of a survey dated March 16, 1955, by Earl J. Wentworth, being out of the A. Y. Ojeda Survey No. 94, Abstract No. 1147, County Block 41622, in Bexar County, Texas, said 19.09 acre parcel being the same property conveyed to Grantors herein by Warranty Deed dated March 27, 1961, recorded in Vol. 4579, p. 225, Deed Records, Bexar County, Texas, executed by J.F. Hair and being more particularly described by metes and bounds as follows:

BEGINNING at the SW corner of Tract No. 6 of HALLIDAY ACRES;

THENCE S. with the W. line of said Halliday Acres, 340.10 feet to a point for the SE corner of this tract;

THENCE W. 1280.80 ft. to a PT. for the SW corner of this tract; THENCE N. 05 deg. E. 244.51 ft. to a pt. for the NW corner of this tract;

THENCE N. 43 deg. 40' E. 1407.02 ft. to a pt. for the NE corner of this tract; THENCE S. 921.28 ft. and E. 288.00 feet to the PLACE OF BEGINNING. Portion of Bexar County Property Tax ID: 181780.

**Tract 5:**

**Lot A:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

First Tract of land out of the John Kalka Survey No. 710, better described by metes and bounds as follows:

Beginning at the N.W. corner of the J.H. Nass 3.14/100 acre tract for the beginning place. Thence running East along the North line of the said 3.14/100 acre tract at 155 feet to a stake set on the West line of the S. A. U. & G. R. R. for the Southeast corner of this tract. Thence running North along the West line of said S. A. U. & G. R. R. to a stake set for the N.E. corner of this tract. Thence running along the N.E. line of the John Kalka survey No. 710 where said survey intersects with the Pleasanton Road a stake set for the N.W. corner of this tract. Thence South along the East side of the Pleasanton Road to the place of beginning.

**Lot B:**

Beginning at an iron pipe set for the Southeast corner of Tract 20, of the J. B. Couric Sub. Bexar County Plat Record Vol. 642, Pg. 267, thence with a projection of this South line of TR. 20 in an Easterly direction a distance of 20.0 feet to a RR Spike set in center-line of old Pleasanton Road; thence in a Southwesterly direction with said center-line of Old Pleasanton Road a distance of 313.7 ft. to RR spike; thence N. 43° 30' E a distance of 58.1 to an iron pin set in East property-line of Old Pleasanton Road, same being set for the Southwest corner of herein described tract and point of beginning;

THENCE continuing N. 43° 30' E. a distance of 193.5 ft. to an iron pin set in the West property line of No. Pac. RR r-o-w, same being set for the Southeast cor. of this tract;

THENCE N. 8° 30' W. along the West property line of said RR r-o-w a distance of 906.0 feet to an iron pin set for the Northeast corner of this tract;

THENCE S. 43°50 W. a distance of 197.0 ft. along old fence to an iron pin set in the East property line of old Pleasanton Road for the Northwest corner of this tract;

THENCE S. 5° 27 E a distance of 147.0 ft. along the East property line of Old Pleasanton Road to an iron pin set at angle point;

THENCE continuing in a Southeasterly direction along the East r-o-w of said Road a distance of 770.0 ft. to an iron pin set for Southwest corner and point of beginning containing 3.12 acres more or less.

Bexar County Property Tax ID: 181781.

**Lot C:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

Second Tract out of the John Kalka survey No. 710, and better described as follows, beginning at the Southeast corner of the J.H. Nass 3.14/100 acre tract for the beginning place.

Thence running south along the West line of the S. A. U. & G. R. R. to a stake set at 300 feet for the S.E. corner of this tract the same being the N.E. corner of the Haiduk tract of land.

Thence running West along the North line of the Haiduk Tract and parallel with the South line of the J.H. Nass 3.14/100 acre tract for the S.W. corner of this tract.

Thence running North along the East line of the Pleasanton Road to a stake set at 300 feet for the N.W. corner of this tract. Thence running East along the J.H. Nass 3.14/100 acre tract at 140 feet to the place of beginning.

**TRACT 6:**

**Lot A:**

A certain tract of land containing 100 acres, comprising parts of Tracts 3, 4, 5, 6, 7, 8 and 9 of the J.B. Couric subdivision of 565.64 acres out of Survey Nos. 710, 1386 and 1386Y2, situated about 18 miles in a southerly direction from the Courthouse in Bexar County, Texas, according to the plat thereof of said Couric Subdivision, recorded in Volume 642, Page 267, Plat Records of Bexar County, Texas, said 100 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" X 4" cedar post on the west line of said Couric Subdivision and being the northwest corner of said Tract No. 5;

THENCE with the north line of Tract No. 5, N 89° 59' E, 2,370 feet to an iron pipe at the southeast corner of a tract of 50 acres;

THENCE N 00° 01' W, 847.2 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet;

THENCE with the north line of Tract No. 3, S 79° 44' E, 1,133.4 feet to an iron pipe for a corner of this tract;

THENCE S 13° 16' W, 661.9 feet to an iron pipe on the north line of Tract No. 5 for a corner;

THENCE with the north line of Tract No. 5, N 89° 59' E, 1,031.2 feet to an iron pipe on the west line of Old Pleasanton Road for a corner of this tract;

THENCE with the west line of Pleasanton Road, S 16° 28 1/2' E, 131 feet to an iron pipe for a corner;

THENCE S 89° 59' W, 826.4 feet to an iron pipe for corner;

THENCE S 15° 21' E, 666 feet to an iron pipe at an angle;

THENCE S 10° 19' E, 304.95 feet to an iron pipe, the southeast corner of said 100 acres;

THENCE W 3,234.4 feet to an iron pipe, the southwest corner of said 100 acres; THENCE N 00° 01' E, 681.57 feet to an auto axle for a corner of this tract;

THENCE N 65° 54' W, 679.7 feet to another auto axle for a corner of this tract;

THENCE with fence, N 24° 12 'A' E, 119.4 feet to the PLACE OF BEGINNING, according to field notes and survey by James C. Adams, Licensed State Land Surveyor, dated January 1953;

**SAVE AND EXCEPT:**

Ten thousand (10,000) square feet of land out of a 565.64 acre tract located approximately one mile from the county line between Bexar County and Atascosa County on Pleasanton Road in Bexar County, Texas, out of Survey No. 1386 V2, and being the same tract of land conveyed by deed of Texas State Bank, July 28, 1926, to J.B. Couric, said deed being recorded in Volume 905, Page 152, Deed Records of Bexar County, Texas, said 10,000 square feet of land being described by metes and bounds as follows, to-wit:



BEGINNING at a stake on the property line between Lots 4 and 5 of the said Couric property, at a point 1,126 feet due West of the west side of Pleasanton Road and 60 feet due East of a point at the intersection of the high line of the Comal Power Company from San Antonio to Pleasanton and the property line between Lot 4 and Lot 5 of the Couric property;

THENCE due South 76 feet, 6 inches to a stake;

THENCE due West 60 feet to the said high line of the Comal Power Company; THENCE due West 40 feet to a stake;

THENCE due North 76 feet, 6 inches to the property line between Lot 4 and Lot 5 of the said Couric property;

THENCE due North 23 feet, 6 inches to a stake;

THENCE due East 40 feet to the said high line of said Comal Power Company; THENCE due East 60 feet to a stake;

THENCE due South 23 feet, 6 inches to the PLACE OF BEGINNING, containing 10,000 square feet, more or less, according to Quitclaim Deed from J.B. Couric to Comal Power Company, dated April 29, 1927 and recorded in Volume 1107, Page 513, Bexar County Deed Records; and

Portion of Bexar County Property Tax ID: 347950.

**Lot B:**

A tract of land containing 50 acres, being the west part of Tracts 3 and 4 of the J.B. Couric subdivision of 565.64 acres, said 50 acres being out of the James Taylor Survey 1386, in Bexar County, Texas according to plat thereof recorded in Volume 642, Page 267 of the Deed and Plat Records of Bexar County, Texas, 50 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" x 4" post at the southwest corner of Tract 4 of said Couric Subdivision; THENCE with fence, N 24° 12 1/2' E, 1,294.8 feet to a 4" X 4" post, the northwest corner of Tract 3;

THENCE with the north line of Tract 3, S 79° 44' E, 1,868.8 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet and an 8 inch L.O. bears S 58° 10' E, 106.5 feet;

THENCE S 00° 01' W, 847.2 feet to an iron pipe on the south line of Tract 4, the southeast corner of said 50 acres;

THENCE S 89° 59' W, 2,370.0 feet to the PLACE OF BEGINNING and containing 50 acres of land, more or less;

Portion of Bexar County Property Tax 1D: 347950.

**Lot C:**

BEING a 0.614 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.614 acre tract being more particularly described as follows:

BEGINNING at a metal pipe found in the south line of said Tract No. 4 for the most southerly corner of the herein described tract; said metal pipe found being North 89° 57' 22" West, 1031.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west Right-of-Way (R.O.W.) line of Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 13° 28' 25" West, 352.01 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 85° 15' 00" East, 160.00 feet along the north line of said Tract No. 4 to a 1/2" iron rod set for the northeast corner of the herein described tract;

THENCE, South 13° 14' 27" West, 338.06 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**Lot D:**

BEING a 0.871 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.871 acre tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod set in the south line of said Tract No. 4 for the southeast corner of the herein described tract, said 1/2" iron rod set being North 89° 57' 22" West, 840.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west R.O.W. line of said Pleasanton Rd. for the southeast corner of said Tract No. 4;

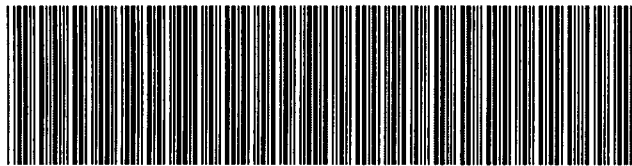
THENCE, North 89° 57' 22" West, 191.00 feet along the south line of said Tract No. 4 to a metal pipe found for the southwest corner of the herein described tract;

THENCE, North 13° 14' 27" East, 338.06 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 84° 40' 21" East, 40.99 feet along the north line of said Tract No. 4 to a metal pipe found for the northeast corner of the herein described tract;

THENCE, South 12° 36' 06" East, 333.45 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.



\*VG-74-2019-20190001459\*

**File Information**

**FILED IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190001459  
**Recorded Date:** January 03, 2019  
**Recorded Time:** 2:33 PM  
**Total Pages:** 182  
**Total Fees:** \$746.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Bexar County, Texas on:  
1/3/2019 2:33 PM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

**AMENDED  
AFFIDAVIT CLAIMING A STATUTORY AND CONSTITUTIONAL LIEN**

**THE STATE OF TEXAS       }**

**COUNTY OF BEXAR             }**

Before me, the undersigned authority, personally appeared **Jason Plante**, who, being by me duly sworn, stated as follows:

1. My name is Jason Plante. I am the Vice President of Market & Johnson, Inc., a Wisconsin corporation (hereafter referred to as "Contractor" or "Claimant"). I am over 18 years of age, have personal knowledge of the facts set forth below, and am of sound mind and am capable of making this affidavit. I make this sworn affidavit for the purpose of perfecting a lien on the real property and improvements owned by Superior Silica Sands, LLC ("Owner") to secure the amount of Claimant's claim as described below as provided under Section 53.054 of the Texas Property Code.
2. Claimant's principal office is located at 2350 Galloway Street, Eau Claire, WI 54703. Claimant's mailing address is the same as the principal office noted above.
3. Pursuant to certain design/build contracts (the "Contract") between Claimant and Owner as identified in the Memorandum of Construction Contracts attached as Exhibit A hereto, Claimant has served as general contractor for the construction of a dry sand processing plant, a wet plant, and a reclaim system on Owner's real property as is more particularly described in Exhibit B hereto (the "Property"). The work performed by Claimant consisted of general contractor services and is described with greater particularity in the Contract.
4. The materials, labor, and/or equipment of Claimant were provided to Owner for the construction of the improvements on the Property. The Owner or reputed Owner of the real property and improvements on which Claimant asserts a lien is Superior Silica Sands, LLC. The last known addresses of the Owner are as follows:

Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, Texas 76109  
Attention: Rick Shearer, President and CEO

With a copy to:


Superior Silica Sands LLC  
1400 Civic Place, Suite 250  
Southlake, Texas 76092  
Attention: General Counsel

5. After allowing all just credits, offsets, and payments, the amount of \$5,050,000.00 remains unpaid and said sum is due and owing to Claimant under said Contract. Owner has not paid

Claimant as required under the Contract. The amount claimed is just and correct and constitutes the reasonable value of the materials furnished and labor performed. Claimant claims a statutory lien on said property and improvements under the provisions of Chapter 53 of the Texas Property Code and a constitutional lien on said property and improvements under the provisions of Article 16, Section 37 of the Texas Constitution to secure payment of the above amount. This amount does not include any attorney's fees, interest or costs which may be recovered at law.

6. The Claimant provided the unpaid labor, material, and/or equipment to the Owner during 2018. Claimant's last date of work on the project was February 26, 2019.
7. A copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested, to the Owner described above, addressed to the Owner at the last known addresses as indicated above.

SWORN AND EXECUTED on this 15<sup>th</sup> day of March, 2019.

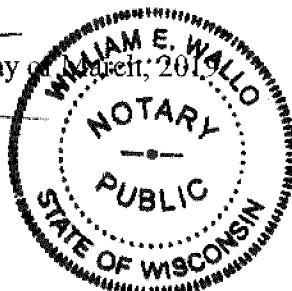
  
\_\_\_\_\_  
Jason Plante  
Vice President, Market & Johnson, Inc.

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF EAU CLAIRE )

Personally came before me this 15<sup>th</sup> day of March, 2019, the above-named Jason Plante, Vice President of Market & Johnson, Inc., and to me known to be the person who executed the foregoing instrument and acknowledged executing the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of Market & Johnson, Inc., and further swore that the foregoing statements are true and correct.

SUBSCRIBED AND SWORN TO on this 13 day of March, 2019

Name: [Signature]  
Notary Public, State of Wisconsin  
My Commission: Permanent



## Certificate of Delivery

I, \_\_\_\_\_, certify that on \_\_\_\_\_, I delivered a true and correct copy of the above instrument to Superior Silica Sands, LLC at the addresses identified above by certified/registered mail, postage prepaid.

---

Print Name \_\_\_\_\_

# Exhibit “A”

**MEMORANDUM OF CONSTRUCTION CONTRACTS  
BETWEEN OWNER AND CONTRACTOR**

The undersigned party hereby signs this Memorandum of Construction Contracts Between Owner and Contractor to evidence the execution of three Construction Contracts Between Owner and Contractor made as of January 8, 2018, March, 2018 and April 5, 2018, each with a fixed, turn-key contract price subject to additions and deductions as provided in the contract documents, by and between the following parties:

Contract No. 1 January 8, 2018:

Owner: Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, TX 76109

Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54702-0630

For the following project:

A Dry Sand Processing Plant at the San Antonio Texas Site  
24068 Pleasanton Road  
San Antonio, TX 78264

The location of the project is more particularly described in Exhibit "A" attached hereto and incorporated fully herein.

Contract No. 2 March, 2018:

Owner: Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, TX 76109

Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54702-0630

For the following project:

A Wet Sand Processing Plant at the San Antonio Texas Site  
24068 Pleasanton Road  
San Antonio, TX 78264

The location of the project is more particularly described in Exhibit "A" attached hereto and incorporated fully herein.

Contract No. 3 April 5, 2018:

Owner: Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, TX 76109



Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54702-0630

For the following project:

Tripper Conveyor and Recovery System at the San Antonio Texas Site  
24068 Pleasanton Road  
San Antonio, TX 78264

The location of the project is more particularly described in Exhibit "A" attached hereto and incorporated fully herein.

Pursuant to the construction contracts described herein, Contractor and Owner entered into the above-described Contracts.

This Memorandum of Construction Contracts Between Owner and Contractor does not alter, amend, or modify any of the construction contracts described herein.

[Signature Page to Follow]

IN WITNESS WHEREOF, Contractor has executed this Memorandum of Construction Contract Between Owner and Contractor March 15, 2019.

CONTRACTOR:

MARKET & JOHNSON, INC.

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

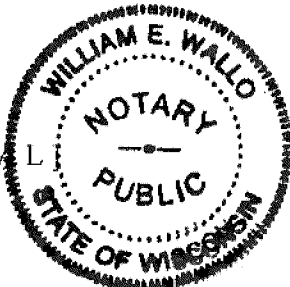
Jason Plante, Vice President

STATE OF WISCONSIN

§  
§  
§

COUNTY OF EAU CLAIRE

This instrument was acknowledged before me on the 15<sup>th</sup> day of March, 2019, by Jason Plante, Vice President of Market & Johnson, Inc., in his capacity as the Vice President Member of Market & Johnson, Inc., for and on behalf of said company.



[SEAL]

\_\_\_\_\_  
Notary Public, State of Wisconsin

**TRACT 1:**

**FIELD NOTES OF A 3.62 ACRE (157737 SQUARE FEET MORE OR LESS) TRACT OF LAND, SITUATED IN BEXAR COUNTY, TEXAS OUT OF THE J.S. MOORING SURVEY NO. 1386A, ABSTRACT NO. 1086, THE C. THIEME SURVEY NO 1386A, ABSTRACT NO. 754 AND THE J. TAYLOR SURVEY NO. 1386, ABSTRACT NO. 761 AND BEING ALL OF THE REMAINDER OF TRACT A, ALL OF TRACT B AND ALL OF THE REMAINDER OF TRACT C AS CONVEYED TO FRED A. AND NANCY L. MAIR OF RECORD IN VOLUME 6461, PAGE 654, DEED RECORDS OF BEXAR COUNTY, TEXAS.**

**EXHIBIT A**

# Exhibit “B”

**TRACT 1:**

**FIELD NOTES OF A 3.62 ACRE (157737 SQUARE FEET MORE OR LESS) TRACT OF LAND, SITUATED IN BEXAR COUNTY, TEXAS OUT OF THE J.S. MOORING SURVEY NO. 1386A, ABSTRACT NO. 1086, THE C. THIEME SURVEY NO 1386A, ABSTRACT NO. 754 AND THE J. TAYLOR SURVEY NO. 1386, ABSTRACT NO. 761 AND BEING ALL OF THE REMAINDER OF TRACT A, ALL OF TRACT B AND ALL OF THE REMAINDER OF TRACT C AS CONVEYED TO FRED A. AND NANCY L. MAIR OF RECORD IN VOLUME 6461, PAGE 654, DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: NOTE: (BASIS OF BEARING IS TEXAS SOUTH CENTRAL ZONE, NAD83.)**

**BEGINNING:** At a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of the Union Pacific Rail Road Company (100' R.O.W.) for the southwest corner of a 12.1 acre tract, called Second Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas the northwest corner of the remainder of Tract C, This Tract and the POINT OF BEGINNING, from which a 5/8" iron rod found bears N 28°40'16" W, a distance of 5.10 feet and from said 5/8" iron rod found, a 5/8" iron rod found bears N 84°19'28" E, a distance of 2.12 feet;

**THENCE:** Departing the east Right-of-Way line of U.P.R.R.Co., with the south line of the 12.1 acre tract, the north line of the remainder of Tract C and This Tract, the following calls and distances:

S 89°46'34" E, a distance of 122.40 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in concrete for an angle point;

N 83°13'26" E, a distance of 42.00 feet to a leaning 5/8" iron rod found in the west line of Tract B, for the southeast corner of the 12.1 acre tract, the northeast corner of the remainder of Tract C and an interior corner of This Tract;

**THENCE:** N 11°06'30" W, with the east line of the 12.1 acre tract, the west line of Tract B and This Tract, a distance of 142.50 feet to a 1A" iron rod found for the west corner of a 44.5 acre tract, called First Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas, the north corner of Tract B and This Tract;

**THENCE:** S 65°37'27" E, with the southwest line of the 44.5 acre tract, the northeast line of Tract B, the remainder of Tract A and This Tract, a distance of 580.12 feet to a Y2" iron rod found for the north corner of an 8.381 acre tract as conveyed to Osburn Sand Company of record in Volume 7885, Page 743, Deed Records of Bexar County, Texas, the east corner of the remainder of Tract A and This Tract;

**THENCE:** S 24°22'35" W, with the northwest line of the 8.381 acre tract, a southeast line of the remainder of Tract A and This Tract, a distance of 170.62 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the northeast line of a 27 acre tract as conveyed to Osburn Sand Company of record in Volume 4369, Page 536, Deed Records of Bexar County,

Texas for the west corner of the 8.381 acre tract, the south corner of the remainder of Tract A and This Tract;

THENCE: N 47° 40' 59" W, with the northeast line of the 27 acre tract, the southwest line of the remainder of Tract A and This Tract, a distance of 87.36 feet to a 1/2" iron rod found for a north corner of the 27 acre tract, the east corner of Tract B and an interior corner of This Tract;

THENCE: S 77° 09' 47" W, with the northwest line of the 27 acre tract, a 0.699 acre tract as conveyed to Osburn Sand Company of record in Volume 7865, Page 743, Deed Records of Bexar County, Texas, a southeast line of Tract B and the remainder of Tract C and This Tract, a distance of 455.08 feet to a 'A" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of U.P.R.R.Co. for the west corner of the 0.699 acre tract, the southwest corner of the remainder of Tract C and This Tract;

THENCE: With the east Right-of-Way line of U.P.R.R.Co., the west line of the remainder of Tract C and This Tract, the following calls and distances:

N 16°39'00" W, a distance of 189.64 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set for a point of Tangency;

Northwesterly, with an arc of a curve to the right, having a radius of 5670.87 feet, a delta angle of 01° 10' 07", an arc length of 115.66 feet and a chord that bears N 16° 03' 57" W, a distance of 115.66 feet to the POINT OF BEGINNING and containing 3.62 acres of land in Bexar County, Texas, according to a survey on the ground on March 21, 2016 by Rickman Land Surveying.

Bexar County Property Tax ID: 180107.

## **TRACT 2:**

### **Lot A:**

Lots 97, 98, 99, 100, 101 and 102, Block 8, OAK HILL RANCHES, in Bexar County, Texas, according to plat thereof recorded in Volume 5580, Pages 48-49, Deed and Plat Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473.

### **Lot B:**

A tract of land containing 8.381 acres, being out of J. S. Mooring Survey No. 1386 3/4 , Abstract No. 1086, County Block Four Thousand One Hundred Sixty Three (4,163), being more particularly described as follows:

BEGINNING at an iron pin found at the most southerly corner of the Robert V. Smith and Henry Feille, Sr. Survey No. 1387, Abstract No. 1261, County Block 4175, Bexar County, Texas, said corner being a reentrant corner of said J. S. Mooring Survey No. 1386 %, Abstract No. 754, and the most easterly corner of this tract.

THENCE S. 27° 39' 37" W. along a northwest line of said Survey No. 1386 % and of Oak Hill Ranches, recorded in Volume 5580, Pages 48 and 49, Bexar County Plat Records, a distance of 517.59 feet to an iron pin found at a fence corner on the common line of said Christopher Thieme Survey No. 1386 1/2 and said J. S. Mooring Survey No, 1386 %, for the most southerly corner of this tract.

THENCE N. 44° 26' 29" W., along said common line, a distance of 1116.90 feet to an iron pin set for the most westerly corner of this tract.

THENCE N. 27° 23' 12" E. a distance of 169.25 feet to an iron pin set in a barbed-wire fence on the southwest line of said Robert V. Smith and Henry Feille, Sr. Survey No. 1387 for the most northerly corner of this tract; said corner being on the northeast line of said J. S. Mooring Survey No. 1386 %.

THENCE S. 62° 36' 48" E. partially along a barbed-wire fence on the common line between said Surveys No. 1387 and 1386% a distance of 1418.46 feet to the point of beginning, and containing 8.381 acres of land.

Portion of Bexar County Property Tax ID: 348473

**Lot C:**

A tract of land containing 0.699 acres, being out of Christopher Thieme Survey No. 1386 1/2, Abstract No. 754, County Block Four Thousand One Hundred Sixty Nine (4,169), being more particularly described as follows:

BEGINNING at an iron pin set at a fence corner for the northeast corner of this tract, said corner being the following courses from the most westerly corner of the above described 8.381 acre tract; S. 44° 35' 17" E. along the common line between said Surveys No. 1386 1/2 and 1386 % a distance of 285.37 feet to an iron pin set at a fence corner; and S. 80° 21' 40" W. along a barbed-wire fence line a distance of 331.94 feet.

THENCE S. 05° 57' 03" E. along a barbed-wire fence line a distance of 311.15 feet to an iron pin found at a fence corner, for the southeast corner of this tract.

THENCE S. 79° 45' 59" W. along a barbed-wire fence line a distance of 68.00 feet to an iron pin found at a fence corner on the east line of the Missouri-Pacific Railroad 100-foot right-of-way, for the southwest corner of this tract.

THENCE northerly along a barbed-wire fence on the east right-of-way line of said Railroad right-of-way the following courses: N. 17° 40' 48" W. a distance of 196.02 feet to an iron pin found at an angle point; and N. 14° 22' 28" E. a distance of 114.07 feet to an iron pin set at a fence corner, for the northwest corner of this tract.

THENCE N. 78° 46' 54" E. along a barbed-wire fence line a distance of 124.90 feet to the point of beginning, and containing 0.699 acre of land.

Portion of Bexar County Property Tax ID: 348473.

**TRACT 3:**

**Lot A:**

- Those three (3) certain tracts of land designated as Tract No. One (1), Tract Number Two (2) and Tract Number Three (3), each containing Twenty-seven (27) acres of land, all out of a survey or subdivision of land of Two Hundred Sixteen (216) acres out of the C. Thieme Survey Number 1386-1/2, made and platted for the heirs of Antonio Huron, husband of Josefa G. Huron, by F. E. Grothouse, Surveyor, located in Bexar County, Texas, which plat is duly recorded in Vol. 927, pages 42-45, of the Deed Records of Bexar County, Texas, to which reference is here made, said three (3) tracts containing in all Eighty-one (81) acres of land; being the same land described in that certain deed from Dave Lehr, Inc., to B. J. Osburn dated January 15, 1947, and recorded in Volume 2335, pages 40-41, Deed Records of Bexar County, Texas;
- That certain tract containing twenty-seven (27) acres of land, more or less, out of Survey Number 1386-1/2, originally granted to C. Thieme in Bexar County, about 18 miles south of San Antonio, Texas. The said tract herein conveyed being known as Tract Number Four set apart to Alfredo Huron in a partition as shown on plat recorded in Volume 927, page 42 of the Deed Records of Bexar County, to which reference is hereby made for a full and more particular description of said twenty-seven (27) acres of land. And being the same property as described in deed dated August 3, 1933, from Alfredo Huron and wife, Vincenta Huron, to Lawrence F. Sultenfuss, which deed was filed for record in Volume 1363, Pages 570-71, of the Deed Records of Bexar County, Texas; and being the same land described in that certain deed from Lawrence F. Sultenfuss and wife, Laura L. Sultenfuss, to B. J. Osburn dated February 13, 1952, and recorded in Volume 3137, pages 547-548, Deed Records of Bexar County, Texas; and
- That certain tract or parcel of land in Bexar County, Texas, same being Tract No. Five (5) of a partition of the Estate of Antonio Huron, said partition being out of Surveys Nos. 1386-1/2 and 1386-1/4, in the name of C. Thieme, as same appears of record in Volume 927, pages 42 to 45, Deed Records of Bexar County, and more particularly described by metes and bounds as follows:

BEGINNING at the most eastern corner of Tract No. Four (4), and also the most northern corner of this tract; Thence S. 43° 30' W. 2422 feet to a stake in the East line of the old Pleasanton Road for a corner of this tract; Thence along the east side of said road, S. 11° 15' E. 313 feet and

S. 8° 30' E. 253 feet to a stake for the most southern corner of said Tract No. Five (5); Thence N. 43° 30' E. 2757 feet to a stake for the most eastern corner of Tract No. Five (5); Thence N. 46° 30' W. 455 feet to the place of beginning and containing 27 acres of land; being the same land described in that certain deed from Clarence Edward Sultenfuss to B. J. Osburn dated December 8, 1956, and recorded in Volume 3961, pages 85-87, Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473 & 348474.

**Lot B:**

A tract of land containing 27 acres, more or less, designated as Tract #6, out of the Huron Subdivision, being an original tract of 216 acres, out of the C. Thieme Original Grantee Survey No. 1386 1/4 and Survey No. 1386 1/2, situated within County Block 5686, according to the Plat Records of the County Assessor's Office, of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**Lot C:**

Tract 7, County Block 4168, and Tract 8, County Block 4169, each containing 27 acres, more or less, out of a subdivision of 216 acres made by F.E. Grothaus for the heirs of Antonio Huron out of the C. Thieme Survey 1386 1/2 and 1386 1/4, Abstracts 754 and 755, and shown by play of partition and proof of heirship of the Estate of Antonio Huron, Sr., Deceased, recorded in Volume 927, Page 42, of the Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**TRACT 4:**

**Lot A:**

Field notes of a 15.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of Lot No. 1 and 4.868 acres out of the north part of Lot No. 2 of the Carver Park Subdivision Unit No. Three according to a plat of record in Volume 3975, Page 176 of the Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the north east corner of said Lot No. 1 and being the north end of Hardwich Drive.

Thence N. 41° 57' 45" W. 1304.57 feet with line of fence and the north line of said Lot No. 1 to an iron pin set at corner of fence for the north west corner of this tract and being the north west corner of Lot No. 1.

Thence S 43° 21' 29" W. 572.35 feet with the north east line of Lot No. 1 to an iron pin found for the south west corner of Lot No. 1 and the north west corner of Lot No. 2.

Thence S 43° 33' 24" W. 176.31 feet with the north east line of Lot No. 2 to an iron pin set for the south west corner of this tract.

Thence S 63° 54' 43" E. 1469.33 feet to an iron pin set in the west line of Hardwich Road for the south east corner of this tract.

Thence N 16° 57' 41" E. with the west line of Hardwich Drive, at 100.00 feet the north east corner of Lot No. 2 and the south east corner of Lot No. 1, in all 230.00 feet to the place of beginning and containing 15.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot B:**

Field Notes of a 6.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:



Beginning at an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 1, said point being S 16° 57' 41" W. 230.00 feet from the north end of Hardwich Drive and being N 16° 57' 41" E. 323.00 feet from the south east corner of lot 2.

Thence N 63° 54' 43" W. 1469.33 feet with the south line of tract 1 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 1.

Thence S 43° 33' 24" W. 239.57 feet with the west line of lot 2 to an iron pin set for the south west corner of this tract and being the north west corner of tract 2-A.

Thence S 67° 56' 46" E. 1564.15 feet with the north line of tract 2-A to an iron pin set in the west line of Hardwick Drive for the south east corner of this tract and being the north east corner of tract 2-A.

Thence N 16° 57' 41" E. 120.00 feet with the west line of Hardwich Drive to the place of beginning and containing 6.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot C:**

Field notes of a 10.318 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 2, said point being S 16° 57' 41" W. 553.00 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 203.00 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of tract 2.

Thence N 67° 56' 46" W. 1564.15 feet with the south line of tract 2 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 2.

Thence S 43° 33' 24" W. 373.45 feet with the west line of lot 2 to an iron pin found for the south west corner of this tract and being the south west corner of lot 2 and north west corner of lot 3.

Thence S 72° 58' 38" E. 1712.80 feet with the south line of lot 2 and the north line of lot 3 to the place of beginning and containing 10.318 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot D:**

Field notes of a 20.720 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 3 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly of described by metes and bounds as follows:

Beginning at an iron pin set for the north east corner of this tract and being the north east corner of lot 3 and south east corner of lot 2 and tract 2-A.

Thence N 72° 58' 38" W. 1712.80 feet with the north line of lot 3 and the south line of lot 2 and tract 2-A to an iron pin found for the north west corner of this tract and lot 3 and being the south west corner of lot 2 and tract 2-A.

Thence S 43° 00' 20" W. 548.39 feet with the west line of lot 3 to an iron pin found for the south west corner of this tract and lot 3 and the north west corner of lot 4 and tract 4.

Thence S 73° 00' 41" E. 1953.58 feet with the south line of lot 3 and the north line of lot 4 and tract 4 to an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and lot 3 and the north east corner of lot 4 and tract 4.

Thence N 16° 57' 41" E. 491.80 feet with the west line of Hardwich Dr. to the place of beginning and containing 20.720 acres of land, according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot E:**

Field notes of a 20.793 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 4 of the Carver Park Subdivision Unit No. 3 according to a plat of record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 440.00 feet with the west line of Hardwich Dr. to an iron pin found for the north east corner of this tract and lot 4 and the south east corner of lot 3 and tract 3.

Thence N. 73° 00' 41" W. 1953.58 feet with the south line of tract 3 and lot 3 and the north line of lot 4 to an iron pin found for the north west corner of this tract and lot 4 and the south west corner of lot 3 and tract 3.

Thence S. 43° 01' 45" W. 488.47 feet with the west line of lot 4 to an iron pin found for the south west corner of this tract and lot 4 and the north east corner of lot 5 and tract 5.

Thence S 72° 58' 50" E. 2168.23 feet with the south line of lot 4 and the north line of lot 5 and tract 5 to the place of beginning and containing 20.793 acres of land, according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot F:**

Field notes of a 12.635 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive and being the south east corner of lot 4 and the north east corner of lot 5.

Thence N 72° 58' 50" W. 2168.23 feet with the south line of tract 4 and lot 4 to an iron pin set for the north west corner of this tract and being the south west corner of tract 4 and lot 4 and the north west corner of lot 5.

Thence S 43° 01' 45" W. 446.00 feet with the west line of lot 5 to an iron pin set for the south west corner of this tract and being the south west corner of lot 5 and the north west corner of lot 6.

Thence S 72° 58' 23" E. 1313.71 feet with the north line of lot 6 to an iron pin set for the south east corner of this tract and being the south west corner of tract 5-A.

Thence N 17° 01' 37" E. 341.43 feet to an iron pin set for a corner of this tract.

Thence S 72° 57' 35" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive.

Thence N 16° 57' 41" E. 60.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 12.635 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot G:**

Being all of Tract No. 5-A out of the Carver Park Subdivision No. 3, as per map or plat of said subdivision appearing of record in Vol. 3975, page 176, Deed or Plat Records, Bexar County, Texas, said Tract 5-A containing 3,168 acres of land, more or less, and being described as follows:

Field notes of a 3.168 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 5, said point being N 16° 57' 41" E. 596.46 feet from the end of Hardwich Drive.

Thence N 72° 58' 23" W. 1050.22 feet with the south line of lot 5 to an iron pin set for the south west corner of this tract and being the south east corner of tract 5,

Thence N 17° 01' 37" E. 131.43 feet with the west line of tract 5 to an iron pin set for the north west corner of this tract.

Thence S 72° 58' 23" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive for the north east corner of this tract.

Thence S 16° 57' 41" W. 131.43 feet with the west line of Hardwich Dr. to the place of beginning and containing 3.168 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot H:**

Field notes of a 13.504 acre tract of land situated in Bexar County, Texas out of the C Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 5-A and lot 5, said point being N 16° 57' 41" E. 596.40 feet from the south end of Hardwich Drive and being the north east corner of lot 6.

Thence N 72° 58' 23" W. 2363.93 feet with the south line or tract 5-A and 5 to an iron pin set for the north west corner of this tract and being the south west corner of tract 5.

Thence S 43° 01' 00" W. 270.05 feet with the west line of lot 6 to an iron pin set for the south west corner of this tract and being the north west corner of tract 7.

Thence S 72° 58' 23" E. 2482.75 feet with the north line of tract 7 to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 7.

Thence N 16° 57' 41" E. 242.74 feet with the west line of Hardwich Dr. to the place of beginning and containing 13.504 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot I:**

Being all of Tract Number Seven (7), containing 7.212 acres of land, more or less, out of the Carver Park Subdivision No. 3, in Bexar County, Texas, as per map or plat of said Subdivision appearing of record in Vol. 3975, Page 176, Deed or Plat Records, Bexar County, Texas;

Field notes of a 7.212 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 6, said point being N 16° 57' 41" E. 228.66 feet from the south end of Hardwich Drive, being the south east corner of lot 6.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of lot 6 to an iron pin set for the south west corner of this tract and being the south west corner of lot 6.

Thence N 43° 01' 00" E. 139.06 feet with the west line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of tract 6.

Thence S 72° 58' 23" E. 2482.75 feet with the south line of tract 6 to an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 6.

Thence S 16° 57' 41" W. 125.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 7.212 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot J:**

Field notes of a 13.740 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey being a part of a 271 acre tract described in Deed Recorded in Volume 1281, page 442 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive at the south end of Hardwich Drive for the south east corner of this tract, said point being S 16° 57' 41" W. 228.66 feet from the south east corner of Carver Park Subdivision Unit No. 3.

Thence N 16° 57' 41" E. 228.66 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of lot 6 of the Carver Park Subdivision.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of said lot 6.

Thence S 43° 01' 00" W. 257.77 feet to an iron pin set for the south west corner of this tract.

Thence S 73° 02' 19" E. 2657.05 feet with line of fence and the north line of a 74.0 acre tract described in Deed of Trust recorded in Volume 3340, page 290, Deed of Trust Records of Bexar County, Texas to the place of beginning and containing 13.740 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot K:**

A 75.76 acre tract out of the south part of a 271.00 acre tract, recorded in Volume 3340, Page 290, Deed of Trust, Bexar County, Texas, said 75.76 acres being 8.06 acres out of the J. Kafka Survey 710, Abstract 1210, County Block 4170, and 67.70 acres out of the C. Thieme Survey Number

1386 1/4, Abstract 754, County Block 4168, Bexar County, Texas, said 75.76 acres being situated approximately twenty miles south of the courthouse in Bexar County, Texas.

COMMENCING: from an iron pin found in the east right-of-way line of Hardwich Drive, sixty foot (60') right-of-way, said iron pin being a corner of a 14.309 acre tract recorded in Volume 3389, Page 1150, Deed Records, Bexar County, Texas;

THENCE: N 71° 46' 54" W, 13.83 feet along the south line of Hardwich Drive to a fence post for the northwest corner of said 14.309 acre tract and the northeast corner and POINT OF BEGINNING of this tract;

THENCE: Along the west line of said 14.309 acre tract as follows:

THENCE: S 18° 15' 00" W, 177.48 feet to an iron pin set for an angle point;

THENCE: S 76° 41' 11" E, 27.68 feet to an iron pin found at a fence post for an angle point;

THENCE: S 16° 35' 27" W, 203.79 feet along a fence line to an iron pin at a fence post found for an angle point;

THENCE: S 11° 04' 04" W, 468.49 feet along a fence to an iron pin at a fence post found for an angle point;

THENCE: S 10° 55' 20" E, 42.02 feet along a fence to an iron pin found for an angle point;

THENCE: S 71° 45' 01" E, 110.06 feet to an iron pin found for the east corner of this tract and the southeast corner of said 14.309 acre tract;

THENCE: S 48° 30' 00" W, 991.58 feet along a fence line and the west line of the Clifford F. Uzzell 19.09 acre tract and the southeast line of the C. Thieme Survey Number 1386 1/4 to an iron pipe found at a fence corner for the south corner of said C. Thieme Survey 1386 1/4 and the southeast corner of this tract;

THENCE: N 41° 04' 59" W, 1423.00 feet with a fence line and the southwest line of the C. Thieme Survey 1386 1/4 and the northwest line of the David Dickson 19.987 acre tract to an iron pin set for a corner of this tract;

THENCE: S 71° 51' 37" W, 176.44 feet with a fence line to an iron pin found at a fence corner for a corner of this tract;

THENCE: N 71° 31' 03" W, 10.00 feet to an iron pin set for a corner of this tract, and the northeast corner of the Julius Espey 3.33 acre tract;

THENCE: N 88° 55' 06" W, 510.00 feet along the north line of the Julius Espey 3.33 acre tract to an iron pin set in the east right-of-way line of the S. A. U. & G. Railroad for the southeast corner of this tract;

THENCE: N 07° 13' 51" W, 1355.00 feet along the fenced the east right-of-way line of the S. A. U. & G. Railroad to an iron pin set for the northwest corner of this tract;

THENCE: N 48° 33' 39" E, 48.14 feet to an iron pin set at a fence post for a corner of this tract;

THENCE; S 71° 46' 54" E, 2698.87 feet along the south line of a 13.74 acre tract recorded in Volume 2856, Page 476, Deed Records, Bexar County, Texas, to the POINT OF BEGINNING and containing 75.76 acres of land.

Portion of Bexar County Property Tax ID: 181780.

**Lot L:**

A 4.871 acre tract of land, more or less out of the A.Y. Ojeda Survey No. N494, Abstract No. 1246, County Block 4162, situated in Bexar County, Texas, and being more particularly described as follows, to wit:

BEGINNING: at the Northwest corner of Tract 23, Halliday Acres Subdivision, recorded in Volume 2222 Page 341, of the plat Records of Bexar County, Texas;

THENCE: Northerly 205.0' with the West line of Tract 24 in said Halliday Acres Subdivision, to a point in same, an iron pin set for the Northwest corner of the herein described tract, said point being Southerly 5.0" measured along the West line of said Tract 24, from the Northwest corner of Tract 24;

THENCE: Westerly 992.86' with the North line of the herein described tract, and making an angle from South to West of 90° with the last previously described line, to its intersection with the fence line on the Southwest side of a tract of land known as the Hair tract, same being the Northeast side of the C.H. Thieme, O.S. 1386 1/4, an iron pin set for the Northwest corner of the herein described tract;

THENCE: Southeasterly 352.48' with said fence line, and making an angle from East to South of 44° 02' with the last previously described line, to a point in same, an iron pin set, for the Southwest corner of the herein described tract;

THENCE: Easterly 739.16' with the South line of the herein described tract, and making an angle from Northwest to East of 135° 58' with the last previously described line, to its intersection with the West line of said Tract 23, Halliday Acres Subdivision, an iron pin set, for the Southeast corner of the herein described tract;

THENCE: Northerly 40.0' with the West line of said Tract 23, and making an angle from West to North of 90° with the last previously described line, to the PLACE OF BEGINNING. Containing: 4.871 acres of land, more or less.

Portion of Bexar County Property Tax ID: 181780.

**Lot M:**

Field notes of a 1.8939 acre tract of land situated in Bexar County, Texas, out of the A. Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being part of that tract described in Deed conveyed to Thomas N. Moore, dated August 16, 1983, and recorded in Volume 7167, Page 1,

Deed Records of Bexar County, Texas, and part of that tract described in Deed conveyed to Thomas N. Moore, dated November 7, 1963, as recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Highway 281, for the southeast corner of this tract and being N 04° 08' 58" E. 105.39 feet along said right-of-way line from its intersection with the cutoff to the north right-of-way line of Mogford Road.

Thence with fence along the southwest line of this tract and the northeast lines of Lots 1-7 of Carver Park Subdivision Unit 1, Plat recorded in Volume 3850, Page 155, part of Duke Drive, a 10.635 acre tract, Hardwich Drive and part of Tract 1, of Carver Park Subdivision Unit 3, Plat recorded in Volume 3975, Page 176, Nat Records of Records of Bexar County, Texas as follows:

N 42° 53' 00" W. 320.78 feet to an iron pin found at an angle point.

N 42° 27' 17" W. 561.37 feet to an iron pin found at the northwest corner of Duke Drive for an angle in this line.

N 42° 29' 56" W. 492.01 feet to an iron pin set at an angle being the south corner of the tract recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas.

N 42° 23' 59" W. 320.79 feet to an iron pin set for the northwest corner of this tract being in the north line of Tract 1, Carver Park Subdivision Unit 3,

Thence S 80° 25' 57" E. 233.06 feet along the north line of this tract to an iron pin set in the west line of Lot 21 of the Halliday Acres Subdivision recorded in Volume 2222, Page 341, Plat Records of Bexar County, Texas, for the northeast corner of this tract.

Thence S 03° 54' 03" W. 125.72 feet with fence along the west line of Lots 21 and 20 of said Halliday Acres Subdivision to an iron pin set at the north corner of the tract recorded in Volume 7167, Page 1, being a corner of Lot 20 and the interior corner of this tract.

Thence along the southwest line of Lots 20, 19, 18, 17 and 16 of Halliday Acres Subdivision as follows:

S 41° 34' 10" E. 863.35 feet to an iron pin at the southwest corner of Lot 18 and the northwest corner of Lot 17, being an angle in this line.

S 42° 26' 41" E. 304.16 feet to an iron pin found at the southwest corner of Lot 17 and the west corner of Lot 16.

S 43° 18' 36" E. 219.40 feet along the southwest line of Lot 16 to an iron pin set in the west right-of-way line of U.S. Highway 281 for a northeast corner of this tract.

Thence S 04° 08' 58" W. 54.85 feet along the west right-of-way line of U.S. Highway 281 to the place of beginning and containing 1.8939 acres of land according to a survey on the ground on January 2, 1986, by Baker Surveying, Inc.

**SAVE AND EXCEPT:**

Field notes of a 1.1279 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 1.8939 acre tract recorded in Volume 4322, Page 362, Real Property records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:



Beginning at an iron pin found in the west right-of-way line of U.S. Hwy. 281 at the east corner of this tract and the 1.8939 acre tract, being at the south corner of Lot 16, Halliday Acres Subdivision.

Thence S 04° 08' 58" W. 54.85 feet along the west line of U.S. Hwy. 281 to an iron pin found for the southeast corner of the 1.8939 acre tract and this tract.

Thence N 42° 52' 28" W. 320.78 feet along the southwest line of the 1.8939 acre tract to an iron pin found at an angle point and N 42° 27' 35" W. 901.33 feet to an iron pin set at the west corner of this tract being the northeast corner of a 1.0179 acre tract this day surveyed;

Thence S 86° 05' 29" E. 70.26 feet along the north line of this tract across the 1.8939 acre tract to an iron pin set for the north corner of this tract.

Thence along the northeast line of the 1.8939 acre tract as follows:

S 41° 31' 11" E. 610.10 feet to an iron pin found at an angle point; S 42° 26' 41" E. 304.16 feet to an iron pin found at an angle point;

S 43° 18' 36" E. 219.40 feet to the place of beginning and containing 1.1279 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot N:**

Field notes of a 1.0179 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 10.635 acre tract recorded in Volume 4048, Page 1444, Real Property Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the east line of Hardwich Drive at its northeast corner being the northwest corner of this tract and the 10.635 acre tract and being N 42° 53' 00" W. 320.78 feet and N 42° 27' 35" W. 1284.08 feet from a point in the west line of U.S. Hwy. 281.

Thence S 42° 27' 35" E. 382.75 feet along the northeast line of the 10.635 acre tract to an iron pin set for the east corner of this tract, being the west corner of a 1.1279 acre tract on this day surveyed.

Thence N 86° 05' 29" W. 335.77 feet along the south line of this tract to an iron pin set in the east line of Hardwich Drive for the southwest corner of this tract.

Thence N 16° 26' 50" E. 270.56 feet along the east line of Hardwich Drive to the place of beginning and containing 1.0179 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot O:**

Lot 20, HALLIDAY ACRES SUBDIVISION in Bexar County, Texas, according to plat recorded in Vol. 2222, p. 341, Deed and Plat Records, Bexar County, Texas; SAVE AND EXCEPT that portion conveyed to the State of Texas by Deed recorded in Vol. 5447, p. 318, Deed Records, Bexar County, Texas.

Portion of Bexar County Property Tax ID: 181780.

**Lot P:**

BEING that certain 0.4225 acre of land, more or less, out of the A. Y. Ojeda Sur. No. 94, Abstract 1251, County Block 5944, being a portion of Hardwich Drive, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron pin found at the northeast corner of Hardwich Drive at the northwest corner of a 1.0179 acre tract conveyed to Robert L. Tooke;

THENCE S. 16° 26' 50" W. 270.56 feet along the east line of said Hardwich Drive to an iron pin found at the southwest corner of said 1.0179 acre tract, for the southeast corner of this tract;

THENCE N. 86° 05' 29" W. 60.76 feet across Hardwich Drive to a point on its west line for the southwest corner of this tract;

THENCE N. 12° 58' 05" E. 332.29 feet along the west line of Hardwich Drive to a point for its northwest corner;

THENCE S. 42° 23' 59" E. 72.92 feet along the north line of said Hardwich Drive to the place or BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot Q:**

Field notes of a 3.233 acre tract of land situated in Bexar County, Texas, being the same land conveyed in Warranty Deed recorded in Volume 689, Page 406, of the Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows: (Note: All iron pins set are 1/2" rebar with a yellow plastic cap stamped "Baker Surveying").

Beginning at a 1 1/2" iron pipe found in the east right-of-way line of the Missouri Pacific Railroad at the southwest corner of this tract, the most westerly northwest corner of a 25.92 acre tract of land conveyed to Osburn Sand Company recorded in Volume 6944, Page 1400 of the Official Records of Bexar County, Texas, from which the north right-of-way line of Hume Road bears

Thence N 08°26'31" W., 286.62 feet with the west line of this tract, the east right-of-way line of Missouri Pacific Railroad to an iron pin set for the northwest corner of this tract, the southwest corner of an 8.06 acre tract conveyed to Osburn Sand Company recorded in Volume 4977, Page 199 of the Official Records of Bexar County, Texas.

Thence S 89°11' 00" E., 520.90 feet with the north line of this tract, the south line of said 8.06 acre tract to a 1/2" iron pin found for the northeast corner of this tract an angle point of said 8.06 acre tract and the most northerly northwest corner of said 25.92 acre tract.

Thence S 00°49'00" W., 282.89 feet with the east line of this tract and an interior line of the 25.92 acre tract to a 1 1/2" iron pipe found for the southeast corner of this tract and an interior corner of said 25.92 acre tract.

Thence N 89°11'00" W., 474.79 feet with the south line of this tract and the most southerly north line of said 25.92 acre tract to the place of beginning and containing 3.233 acres of land according to a survey made on the ground on June 25, 1998 by Baker Surveying & Engineering, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot R:**

A certain tract of land containing TWENTY-FIVE AND NINETY-TWO (25.92) HUNDREDTHS ACRES comprising the North Part of the Curtis Bell Tract of 45.908 acres described in Deed from Robert Hausser, et ux, to Curtis Bell, dated May 16, 1972, and recorded in Vol. 6813, p. 787, Deed Records of Bexar County, Texas. The said 25.92 acres is out of the South One-Half (1/2) of A.Y. Ojeda Survey 94, Abstract 1247, County Block 4162 in Bexar County, Texas. The said 25.92 acres fronts on the west side of Sunset Road and extends westward to the east right-of-way line of S.A.U. & O. Railroad, being about sixteen miles in a southerly direction from the Court House in Bexar County, Texas.

BEGINNING at an iron pipe on the east right-of-way line of S.A.U. & O. Railroad for the Southwest corner of said 25.92 acres, and being the Northwest corner of a tract of 20.00 acres; said Point of Beginning being 1333.58 feet North 8 deg., 30' West from the north line of Hume Road;

THENCE with fence along the east right-of-way line of S.A.U. & O. Railroad, North 8 deg. 30' West, 611.30 feet to an iron pipe, the Northwest corner of this tract;

THENCE with fence South 89 deg. 11' East, 474.79 feet to an iron pipe for an interior corner;

THENCE with fence North 00 deg. 34' East, 282.89 feet to an iron pipe for a corner;

THENCE with fence North 71 deg. 21' East, 175.35 feet to an iron pipe, the most northerly corner of this tract;

THENCE with fence South 42 deg. 24' East, 1421.18 feet to an iron pipe for an interior corner of this tract;

THENCE with fence North 47 deg. 05' East, 173.57 feet to an iron pipe for a corner;

THENCE with fence South 8 deg. 33' West, 413.10 feet to an iron pipe on west line of Sunset Road, the southeast corner of this tract;

THENCE with fence along the south line of said 25.92 acres, being the north line of said 20.00 acres; North 75 deg. 40' West, 1628.00 feet to the PLACE OF BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot S:**

19.09 acres, being Tracts 1, 2, 3, 4, and 9, out of a survey dated March 16, 1955, by Earl J. Wentworth, being out of the A. Y. Ojeda Survey No. 94, Abstract No. 1147, County Block 41622, in Bexar County, Texas, said 19.09 acre parcel being the same property conveyed to Grantors herein by Warranty Deed dated March 27, 1961, recorded in Vol. 4579, p. 225, Deed Records, Bexar County, Texas, executed by J.F. Hair and being more particularly described by metes and bounds as follows:

BEGINNING at the SW corner of Tract No. 6 of HALLIDAY ACRES;

THENCE S. with the W. line of said Halliday Acres, 340.10 feet to a point for the SE corner of this tract;

THENCE W. 1280.80 ft. to a PT. for the SW corner of this tract; THENCE N. 05 deg. E. 244.51 ft. to a pt. for the NW corner of this tract;

THENCE N. 43 deg. 40' E. 1407.02 ft. to a pt. for the NE corner of this tract; THENCE S. 921.28 ft. and E. 288.00 feet to the PLACE OF BEGINNING. Portion of Bexar County Property Tax ID: 181780.

**Tract 5:**

**Lot A:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

First Tract of land out of the John Kalka Survey No. 710, better described by metes and bounds as follows:

Beginning at the N.W. corner of the J.H. Nass 3.14/100 acre tract for the beginning place. Thence running East along the North line of the said 3.14/100 acre tract at 155 feet to a stake set on the West line of the S. A. U. & G. R. R. for the Southeast corner of this tract. Thence running North along the West line of said S. A. U. & G. R. R. to a stake set for the N.E. corner of this tract. Thence running along the N.E. line of the John Kalka survey No. 710 where said survey intersects with the Pleasanton Road a stake set for the N.W. corner of this tract. Thence South along the East side of the Pleasanton Road to the place of beginning.

**Lot B:**

Beginning at an iron pipe set for the Southeast corner of Tract 20, of the J. B. Couric Sub. Bexar County Plat Record Vol. 642, Pg. 267, thence with a projection of this South line of TR. 20 in an Easterly direction a distance of 20.0 feet to a RR Spike set in center-line of old Pleasanton Road; thence in a Southwesterly direction with said center-line of Old Pleasanton Road a distance of 313.7 ft. to RR spike; thence N. 43° 30' E a distance of 58.1 to an iron pin set in East property-line of Old Pleasanton Road, same being set for the Southwest corner of herein described tract and point of beginning;

THENCE continuing N. 43° 30' E. a distance of 193.5 ft. to an iron pin set in the West property line of No. Pac. RR r-o-w, same being set for the Southeast cor. of this tract;

THENCE N. 8° 30' W. along the West property line of said RR r-o-w a distance of 906.0 feet to an iron pin set for the Northeast corner of this tract;

THENCE S. 43°50' W. a distance of 197.0 ft. along old fence to an iron pin set in the East property line of old Pleasanton Road for the Northwest corner of this tract;

THENCE S. 5° 27' E a distance of 147.0 ft. along the East property line of Old Pleasanton Road to an iron pin set at angle point;

THENCE continuing in a Southeasterly direction along the East r-o-w of said Road a distance of 770.0 ft. to an iron pin set for Southwest corner and point of beginning containing 3.12 acres more or less.

Bexar County Property Tax ID: 181781.

**Lot C:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

Second Tract out of the John Kalka survey No. 710, and better described as follows, beginning at the Southeast corner of the J.H. Nass 3.14/100 acre tract for the beginning place.

Thence running south along the West line of the S. A. U. & G. R. R. to a stake set at 300 feet for the S.E. corner of this tract the same being the N.E. corner of the Haiduk tract of land.

Thence running West along the North line of the Haiduk Tract and parallel with the South line of the J.H. Nass 3.14/100 acre tract for the S.W. corner of this tract.

Thence running North along the East line of the Pleasanton Road to a stake set at 300 feet for the N.W. corner of this tract. Thence running East along the J.H. Nass 3.14/100 acre tract at 140 feet to the place of beginning.

**TRACT 6:**

**Lot A:**

A certain tract of land containing 100 acres, comprising parts of Tracts 3, 4, 5, 6, 7, 8 and 9 of the J.B. Couric subdivision of 565.64 acres out of Survey Nos. 710, 1386 and 1386Y2, situated about 18 miles in a southerly direction from the Courthouse in Bexar County, Texas, according to the plat thereof of said Couric Subdivision, recorded in Volume 642, Page 267, Plat Records of Bexar County, Texas, said 100 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" X 4" cedar post on the west line of said Couric Subdivision and being the northwest corner of said Tract No. 5;

THENCE with the north line of Tract No. 5, N 89° 59' E, 2,370 feet to an iron pipe at the south-east corner of a tract of 50 acres;

THENCE N 00° 01' W, 847.2 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet;

THENCE with the north line of Tract No. 3, S 79° 44' E, 1,133.4 feet to an iron pipe for a corner of this tract;

THENCE S 13° 16' W, 661.9 feet to an iron pipe on the north line of Tract No. 5 for a corner;

THENCE with the north line of Tract No. 5, N 89° 59' E, 1,031.2 feet to an iron pipe on the west line of Old Pleasanton Road for a corner of this tract;

THENCE with the west line of Pleasanton Road, S 16° 28 1/2' E, 131 feet to an iron pipe for a corner;

THENCE S 89° 59' W, 826.4 feet to an iron pipe for corner;

THENCE S 15° 21' E, 666 feet to an iron pipe at an angle;

THENCE S 10° 19' E, 304.95 feet to an iron pipe, the southeast corner of said 100 acres;

THENCE W 3,234.4 feet to an iron pipe, the southwest corner of said 100 acres; THENCE N 00° 01' E, 681.57 feet to an auto axle for a corner of this tract;

THENCE N 65° 54' W, 679.7 feet to another auto axle for a corner of this tract;

THENCE with fence, N 24° 12 'A' E, 119.4 feet to the PLACE OF BEGINNING, according to field notes and survey by James C. Adams, Licensed State Land Surveyor, dated January 1953;

**SAVE AND EXCEPT:**

Ten thousand (10,000) square feet of land out of a 565.64 acre tract located approximately one mile from the county line between Bexar County and Atascosa County on Pleasanton Road in Bexar County, Texas, out of Survey No. 1386 V2, and being the same tract of land conveyed by deed of Texas State Bank, July 28, 1926, to J.B. Couric, said deed being recorded in Volume 905, Page 152, Deed Records of Bexar County, Texas, said 10,000 square feet of land being described by metes and bounds as follows, to-wit:

BEGINNING at a stake on the property line between Lots 4 and 5 of the said Couric property, at a point 1,126 feet due West of the west side of Pleasanton Road and 60 feet due East of a point at the intersection of the high line of the Comal Power Company from San Antonio to Pleasanton and the property line between Lot 4 and Lot 5 of the Couric property;

THENCE due South 76 feet, 6 inches to a stake;

THENCE due West 60 feet to the said high line of the Comal Power Company; THENCE due West 40 feet to a stake;

THENCE due North 76 feet, 6 inches to the property line between Lot 4 and Lot 5 of the said Couric property;

THENCE due North 23 feet, 6 inches to a stake;

THENCE due East 40 feet to the said high line of said Comal Power Company; THENCE due East 60 feet to a stake;

THENCE due South 23 feet, 6 inches to the PLACE OF BEGINNING, containing 10,000 square feet, more or less, according to Quitclaim Deed from J.B. Couric to Comal Power Company, dated April 29, 1927 and recorded in Volume 1107, Page 513, Bexar County Deed Records; and

Portion of Bexar County Property Tax ID: 347950.

**Lot B:**

A tract of land containing 50 acres, being the west part of Tracts 3 and 4 of the J.B. Couric subdivision of 565.64 acres, said 50 acres being out of the James Taylor Survey 1386, in Bexar County, Texas according to plat thereof recorded in Volume 642, Page 267 of the Deed and Plat Records of Bexar County, Texas, 50 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" x 4" post at the southwest corner of Tract 4 of said Couric Subdivision; THENCE with fence, N 24° 12 1/2' E, 1,294.8 feet to a 4" X 4" post, the northwest corner of Tract 3;

THENCE with the north line of Tract 3, S 79° 44' E, 1,868.8 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet and an 8 inch L.O. bears S 58° 10' E, 106.5 feet;

THENCE S 00° 01' W, 847.2 feet to an iron pipe on the south line of Tract 4, the southeast corner of said 50 acres;

THENCE S 89° 59' W, 2,370.0 feet to the PLACE OF BEGINNING and containing 50 acres of land, more or less;

Portion of Bexar County Property Tax 1D: 347950.

**Lot C:**

BEING a 0.614 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.614 acre tract being more particularly described as follows:

BEGINNING at a metal pipe found in the south line of said Tract No. 4 for the most southerly corner of the herein described tract; said metal pipe found being North 89° 57' 22" West, 1031.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west Right-of-Way (R.O.W.) line of Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 13° 28' 25" West, 352.01 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 85° 15' 00" East, 160.00 feet along the north line of said Tract No. 4 to a 1/2" iron rod set for the northeast corner of the herein described tract;

THENCE, South 13° 14' 27" West, 338.06 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**Lot D:**

BEING a 0.871 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.871 acre tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod set in the south line of said Tract No. 4 for the southeast corner of the herein described tract, said 1/2" iron rod set being North 89° 57' 22" West, 840.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west R.O.W. line of said Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 89° 57' 22" West, 191.00 feet along the south line of said Tract No. 4 to a metal pipe found for the southwest corner of the herein described tract;

THENCE, North 13° 14' 27" East, 338.06 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 84° 40' 21" East, 40.99 feet along the north line of said Tract No. 4 to a metal pipe found for the northeast corner of the herein described tract;



THENCE, South 12° 36' 06" East, 333.45 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190047706  
**Recorded Date:** March 19, 2019  
**Recorded Time:** 8:50 AM  
**Total Pages:** 30  
**Total Fees:** \$138.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 3/19/2019 8:50 AM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

**REVISED AMENDED  
AFFIDAVIT CLAIMING A STATUTORY AND CONSTITUTIONAL LIEN**

**THE STATE OF TEXAS       }**

**COUNTY OF BEXAR             }**

Before me, the undersigned authority, personally appeared **Jason Plante**, who, being by me duly sworn, stated as follows:

1. My name is Jason Plante. I am the Vice President of Market & Johnson, Inc., a Wisconsin corporation (hereafter referred to as "Contractor" or "Claimant"). I am over 18 years of age, have personal knowledge of the facts set forth below, and am of sound mind and am capable of making this affidavit. I make this sworn affidavit for the purpose of perfecting a lien on the real property and improvements owned by Superior Silica Sands, LLC ("Owner") to secure the amount of Claimant's claim as described below as provided under Section 53.054 of the Texas Property Code.
2. Claimant's principal office is located at 2350 Galloway Street, Eau Claire, WI 54703. Claimant's mailing address is the same as the principal office noted above.
3. Pursuant to certain design/build contracts (the "Contract") between Claimant and Owner as identified in the Memorandum of Construction Contracts attached as Exhibit A hereto, Claimant has served as general contractor for the construction of a dry sand processing plant, a wet plant, and a reclaim system on Owner's real property as is more particularly described in Exhibit B hereto (the "Property"). The work performed by Claimant consisted of general contractor services and is described with greater particularity in the Contract.
4. The materials, labor, and/or equipment of Claimant were provided to Owner for the construction of the improvements on the Property. The Owner or reputed Owner of the real property and improvements on which Claimant asserts a lien is Superior Silica Sands, LLC. The last known addresses of the Owner are as follows:

**Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, Texas 76109  
Attention: Rick Shearer, President and CEO**

With a copy to:

**Superior Silica Sands LLC**  
**1400 Civic Place, Suite 250**  
**Southlake, Texas 76092**  
**Attention: General Counsel**

5. After allowing all just credits, offsets, and payments, the amount of \$4,850,087.00 remains unpaid and said sum is due and owing to Claimant under said Contract. Owner has not paid Claimant as required under the Contract. The amount claimed is just and correct and constitutes

the reasonable value of the materials furnished and labor performed. Claimant claims a statutory lien on said property and improvements under the provisions of Chapter 53 of the Texas Property Code and a constitutional lien on said property and improvements under the provisions of Article 16, Section 37 of the Texas Constitution to secure payment of the above amount. This amount does not include any attorney's fees, interest or costs which may be recovered at law. Claimant previously filed an amended lien affidavit in regard to this matter and this revision is intended to reflect additional credits being given to Owner since the date of that filing.

6. The Claimant provided the unpaid labor, material, and/or equipment to the Owner during 2018. Claimant's last date of work on the project was February 26, 2019.
7. A copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested, to the Owner described above, addressed to the Owner at the last known addresses as indicated above.

SWORN AND EXECUTED on this 11 day of June, 2019.

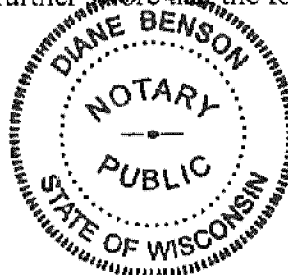
Jason Plante  
Vice President, Market & Johnson, Inc.

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF EAU CLAIRE )

Personally came before me this 11<sup>th</sup> day of June, 2019, the above-named Jason Plante, Vice President of Market & Johnson, Inc., and to me known to be the person who executed the foregoing instrument and acknowledged executing the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of Market & Johnson, Inc., and further swore that the foregoing statements are true and correct.

SUBSCRIBED AND SWORN TO on this 11 day of June, 2019

Name: Glenn Benson  
Notary Public, State of Wisconsin  
My Commission: expires 6/14/2019



## Certificate of Delivery

I, Norah M. Lorey, certify that on June 12, 2019 I delivered a true and correct copy of the above instrument to Superior Silica Sands, LLC at the addresses identified above by certified/registered mail, postage prepaid.

Norman Lacey  
Print Name Norman Lacey

## EXHIBIT A

Exhibit A-1



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

**Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703**Date Ordered:** 01/18/19  
**Ordered By:** afernimg  
**Payment Terms:****Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630**Ship To:** Superior Silica Sands-San Antonio  
24068 Pleasanton Road  
San Antonio, TX 78264

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-Installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			180' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2123

3940

3895

-3904

-5904

-2823



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Pete Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44	\$ 4,437.12	
		12.00		\$121.95	\$ 1,463.40	
				\$151.45	\$ -	
Welders	30.00			\$8.00	\$ 240.00	
Summary:						
Labor	\$ 5,900.52				5,900.52	
Welders	\$ 240.00				240.00	
Equipment					\$ -	
Mark Up 15%					\$ 921.08	
Total this billing:					\$ 7,061.60	
Total this billing:					\$ 7,061.60	
Previously Paid					\$ -	
Total due:					\$ 7,061.60	

## Exhibit A-4

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

## BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18 2 Journeymen	32.00	6.00		\$92.44	\$ 2,958.08	
				\$121.95	\$ 731.70	
				\$151.45	\$ -	
Welders	32.00			\$8.00	\$ 256.00	
Summary:						
Labor	\$ 3,689.78					3,689.78
Welders	\$ 256.00					256.00
Equipment					\$	-
Mark Up 15%					\$	591.87
Total this billing:					\$	4,537.65
Total this billing:					\$	4,537.65
Previously Paid					\$	-
Total due:					\$	4,537.65



## Exhibit A-5

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

## BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Assemble and install cyclone on wet plant.						
10/28/18-11/24/18 4 Journeymen	32.00			\$92.44	\$ 2,958.08	
		8.00		\$121.95	\$ 975.60	
				\$151.45	\$ -	
Welders				\$8.00	\$ -	
<b>Summary:</b>						
Labor	\$ 3,933.68					3,933.68
Welders	\$ -					0.00
Equipment					\$ -	
Mark Up 15%					\$ 590.05	
Total this billing:					\$ 4,523.73	
Total this billing:					\$ 4,523.73	
Previously Paid					\$ -	
Total due:					\$ 4,523.73	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18 2 Journeymen	20.00	4.00		\$92.44	\$ 1,848.80	
				\$121.95	\$ 487.80	
				\$151.45	\$ -	
Welders	20.00			\$8.00	\$ 160.00	
<b>Summary:</b>						
Labor	\$ 2,336.60				2,336.60	
Welders	\$ 160.00				160.00	
Equipment					\$ -	
Mark Up 15%					\$ 374.49	
Total this billing:					\$ 2,871.09	
Total this billing:					\$ 2,871.09	
Previously Paid					\$ -	
Total due:					\$ 2,871.09	

## Exhibit A-7

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

## BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18 5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up 15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

**INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC**

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18      1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor      \$    983.42						983.42
Equipment \$       -						0.00
Indirects						\$ -
Mark Up            15%						\$ 147.51
Total this billing:						\$ 1,130.93
Total this billing:						\$ 1,130.93
Previously Paid						\$ -
Total due:						\$ 1,130.93

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION		HOURS	OT	DT	RATE	AMOUNT
<b>SSS-San Antonio, TX</b>						
Install hand rail around hydrosisars						
9/23/18-10/27/18	2 Journeymen	24.00			\$92.44	\$ 2,218.56
			24.00		\$121.95	\$ 2,926.80
				14.00	\$151.45	\$ 2,120.30
	Sub Pay					\$ 180.00
Summary:						
Labor \$ 7,445.66						7,445.66
Equipment \$ -						0.00
Indirects						\$ -
Mark Up 15%						\$ 1,116.85
Total this billing:						\$ 8,562.51
Total this billing:						\$ 8,562.51
Previously Paid						\$ -
Total due:						\$ 8,562.51

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Installing Stairs for Clarifer tank						
10/28/18-11/17/18 4 Journeymen	69.00			\$92.44	\$ 6,378.36	
		11.00		\$121.95	\$ 1,341.45	
			15.00	\$151.45	\$ 2,271.75	
Sub Pay					\$ 630.00	
<b>Summary:</b>						
Labor \$ 10,621.56					10,621.56	
Equipment \$ -					0.00	
Indirects					\$ -	
Mark Up 15%					\$ 1,593.23	
Total this billing:					\$ 12,214.79	
Total this billing:					\$ 12,214.79	
Previously Paid					\$ -	
Total due:					\$ 12,214.79	

DATE	INVOICE #
12/31/18	

PO #	TERMS		DUE DATE	JOB #
			01/31/19	
HOURS	OT	DT	RATE	AMOUNT
168.00	40.00	2.50	\$92.44 \$121.95 \$151.45	\$ 15,529.92 \$ 4,878.00 \$ 378.63 \$ 1,260.00
				22,046.55
				0.00
				\$ -
				\$ 3,306.98
Total this billing:				\$ 25,353.53
Total this billing:				\$ 25,353.53
Previously Paid				\$ -
Total due:				\$ 25,353.53

## Exhibit A-12



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

<b>Vendor:</b>	Industrial Construction Specialists 1919 Galloway Street Eau Claire, WI 54703	<b>Date Ordered:</b>	01/18/19
		<b>Ordered By:</b>	afterling
		<b>Payment Terms:</b>	

<b>Bill:</b>	Market & Johnson, Inc. PO Box 630 Eau Claire, WI 54702-0630	<b>Ship To:</b>	Superior Silica Sands-San Antonio 24068 Pleasanton Road San Antonio, TX 78264
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Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2423

3940

3895

-3904

-3904

-2823





*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Fate Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18    3 Journeymen	48.00			\$92.44	\$	4,437.12
		12.00		\$121.95	\$	1,463.40
				\$151.45	\$	-
Welders	30.00			\$8.00	\$	240.00
Summary:						
Labor       \$	5,900.52					5,900.52
Welders    \$	240.00					240.00
Equipment					\$	-
Mark Up       15%					\$	921.08
Total this billing:					\$	7,061.60
Total this billing:					\$	7,061.60
Previously Paid					\$	-
Total due:					\$	7,061.60

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE	JOB #
			01/31/19	
SSS-Wet Plant - San Antonio, TX Repair hand rails that advanced construction -cut apart and removed				
10/28/18-11/24/18 2 Journeymen	32.00	6.00	\$92.44 \$	2,958.08
			\$121.95 \$	731.70
			\$151.45 \$	-
Welders	32.00		\$8.00 \$	256.00
Summary:				
Labor \$ 3,689.78				3,689.78
Welders \$ 256.00				256.00
Equipment				\$ -
Mark Up 15%				\$ 591.87
Total this billing:				\$ 4,537.65
Total this billing:				\$ 4,537.65
Previously Paid				\$ -
Total due:				\$ 4,537.65

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Assemble and install cyclone on wet plant.						
10/28/18-11/24/18 4 Journeymen	32.00			\$92.44	\$ 2,958.08	
		8.00		\$121.95	\$ 975.60	
				\$151.45	\$ -	
Welders				\$8.00	\$ -	
<b>Summary:</b>						
Labor	\$ 3,933.68					3,933.68
Welders	\$ -					0.00
Equipment					\$ -	
Mark Up 15%					\$ 590.05	
Total this billing:					\$ 4,523.73	
Total this billing:					\$ 4,523.73	
Previously Paid					\$ -	
Total due					\$ 4,523.73	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18 2 Journeymen	20.00			\$92.44	\$ 1,848.80	
		4.00		\$121.95	\$ 487.80	
				\$151.45	\$ -	
Welders	20.00			\$8.00	\$ 160.00	
Summary:						
Labor	\$ 2,336.60					2,336.60
Welders	\$ 160.00					160.00
Equipment					\$ -	
Mark Up 15%					\$ 374.49	
Total this billing:					\$ 2,871.09	
Total this billing:					\$ 2,871.09	
Previously Paid					\$ -	
Total due:					\$ 2,871.09	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                  15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE		JOB #
	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX Welding E-Houses Down				01/31/19	
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52
		2.00		\$121.95	\$ 243.90
			0.00	\$151.45	\$ -
Summary:					
Labor \$ 983.42					983.42
Equipment \$ -					0.00
Indirects					\$ -
Mark Up 15%					\$ 147.51
Total this billing:					\$ 1,130.93
Total this billing:					\$ 1,130.93
Previously Paid					\$ -
Total due:					\$ 1,130.93

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX						
Install hand rail around hydrosisars						
9/23/18-10/27/18      2 Journeymen	24.00			\$92.44	\$	2,218.56
		24.00		\$121.95	\$	2,926.80
			14.00	\$151.45	\$	2,120.30
Sub Pay					\$	180.00
Summary:						
Labor	\$	7,445.66				7,445.66
Equipment	\$	-				0.00
Indirects					\$	-
Mark Up	15%				\$	1,116.85
Total this billing:					\$	8,562.51
Total this billing:					\$	8,562.51
Previously Paid					\$	-
Total due:					\$	8,562.51



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION		HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX						
Installing Stairs for Clarifer tank						
10/28/18-11/17/18	4 Journeymen	69.00			\$92.44	\$ 6,378.36
			11.00		\$121.95	\$ 1,341.45
				15.00	\$151.45	\$ 2,271.75
	Sub Pay					\$ 630.00
Summary:						
Labor \$ 10,621.56						10,621.56
Equipment \$ -						0.00
Indirects						\$ -
Mark Up 15%						\$ 1,593.23
Total this billing:						\$ 12,214.79
Total this billing:						\$ 12,214.79
Previously Paid						\$ -
Total due:						\$ 12,214.79

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Sump crash box support and install chutes						
10/28/18-11/17/18      4 Journeymen	168.00			\$92.44	\$	15,529.92
		40.00		\$121.95	\$	4,878.00
			2.50	\$151.45	\$	378.63
Sub Pay					\$	1,260.00
<b>Summary:</b>						
Labor	\$ 22,046.55					22,046.55
Equipment	\$ -					0.00
Indirects					\$	-
Mark Up	15%				\$	3,306.98
Total this billing:					\$	25,353.53
Total this billing:					\$	25,353.53
Previously Paid					\$	-
Total due:					\$	25,353.53

## Exhibit A-23



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

**PO #: 59354**

**Job: 2734- Superior Silica Sands-San Antonio**

**Page 1 of 2**

**Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703

**Date Ordered:** 01/18/19  
**Ordered By:** afferling  
**Payment Terms:**

**Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630

**Ship To:** Superior Silica Sands-San Antonio  
24068 Pleasanton Road  
San Antonio, TX 78264

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
<b>Subtotal</b>							343,297.67
<b>Total</b>							343,297.67

2123  
3940  
3895  
-3904  
-3904  
-2823



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read 'Pat Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630
Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44	\$	4,437.12
		12.00		\$121.95	\$	1,463.40
				\$151.45	\$	-
Welders	30.00			\$8.00	\$	240.00
Summary:						
Labor	\$	5,900.52				5,900.52
Welders	\$	240.00				240.00
Equipment					\$	-
Mark Up 15%					\$	921.08
Total this billing:					\$	7,061.60
Total this billing:					\$	7,061.60
Previously Paid					\$	-
Total due:					\$	7,061.60

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18    2 Journeymen	32.00	6.00		\$92.44	\$	2,958.08
				\$121.95	\$	731.70
				\$151.45	\$	-
Welders	32.00			\$8.00	\$	256.00
<b>Summary:</b>						
Labor	\$	3,689.78				3,689.78
Welders	\$	256.00				256.00
Equipment					\$	-
Mark Up                    15%					\$	591.87
Total this billing:						\$ 4,537.65
Total this billing:						\$ 4,537.65
Previously Paid						\$ -
Total due:						\$ 4,537.65

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

	PO #	TERMS		DUE DATE	JOB #
				01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT
<b>SSS-Wet Plant - San Antonio, TX</b> Assemble and install cyclone on wet plant.					
10/28/18-11/24/18 4 Journeymen	32.00			\$92.44	\$ 2,958.08
		8.00		\$121.95	\$ 975.60
				\$151.45	\$ -
Welders				\$8.00	\$ -
Summary:					
Labor \$ 3,933.68					3,933.68
Welders \$ -					0.00
Equipment					\$ -
Mark Up 15%					\$ 590.05
Total this billing:					\$ 4,523.73
Total this billing:					\$ 4,523.73
Previously Paid					\$ -
Total due:					\$ 4,523.73

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS		DUE DATE	JOB #
				01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT
SSS-Wet Plant - San Antonio, TX Cut and modify grading around cyclones.					
10/28/18-11/24/18      2 Journeymen	20.00			\$92.44	\$ 1,848.80
		4.00		\$121.95	\$ 487.80
				\$151.45	\$ -
Welders	20.00			\$8.00	\$ 160.00
Summary:					
Labor      \$ 2,336.60					2,336.60
Welders    \$ 160.00					160.00
Equipment					\$ -
Mark Up      15%					\$ 374.49
Total this billing:					\$ 2,871.09
Total this billing:					\$ 2,871.09
Previously Paid					\$ -
Total due:					\$ 2,871.09



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                      15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 147.51	
Total this billing:					\$ 1,130.93	
Total this billing:					\$ 1,130.93	
Previously Paid					\$ -	
Total due:					\$ 1,130.93	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Install hand rail around hydrosisars						
9/23/18-10/27/18      2 Journeymen	24.00			\$92.44	\$	2,218.56
		24.00		\$121.95	\$	2,926.80
			14.00	\$151.45	\$	2,120.30
Sub Pay					\$	180.00
Summary:						
Labor	\$	7,445.66				7,445.66
Equipment	\$	-				0.00
Indirects					\$	-
Mark Up	15%				\$	1,116.85
Total this billing:					\$	8,562.51
Total this billing:					\$	8,562.51
Previously Paid					\$	-
Total due:					\$	8,562.51

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE		JOB #
	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX Installing Stairs for Clarifer tank					
10/28/18-11/17/18 4 Journeymen	69.00	11.00	15.00	\$92.44	\$ 6,378.36
				\$121.95	\$ 1,341.45
				\$151.45	\$ 2,271.75
Sub Pay					\$ 630.00
Summary:					
Labor \$ 10,621.56					10,621.56
Equipment \$ -					0.00
Indirects					\$ -
Mark Up 15%					\$ 1,593.23
Total this billing:					\$ 12,214.79
Total this billing:					\$ 12,214.79
Previously Paid					\$ -
Total due:					\$ 12,214.79

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Sump crash box support and install chutes						
10/28/18-11/17/18 4 Journeymen	168.00			\$92.44	\$ 15,529.92	
		40.00		\$121.95	\$ 4,878.00	
			2.50	\$151.45	\$ 378.63	
Sub Pay					\$ 1,260.00	
<b>Summary:</b>						
Labor	\$ 22,046.55				22,046.55	
Equipment	\$ -				0.00	
Indirects					\$ -	
Mark Up 15%					\$ 3,306.98	
Total this billing:					\$ 25,353.53	
Total this billing:					\$ 25,353.53	
Previously Paid					\$ -	
Total due:					\$ 25,353.53	

## Exhibit A-34



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

<b>Vendor:</b> Industrial Construction Specialists 1919 Galloway Street Eau Claire, WI 54703	<b>Date Ordered:</b> 01/18/19 <b>Ordered By:</b> affleming <b>Payment Terms:</b>
--	--

<b>Bill:</b> Market & Johnson, Inc. PO Box 630 Eau Claire, WI 54702-0630	<b>Ship To:</b> Superior Silica Sands-San Antonio 24068 Pleasanton Road San Antonio, TX 78264
--	---

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-Installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2123

3940

3895

-3904

-3904

-2823

Exhibit A-35



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Pat Adams', written over a horizontal line.

## Exhibit A-36

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE	JOB #
			01/31/19	
<b>SSS-Wet Plant - San Antonio, TX</b>	<b>HOURS</b>	<b>OT</b>	<b>DT</b>	<b>RATE</b>
Re-installing beams that were removed to install hydrosizers.				<b>AMOUNT</b>
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44 \$ 4,437.12
		12.00		\$121.95 \$ 1,463.40
				\$151.45 \$ -
Welders	30.00			\$8.00 \$ 240.00
Summary:				
Labor \$ 5,900.52				5,900.52
Welders \$ 240.00				240.00
Equipment				\$ -
Mark Up 15%				\$ 921.08
Total this billing:				\$ 7,061.60
Total this billing:				\$ 7,061.60
Previously Paid				\$ -
Total due:				\$ 7,061.60



## Exhibit A-37

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

## BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18 2 Journeymen	32.00	6.00		\$92.44	\$ 2,958.08	
				\$121.95	\$ 731.70	
				\$151.45	\$ -	
Welders	32.00			\$8.00	\$ 256.00	
Summary:						
Labor	\$ 3,689.78					3,689.78
Welders	\$ 256.00					256.00
Equipment					\$ -	
Mark Up 15%					\$ 591.87	
Total this billing:					\$ 4,537.65	
Total this billing:					\$ 4,537.65	
Previously Paid					\$ -	
Total due:					\$ 4,537.65	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX Assemble and install cyclone on wet plant.						
10/28/18-11/24/18      4 Journeymen	32.00			\$92.44	\$	2,958.08
		8.00		\$121.95	\$	975.60
				\$151.45	\$	-
Welders				\$8.00	\$	-
Summary:						
Labor      \$ 3,933.68						3,933.68
Welders    \$ -						0.00
Equipment					\$	-
Mark Up      15%					\$	590.05
Total this billing:					\$	4,523.73
Total this billing:					\$	4,523.73
Previously Paid					\$	-
Total due:					\$	4,523.73

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18    2 Journeymen	20.00			\$92.44	\$	1,848.80
		4.00		\$121.95	\$	487.80
				\$151.45	\$	-
Welders	20.00			\$8.00	\$	160.00
Summary:						
Labor       \$ 2,336.60						2,336.60
Welders     \$ 160.00						160.00
Equipment					\$	-
Mark Up       15%					\$	374.49
Total this billing:					\$	2,871.09
Total this billing:					\$	2,871.09
Previously Paid					\$	-
Total due:					\$	2,871.09

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                      15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 147.51	
Total this billing:					\$ 1,130.93	
Total this billing:					\$ 1,130.93	
Previously Paid					\$ -	
Total due:					\$ 1,130.93	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Install hand rail around hydrosisars						
9/23/18-10/27/18      2 Journeymen	24.00			\$92.44	\$	2,218.56
		24.00		\$121.95	\$	2,926.80
			14.00	\$151.45	\$	2,120.30
Sub Pay					\$	180.00
<b>Summary:</b>						
Labor	\$	7,445.66				7,445.66
Equipment	\$	-				0.00
Indirects					\$	-
Mark Up	15%				\$	1,116.85
Total this billing:					\$	8,562.51
Total this billing:					\$	8,562.51
Previously Paid					\$	-
Total due:					\$	8,562.51

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Installing Stairs for Clarifer tank						
10/28/18-11/17/18 4 Journeymen	69.00			\$92.44	\$ 6,378.36	
		11.00		\$121.95	\$ 1,341.45	
			15.00	\$151.45	\$ 2,271.75	
Sub Pay					\$ 630.00	
Summary:						
Labor \$ 10,621.56						10,621.56
Equipment \$ -						0.00
Indirects					\$ -	
Mark Up 15%					\$ 1,593.23	
Total this billing:					\$ 12,214.79	
Total this billing:					\$ 12,214.79	
Previously Paid					\$ -	
Total due:					\$ 12,214.79	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

	PO #	TERMS		DUE DATE	JOB #
				01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX					
Sump crash box support and install chutes					
10/28/18-11/17/18      4 Journeymen	168.00			\$92.44	\$      15,529.92
		40.00		\$121.95	\$      4,878.00
			2.50	\$151.45	\$      378.63
Sub Pay					\$      1,260.00
Summary:					
Labor      \$ 22,046.55					22,046.55
Equipment \$      -					0.00
Indirects					\$      -
Mark Up      15%					\$      3,306.98
Total this billing:					\$      25,353.53
Total this billing:					\$      25,353.53
Previously Paid					\$      -
Total due:					\$      25,353.53



## Exhibit A-45

*Adding Value to Everything We Do*

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

**Purchase Order****PO #: 61911****Job: 2734- 01 Superior Silica Sands-San Antonio-Wet Plant****Page 1 of 1****Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703**Date Ordered:** 03/05/19  
**Ordered By:** 2909  
**Payment Terms:****Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630**Ship To:** Superior Silica Sands-San Antonio-Wet Plant

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
4		ICS 3940	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	6,700.80
5		ICS 3945	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	34,438.19
6		ICS 3946	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	20,280.83
<b>Subtotal</b>							61,419.82
<b>Total</b>							61,419.82

3940

3945

3946

Authorized Signature:

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**WORK ORDER**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	
01/31/19	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		WO	TERMS		DUE DATE	JOB #
		3940-2			01/31/19	3940
DESCRIPTION		HOURS	OT	DT	RATE	AMOUNT
<b>SSS-San Antonio, TX</b>						
160' Pipe Bridge						
1/6/19-1/12/19	5 Journeymen	40.00			\$92.44	\$ 3,697.60
			18.00		\$121.95	\$ 2,195.10
					\$151.45	\$ -
	Sub Pay					\$ -
<b>Summary:</b>						
	Labor	\$ 5,892.70				5,892.70
	Welders					
	Equipment					
	Mark Up	15%				\$ 883.91
	Total this billing:					\$ 6,776.61
	Total this billing:					\$ 6,700.80
	Previously Paid					\$ -
	Total due:					\$ 6,700.80



## Exhibit A-48

*Adding Value to Everything We Do*

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

**Purchase Order****PO #: 61911****Job: 2734- 01 Superior Silica Sands-San Antonio-Wet Plant****Page 1 of 1****Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703**Date Ordered:** 03/05/19  
**Ordered By:** 2909  
**Payment Terms:****Bill :** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630**Ship To:** Superior Silica Sands-San Antonio-Wet Plant

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
4		ICS 3940	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	6,700.80
5		ICS 3945	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	34,438.19
6		ICS 3946	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	20,280.83
<b>Subtotal</b>							<b>61,419.82</b>
<b>Total</b>							<b>61,419.82</b>

Authorized Signature:

**EXHIBIT B**

**TRACT 1:**

**FIELD NOTES OF A 3.62 ACRE (157737 SQUARE FEET MORE OR LESS) TRACT OF LAND, SITUATED IN BEXAR COUNTY, TEXAS OUT OF THE J.S. MOORING SURVEY NO. 1386A, ABSTRACT NO. 1086, THE C. THIEME SURVEY NO 1386A, ABSTRACT NO. 754 AND THE J. TAYLOR SURVEY NO. 1386, ABSTRACT NO. 761 AND BEING ALL OF THE REMAINDER OF TRACT A, ALL OF TRACT B AND ALL OF THE REMAINDER OF TRACT C AS CONVEYED TO FRED A. AND NANCY L. MAIR OF RECORD IN VOLUME 6461, PAGE 654, DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: NOTE: (BASIS OF BEARING IS TEXAS SOUTH CENTRAL ZONE, NAD83.)**

BEGINNING: At a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of the Union Pacific Rail Road Company (100' R.O.W.) for the southwest corner of a 12.1 acre tract, called Second Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas the northwest corner of the remainder of Tract C, This Tract and the POINT OF BEGINNING, from which a 5/8" iron rod found bears N 28°40'16" W, a distance of 5.10 feet and from said 5/8" iron rod found, a 5/8" iron rod found bears N 84°19'28" E, a distance of 2.12 feet;

THENCE: Departing the east Right-of-Way line of U.P.R.R.Co., with the south line of the 12.1 acre tract, the north line of the remainder of Tract C and This Tract, the following calls and distances:

S 89°46'34" E, a distance of 122.40 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in concrete for an angle point;

N 83°13'26" E, a distance of 42.00 feet to a leaning 5/8" iron rod found in the west line of Tract B, for the southeast corner of the 12.1 acre tract, the northeast corner of the remainder of Tract C and an interior corner of This Tract;

THENCE: N 11°06'30" W, with the east line of the 12.1 acre tract, the west line of Tract B and This Tract, a distance of 142.50 feet to a 1A" iron rod found for the west corner of a 44.5 acre tract, called First Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas, the north corner of Tract B and This Tract;

THENCE: S 65°37'27" E, with the southwest line of the 44.5 acre tract, the northeast line of Tract B, the remainder of Tract A and This Tract, a distance of 580.12 feet to a Y2" iron rod found for the north corner of an 8.381 acre tract as conveyed to Osburn Sand Company of record in Volume 7885, Page 743, Deed Records of Bexar County, Texas, the east corner of the remainder of Tract A and This Tract;

THENCE: S 24°22'35" W, with the northwest line of the 8.381 acre tract, a southeast line of the remainder of Tract A and This Tract, a distance of 170.62 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the northeast line of a 27 acre tract as conveyed to Osburn Sand Company of record in Volume 4369, Page 536, Deed Records of Bexar County,

Texas for the west corner of the 8.381 acre tract, the south corner of the remainder of Tract A and This Tract;

THENCE: N 47° 40' 59" W, with the northeast line of the 27 acre tract, the southwest line of the remainder of Tract A and This Tract, a distance of 87.36 feet to a 1/2" iron rod found for a north corner of the 27 acre tract, the east corner of Tract B and an interior corner of This Tract;

THENCE: S 77° 09' 47" W, with the northwest line of the 27 acre tract, a 0.699 acre tract as conveyed to Osburn Sand Company of record in Volume 7865, Page 743, Deed Records of Bexar County, Texas, a southeast line of Tract B and the remainder of Tract C and This Tract, a distance of 455.08 feet to a 'A' iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of U.P.R.R.Co. for the west corner of the 0.699 acre tract, the southwest corner of the remainder of Tract C and This Tract;

THENCE: With the east Right-of-Way line of U.P.R.R.Co., the west line of the remainder of Tract C and This Tract, the following calls and distances:

N 16°39'00" W, a distance of 189.64 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set for a point of Tangency;

Northwesterly, with an arc of a curve to the right, having a radius of 5670.87 feet, a delta angle of 01° 10' 07", an arc length of 115.66 feet and a chord that bears N 16° 03' 57" W, a distance of 115.66 feet to the POINT OF BEGINNING and containing 3.62 acres of land in Bexar County, Texas, according to a survey on the ground on March 21, 2016 by Rickman Land Surveying.

Bexar County Property Tax ID: 180107.

## **TRACT 2:**

### **Lot A:**

Lots 97, 98, 99, 100, 101 and 102, Block 8, OAK HILL RANCHES, in Bexar County, Texas, according to plat thereof recorded in Volume 5580, Pages 48-49, Deed and Plat Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473.

### **Lot B:**

A tract of land containing 8.381 acres, being out of J. S. Mooring Survey No. 1386 3/4 , Abstract No. 1086, County Block Four Thousand One Hundred Sixty Three (4,163), being more particularly described as follows:

BEGINNING at an iron pin found at the most southerly corner of the Robert V. Smith and Henry Feille, Sr. Survey No. 1387, Abstract No. 1261, County Block 4175, Bexar County, Texas, said corner being a reentrant corner of said J. S. Mooring Survey No. 1386 %, Abstract No. 754, and the most easterly corner of this tract.

THENCE S. 27° 39' 37" W. along a northwest line of said Survey No. 1386 % and of Oak Hill Ranches, recorded in Volume 5580, Pages 48 and 49, Bexar County Plat Records, a distance of 517.59 feet to an iron pin found at a fence corner on the common line of said Christopher Thieme Survey No. 1386 1/2 and said J. S. Mooring Survey No, 1386 %, for the most southerly corner of this tract.

THENCE N. 44° 26' 29" W., along said common line, a distance of 1116.90 feet to an iron pin set for the most westerly corner of this tract.

THENCE N. 27° 23' 12" E. a distance of 169.25 feet to an iron pin set in a barbed-wire fence on the southwest line of said Robert V. Smith and Henry Feille, Sr. Survey No. 1387 for the most northerly corner of this tract; said corner being on the northeast line of said J. S. Mooring Survey No. 1386 %.

THENCE S. 62° 36' 48" E. partially along a barbed-wire fence on the common line between said Surveys No. 1387 and 1386% a distance of 1418.46 feet to the point of beginning, and containing 8.381 acres of land.

Portion of Bexar County Property Tax ID: 348473

**Lot C:**

A tract of land containing 0.699 acres, being out of Christopher Thieme Survey No. 1386 1/2, Abstract No. 754, County Block Four Thousand One Hundred Sixty Nine (4,169), being more particularly described as follows:

BEGINNING at an iron pin set at a fence corner for the northeast corner of this tract, said corner being the following courses from the most westerly corner of the above described 8.381 acre tract; S. 44° 35' 17" E. along the common line between said Surveys No. 1386 1/2 and 1386 % a distance of 285.37 feet to an iron pin set at a fence corner; and S. 80° 21' 40" W. along a barbed-wire fence line a distance of 331.94 feet.

THENCE S. 05° 57' 03" E. along a barbed-wire fence line a distance of 311.15 feet to an iron pin found at a fence corner, for the southeast corner of this tract.

THENCE S. 79° 45' 59" W. along a barbed-wire fence line a distance of 68.00 feet to an iron pin found at a fence corner on the east line of the Missouri-Pacific Railroad 100-foot right-of-way, for the southwest corner of this tract.

THENCE northerly along a barbed-wire fence on the east right-of-way line of said Railroad right-of-way the following courses: N. 17° 40' 48" W. a distance of 196.02 feet to an iron pin found at an angle point; and N. 14° 22' 28" E. a distance of 114.07 feet to an iron pin set at a fence corner, for the northwest corner of this tract.

THENCE N. 78° 46' 54" E. along a barbed-wire fence line a distance of 124.90 feet to the point of beginning, and containing 0.699 acre of land.

Portion of Bexar County Property Tax ID: 348473.

**TRACT 3:**

**Lot A:**

- Those three (3) certain tracts of land designated as Tract No. One (1), Tract Number Two (2) and Tract Number Three (3), each containing Twenty-seven (27) acres of land, all out of a survey or subdivision of land of Two Hundred Sixteen (216) acres out of the C. Thieme Survey Number 1386-1/2, made and platted for the heirs of Antonio Huron, husband of Josefa G. Huron, by F. E. Grothouse, Surveyor, located in Bexar County, Texas, which plat is duly recorded in Vol. 927, pages 42-45, of the Deed Records of Bexar County, Texas, to which reference is here made, said three (3) tracts containing in all Eighty-one (81) acres of land; being the same land described in that certain deed from Dave Lehr, Inc., to B. J. Osburn dated January 15, 1947, and recorded in Volume 2335, pages 40-41, Deed Records of Bexar County, Texas;
- That certain tract containing twenty-seven (27) acres of land, more or less, out of Survey Number 1386-1/2, originally granted to C. Thieme in Bexar County, about 18 miles south of San Antonio, Texas. The said tract herein conveyed being known as Tract Number Four set apart to Alfredo Huron in a partition as shown on plat recorded in Volume 927, page 42 of the Deed Records of Bexar County, to which reference is hereby made for a full and more particular description of said twenty-seven (27) acres of land. And being the same property as described in deed dated August 3, 1933, from Alfredo Huron and wife, Vincenta Huron, to Lawrence F. Sultenfuss, which deed was filed for record in Volume 1363, Pages 570-71, of the Deed Records of Bexar County, Texas; and being the same land described in that certain deed from Lawrence F. Sultenfuss and wife, Laura L. Sultenfuss, to B. J. Osburn dated February 13, 1952, and recorded in Volume 3137, pages 547-548, Deed Records of Bexar County, Texas; and
- That certain tract or parcel of land in Bexar County, Texas, same being Tract No. Five (5) of a partition of the Estate of Antonio Huron, said partition being out of Surveys Nos. 1386-1/2 and 1386-1/4, in the name of C. Thieme, as same appears of record in Volume 927, pages 42 to 45, Deed Records of Bexar County, and more particularly described by metes and bounds as follows:

BEGINNING at the most eastern corner of Tract No. Four (4), and also the most northern corner of this tract; Thence S. 43° 30' W. 2422 feet to a stake in the East line of the old Pleasanton Road for a corner of this tract; Thence along the east side of said road, S. 11° 15' E. 313 feet and

S. 8° 30' E. 253 feet to a stake for the most southern corner of said Tract No. Five (5); Thence N. 43° 30' E. 2757 feet to a stake for the most eastern corner of Tract No. Five (5); Thence N. 46° 30' W. 455 feet to the place of beginning and containing 27 acres of land; being the same land described in that certain deed from Clarence Edward Sultenfuss to B. J. Osburn dated December 8, 1956, and recorded in Volume 3961, pages 85-87, Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473 & 348474.



**Lot B:**

A tract of land containing 27 acres, more or less, designated as Tract #6, out of the Huron Subdivision, being an original tract of 216 acres, out of the C. Thieme Original Grantee Survey No. 1386 1/4 and Survey No. 1386 1/2, situated within County Block 5686, according to the Plat Records of the County Assessor's Office, of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**Lot C:**

Tract 7, County Block 4168, and Tract 8, County Block 4169, each containing 27 acres, more or less, out of a subdivision of 216 acres made by F.E. Grothaus for the heirs of Antonio Huron out of the C. Thieme Survey 1386 1/2 and 1386 1/4, Abstracts 754 and 755, and shown by play of partition and proof of heirship of the Estate of Antonio Huron, Sr., Deceased, recorded in Volume 927, Page 42, of the Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**TRACT 4:**

**Lot A:**

Field notes of a 15.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of Lot No. 1 and 4.868 acres out of the north part of Lot No. 2 of the Carver Park Subdivision Unit No. Three according to a plat of record in Volume 3975, Page 176 of the Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the north east corner of said Lot No. 1 and being the north end of Hardwich Drive.

Thence N. 41° 57' 45" W. 1304.57 feet with line of fence and the north line of said Lot No. 1 to an iron pin set at corner of fence for the north west corner of this tract and being the north west corner of Lot No. 1.

Thence S 43° 21' 29" W. 572.35 feet with the north east line of Lot No. 1 to an iron pin found for the south west corner of Lot No. 1 and the north west corner of Lot No. 2.

Thence S 43° 33' 24" W. 176.31 feet with the north east line of Lot No. 2 to an iron pin set for the south west corner of this tract.

Thence S 63° 54' 43" E. 1469.33 feet to an iron pin set in the west line of Hardwich Road for the south east corner of this tract.

Thence N 16° 57' 41" E. with the west line of Hardwich Drive, at 100.00 feet the north east corner of Lot No. 2 and the south east corner of Lot No. 1, in all 230.00 feet to the place of beginning and containing 15.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot B:**

Field Notes of a 6.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 1, said point being S 16° 57' 41" W. 230.00 feet from the north end of Hardwich Drive and being N 16° 57' 41" E. 323.00 feet from the south east corner of lot 2.

Thence N 63° 54' 43" W. 1469.33 feet with the south line of tract 1 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 1.

Thence S 43° 33' 24" W. 239.57 feet with the west line of lot 2 to an iron pin set for the south west corner of this tract and being the north west corner of tract 2-A.

Thence S 67° 56' 46" E. 1564.15 feet with the north line of tract 2-A to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 2-A.

Thence N 16° 57' 41" E. 120.00 feet with the west line of Hardwich Drive to the place of beginning and containing 6.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot C:**

Field notes of a 10.318 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 2, said point being S 16° 57' 41" W. 553.00 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 203.00 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of tract 2.

Thence N 67° 56' 46" W. 1564.15 feet with the south line of tract 2 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 2.

Thence S 43° 33' 24" W. 373.45 feet with the west line of lot 2 to an iron pin found for the south west corner of this tract and being the south west corner of lot 2 and north west corner of lot 3.

Thence S 72° 58' 38" E. 1712.80 feet with the south line of lot 2 and the north line of lot 3 to the place of beginning and containing 10.318 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot D:**

Field notes of a 20.720 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 3 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly of described by metes and bounds as follows:

Beginning at an iron pin set for the north east corner of this tract and being the north east corner of lot 3 and south east corner of lot 2 and tract 2-A.

Thence N 72° 58' 38" W. 1712.80 feet with the north line of lot 3 and the south line of lot 2 and tract 2-A to an iron pin found for the north west corner of this tract and lot 3 and being the south west corner of lot 2 and tract 2-A.

Thence S 43° 00' 20" W. 548.39 feet with the west line of lot 3 to an iron pin found for the south west corner of this tract and lot 3 and the north west corner of lot 4 and tract 4.

Thence S 73° 00' 41" E. 1953.58 feet with the south line of lot 3 and the north line of lot 4 and tract 4 to an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and lot 3 and the north east corner of lot 4 and tract 4.

Thence N 16° 57' 41" E. 491.80 feet with the west line of Hardwich Dr. to the place of beginning and containing 20.720 acres of land, according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot E:**

Field notes of a 20.793 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 4 of the Carver Park Subdivision Unit No. 3 according to a plat of record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 440.00 feet with the west line of Hardwich Dr. to an iron pin found for the north east corner of this tract and lot 4 and the south east corner of lot 3 and tract 3.

Thence N. 73° 00' 41" W. 1953.58 feet with the south line of tract 3 and lot 3 and the north line of lot 4 to an iron pin found for the north west corner of this tract and lot 4 and the south west corner of lot 3 and tract 3.

Thence S. 43° 01' 45" W. 488.47 feet with the west line of lot 4 to an iron pin found for the south west corner of this tract and lot 4 and the north east corner of lot 5 and tract 5.

Thence S 72° 58' 50" E. 2168.23 feet with the south line of lot 4 and the north line of lot 5 and tract 5 to the place of beginning and containing 20.793 acres of land, according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot F:**

Field notes of a 12.635 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 4, said point being S 16° 57'41" W. 1424.80 feet from the north end of Hardwich Drive and being the south east corner of lot 4 and the north east corner of lot 5.

Thence N 72°58' 50" W. 2168.23 feet with the south line of tract 4 and lot 4 to an iron pin set for the north west corner of this tract and being the south west corner of tract 4 and lot 4 and the north west corner of lot 5.

Thence S 43° 01' 45" W. 446.00 feet with the west line of lot 5 to an iron pin set for the south west corner of this tract and being the south west corner of lot 5 and the north west corner of lot 6.

Thence S 72° 58' 23" E. 1313.71 feet with the north line of lot 6 to an iron pin set for the south east corner of this tract and being the south west corner of tract 5-A.

Thence N 17° 01' 37" E. 341.43 feet to an iron pin set for a corner of this tract.

Thence S 72° 57' 35" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive.

Thence N 16° 57' 41" E. 60.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 12.635 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot G:**

Being all of Tract No. 5-A out of the Carver Park Subdivision No. 3, as per map or plat of said subdivision appearing of record in Vol. 3975, page 176, Deed or Plat Records, Bexar County, Texas, said Tract 5-A containing 3,168 acres of land, more or less, and being described as follows:

Field notes of a 3.168 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 5, said point being N 16° 57' 41" E. 596.46 feet from the end of Hardwich Drive.

Thence N 72° 58' 23" W. 1050.22 feet with the south line of lot 5 to an iron pin set for the south west corner of this tract and being the south east corner of tract 5,

Thence N 17° 01' 37" E. 131.43 feet with the west line of tract 5 to an iron pin set for the north west corner of this tract.

Thence S 72° 58' 23" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive for the north east corner of this tract.

Thence S 16° 57' 41" W. 131.43 feet with the west line of Hardwich Dr. to the place of beginning and containing 3.168 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot H:**

Field notes of a 13.504 acre tract of land situated in Bexar County, Texas out of the C Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 5-A and lot 5, said point being N 16° 57' 41" E. 596.40 feet from the south end of Hardwich Drive and being the north east corner of lot 6.

Thence N 72° 58' 23" W. 2363.93 feet with the south line of tract 5-A and 5 to an iron pin set for the north west corner of this tract and being the south west corner of tract 5.

Thence S 43° 01' 00" W. 270.05 feet with the west line of lot 6 to an iron pin set for the south west corner of this tract and being the north west corner of tract 7.

Thence S 72° 58' 23" E. 2482.75 feet with the north line of tract 7 to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 7.

Thence N 16° 57' 41" E. 242.74 feet with the west line of Hardwich Dr. to the place of beginning and containing 13.504 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot I:**

Being all of Tract Number Seven (7), containing 7.212 acres of land, more or less, out of the Carver Park Subdivision No. 3, in Bexar County, Texas, as per map or plat of said Subdivision appearing of record in Vol. 3975, Page 176, Deed or Plat Records, Bexar County, Texas;

Field notes of a 7.212 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 6, said point being N 16° 57' 41" E. 228.66 feet from the south end of Hardwich Drive, being the south east corner of lot 6.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of lot 6 to an iron pin set for the south west corner of this tract and being the south west corner of lot 6.

Thence N 43° 01' 00" E. 139.06 feet with the west line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of tract 6.

Thence S 72° 58' 23" E. 2482.75 feet with the south line of tract 6 to an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 6.

Thence S 16° 57' 41" W. 125.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 7.212 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot J:**

Field notes of a 13.740 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey being a part of a 271 acre tract described in Deed Recorded in Volume 1281, page 442 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive at the south end of Hardwich Drive for the south east corner of this tract, said point being S 16° 57' 41" W. 228.66 feet from the south east corner of Carver Park Subdivision Unit No. 3.

Thence N 16° 57' 41" E. 228.66 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of lot 6 of the Carver Park Subdivision.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of said lot 6.

Thence S 43° 01' 00" W. 257.77 feet to an iron pin set for the south west corner of this tract.

Thence S 73° 02' 19" E. 2657.05 feet with line of fence and the north line of a 74.0 acre tract described in Deed of Trust recorded in Volume 3340, page 290, Deed of Trust Records of Bexar County, Texas to the place of beginning and containing 13.740 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot K:**

A 75.76 acre tract out of the south part of a 271.00 acre tract, recorded in Volume 3340, Page 290, Deed of Trust, Bexar County, Texas, said 75.76 acres being 8.06 acres out of the J. Kafka Survey 710, Abstract 1210, County Block 4170, and 67.70 acres out of the C. Thieme Survey Number

1386 1/4, Abstract 754, County Block 4168, Bexar County, Texas, said 75.76 acres being situated approximately twenty miles south of the courthouse in Bexar County, Texas.

COMMENCING: from an iron pin found in the east right-of-way line of Hardwich Drive, sixty foot (60') right-of-way, said iron pin being a corner of a 14.309 acre tract recorded in Volume 3389, Page 1150, Deed Records, Bexar County, Texas;

THENCE: N 71° 46' 54" W, 13.83 feet along the south line of Hardwich Drive to a fence post for the northwest corner of said 14.309 acre tract and the northeast corner and POINT OF BEGINNING of this tract;

THENCE: Along the west line of said 14.309 acre tract as follows:

THENCE: S 18° 15' 00" W, 177.48 feet to an iron pin set for an angle point;

THENCE: S 76° 41' 11" E, 27.68 feet to an iron pin found at a fence post for an angle point;

THENCE: S 16° 35' 27" W, 203.79 feet along a fence line to an iron pin at a fence post found for an angle point;

THENCE: S 11° 04' 04" W, 468.49 feet along a fence to an iron pin at a fence post found for an angle point;

THENCE: S 10° 55' 20" E, 42.02 feet along a fence to an iron pin found for an angle point;

THENCE: S 71° 45' 01" E, 110.06 feet to an iron pin found for the east corner of this tract and the southeast corner of said 14.309 acre tract;

THENCE: S 48° 30' 00" W, 991.58 feet along a fence line and the west line of the Clifford F. Uzzell 19.09 acre tract and the southeast line of the C. Thieme Survey Number 1386 1/4 to an iron pipe found at a fence corner for the south corner of said C. Thieme Survey 1386 1/4 and the southeast corner of this tract;

THENCE: N 41° 04' 59" W, 1423.00 feet with a fence line and the southwest line of the C. Thieme Survey 1386 1/4 and the northwest line of the David Dickson 19.987 acre tract to an iron pin set for a corner of this tract;

THENCE: S 71° 51' 37" W, 176.44 feet with a fence line to an iron pin found at a fence corner for a corner of this tract;

THENCE: N 71° 31' 03" W, 10.00 feet to an iron pin set for a corner of this tract, and the northeast corner of the Julius Espey 3.33 acre tract;

THENCE: N 88° 55' 06" W, 510.00 feet along the north line of the Julius Espey 3.33 acre tract to an iron pin set in the east right-of-way line of the S. A. U. & G. Railroad for the southeast corner of this tract;

THENCE: N 07° 13' 51" W, 1355.00 feet along the fenced the east right-of-way line of the S. A. U. & G. Railroad to an iron pin set for the northwest corner of this tract;

THENCE: N 48° 33' 39" E, 48.14 feet to an iron pin set at a fence post for a corner of this tract;

THENCE; S 71° 46' 54" E, 2698.87 feet along the south line of a 13.74 acre tract recorded in Volume 2856, Page 476, Deed Records, Bexar County, Texas, to the POINT OF BEGINNING and containing 75.76 acres of land.

Portion of Bexar County Property Tax ID: 181780.

**Lot L:**

A 4.871 acre tract of land, more or less out of the A.Y. Ojeda Survey No. N494, Abstract No. 1246, County Block 4162, situated in Bexar County, Texas, and being more particularly described as follows, to wit:

BEGINNING: at the Northwest corner of Tract 23, Halliday Acres Subdivision, recorded in Volume 2222 Page 341, of the plat Records of Bexar County, Texas;

THENCE: Northerly 205.0' with the West line of Tract 24 in said Halliday Acres Subdivision, to a point in same, an iron pin set for the Northwest corner of the herein described tract, said point being Southerly 5.0" measured along the West line of said Tract 24, from the Northwest corner of Tract 24;

THENCE: Westerly 992.86' with the North line of the herein described tract, and making an angle from South to West of 90° with the last previously described line, to its intersection with the fence line on the Southwest side of a tract of land known as the Hair tract, same being the Northeast side of the C.H. Thieme, O.S. 1386 1/4, an iron pin set for the Northwest corner of the herein described tract;

THENCE: Southeasterly 352.48' with said fence line, and making an angle from East to South of 44° 02' with the last previously described line, to a point in same, an iron pin set, for the Southwest corner of the herein described tract;

THENCE: Easterly 739.16' with the South line of the herein described tract, and making an angle from Northwest to East of 135° 58' with the last previously described line, to its intersection with the West line of said Tract 23, Halliday Acres Subdivision, an iron pin set, for the Southeast corner of the herein described tract;

THENCE: Northerly 40.0' with the West line of said Tract 23, and making an angle from West to North of 90° with the last previously described line, to the PLACE OF BEGINNING. Containing: 4.871 acres of land, more or less.

Portion of Bexar County Property Tax ID: 181780.

**Lot M:**

Field notes of a 1.8939 acre tract of land situated in Bexar County, Texas, out of the A. Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being part of that tract described in Deed conveyed to Thomas N. Moore, dated August 16, 1983, and recorded in Volume 7167, Page 1,

Deed Records of Bexar County, Texas, and part of that tract described in Deed conveyed to Thomas N. Moore, dated November 7, 1963, as recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:



Beginning at an iron pin found in the west right-of-way line of U.S. Highway 281, for the southeast corner of this tract and being N 04° 08' 58" E. 105.39 feet along said right-of-way line from its intersection with the cutoff to the north right-of-way line of Mogford Road.

Thence with fence along the southwest line of this tract and the northeast lines of Lots 1-7 of Carver Park Subdivision Unit 1, Plat recorded in Volume 3850, Page 155, part of Duke Drive, a 10.635 acre tract, Hardwich Drive and part of Tract 1, of Carver Park Subdivision Unit 3, Plat recorded in Volume 3975, Page 176, Nat Records of Records of Bexar County, Texas as follows:

N 42° 53' 00" W. 320.78 feet to an iron pin found at an angle point.

N 42° 27' 17" W. 561.37 feet to an iron pin found at the northwest corner of Duke Drive for an angle in this line.

N 42° 29' 56" W. 492.01 feet to an iron pin set at an angle being the south corner of the tract recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas.

N 42° 23' 59" W. 320.79 feet to an iron pin set for the northwest corner of this tract being in the north line of Tract 1, Carver Park Subdivision Unit 3,

Thence S 80° 25' 57" E. 233.06 feet along the north line of this tract to an iron pin set in the west line of Lot 21 of the Halliday Acres Subdivision recorded in Volume 2222, Page 341, Plat Records of Bexar County, Texas, for the northeast corner of this tract.

Thence S 03° 54' 03" W. 125.72 feet with fence along the west line of Lots 21 and 20 of said Halliday Acres Subdivision to an iron pin set at the north corner of the tract recorded in Volume 7167, Page 1, being a corner of Lot 20 and the interior corner of this tract.

Thence along the southwest line of Lots 20, 19, 18, 17 and 16 of Halliday Acres Subdivision as follows:

S 41° 34' 10" E. 863.35 feet to an iron pin at the southwest corner of Lot 18 and the northwest corner of Lot 17, being an angle in this line.

S 42° 26' 41" E. 304.16 feet to an iron pin found at the southwest corner of Lot 17 and the west corner of Lot 16.

S 43° 18' 36" E. 219.40 feet along the southwest line of Lot 16 to an iron pin set in the west right-of-way line of U.S. Highway 281 for a northeast corner of this tract.

Thence S 04° 08' 58" W. 54.85 feet along the west right-of-way line of U.S. Highway 281 to the place of beginning and containing 1.8939 acres of land according to a survey on the ground on January 2, 1986, by Baker Surveying, Inc.

**SAVE AND EXCEPT:**

Field notes of a 1.1279 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 1.8939 acre tract recorded in Volume 4322, Page 362, Real Property records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Hwy. 281 at the east corner of this tract and the 1.8939 acre tract, being at the south corner of Lot 16, Halliday Acres Subdivision.

Thence S 04° 08' 58" W. 54.85 feet along the west line of U.S. Hwy. 281 to an iron pin found for the southeast corner of the 1.8939 acre tract and this tract.

Thence N 42° 52' 28" W. 320.78 feet along the southwest line of the 1.8939 acre tract to an iron pin found at an angle point and N 42° 27' 35" W. 901.33 feet to an iron pin set at the west corner of this tract being the northeast corner of a 1.0179 acre tract this day surveyed;

Thence S 86° 05' 29" E. 70.26 feet along the north line of this tract across the 1.8939 acre tract to an iron pin set for the north corner of this tract.

Thence along the northeast line of the 1.8939 acre tract as follows:

S 41° 31' 11" E. 610.10 feet to an iron pin found at an angle point; S 42° 26' 41" E. 304.16 feet to an iron pin found at an angle point;

S 43° 18' 36" E. 219.40 feet to the place of beginning and containing 1.1279 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot N:**

Field notes of a 1.0179 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 10.635 acre tract recorded in Volume 4048, Page 1444, Real Property Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the east line of Hardwich Drive at its northeast corner being the northwest corner of this tract and the 10.635 acre tract and being N 42° 53' 00" W. 320.78 feet and N 42° 27' 35" W. 1284.08 feet from a point in the west line of U.S. Hwy. 281.

Thence S 42° 27' 35" E. 382.75 feet along the northeast line of the 10.635 acre tract to an iron pin set for the east corner of this tract, being the west corner of a 1.1279 acre tract on this day surveyed.

Thence N 86° 05' 29" W. 335.77 feet along the south line of this tract to an iron pin set in the east line of Hardwich Drive for the southwest corner of this tract.

Thence N 16° 26' 50" E. 270.56 feet along the east line of Hardwich Drive to the place of beginning and containing 1.0179 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot O:**

Lot 20, HALLIDAY ACRES SUBDIVISION in Bexar County, Texas, according to plat recorded in Vol. 2222, p. 341, Deed and Plat Records, Bexar County, Texas; SAVE AND EXCEPT that portion conveyed to the State of Texas by Deed recorded in Vol. 5447, p. 318, Deed Records, Bexar County, Texas.

Portion of Bexar County Property Tax ID: 181780.

**Lot P:**

BEING that certain 0.4225 acre of land, more or less, out of the A. Y. Ojeda Sur. No. 94, Abstract 1251, County Block 5944, being a portion of Hardwich Drive, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron pin found at the northeast corner of Hardwich Drive at the northwest corner of a 1.0179 acre tract conveyed to Robert L. Tooke;

THENCE S. 16° 26' 50" W. 270.56 feet along the east line of said Hardwich Drive to an iron pin found at the southwest corner of said 1.0179 acre tract, for the southeast corner of this tract;

THENCE N. 86° 05' 29" W. 60.76 feet across Hardwich Drive to a point on its west line for the southwest corner of this tract;

THENCE N. 12° 58' 05" E. 332.29 feet along the west line of Hardwich Drive to a point for its northwest corner;

THENCE S. 42° 23' 59" E. 72.92 feet along the north line of said Hardwich Drive to the place or BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot Q:**

Field notes of a 3.233 acre tract of land situated in Bexar County, Texas, being the same land conveyed in Warranty Deed recorded in Volume 689, Page 406, of the Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows: (Note: All iron pins set are 1/2" rebar with a yellow plastic cap stamped "Baker Surveying").

Beginning at a 1 1/2" iron pipe found in the east right-of-way line of the Missouri Pacific Railroad at the southwest corner of this tract, the most westerly northwest corner of a 25.92 acre tract of land conveyed to Osburn Sand Company recorded in Volume 6944, Page 1400 of the Official Records of Bexar County, Texas, from which the north right-of-way line of Hume Road bears

Thence N 08°26'31" W., 286.62 feet with the west line of this tract, the east right-of-way line of Missouri Pacific Railroad to an iron pin set for the northwest corner of this tract, the southwest corner of an 8.06 acre tract conveyed to Osburn Sand Company recorded in Volume 4977, Page 199 of the Official Records of Bexar County, Texas.

Thence S 89°11'00" E., 520.90 feet with the north line of this tract, the south line of said 8.06 acre tract to a 1/2" iron pin found for the northeast corner of this tract an angle point of said 8.06 acre tract and the most northerly northwest corner of said 25.92 acre tract.

Thence S 00°49'00" W., 282.89 feet with the east line of this tract and an interior line of the 25.92 acre tract to a 1 1/2" iron pipe found for the southeast corner of this tract and an interior corner of said 25.92 acre tract.

Thence N 89°11'00" W., 474.79 feet with the south line of this tract and the most southerly north line of said 25.92 acre tract to the place of beginning and containing 3.233 acres of land according to a survey made on the ground on June 25, 1998 by Baker Surveying & Engineering, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot R:**

A certain tract of land containing TWENTY-FIVE AND NINETY-TWO (25.92) HUNDREDTHS ACRES comprising the North Part of the Curtis Bell Tract of 45.908 acres described in Deed from Robert Hausser, et ux, to Curtis Bell, dated May 16, 1972, and recorded in Vol. 6813, p. 787, Deed Records of Bexar County, Texas. The said 25.92 acres is out of the South One-Half (1/2) of A.Y. Ojeda Survey 94, Abstract 1247, County Block 4162 in Bexar County, Texas. The said 25.92 acres fronts on the west side of Sunset Road and extends westward to the east right-of-way line of S.A.U. & O. Railroad, being about sixteen miles in a southerly direction from the Court House in Bexar County, Texas.

BEGINNING at an iron pipe on the east right-of-way line of S.A.U. & O. Railroad for the Southwest corner of said 25.92 acres, and being the Northwest corner of a tract of 20.00 acres; said Point of Beginning being 1333.58 feet North 8 deg., 30' West from the north line of Hume Road;

THENCE with fence along the east right-of-way line of S.A.U. & O. Railroad, North 8 deg. 30' West, 611.30 feet to an iron pipe, the Northwest corner of this tract;

THENCE with fence South 89 deg. 11' East, 474.79 feet to an iron pipe for an interior corner;

THENCE with fence North 00 deg. 34' East, 282.89 feet to an iron pipe for a corner;

THENCE with fence North 71 deg. 21' East, 175.35 feet to an iron pipe, the most northerly corner of this tract;

THENCE with fence South 42 deg. 24' East, 1421.18 feet to an iron pipe for an interior corner of this tract;

THENCE with fence North 47 deg. 05' East, 173.57 feet to an iron pipe for a corner;

THENCE with fence South 8 deg. 33' West, 413.10 feet to an iron pipe on west line of Sunset Road, the southeast corner of this tract;

THENCE with fence along the south line of said 25.92 acres, being the north line of said 20.00 acres; North 75 deg. 40' West, 1628.00 feet to the PLACE OF BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot S:**

19.09 acres, being Tracts 1, 2, 3, 4, and 9, out of a survey dated March 16, 1955, by Earl J. Wentworth, being out of the A. Y. Ojeda Survey No. 94, Abstract No. 1147, County Block 41622, in Bexar County, Texas, said 19.09 acre parcel being the same property conveyed to Grantors herein by Warranty Deed dated March 27, 1961, recorded in Vol. 4579, p. 225, Deed Records, Bexar County, Texas, executed by J.F. Hair and being more particularly described by metes and bounds as follows:

BEGINNING at the SW corner of Tract No. 6 of HALLIDAY ACRES;

THENCE S. with the W. line of said Halliday Acres, 340.10 feet to a point for the SE corner of this tract;

THENCE W. 1280.80 ft. to a PT. for the SW corner of this tract; THENCE N. 05 deg. E. 244.51 ft. to a pt. for the NW corner of this tract;

THENCE N. 43 deg. 40' E. 1407.02 ft. to a pt. for the NE corner of this tract; THENCE S. 921.28 ft. and E. 288.00 feet to the PLACE OF BEGINNING. Portion of Bexar County Property Tax ID: 181780.

**Tract 5:**

**Lot A:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

First Tract of land out of the John Kalka Survey No. 710, better described by metes and bounds as follows:

Beginning at the N.W. corner of the J.H. Nass 3.14/100 acre tract for the beginning place. Thence running East along the North line of the said 3.14/100 acre tract at 155 feet to a stake set on the West line of the S. A. U. & G. R. R. for the Southeast corner of this tract. Thence running North along the West line of said S. A. U. & G. R. R. to a stake set for the N.E. corner of this tract. Thence running along the N.E. line of the John Kalka survey No. 710 where said survey intersects with the Pleasanton Road a stake set for the N.W. corner of this tract. Thence South along the East side of the Pleasanton Road to the place of beginning.

**Lot B:**

Beginning at an iron pipe set for the Southeast corner of Tract 20, of the J. B. Couric Sub. Bexar County Plat Record Vol. 642, Pg. 267, thence with a projection of this South line of TR. 20 in an Easterly direction a distance of 20.0 feet to a RR Spike set in center-line of old Pleasanton Road; thence in a Southwesterly direction with said center-line of Old Pleasanton Road a distance of 313.7 ft. to RR spike; thence N. 43° 30' E a distance of 58.1 to an iron pin set in East property-line of Old Pleasanton Road, same being set for the Southwest corner of herein described tract and point of beginning;

THENCE continuing N. 43° 30' E. a distance of 193.5 ft. to an iron pin set in the West property line of No. Pac. RR r-o-w, same being set for the Southeast cor. of this tract;

THENCE N. 8° 30' W. along the West property line of said RR r-o-w a distance of 906.0 feet to an iron pin set for the Northeast corner of this tract;

THENCE S. 43°50' W. a distance of 197.0 ft. along old fence to an iron pin set in the East property line of old Pleasanton Road for the Northwest corner of this tract;

THENCE S. 5° 27' E a distance of 147.0 ft. along the East property line of Old Pleasanton Road to an iron pin set at angle point;

THENCE continuing in a Southeasterly direction along the East r-o-w of said Road a distance of 770.0 ft. to an iron pin set for Southwest corner and point of beginning containing 3.12 acres more or less.

Bexar County Property Tax ID: 181781.

**Lot C:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

Second Tract out of the John Kalka survey No. 710, and better described as follows, beginning at the Southeast corner of the J.H. Nass 3.14/100 acre tract for the beginning place.

Thence running south along the West line of the S. A. U. & G. R. R. to a stake set at 300 feet for the S.E. corner of this tract the same being the N.E. corner of the Haiduk tract of land.

Thence running West along the North line of the Haiduk Tract and parallel with the South line of the J.H. Nass 3.14/100 acre tract for the S.W. corner of this tract.

Thence running North along the East line of the Pleasanton Road to a stake set at 300 feet for the N.W. corner of this tract. Thence running East along the J.H. Nass 3.14/100 acre tract at 140 feet to the place of beginning.

**TRACT 6:**

**Lot A:**

A certain tract of land containing 100 acres, comprising parts of Tracts 3, 4, 5, 6, 7, 8 and 9 of the J.B. Couric subdivision of 565.64 acres out of Survey Nos. 710, 1386 and 1386Y2, situated about 18 miles in a southerly direction from the Courthouse in Bexar County, Texas, according to the plat thereof of said Couric Subdivision, recorded in Volume 642, Page 267, Plat Records of Bexar County, Texas, said 100 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" X 4" cedar post on the west line of said Couric Subdivision and being the northwest corner of said Tract No. 5;

THENCE with the north line of Tract No. 5, N 89° 59' E, 2,370 feet to an iron pipe at the south-east corner of a tract of 50 acres;

THENCE N 00° 01' W, 847.2 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet;

THENCE with the north line of Tract No. 3, S 79° 44' E, 1,133.4 feet to an iron pipe for a corner of this tract;

THENCE S 13° 16' W, 661.9 feet to an iron pipe on the north line of Tract No. 5 for a corner;

THENCE with the north line of Tract No. 5, N 89° 59' E, 1,031.2 feet to an iron pipe on the west line of Old Pleasanton Road for a corner of this tract;

THENCE with the west line of Pleasanton Road, S 16° 28 1/2' E, 131 feet to an iron pipe for a corner;

THENCE S 89° 59' W, 826.4 feet to an iron pipe for corner;

THENCE S 15° 21' E, 666 feet to an iron pipe at an angle;

THENCE S 10° 19' E, 304.95 feet to an iron pipe, the southeast corner of said 100 acres;

THENCE W 3,234.4 feet to an iron pipe, the southwest corner of said 100 acres; THENCE N 00° 01' E, 681.57 feet to an auto axle for a corner of this tract;

THENCE N 65° 54' W, 679.7 feet to another auto axle for a corner of this tract;

THENCE with fence, N 24° 12 'A' E, 119.4 feet to the PLACE OF BEGINNING, according to field notes and survey by James C. Adams, Licensed State Land Surveyor, dated January 1953;

**SAVE AND EXCEPT:**

Ten thousand (10,000) square feet of land out of a 565.64 acre tract located approximately one mile from the county line between Bexar County and Atascosa County on Pleasanton Road in Bexar County, Texas, out of Survey No. 1386 V2, and being the same tract of land conveyed by deed of Texas State Bank, July 28, 1926, to J.B. Couric, said deed being recorded in Volume 905, Page 152, Deed Records of Bexar County, Texas, said 10,000 square feet of land being described by metes and bounds as follows, to-wit:

BEGINNING at a stake on the property line between Lots 4 and 5 of the said Couric property, at a point 1,126 feet due West of the west side of Pleasanton Road and 60 feet due East of a point at the intersection of the high line of the Comal Power Company from San Antonio to Pleasanton and the property line between Lot 4 and Lot 5 of the Couric property;

THENCE due South 76 feet, 6 inches to a stake;

THENCE due West 60 feet to the said high line of the Comal Power Company; THENCE due West 40 feet to a stake;

THENCE due North 76 feet, 6 inches to the property line between Lot 4 and Lot 5 of the said Couric property;

THENCE due North 23 feet, 6 inches to a stake;

THENCE due East 40 feet to the said high line of said Comal Power Company; THENCE due East 60 feet to a stake;

THENCE due South 23 feet, 6 inches to the PLACE OF BEGINNING, containing 10,000 square feet, more or less, according to Quitclaim Deed from J.B. Couric to Comal Power Company, dated April 29, 1927 and recorded in Volume 1107, Page 513, Bexar County Deed Records; and

Portion of Bexar County Property Tax ID: 347950.

**Lot B:**

A tract of land containing 50 acres, being the west part of Tracts 3 and 4 of the J.B. Couric subdivision of 565.64 acres, said 50 acres being out of the James Taylor Survey 1386, in Bexar County, Texas according to plat thereof recorded in Volume 642, Page 267 of the Deed and Plat Records of Bexar County, Texas, 50 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" x 4" post at the southwest corner of Tract 4 of said Couric Subdivision; THENCE with fence, N 24° 12 1/2' E, 1,294.8 feet to a 4" X 4" post, the northwest corner of Tract 3;

THENCE with the north line of Tract 3, S 79° 44' E, 1,868.8 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet and an 8 inch L.O. bears S 58° 10' E, 106.5 feet;

THENCE S 00° 01' W, 847.2 feet to an iron pipe on the south line of Tract 4, the southeast corner of said 50 acres;

THENCE S 89° 59' W, 2,370.0 feet to the PLACE OF BEGINNING and containing 50 acres of land, more or less;



Portion of Bexar County Property Tax ID: 347950.

**Lot C:**

BEING a 0.614 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.614 acre tract being more particularly described as follows:

BEGINNING at a metal pipe found in the south line of said Tract No. 4 for the most southerly corner of the herein described tract; said metal pipe found being North 89° 57' 22" West, 1031.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west Right-of-Way (R.O.W.) line of Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 13° 28' 25" West, 352.01 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 85° 15' 00" East, 160.00 feet along the north line of said Tract No. 4 to a 1/2" iron rod set for the northeast corner of the herein described tract;

THENCE, South 13° 14' 27" West, 338.06 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**Lot D:**

BEING a 0.871 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.871 acre tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod set in the south line of said Tract No. 4 for the southeast corner of the herein described tract, said 1/2" iron rod set being North 89° 57' 22" West, 840.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west R.O.W. line of said Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 89° 57' 22" West, 191.00 feet along the south line of said Tract No. 4 to a metal pipe found for the southwest corner of the herein described tract;

THENCE, North 13° 14' 27" East, 338.06 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 84° 40' 21" East, 40.99 feet along the north line of said Tract No. 4 to a metal pipe found for the northeast corner of the herein described tract;

THENCE, South 12° 36' 06" East, 333.45 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190110552

**Recorded Date:** June 12, 2019

**Recorded Time:** 11:18 AM

**Total Pages:** 73

**Total Fees:** \$310.00

**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 6/12/2019 11:18 AM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

**REVISED AMENDED  
AFFIDAVIT CLAIMING A STATUTORY AND CONSTITUTIONAL LIEN**

**THE STATE OF TEXAS        }**

**COUNTY OF BEXAR             }**

Before me, the undersigned authority, personally appeared **Jason Plante**, who, being by me duly sworn, stated as follows:

1. My name is Jason Plante. I am the Vice President of Market & Johnson, Inc., a Wisconsin corporation (hereafter referred to as "Contractor" or "Claimant"). I am over 18 years of age, have personal knowledge of the facts set forth below, and am of sound mind and am capable of making this affidavit. I make this sworn affidavit for the purpose of perfecting a lien on the real property and improvements owned by Superior Silica Sands, LLC ("Owner") to secure the amount of Claimant's claim as described below as provided under Section 53.054 of the Texas Property Code.
2. Claimant's principal office is located at 2350 Galloway Street, Eau Claire, WI 54703. Claimant's mailing address is the same as the principal office noted above.
3. Pursuant to certain design/build contracts (the "Contract") between Claimant and Owner as identified in the Memorandum of Construction Contracts attached as Exhibit A hereto, Claimant has served as general contractor for the construction of a dry sand processing plant, a wet plant, and a reclaim system on Owner's real property as is more particularly described in Exhibit B hereto (the "Property"). The work performed by Claimant consisted of general contractor services and is described with greater particularity in the Contract.
4. The materials, labor, and/or equipment of Claimant were provided to Owner for the construction of the improvements on the Property. The Owner or reputed Owner of the real property and improvements on which Claimant asserts a lien is Superior Silica Sands, LLC. The last known addresses of the Owner are as follows:

**Superior Silica Sands LLC  
5600 Clearfork Main Street  
Fort Worth, Texas 76109  
Attention: Rick Shearer, President and CEO**

With a copy to:

**Superior Silica Sands LLC**  
**1400 Civic Place, Suite 250**  
**Southlake, Texas 76092**  
**Attention: General Counsel**

5. After allowing all just credits, offsets, and payments, the amount of \$4,850,087.00 remains unpaid and said sum is due and owing to Claimant under said Contract. Owner has not paid Claimant as required under the Contract. The amount claimed is just and correct and constitutes

the reasonable value of the materials furnished and labor performed. Claimant claims a statutory lien on said property and improvements under the provisions of Chapter 53 of the Texas Property Code and a constitutional lien on said property and improvements under the provisions of Article 16, Section 37 of the Texas Constitution to secure payment of the above amount. This amount does not include any attorney's fees, interest or costs which may be recovered at law. Claimant previously filed an amended lien affidavit in regard to this matter and this revision is intended to reflect additional credits being given to Owner since the date of that filing.

6. The Claimant provided the unpaid labor, material, and/or equipment to the Owner during 2018. Claimant's last date of work on the project was February 26, 2019.
7. A copy of this Affidavit is being sent by Certified Mail, Return Receipt Requested, to the Owner described above, addressed to the Owner at the last known addresses as indicated above.

SWORN AND EXECUTED on this 11<sup>th</sup> day of June, 2019.

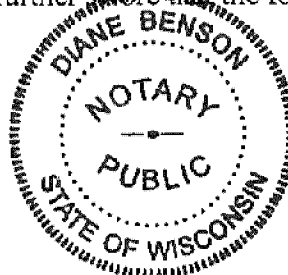
  
\_\_\_\_\_  
Jason Plante  
Vice President, Market & Johnson, Inc.

STATE OF WISCONSIN                    )  
  ) ss.  
COUNTY OF EAU CLAIRE            )

Personally came before me this 11<sup>th</sup> day of June, 2019, the above-named Jason Plante, Vice President of Market & Johnson, Inc., and to me known to be the person who executed the foregoing instrument and acknowledged executing the same for the purposes and consideration therein expressed and in the capacity therein stated as the act and deed of Market & Johnson, Inc., and further swore that the foregoing statements are true and correct.

SUBSCRIBED AND SWORN TO on this 11<sup>th</sup> day of June, 2019

Name: Diane Benson  
Notary Public, State of Wisconsin  
My Commission: expires 6/14/2019



### Certificate of Delivery

I, Norma M. Lacey, certify that on June 12, 2019 I delivered a true and correct copy of the above instrument to Superior Silica Sands, LLC at the addresses identified above by certified/registered mail, postage prepaid.

Norma M. Lacey  
Print Name Norma M. Lacey

## EXHIBIT A

Exhibit A-1



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

**Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703**Date Ordered:** 01/18/19  
**Ordered By:** afernling  
**Payment Terms:****Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630**Ship To:** Superior Silica Sands-San Antonio  
24068 Pleasanton Road  
San Antonio, TX 78264

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-Installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			180' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2123

3940

3895

-3904

-5904

-2823



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Pete Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44	\$ 4,437.12	
		12.00		\$121.95	\$ 1,463.40	
				\$151.45	\$ -	
Welders	30.00			\$8.00	\$ 240.00	
Summary:						
Labor	\$ 5,900.52				5,900.52	
Welders	\$ 240.00				240.00	
Equipment					\$ -	
Mark Up 15%					\$ 921.08	
Total this billing:					\$ 7,061.60	
Total this billing:					\$ 7,061.60	
Previously Paid					\$ -	
Total due:					\$ 7,061.60	



## Exhibit A-4

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

## INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

## BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18 2 Journeymen	32.00	6.00		\$92.44	\$ 2,958.08	
				\$121.95	\$ 731.70	
				\$151.45	\$ -	
Welders	32.00			\$8.00	\$ 256.00	
Summary:						
Labor	\$ 3,689.78					3,689.78
Welders	\$ 256.00					256.00
Equipment					\$	-
Mark Up 15%					\$	591.87
Total this billing:					\$	4,537.65
Total this billing:					\$	4,537.65
Previously Paid					\$	
Total due:					\$	4,537.65

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Assemble and install cyclone on wet plant.						
10/28/18-11/24/18 4 Journeymen	32.00			\$92.44	\$	2,958.08
		8.00		\$121.95	\$	975.60
				\$151.45	\$	-
Welders				\$8.00	\$	-
<b>Summary:</b>						
Labor	\$	3,933.68				3,933.68
Welders	\$	-				0.00
Equipment					\$	-
Mark Up	15%				\$	590.05
Total this billing:					\$	4,523.73
Total this billing:					\$	4,523.73
Previously Paid					\$	-
Total due:					\$	4,523.73

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18 2 Journeymen	20.00			\$92.44	\$ 1,848.80	
		4.00		\$121.95	\$ 487.80	
				\$151.45	\$ -	
Welders	20.00			\$8.00	\$ 160.00	
Summary:						
Labor	\$ 2,336.60					2,336.60
Welders	\$ 160.00					160.00
Equipment					\$ -	
Mark Up 15%					\$ 374.49	
Total this billing:					\$ 2,871.09	
Total this billing:					\$ 2,871.09	
Previously Paid					\$ -	
Total due:					\$ 2,871.09	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                      15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$	-
Mark Up 15%					\$	147.51
Total this billing:					\$	1,130.93
Total this billing:					\$	1,130.93
Previously Paid					\$	-
Total due:					\$	1,130.93

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION		HOURS	OT	DT	RATE	AMOUNT
<b>SSS-San Antonio, TX</b>						
Install hand rail around hydrosisars						
9/23/18-10/27/18	2 Journeymen	24.00			\$92.44	\$ 2,218.56
			24.00		\$121.95	\$ 2,926.80
				14.00	\$151.45	\$ 2,120.30
	Sub Pay					\$ 180.00
Summary:						
Labor \$ 7,445.66						7,445.66
Equipment \$ -						0.00
Indirects						\$ -
Mark Up 15%						\$ 1,116.85
Total this billing:						\$ 8,562.51
Total this billing:						\$ 8,562.51
Previously Paid						\$ -
Total due:						\$ 8,562.51

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Installing Stairs for Clarifer tank						
10/28/18-11/17/18 4 Journeymen	69.00			\$92.44	\$ 6,378.36	
		11.00		\$121.95	\$ 1,341.45	
			15.00	\$151.45	\$ 2,271.75	
Sub Pay					\$ 630.00	
<b>Summary:</b>						
Labor	\$ 10,621.56					10,621.56
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 1,593.23	
Total this billing:					\$ 12,214.79	
Total this billing:					\$ 12,214.79	
Previously Paid					\$ -	
Total due:					\$ 12,214.79	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
 P.O. BOX 630  
 EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Sump crash box support and install chutes						
10/28/18-11/17/18 4 Journeymen	168.00	40.00	2.50	\$92.44	\$ 15,529.92	
				\$121.95	\$ 4,878.00	
				\$151.45	\$ 378.63	
Sub Pay					\$ 1,260.00	
<b>Summary:</b>						
Labor	\$ 22,046.55				22,046.55	
Equipment	\$ -				0.00	
Indirects					\$ -	
Mark Up 15%					\$ 3,306.98	
Total this billing:					\$ 25,353.53	
Total this billing:					\$ 25,353.53	
Previously Paid					\$ -	
Total due:					\$ 25,353.53	



## Exhibit A-12



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

<b>Vendor:</b> Industrial Construction Specialists 1919 Galloway Street Eau Claire, WI 54703	<b>Date Ordered:</b> 01/18/19 <b>Ordered By:</b> afterling <b>Payment Terms:</b>
--	--

<b>Bill To:</b> Market & Johnson, Inc. PO Box 630 Eau Claire, WI 54702-0630	<b>Ship To:</b> Superior Silica Sands-San Antonio 24068 Pleasanton Road San Antonio, TX 78264
---	---

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
<b>Subtotal</b>							343,297.67
<b>Total</b>							343,297.67

2423

3940

3895

-3904

-3904

-2823



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Fate Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44	\$ 4,437.12	
		12.00		\$121.95	\$ 1,463.40	
				\$151.45	\$ -	
Welders	30.00			\$8.00	\$ 240.00	
Summary:						
Labor \$ 5,900.52						5,900.52
Welders \$ 240.00						240.00
Equipment					\$	-
Mark Up 15%					\$	921.08
Total this billing:					\$	7,061.60
Total this billing:					\$	7,061.60
Previously Paid					\$	-
Total due:					\$	7,061.60

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18 2 Journeymen	32.00			\$92.44	\$	2,958.08
		6.00		\$121.95	\$	731.70
				\$151.45	\$	-
Welders	32.00			\$8.00	\$	256.00
Summary:						
Labor	\$	3,689.78				3,689.78
Welders	\$	256.00				256.00
Equipment					\$	-
Mark Up 15%					\$	591.87
Total this billing:					\$	4,537.65
Total this billing:					\$	4,537.65
Previously Paid					\$	-
Total due:					\$	4,537.65

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE		JOB #
	HOURS	OT	DT	RATE	AMOUNT
SSS-Wet Plant - San Antonio, TX Assemble and install cyclone on wet plant.				01/31/19	
10/28/18-11/24/18 4 Journeymen	32.00			\$92.44	\$ 2,958.08
		8.00		\$121.95	\$ 975.60
				\$151.45	\$ -
Welders				\$8.00	\$ -
Summary:					
Labor \$ 3,933.68					3,933.68
Welders \$ -					0.00
Equipment					\$ -
Mark Up 15%					\$ 590.05
Total this billing:					\$ 4,523.73
Total this billing:					\$ 4,523.73
Previously Paid					\$ -
Total due					\$ 4,523.73

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
P.O. BOX 630  
EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18 2 Journeymen	20.00			\$92.44	\$ 1,848.80	
		4.00		\$121.95	\$ 487.80	
				\$151.45	\$ -	
Welders	20.00			\$8.00	\$ 160.00	
Summary:						
Labor	\$ 2,336.60					2,336.60
Welders	\$ 160.00					160.00
Equipment					\$	-
Mark Up 15%					\$	374.49
Total this billing:					\$	2,871.09
Total this billing:					\$	2,871.09
Previously Paid					\$	-
Total due:					\$	2,871.09

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                  15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 147.51	
Total this billing:					\$ 1,130.93	
Total this billing:					\$ 1,130.93	
Previously Paid					\$ -	
Total due:					\$ 1,130.93	



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX						
Install hand rail around hydrosisars						
9/23/18-10/27/18      2 Journeymen	24.00			\$92.44	\$	2,218.56
		24.00		\$121.95	\$	2,926.80
			14.00	\$151.45	\$	2,120.30
Sub Pay					\$	180.00
Summary:						
Labor	\$	7,445.66				7,445.66
Equipment	\$	-				0.00
Indirects					\$	-
Mark Up	15%				\$	1,116.85
Total this billing:					\$	8,562.51
Total this billing:					\$	8,562.51
Previously Paid					\$	-
Total due:					\$	8,562.51

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
 P.O. BOX 630  
 EAU CLAIRE, WI 54702-0630

Customer No: 1000

DESCRIPTION	PO #	TERMS		DUE DATE	JOB #
	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX				01/31/19	
Installing Stairs for Clarifer tank					
10/28/18-11/17/18 4 Journeymen	69.00			\$92.44	\$ 6,378.36
		11.00		\$121.95	\$ 1,341.45
			15.00	\$151.45	\$ 2,271.75
Sub Pay					\$ 630.00
Summary:					
Labor \$ 10,621.56					10,621.56
Equipment \$ -					0.00
Indirects					\$ -
Mark Up 15%					\$ 1,593.23
Total this billing:					\$ 12,214.79
Total this billing:					\$ 12,214.79
Previously Paid					\$ -
Total due:					\$ 12,214.79

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Sump crash box support and install chutes						
10/28/18-11/17/18 4 Journeymen	168.00			\$92.44	\$	15,529.92
		40.00		\$121.95	\$	4,878.00
			2.50	\$151.45	\$	378.63
Sub Pay					\$	1,260.00
<b>Summary:</b>						
Labor	\$ 22,046.55					22,046.55
Equipment	\$ -					0.00
Indirects					\$	-
Mark Up 15%					\$	3,306.98
Total this billing:					\$	25,353.53
Total this billing:					\$	25,353.53
Previously Paid					\$	-
Total due:					\$	25,353.53

## Exhibit A-23



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

**Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703

**Date Ordered:** 01/18/19  
**Ordered By:** afferling  
**Payment Terms:**

**Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630

**Ship To:** Superior Silica Sands-San Antonio  
24068 Pleasanton Road  
San Antonio, TX 78264

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2123  
3940  
3895  
-3904  
-3904  
-2823



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in cursive script, appearing to read 'Pat Adams', written over a horizontal line.

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Re-installing beams that were removed to install hydrosizers.						
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44	\$	4,437.12
		12.00		\$121.95	\$	1,463.40
				\$151.45	\$	-
Welders	30.00			\$8.00	\$	240.00
Summary:						
Labor	\$	5,900.52				5,900.52
Welders	\$	240.00				240.00
Equipment					\$	-
Mark Up 15%					\$	921.08
Total this billing:					\$	7,061.60
Total this billing:					\$	7,061.60
Previously Paid					\$	-
Total due:					\$	7,061.60

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18 2 Journeymen	32.00	6.00		\$92.44	\$ 2,958.08	
				\$121.95	\$ 731.70	
				\$151.45	\$ -	
Welders	32.00			\$8.00	\$ 256.00	
<b>Summary:</b>						
Labor	\$ 3,689.78					3,689.78
Welders	\$ 256.00					256.00
Equipment					\$ -	
Mark Up 15%					\$ 591.87	
Total this billing:					\$ 4,537.65	
Total this billing:					\$ 4,537.65	
Previously Paid					\$ -	
Total due:					\$ 4,537.65	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

	PO #	TERMS		DUE DATE	JOB #
				01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT
<b>SSS-Wet Plant - San Antonio, TX</b> Assemble and install cyclone on wet plant.					
10/28/18-11/24/18 4 Journeymen	32.00	8.00		\$92.44	\$ 2,958.08
				\$121.95	\$ 975.60
				\$151.45	\$ -
Welders				\$8.00	\$ -
Summary:					
Labor \$ 3,933.68					3,933.68
Welders \$ -					0.00
Equipment					\$ -
Mark Up 15%					\$ 590.05
Total this billing:					\$ 4,523.73
Total this billing:					\$ 4,523.73
Previously Paid					\$ -
Total due:					\$ 4,523.73



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18    2 Journeymen	20.00	4.00		\$92.44	\$ 1,848.80	
				\$121.95	\$ 487.80	
				\$151.45	\$ -	
Welders	20.00			\$8.00	\$ 160.00	
Summary:						
Labor	\$ 2,336.60					2,336.60
Welders	\$ 160.00					160.00
Equipment					\$ -	
Mark Up            15%					\$ 374.49	
Total this billing:					\$ 2,871.09	
Total this billing:					\$ 2,871.09	
Previously Paid					\$ -	
Total due:					\$ 2,871.09	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
<b>Summary:</b>						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                  15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 147.51	
Total this billing:					\$ 1,130.93	
Total this billing:					\$ 1,130.93	
Previously Paid					\$ -	
Total due:					\$ 1,130.93	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX						
Install hand rail around hydrosisars						
9/23/18-10/27/18 2 Journeymen	24.00			\$92.44	\$ 2,218.56	
		24.00		\$121.95	\$ 2,926.80	
			14.00	\$151.45	\$ 2,120.30	
Sub Pay					\$ 180.00	
Summary:						
Labor \$ 7,445.66						7,445.66
Equipment \$ -						0.00
Indirects					\$ -	
Mark Up 15%					\$ 1,116.85	
Total this billing:					\$ 8,562.51	
Total this billing:					\$ 8,562.51	
Previously Paid					\$ -	
Total due:					\$ 8,562.51	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE		JOB #
	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX Installing Stairs for Clarifer tank				01/31/19	
10/28/18-11/17/18 4 Journeymen	69.00	11.00	15.00	\$92.44	\$ 6,378.36
				\$121.95	\$ 1,341.45
				\$151.45	\$ 2,271.75
Sub Pay					\$ 630.00
Summary:					
Labor \$ 10,621.56					10,621.56
Equipment \$ -					0.00
Indirects					\$ -
Mark Up 15%					\$ 1,593.23
Total this billing:					\$ 12,214.79
Total this billing:					\$ 12,214.79
Previously Paid					\$ -
Total due:					\$ 12,214.79

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO

MARKET & JOHNSON, INC.  
 P.O. BOX 630  
 EAU CLAIRE, WI 54702-0630

Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Sump crash box support and install chutes						
10/28/18-11/17/18 4 Journeymen	168.00			\$92.44	\$	15,529.92
		40.00		\$121.95	\$	4,878.00
			2.50	\$151.45	\$	378.63
Sub Pay					\$	1,260.00
<b>Summary:</b>						
Labor	\$ 22,046.55					22,046.55
Equipment	\$ -					0.00
Indirects					\$	-
Mark Up 15%					\$	3,306.98
Total this billing:					\$	25,353.53
Total this billing:					\$	25,353.53
Previously Paid					\$	-
Total due:					\$	25,353.53

## Exhibit A-34



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 1 of 2

<b>Vendor:</b>	Industrial Construction Specialists 1919 Galloway Street Eau Claire, WI 54703	<b>Date Ordered:</b>	01/18/19
		<b>Ordered By:</b>	affleming
		<b>Payment Terms:</b>	

<b>Bill:</b>	Market & Johnson, Inc. PO Box 630 Eau Claire, WI 54702-0630	<b>Ship To:</b>	Superior Silica Sands-San Antonio 24068 Pleasanton Road San Antonio, TX 78264
--------------	---	-----------------	---

Superior Silica Sands San Antonio, TX

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
1			Welding E-houses down M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	1,130.93
2			Fab. and install beam to hang dump boxes in the wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	92,678.26
3			Re-Installing beams that were removed to install hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	7,061.60
4			Repair hand rails that Advanced cut apart & removed M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,537.65
5			Assemble and install cyclone on wet plant M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	4,523.73
6			Cut and modify grading around cyclones M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	2,871.09
7			Install hand rail around hydrosizers M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	8,562.51
8			Installing stairs for clarifier tank M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	12,214.79
9			160' pipe bridge M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	66,578.28
10			Call walkway over conveyor & rotex frames M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	35,032.09
11			Pre-engineering chemical building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	60,000.00
12			Floc Building M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	22,753.21
13			Sump crash box support and install chutes M&J Job: 2734- Phase: 05120-48-	LS	0.000	0.00000	25,353.53
Subtotal							343,297.67
Total							343,297.67

2123

3940

3895

-3904

-3904

-2823

Exhibit A-35



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 59354

Job: 2734- Superior Silica Sands-San Antonio

Page 2 of 2

Authorized Signature: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Pat Adams', written over a horizontal line.



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

DESCRIPTION	PO #	TERMS	DUE DATE	JOB #
			01/31/19	
<b>SSS-Wet Plant - San Antonio, TX</b>	<b>HOURS</b>	<b>OT</b>	<b>DT</b>	<b>RATE</b>
Re-installing beams that were removed to install hydrosizers.				<b>AMOUNT</b>
10/28/18-11/24/18 3 Journeymen	48.00			\$92.44 \$ 4,437.12
		12.00		\$121.95 \$ 1,463.40
				\$151.45 \$ -
Welders	30.00			\$8.00 \$ 240.00
Summary:				
Labor \$ 5,900.52				5,900.52
Welders \$ 240.00				240.00
Equipment				\$ -
Mark Up 15%				\$ 921.08
Total this billing:				\$ 7,061.60
Total this billing:				\$ 7,061.60
Previously Paid				\$ -
Total due:				\$ 7,061.60

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Repair hand rails that advanced construction -cut apart and removed						
10/28/18-11/24/18     2 Journeymen	32.00	6.00		\$92.44	\$ 2,958.08	
				\$121.95	\$ 731.70	
				\$151.45	\$ -	
Welders	32.00			\$8.00	\$ 256.00	
<b>Summary:</b>						
Labor	\$ 3,689.78					3,689.78
Welders	\$ 256.00					256.00
Equipment					\$ -	-
Mark Up                    15%					\$ 591.87	
Total this billing:					\$ 4,537.65	
Total this billing:					\$ 4,537.65	
Previously Paid					\$ -	
Total due:					\$ 4,537.65	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-Wet Plant - San Antonio, TX						
Assemble and install cyclone on wet plant.						
10/28/18-11/24/18      4 Journeymen	32.00			\$92.44	\$	2,958.08
		8.00		\$121.95	\$	975.60
				\$151.45	\$	-
Welders				\$8.00	\$	-
Summary:						
Labor	\$	3,933.68				3,933.68
Welders	\$	-				0.00
Equipment					\$	-
Mark Up	15%				\$	590.05
Total this billing:					\$	4,523.73
Total this billing:					\$	4,523.73
Previously Paid					\$	-
Total due:					\$	4,523.73

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-Wet Plant - San Antonio, TX</b>						
Cut and modify grading around cyclones.						
10/28/18-11/24/18    2 Journeymen	20.00			\$92.44	\$	1,848.80
		4.00		\$121.95	\$	487.80
				\$151.45	\$	-
Welders	20.00			\$8.00	\$	160.00
Summary:						
Labor	\$	2,336.60				2,336.60
Welders	\$	160.00				160.00
Equipment					\$	-
Mark Up	15%				\$	374.49
Total this billing:					\$	2,871.09
Total this billing:					\$	2,871.09
Previously Paid					\$	-
Total due:					\$	2,871.09

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX						
Fabrication and install beam to hang dump boxes in the wet plant						
9/23/18-10/27/18      5 Journeymen	458.50			\$92.44	\$	42,383.74
		150.00		\$121.95	\$	18,292.50
			99.00	\$151.45	\$	14,993.55
Sub Pay					\$	2,520.00
Welders	300.00			\$8.00	\$	2,400.00
Summary:						
Labor	\$ 78,189.79					78,189.79
Equipment	\$ 2,400.00					2,400.00
Indirects					\$	-
Mark Up                  15%					\$	12,088.47
Total this billing:					\$	92,678.26
Total this billing:					\$	92,678.26
Previously Paid					\$	-
Total due:					\$	92,678.26

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Welding E-Houses Down						
9/23/18-10/27/18 1 Journeyman	8.00			\$92.44	\$ 739.52	
		2.00		\$121.95	\$ 243.90	
			0.00	\$151.45	\$ -	
Summary:						
Labor	\$ 983.42					983.42
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 147.51	
Total this billing:					\$ 1,130.93	
Total this billing:					\$ 1,130.93	
Previously Paid					\$ -	
Total due:					\$ 1,130.93	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**INVOICE**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
<b>SSS-San Antonio, TX</b>						
Install hand rail around hydrosisars						
9/23/18-10/27/18 2 Journeymen	24.00			\$92.44	\$ 2,218.56	
		24.00		\$121.95	\$ 2,926.80	
			14.00	\$151.45	\$ 2,120.30	
Sub Pay					\$ 180.00	
<b>Summary:</b>						
Labor	\$ 7,445.66					7,445.66
Equipment	\$ -					0.00
Indirects					\$ -	
Mark Up 15%					\$ 1,116.85	
Total this billing:					\$ 8,562.51	
Total this billing:					\$ 8,562.51	
Previously Paid					\$ -	
Total due:					\$ 8,562.51	

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		PO #	TERMS		DUE DATE	JOB #
					01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT	
SSS-San Antonio, TX Installing Stairs for Clarifer tank						
10/28/18-11/17/18 4 Journeymen	69.00			\$92.44	\$ 6,378.36	
		11.00		\$121.95	\$ 1,341.45	
			15.00	\$151.45	\$ 2,271.75	
Sub Pay					\$ 630.00	
Summary:						
Labor \$ 10,621.56						10,621.56
Equipment \$ -						0.00
Indirects					\$ -	
Mark Up 15%					\$ 1,593.23	
Total this billing:					\$ 12,214.79	
Total this billing:					\$ 12,214.79	
Previously Paid					\$ -	
Total due:					\$ 12,214.79	



INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

INVOICE

1919 GALLOWAY STREET  
 P.O. BOX 1501  
 EAU CLAIRE, WI 54702-1501

DATE	INVOICE #
12/31/18	

BILL TO
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

	PO #	TERMS		DUE DATE	JOB #
				01/31/19	
DESCRIPTION	HOURS	OT	DT	RATE	AMOUNT
SSS-San Antonio, TX					
Sump crash box support and install chutes					
10/28/18-11/17/18      4 Journeymen	168.00			\$92.44	\$      15,529.92
		40.00		\$121.95	\$      4,878.00
			2.50	\$151.45	\$      378.63
Sub Pay					\$      1,260.00
Summary:					
Labor      \$ 22,046.55					22,046.55
Equipment \$      -					0.00
Indirects					\$      -
Mark Up              15%					\$      3,306.98
Total this billing:					\$      25,353.53
Total this billing:					\$      25,353.53
Previously Paid					\$      -
Total due:					\$      25,353.53

## Exhibit A-45



Adding Value to Everything We Do

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

PO #: 61911

Job: 2734- 01 Superior Silica Sands-San Antonio-Wet Plant

Page 1 of 1

**Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703

**Date Ordered:** 03/05/19  
**Ordered By:** 2909  
**Payment Terms:**

**Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630

**Ship To:** Superior Silica Sands-San Antonio-Wet Plant

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
4		ICS 3940	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	6,700.80
5		ICS 3945	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	34,438.19
6		ICS 3946	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	20,280.83
Subtotal							61,419.82
Total							61,419.82

3940

3945

3946

Authorized Signature:

INDUSTRIAL CONSTRUCTION SPECIALISTS, LLC

**WORK ORDER**

1919 GALLOWAY STREET  
P.O. BOX 1501  
EAU CLAIRE, WI 54702-1501

DATE	
01/31/19	

<b>BILL TO</b>
MARKET & JOHNSON, INC. P.O. BOX 630 EAU CLAIRE, WI 54702-0630  Customer No: 1000

		WO	TERMS		DUE DATE	JOB #
		3940-2			01/31/19	3940
DESCRIPTION		HOURS	OT	DT	RATE	AMOUNT
<b>SSS-San Antonio, TX</b>						
160' Pipe Bridge						
1/6/19-1/12/19	5 Journeymen	40.00			\$92.44	\$ 3,697.60
			18.00		\$121.95	\$ 2,195.10
					\$151.45	\$ -
	Sub Pay					\$ -
<b>Summary:</b>						
	Labor	\$ 5,892.70				5,892.70
	Welders					
	Equipment					
	Mark Up	15%				\$ 883.91
	Total this billing:					\$ 6,776.61
	Total this billing:					\$ 6,700.80
	Previously Paid					\$ -
	Total due:					\$ 6,700.80

## Exhibit A-47

*Adding Value to Everything We Do*

Market &amp; Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

**Purchase Order****PO #: 61911****Job: 2734- 01 Superior Silica Sands-San Antonio-Wet Plant****Page 1 of 1****Vendor:** Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703**Date Ordered:** 03/05/19  
**Ordered By:** 2909  
**Payment Terms:****Bill:** Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630**Ship To:** Superior Silica Sands-San Antonio-Wet Plant

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
4		ICS 3940	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	6,700.80
5		ICS 3945	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	34,438.19
6		ICS 3946	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	20,280.83
Subtotal							61,419.82
Total							61,419.82

Authorized Signature:

## Exhibit A-48



*Adding Value to Everything We Do*

Market & Johnson, Inc. 2350 Galloway Street PO Box 630 Eau Claire, WI 54702-0630 Ph. 715.834.1213 Fax. 715.834.2331

## Purchase Order

**PO #: 61911**

**Job: 2734- 01 Superior Silica Sands-San Antonio-Wet Plant**

**Page 1 of 1**

**Vendor:**

Industrial Construction Specialists  
1919 Galloway Street  
Eau Claire, WI 54703

**Date Ordered:**

03/05/19

**Ordered By:**

2909

**Payment Terms:**

**Bill :**

Market & Johnson, Inc.  
PO Box 630  
Eau Claire, WI 54702-0630

**Ship To:**

Superior Silica Sands-San Antonio-Wet Plant

Via:

Item	GL Acct	Material	Description	UM	Units	Unit Cost	Total
4		ICS 3940	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	6,700.80
5		ICS 3945	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	34,438.19
6		ICS 3946	M&J Job: 2734- 01 Phase: 05120-02-	LS	0.000	0.00000	20,280.83
<b>Subtotal</b>							<b>61,419.82</b>
<b>Total</b>							<b>61,419.82</b>

Authorized Signature:

**EXHIBIT B**

**TRACT 1:**

**FIELD NOTES OF A 3.62 ACRE (157737 SQUARE FEET MORE OR LESS) TRACT OF LAND, SITUATED IN BEXAR COUNTY, TEXAS OUT OF THE J.S. MOORING SURVEY NO. 1386A, ABSTRACT NO. 1086, THE C. THIEME SURVEY NO 1386A, ABSTRACT NO. 754 AND THE J. TAYLOR SURVEY NO. 1386, ABSTRACT NO. 761 AND BEING ALL OF THE REMAINDER OF TRACT A, ALL OF TRACT B AND ALL OF THE REMAINDER OF TRACT C AS CONVEYED TO FRED A. AND NANCY L. MAIR OF RECORD IN VOLUME 6461, PAGE 654, DEED RECORDS OF BEXAR COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS: NOTE: (BASIS OF BEARING IS TEXAS SOUTH CENTRAL ZONE, NAD83.)**

BEGINNING: At a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of the Union Pacific Rail Road Company (100' R.O.W.) for the southwest corner of a 12.1 acre tract, called Second Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas the northwest corner of the remainder of Tract C, This Tract and the POINT OF BEGINNING, from which a 5/8" iron rod found bears N 28°40'16" W, a distance of 5.10 feet and from said 5/8" iron rod found, a 5/8" iron rod found bears N 84°19'28" E, a distance of 2.12 feet;

THENCE: Departing the east Right-of-Way line of U.P.R.R.Co., with the south line of the 12.1 acre tract, the north line of the remainder of Tract C and This Tract, the following calls and distances:

S 89°46'34" E, a distance of 122.40 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in concrete for an angle point;

N 83°13'26" E, a distance of 42.00 feet to a leaning 5/8" iron rod found in the west line of Tract B, for the southeast corner of the 12.1 acre tract, the northeast corner of the remainder of Tract C and an interior corner of This Tract;

THENCE: N 11°06'30" W, with the east line of the 12.1 acre tract, the west line of Tract B and This Tract, a distance of 142.50 feet to a 1A" iron rod found for the west corner of a 44.5 acre tract, called First Tract as conveyed to Louise Forbes of record in Volume 169, Page 417, Deed Records of Bexar County, Texas, the north corner of Tract B and This Tract;

THENCE: S 65°37'27" E, with the southwest line of the 44.5 acre tract, the northeast line of Tract B, the remainder of Tract A and This Tract, a distance of 580.12 feet to a Y2" iron rod found for the north corner of an 8.381 acre tract as conveyed to Osburn Sand Company of record in Volume 7885, Page 743, Deed Records of Bexar County, Texas, the east corner of the remainder of Tract A and This Tract;

THENCE: S 24°22'35" W, with the northwest line of the 8.381 acre tract, a southeast line of the remainder of Tract A and This Tract, a distance of 170.62 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set in the northeast line of a 27 acre tract as conveyed to Osburn Sand Company of record in Volume 4369, Page 536, Deed Records of Bexar County,

Texas for the west corner of the 8.381 acre tract, the south corner of the remainder of Tract A and This Tract;

THENCE: N 47° 40' 59" W, with the northeast line of the 27 acre tract, the southwest line of the remainder of Tract A and This Tract, a distance of 87.36 feet to a 1/2" iron rod found for a north corner of the 27 acre tract, the east corner of Tract B and an interior corner of This Tract;

THENCE: S 77° 09' 47" W, with the northwest line of the 27 acre tract, a 0.699 acre tract as conveyed to Osburn Sand Company of record in Volume 7865, Page 743, Deed Records of Bexar County, Texas, a southeast line of Tract B and the remainder of Tract C and This Tract, a distance of 455.08 feet to a 'A' iron rod with a cap stamped "RICKMAN RPLS 5826" set in the east Right-of-Way line of U.P.R.R.Co. for the west corner of the 0.699 acre tract, the southwest corner of the remainder of Tract C and This Tract;

THENCE: With the east Right-of-Way line of U.P.R.R.Co., the west line of the remainder of Tract C and This Tract, the following calls and distances:

N 16°39'00" W, a distance of 189.64 feet to a 1/2" iron rod with a cap stamped "RICKMAN RPLS 5826" set for a point of Tangency;

Northwesterly, with an arc of a curve to the right, having a radius of 5670.87 feet, a delta angle of 01° 10' 07", an arc length of 115.66 feet and a chord that bears N 16° 03' 57" W, a distance of 115.66 feet to the POINT OF BEGINNING and containing 3.62 acres of land in Bexar County, Texas, according to a survey on the ground on March 21, 2016 by Rickman Land Surveying.

Bexar County Property Tax ID: 180107.

## **TRACT 2:**

### **Lot A:**

Lots 97, 98, 99, 100, 101 and 102, Block 8, OAK HILL RANCHES, in Bexar County, Texas, according to plat thereof recorded in Volume 5580, Pages 48-49, Deed and Plat Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473.

### **Lot B:**

A tract of land containing 8.381 acres, being out of J. S. Mooring Survey No. 1386 3/4 , Abstract No. 1086, County Block Four Thousand One Hundred Sixty Three (4,163), being more particularly described as follows:

BEGINNING at an iron pin found at the most southerly corner of the Robert V. Smith and Henry Feille, Sr. Survey No. 1387, Abstract No. 1261, County Block 4175, Bexar County, Texas, said corner being a reentrant corner of said J. S. Mooring Survey No. 1386 %, Abstract No. 754, and the most easterly corner of this tract.

THENCE S. 27° 39' 37" W. along a northwest line of said Survey No. 1386 % and of Oak Hill Ranches, recorded in Volume 5580, Pages 48 and 49, Bexar County Plat Records, a distance of 517.59 feet to an iron pin found at a fence corner on the common line of said Christopher Thieme Survey No. 1386 1/2 and said J. S. Mooring Survey No, 1386 %, for the most southerly corner of this tract.

THENCE N. 44° 26' 29" W., along said common line, a distance of 1116.90 feet to an iron pin set for the most westerly corner of this tract.

THENCE N. 27° 23' 12" E. a distance of 169.25 feet to an iron pin set in a barbed-wire fence on the southwest line of said Robert V. Smith and Henry Feille, Sr. Survey No. 1387 for the most northerly corner of this tract; said corner being on the northeast line of said J. S. Mooring Survey No. 1386 %.

THENCE S. 62° 36' 48" E. partially along a barbed-wire fence on the common line between said Surveys No. 1387 and 1386% a distance of 1418.46 feet to the point of beginning, and containing 8.381 acres of land.

Portion of Bexar County Property Tax ID: 348473

**Lot C:**

A tract of land containing 0.699 acres, being out of Christopher Thieme Survey No. 1386 1/2, Abstract No. 754, County Block Four Thousand One Hundred Sixty Nine (4,169), being more particularly described as follows:

BEGINNING at an iron pin set at a fence corner for the northeast corner of this tract, said corner being the following courses from the most westerly corner of the above described 8.381 acre tract; S. 44° 35' 17" E. along the common line between said Surveys No. 1386 1/2 and 1386 % a distance of 285.37 feet to an iron pin set at a fence corner; and S. 80° 21' 40" W. along a barbed-wire fence line a distance of 331.94 feet.

THENCE S. 05° 57' 03" E. along a barbed-wire fence line a distance of 311.15 feet to an iron pin found at a fence corner, for the southeast corner of this tract.

THENCE S. 79° 45' 59" W. along a barbed-wire fence line a distance of 68.00 feet to an iron pin found at a fence corner on the east line of the Missouri-Pacific Railroad 100-foot right-of-way, for the southwest corner of this tract.

THENCE northerly along a barbed-wire fence on the east right-of-way line of said Railroad right-of-way the following courses: N. 17° 40' 48" W. a distance of 196.02 feet to an iron pin found at an angle point; and N. 14° 22' 28" E. a distance of 114.07 feet to an iron pin set at a fence corner, for the northwest corner of this tract.

THENCE N. 78° 46' 54" E. along a barbed-wire fence line a distance of 124.90 feet to the point of beginning, and containing 0.699 acre of land.

Portion of Bexar County Property Tax ID: 348473.



**TRACT 3:**

**Lot A:**

- Those three (3) certain tracts of land designated as Tract No. One (1), Tract Number Two (2) and Tract Number Three (3), each containing Twenty-seven (27) acres of land, all out of a survey or subdivision of land of Two Hundred Sixteen (216) acres out of the C. Thieme Survey Number 1386-1/2, made and platted for the heirs of Antonio Huron, husband of Josefa G. Huron, by F. E. Grothouse, Surveyor, located in Bexar County, Texas, which plat is duly recorded in Vol. 927, pages 42-45, of the Deed Records of Bexar County, Texas, to which reference is here made, said three (3) tracts containing in all Eighty-one (81) acres of land; being the same land described in that certain deed from Dave Lehr, Inc., to B. J. Osburn dated January 15, 1947, and recorded in Volume 2335, pages 40-41, Deed Records of Bexar County, Texas;
- That certain tract containing twenty-seven (27) acres of land, more or less, out of Survey Number 1386-1/2, originally granted to C. Thieme in Bexar County, about 18 miles south of San Antonio, Texas. The said tract herein conveyed being known as Tract Number Four set apart to Alfredo Huron in a partition as shown on plat recorded in Volume 927, page 42 of the Deed Records of Bexar County, to which reference is hereby made for a full and more particular description of said twenty-seven (27) acres of land. And being the same property as described in deed dated August 3, 1933, from Alfredo Huron and wife, Vincenta Huron, to Lawrence F. Sultenfuss, which deed was filed for record in Volume 1363, Pages 570-71, of the Deed Records of Bexar County, Texas; and being the same land described in that certain deed from Lawrence F. Sultenfuss and wife, Laura L. Sultenfuss, to B. J. Osburn dated February 13, 1952, and recorded in Volume 3137, pages 547-548, Deed Records of Bexar County, Texas; and
- That certain tract or parcel of land in Bexar County, Texas, same being Tract No. Five (5) of a partition of the Estate of Antonio Huron, said partition being out of Surveys Nos. 1386-1/2 and 1386-1/4, in the name of C. Thieme, as same appears of record in Volume 927, pages 42 to 45, Deed Records of Bexar County, and more particularly described by metes and bounds as follows:

BEGINNING at the most eastern corner of Tract No. Four (4), and also the most northern corner of this tract; Thence S. 43° 30' W. 2422 feet to a stake in the East line of the old Pleasanton Road for a corner of this tract; Thence along the east side of said road, S. 11° 15' E. 313 feet and

S. 8° 30' E. 253 feet to a stake for the most southern corner of said Tract No. Five (5); Thence N. 43° 30' E. 2757 feet to a stake for the most eastern corner of Tract No. Five (5); Thence N. 46° 30' W. 455 feet to the place of beginning and containing 27 acres of land; being the same land described in that certain deed from Clarence Edward Sultenfuss to B. J. Osburn dated December 8, 1956, and recorded in Volume 3961, pages 85-87, Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348473 & 348474.

**Lot B:**

A tract of land containing 27 acres, more or less, designated as Tract #6, out of the Huron Subdivision, being an original tract of 216 acres, out of the C. Thieme Original Grantee Survey No. 1386 1/4 and Survey No. 1386 1/2, situated within County Block 5686, according to the Plat Records of the County Assessor's Office, of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**Lot C:**

Tract 7, County Block 4168, and Tract 8, County Block 4169, each containing 27 acres, more or less, out of a subdivision of 216 acres made by F.E. Grothaus for the heirs of Antonio Huron out of the C. Thieme Survey 1386 1/2 and 1386 1/4, Abstracts 754 and 755, and shown by play of partition and proof of heirship of the Estate of Antonio Huron, Sr., Deceased, recorded in Volume 927, Page 42, of the Deed Records of Bexar County, Texas.

Portion of Bexar County Property Tax ID: 348474.

**TRACT 4:**

**Lot A:**

Field notes of a 15.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of Lot No. 1 and 4.868 acres out of the north part of Lot No. 2 of the Carver Park Subdivision Unit No. Three according to a plat of record in Volume 3975, Page 176 of the Plat Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the north east corner of said Lot No. 1 and being the north end of Hardwich Drive.

Thence N. 41° 57' 45" W. 1304.57 feet with line of fence and the north line of said Lot No. 1 to an iron pin set at corner of fence for the north west corner of this tract and being the north west corner of Lot No. 1.

Thence S 43° 21' 29" W. 572.35 feet with the north east line of Lot No. 1 to an iron pin found for the south west corner of Lot No. 1 and the north west corner of Lot No. 2.

Thence S 43° 33' 24" W. 176.31 feet with the north east line of Lot No. 2 to an iron pin set for the south west corner of this tract.

Thence S 63° 54' 43" E. 1469.33 feet to an iron pin set in the west line of Hardwich Road for the south east corner of this tract.

Thence N 16° 57' 41" E. with the west line of Hardwich Drive, at 100.00 feet the north east corner of Lot No. 2 and the south east corner of Lot No. 1, in all 230.00 feet to the place of beginning and containing 15.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot B:**

Field Notes of a 6.00 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 1, said point being S 16° 57' 41" W. 230.00 feet from the north end of Hardwick Drive and being N 16° 57' 41" E. 323.00 feet from the south east corner of lot 2.

Thence N 63° 54' 43" W. 1469.33 feet with the south line of tract 1 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 1.

Thence S 43° 33' 24" W. 239.57 feet with the west line of lot 2 to an iron pin set for the south west corner of this tract and being the north west corner of tract 2-A.

Thence S 67° 56' 46" E. 1564.15 feet with the north line of tract 2-A to an iron pin set in the west line of Hardwick Drive for the south east corner of this tract and being the north east corner of tract 2-A.

Thence N 16° 57' 41" E. 120.00 feet with the west line of Hardwick Drive to the place of beginning and containing 6.00 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot C:**

Field notes of a 10.318 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being a part of lot 2 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwick Drive for the south east corner of this tract and being the south east corner of lot 2, said point being S 16° 57' 41" W. 553.00 feet from the north end of Hardwick Drive.

Thence N 16° 57' 41" E. 203.00 feet with the west line of Hardwick Dr. to an iron pin set for the north east corner of this tract and being the south east corner of tract 2.

Thence N 67° 56' 46" W. 1564.15 feet with the south line of tract 2 to an iron pin set in the west line of lot 2 for the north west corner of this tract and being the south west corner of tract 2.

Thence S 43° 33' 24" W. 373.45 feet with the west line of lot 2 to an iron pin found for the south west corner of this tract and being the south west corner of lot 2 and north west corner of lot 3.

Thence S 72° 58' 38" E. 1712.80 feet with the south line of lot 2 and the north line of lot 3 to the place of beginning and containing 10.318 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot D:**

Field notes of a 20.720 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 3 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly of described by metes and bounds as follows:

Beginning at an iron pin set for the north east corner of this tract and being the north east corner of lot 3 and south east corner of lot 2 and tract 2-A.

Thence N 72° 58' 38" W. 1712.80 feet with the north line of lot 3 and the south line of lot 2 and tract 2-A to an iron pin found for the north west corner of this tract and lot 3 and being the south west corner of lot 2 and tract 2-A.

Thence S 43° 00' 20" W. 548.39 feet with the west line of lot 3 to an iron pin found for the south west corner of this tract and lot 3 and the north west corner of lot 4 and tract 4.

Thence S 73° 00' 41" E. 1953.58 feet with the south line of lot 3 and the north line of lot 4 and tract 4 to an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and lot 3 and the north east corner of lot 4 and tract 4.

Thence N 16° 57' 41" E. 491.80 feet with the west line of Hardwich Dr. to the place of beginning and containing 20.720 acres of land, according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot E:**

Field notes of a 20.793 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4 being all of lot 4 of the Carver Park Subdivision Unit No. 3 according to a plat of record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive.

Thence N 16° 57' 41" E. 440.00 feet with the west line of Hardwich Dr. to an iron pin found for the north east corner of this tract and lot 4 and the south east corner of lot 3 and tract 3.

Thence N. 73° 00' 41" W. 1953.58 feet with the south line of tract 3 and lot 3 and the north line of lot 4 to an iron pin found for the north west corner of this tract and lot 4 and the south west corner of lot 3 and tract 3.

Thence S. 43° 01' 45" W. 488.47 feet with the west line of lot 4 to an iron pin found for the south west corner of this tract and lot 4 and the north east corner of lot 5 and tract 5.

Thence S 72° 58' 50" E. 2168.23 feet with the south line of lot 4 and the north line of lot 5 and tract 5 to the place of beginning and containing 20.793 acres of land, according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot F:**

Field notes of a 12.635 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 4, said point being S 16° 57' 41" W. 1424.80 feet from the north end of Hardwich Drive and being the south east corner of lot 4 and the north east corner of lot 5.

Thence N 72° 58' 50" W. 2168.23 feet with the south line of tract 4 and lot 4 to an iron pin set for the north west corner of this tract and being the south west corner of tract 4 and lot 4 and the north west corner of lot 5.

Thence S 43° 01' 45" W. 446.00 feet with the west line of lot 5 to an iron pin set for the south west corner of this tract and being the south west corner of lot 5 and the north west corner of lot 6.

Thence S 72° 58' 23" E. 1313.71 feet with the north line of lot 6 to an iron pin set for the south east corner of this tract and being the south west corner of tract 5-A.

Thence N 17° 01' 37" E. 341.43 feet to an iron pin set for a corner of this tract.

Thence S 72° 57' 35" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive.

Thence N 16° 57' 41" E. 60.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 12.635 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot G:**

Being all of Tract No. 5-A out of the Carver Park Subdivision No. 3, as per map or plat of said subdivision appearing of record in Vol. 3975, page 176, Deed or Plat Records, Bexar County, Texas, said Tract 5-A containing 3,168 acres of land, more or less, and being described as follows:

Field notes of a 3.168 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 5 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 5, said point being N 16° 57' 41" E. 596.46 feet from the end of Hardwich Drive.

Thence N 72° 58' 23" W. 1050.22 feet with the south line of lot 5 to an iron pin set for the south west corner of this tract and being the south east corner of tract 5,

Thence N 17° 01' 37" E. 131.43 feet with the west line of tract 5 to an iron pin set for the north west corner of this tract.

Thence S 72° 58' 23" E. 1050.00 feet to an iron pin set in the west line of Hardwich Drive for the north east corner of this tract.

Thence S 16° 57' 41" W. 131.43 feet with the west line of Hardwich Dr. to the place of beginning and containing 3.168 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot H:**

Field notes of a 13.504 acre tract of land situated in Bexar County, Texas out of the C Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, Page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the north east corner of this tract and being the south east corner of tract 5-A and lot 5, said point being N 16° 57' 41" E. 596.40 feet from the south end of Hardwich Drive and being the north east corner of lot 6.

Thence N 72° 58' 23" W. 2363.93 feet with the south line of tract 5-A and 5 to an iron pin set for the north west corner of this tract and being the south west corner of tract 5.

Thence S 43° 01' 00" W. 270.05 feet with the west line of lot 6 to an iron pin set for the south west corner of this tract and being the north west corner of tract 7.

Thence S 72° 58' 23" E. 2482.75 feet with the north line of tract 7 to an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the north east corner of tract 7.

Thence N 16° 57' 41" E. 242.74 feet with the west line of Hardwich Dr. to the place of beginning and containing 13.504 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot I:**

Being all of Tract Number Seven (7), containing 7.212 acres of land, more or less, out of the Carver Park Subdivision No. 3, in Bexar County, Texas, as per map or plat of said Subdivision appearing of record in Vol. 3975, Page 176, Deed or Plat Records, Bexar County, Texas;

Field notes of a 7.212 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey No. 1386 1/4, being a part of lot 6 of the Carver Park Subdivision Unit No. 3 according to a plat of Record in Volume 3975, page 176 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive for the south east corner of this tract and being the south east corner of lot 6, said point being N 16° 57' 41" E. 228.66 feet from the south end of Hardwich Drive, being the south east corner of lot 6.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of lot 6 to an iron pin set for the south west corner of this tract and being the south west corner of lot 6.

Thence N 43° 01' 00" E. 139.06 feet with the west line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of tract 6.

Thence S 72° 58' 23" E. 2482.75 feet with the south line of tract 6 to an iron pin set in the west line of Hardwick Drive for the north east corner of this tract and being the south east corner of tract 6.

Thence S 16° 57' 41" W. 125.00 feet with the west line of Hardwich Dr. to the place of beginning and containing 7.212 acres of land according to a Survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot J:**

Field notes of a 13.740 acre tract of land situated in Bexar County, Texas out of the C. Thieme Survey being a part of a 271 acre tract described in Deed Recorded in Volume 1281, page 442 of the Deed Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the west line of Hardwich Drive at the south end of Hardwich Drive for the south east corner of this tract, said point being S 16° 57' 41" W. 228.66 feet from the south east corner of Carver Park Subdivision Unit No. 3.

Thence N 16° 57' 41" E. 228.66 feet with the west line of Hardwich Dr. to an iron pin set for the north east corner of this tract and being the south east corner of lot 6 of the Carver Park Subdivision.

Thence N 72° 58' 23" W. 2543.83 feet with the south line of Lot 6 to an iron pin set for the north west corner of this tract and being the south west corner of said lot 6.

Thence S 43° 01' 00" W. 257.77 feet to an iron pin set for the south west corner of this tract.

Thence S 73° 02' 19" E. 2657.05 feet with line of fence and the north line of a 74.0 acre tract described in Deed of Trust recorded in Volume 3340, page 290, Deed of Trust Records of Bexar County, Texas to the place of beginning and containing 13.740 acres of land according to a survey on the ground by Amil M. Baker, Jr., Surveying.

Portion of Bexar County Property Tax ID: 181780.

**Lot K:**

A 75.76 acre tract out of the south part of a 271.00 acre tract, recorded in Volume 3340, Page 290, Deed of Trust, Bexar County, Texas, said 75.76 acres being 8.06 acres out of the J. Kafka Survey 710, Abstract 1210, County Block 4170, and 67.70 acres out of the C. Thieme Survey Number

1386 1/4, Abstract 754, County Block 4168, Bexar County, Texas, said 75.76 acres being situated approximately twenty miles south of the courthouse in Bexar County, Texas.

COMMENCING: from an iron pin found in the east right-of-way line of Hardwich Drive, sixty foot (60') right-of-way, said iron pin being a corner of a 14.309 acre tract recorded in Volume 3389, Page 1150, Deed Records, Bexar County, Texas;

THENCE: N 71° 46' 54" W, 13.83 feet along the south line of Hardwich Drive to a fence post for the northwest corner of said 14.309 acre tract and the northeast corner and POINT OF BEGINNING of this tract;

THENCE: Along the west line of said 14.309 acre tract as follows:

THENCE: S 18° 15' 00" W, 177.48 feet to an iron pin set for an angle point;

THENCE: S 76° 41' 11" E, 27.68 feet to an iron pin found at a fence post for an angle point;

THENCE: S 16° 35' 27" W, 203.79 feet along a fence line to an iron pin at a fence post found for an angle point;

THENCE: S 11° 04' 04" W, 468.49 feet along a fence to an iron pin at a fence post found for an angle point;

THENCE: S 10° 55' 20" E, 42.02 feet along a fence to an iron pin found for an angle point;

THENCE: S 71° 45' 01" E, 110.06 feet to an iron pin found for the east corner of this tract and the southeast corner of said 14.309 acre tract;

THENCE: S 48° 30' 00" W, 991.58 feet along a fence line and the west line of the Clifford F. Uzzell 19.09 acre tract and the southeast line of the C. Thieme Survey Number 1386 1/4 to an iron pipe found at a fence corner for the south corner of said C. Thieme Survey 1386 1/4 and the southeast corner of this tract;

THENCE: N 41° 04' 59" W, 1423.00 feet with a fence line and the southwest line of the C. Thieme Survey 1386 1/4 and the northwest line of the David Dickson 19.987 acre tract to an iron pin set for a corner of this tract;

THENCE: S 71° 51' 37" W, 176.44 feet with a fence line to an iron pin found at a fence corner for a corner of this tract;

THENCE: N 71° 31' 03" W, 10.00 feet to an iron pin set for a corner of this tract, and the northeast corner of the Julius Espey 3.33 acre tract;

THENCE: N 88° 55' 06" W, 510.00 feet along the north line of the Julius Espey 3.33 acre tract to an iron pin set in the east right-of-way line of the S. A. U. & G. Railroad for the southeast corner of this tract;

THENCE: N 07° 13' 51" W, 1355.00 feet along the fenced the east right-of-way line of the S. A. U. & G. Railroad to an iron pin set for the northwest corner of this tract;

THENCE: N 48° 33' 39" E, 48.14 feet to an iron pin set at a fence post for a corner of this tract;



THENCE; S 71° 46' 54" E, 2698.87 feet along the south line of a 13.74 acre tract recorded in Volume 2856, Page 476, Deed Records, Bexar County, Texas, to the POINT OF BEGINNING and containing 75.76 acres of land.

Portion of Bexar County Property Tax ID: 181780.

**Lot L:**

A 4.871 acre tract of land, more or less out of the A.Y. Ojeda Survey No. N494, Abstract No. 1246, County Block 4162, situated in Bexar County, Texas, and being more particularly described as follows, to wit:

BEGINNING: at the Northwest corner of Tract 23, Halliday Acres Subdivision, recorded in Volume 2222 Page 341, of the plat Records of Bexar County, Texas;

THENCE: Northerly 205.0' with the West line of Tract 24 in said Halliday Acres Subdivision, to a point in same, an iron pin set for the Northwest corner of the herein described tract, said point being Southerly 5.0" measured along the West line of said Tract 24, from the Northwest corner of Tract 24;

THENCE: Westerly 992.86' with the North line of the herein described tract, and making an angle from South to West of 90° with the last previously described line, to its intersection with the fence line on the Southwest side of a tract of land known as the Hair tract, same being the Northeast side of the C.H. Thieme, O.S. 1386 1/4, an iron pin set for the Northwest corner of the herein described tract;

THENCE: Southeasterly 352.48' with said fence line, and making an angle from East to South of 44° 02' with the last previously described line, to a point in same, an iron pin set, for the Southwest corner of the herein described tract;

THENCE: Easterly 739.16' with the South line of the herein described tract, and making an angle from Northwest to East of 135° 58' with the last previously described line, to its intersection with the West line of said Tract 23, Halliday Acres Subdivision, an iron pin set, for the Southeast corner of the herein described tract;

THENCE: Northerly 40.0' with the West line of said Tract 23, and making an angle from West to North of 90° with the last previously described line, to the PLACE OF BEGINNING. Containing: 4.871 acres of land, more or less.

Portion of Bexar County Property Tax ID: 181780.

**Lot M:**

Field notes of a 1.8939 acre tract of land situated in Bexar County, Texas, out of the A. Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being part of that tract described in Deed conveyed to Thomas N. Moore, dated August 16, 1983, and recorded in Volume 7167, Page 1,

Deed Records of Bexar County, Texas, and part of that tract described in Deed conveyed to Thomas N. Moore, dated November 7, 1963, as recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Highway 281, for the southeast corner of this tract and being N 04° 08' 58" E. 105.39 feet along said right-of-way line from its intersection with the cutoff to the north right-of-way line of Mogford Road.

Thence with fence along the southwest line of this tract and the northeast lines of Lots 1-7 of Carver Park Subdivision Unit 1, Plat recorded in Volume 3850, Page 155, part of Duke Drive, a 10.635 acre tract, Hardwich Drive and part of Tract 1, of Carver Park Subdivision Unit 3, Plat recorded in Volume 3975, Page 176, Nat Records of Records of Bexar County, Texas as follows:

N 42° 53' 00" W. 320.78 feet to an iron pin found at an angle point.

N 42° 27' 17" W. 561.37 feet to an iron pin found at the northwest corner of Duke Drive for an angle in this line.

N 42° 29' 56" W. 492.01 feet to an iron pin set at an angle being the south corner of the tract recorded in Volume 5055, Page 218, Deed Records of Bexar County, Texas.

N 42° 23' 59" W. 320.79 feet to an iron pin set for the northwest corner of this tract being in the north line of Tract 1, Carver Park Subdivision Unit 3,

Thence S 80° 25' 57" E. 233.06 feet along the north line of this tract to an iron pin set in the west line of Lot 21 of the Halliday Acres Subdivision recorded in Volume 2222, Page 341, Plat Records of Bexar County, Texas, for the northeast corner of this tract.

Thence S 03° 54' 03" W. 125.72 feet with fence along the west line of Lots 21 and 20 of said Halliday Acres Subdivision to an iron pin set at the north corner of the tract recorded in Volume 7167, Page 1, being a corner of Lot 20 and the interior corner of this tract.

Thence along the southwest line of Lots 20, 19, 18, 17 and 16 of Halliday Acres Subdivision as follows:

S 41° 34' 10" E. 863.35 feet to an iron pin at the southwest corner of Lot 18 and the northwest corner of Lot 17, being an angle in this line.

S 42° 26' 41" E. 304.16 feet to an iron pin found at the southwest corner of Lot 17 and the west corner of Lot 16.

S 43° 18' 36" E. 219.40 feet along the southwest line of Lot 16 to an iron pin set in the west right-of-way line of U.S. Highway 281 for a northeast corner of this tract.

Thence S 04° 08' 58" W. 54.85 feet along the west right-of-way line of U.S. Highway 281 to the place of beginning and containing 1.8939 acres of land according to a survey on the ground on January 2, 1986, by Baker Surveying, Inc.

**SAVE AND EXCEPT:**

Field notes of a 1.1279 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 1.8939 acre tract recorded in Volume 4322, Page 362, Real Property records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin found in the west right-of-way line of U.S. Hwy. 281 at the east corner of this tract and the 1.8939 acre tract, being at the south corner of Lot 16, Halliday Acres Subdivision.

Thence S 04° 08' 58" W. 54.85 feet along the west line of U.S. Hwy. 281 to an iron pin found for the southeast corner of the 1.8939 acre tract and this tract.

Thence N 42° 52' 28" W. 320.78 feet along the southwest line of the 1.8939 acre tract to an iron pin found at an angle point and N 42° 27' 35" W. 901.33 feet to an iron pin set at the west corner of this tract being the northeast corner of a 1.0179 acre tract this day surveyed;

Thence S 86° 05' 29" E. 70.26 feet along the north line of this tract across the 1.8939 acre tract to an iron pin set for the north corner of this tract.

Thence along the northeast line of the 1.8939 acre tract as follows:

S 41° 31' 11" E. 610.10 feet to an iron pin found at an angle point; S 42° 26' 41" E. 304.16 feet to an iron pin found at an angle point;

S 43° 18' 36" E. 219.40 feet to the place of beginning and containing 1.1279 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot N:**

Field notes of a 1.0179 acre tract of land situated in Bexar County, Texas, out of the A.Y. Ojeda Survey No. 94, Abstract 1251, County Block 5944, being out of that 10.635 acre tract recorded in Volume 4048, Page 1444, Real Property Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows:

Beginning at an iron pin set in the east line of Hardwich Drive at its northeast corner being the northwest corner of this tract and the 10.635 acre tract and being N 42° 53' 00" W. 320.78 feet and N 42° 27' 35" W. 1284.08 feet from a point in the west line of U.S. Hwy. 281.

Thence S 42° 27' 35" E. 382.75 feet along the northeast line of the 10.635 acre tract to an iron pin set for the east corner of this tract, being the west corner of a 1.1279 acre tract on this day surveyed.

Thence N 86° 05' 29" W. 335.77 feet along the south line of this tract to an iron pin set in the east line of Hardwich Drive for the southwest corner of this tract.

Thence N 16° 26' 50" E. 270.56 feet along the east line of Hardwich Drive to the place of beginning and containing 1.0179 acres of land according to a survey on the ground on April 11, 1990, by Baker Surveying, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot O:**

Lot 20, HALLIDAY ACRES SUBDIVISION in Bexar County, Texas, according to plat recorded in Vol. 2222, p. 341, Deed and Plat Records, Bexar County, Texas; SAVE AND EXCEPT that portion conveyed to the State of Texas by Deed recorded in Vol. 5447, p. 318, Deed Records, Bexar County, Texas.

Portion of Bexar County Property Tax ID: 181780.

**Lot P:**

BEING that certain 0.4225 acre of land, more or less, out of the A. Y. Ojeda Sur. No. 94, Abstract 1251, County Block 5944, being a portion of Hardwich Drive, Bexar County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an iron pin found at the northeast corner of Hardwich Drive at the northwest corner of a 1.0179 acre tract conveyed to Robert L. Tooke;

THENCE S. 16° 26' 50" W. 270.56 feet along the east line of said Hardwich Drive to an iron pin found at the southwest corner of said 1.0179 acre tract, for the southeast corner of this tract;

THENCE N. 86° 05' 29" W. 60.76 feet across Hardwich Drive to a point on its west line for the southwest corner of this tract;

THENCE N. 12° 58' 05" E. 332.29 feet along the west line of Hardwich Drive to a point for its northwest corner;

THENCE S. 42° 23' 59" E. 72.92 feet along the north line of said Hardwich Drive to the place or BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot Q:**

Field notes of a 3.233 acre tract of land situated in Bexar County, Texas, being the same land conveyed in Warranty Deed recorded in Volume 689, Page 406, of the Deed Records of Bexar County, Texas, and being more particularly described by metes and bounds as follows: (Note: All iron pins set are ½" rebar with a yellow plastic cap stamped "Baker Surveying").

Beginning at a 1 ½" iron pipe found in the east right-of-way line of the Missouri Pacific Railroad at the southwest corner of this tract, the most westerly northwest corner of a 25.92 acre tract of land conveyed to Osburn Sand Company recorded in Volume 6944, Page 1400 of the Official Records of Bexar County, Texas, from which the north right-of-way line of Hume Road bears

Thence N 08°26'31" W., 286.62 feet with the west line of this tract, the east right-of-way line of Missouri Pacific Railroad to an iron pin set for the northwest corner of this tract, the southwest corner of an 8.06 acre tract conveyed to Osburn Sand Company recorded in Volume 4977, Page 199 of the Official Records of Bexar County, Texas.

Thence S 89°11'00" E., 520.90 feet with the north line of this tract, the south line of said 8.06 acre tract to a 1/2" iron pin found for the northeast corner of this tract an angle point of said 8.06 acre tract and the most northerly northwest corner of said 25.92 acre tract.

Thence S 00°49'00" W., 282.89 feet with the east line of this tract and an interior line of the 25.92 acre tract to a 1 1/2" iron pipe found for the southeast corner of this tract and an interior corner of said 25.92 acre tract.

Thence N 89°11'00" W., 474.79 feet with the south line of this tract and the most southerly north line of said 25.92 acre tract to the place of beginning and containing 3.233 acres of land according to a survey made on the ground on June 25, 1998 by Baker Surveying & Engineering, Inc.

Portion of Bexar County Property Tax ID: 181780.

**Lot R:**

A certain tract of land containing TWENTY-FIVE AND NINETY-TWO (25.92) HUNDREDTHS ACRES comprising the North Part of the Curtis Bell Tract of 45.908 acres described in Deed from Robert Hausser, et ux, to Curtis Bell, dated May 16, 1972, and recorded in Vol. 6813, p. 787, Deed Records of Bexar County, Texas. The said 25.92 acres is out of the South One-Half (1/2) of A.Y. Ojeda Survey 94, Abstract 1247, County Block 4162 in Bexar County, Texas. The said 25.92 acres fronts on the west side of Sunset Road and extends westward to the east right-of-way line of S.A.U. & O. Railroad, being about sixteen miles in a southerly direction from the Court House in Bexar County, Texas.

BEGINNING at an iron pipe on the east right-of-way line of S.A.U. & O. Railroad for the Southwest corner of said 25.92 acres, and being the Northwest corner of a tract of 20.00 acres; said Point of Beginning being 1333.58 feet North 8 deg., 30' West from the north line of Hume Road;

THENCE with fence along the east right-of-way line of S.A.U. & O. Railroad, North 8 deg. 30' West, 611.30 feet to an iron pipe, the Northwest corner of this tract;

THENCE with fence South 89 deg. 11' East, 474.79 feet to an iron pipe for an interior corner;

THENCE with fence North 00 deg. 34' East, 282.89 feet to an iron pipe for a corner;

THENCE with fence North 71 deg. 21' East, 175.35 feet to an iron pipe, the most northerly corner of this tract;

THENCE with fence South 42 deg. 24' East, 1421.18 feet to an iron pipe for an interior corner of this tract;

THENCE with fence North 47 deg. 05' East, 173.57 feet to an iron pipe for a corner;

THENCE with fence South 8 deg. 33' West, 413.10 feet to an iron pipe on west line of Sunset Road, the southeast corner of this tract;

THENCE with fence along the south line of said 25.92 acres, being the north line of said 20.00 acres; North 75 deg. 40' West, 1628.00 feet to the PLACE OF BEGINNING.

Portion of Bexar County Property Tax ID: 181780.

**Lot S:**

19.09 acres, being Tracts 1, 2, 3, 4, and 9, out of a survey dated March 16, 1955, by Earl J. Wentworth, being out of the A. Y. Ojeda Survey No. 94, Abstract No. 1147, County Block 41622, in Bexar County, Texas, said 19.09 acre parcel being the same property conveyed to Grantors herein by Warranty Deed dated March 27, 1961, recorded in Vol. 4579, p. 225, Deed Records, Bexar County, Texas, executed by J.F. Hair and being more particularly described by metes and bounds as follows:

BEGINNING at the SW corner of Tract No. 6 of HALLIDAY ACRES;

THENCE S. with the W. line of said Halliday Acres, 340.10 feet to a point for the SE corner of this tract;

THENCE W. 1280.80 ft. to a PT. for the SW corner of this tract; THENCE N. 05 deg. E. 244.51 ft. to a pt. for the NW corner of this tract;

THENCE N. 43 deg. 40' E. 1407.02 ft. to a pt. for the NE corner of this tract; THENCE S. 921.28 ft. and E. 288.00 feet to the PLACE OF BEGINNING. Portion of Bexar County Property Tax ID: 181780.

**Tract 5:**

**Lot A:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

First Tract of land out of the John Kalka Survey No. 710, better described by metes and bounds as follows:

Beginning at the N.W. corner of the J.H. Nass 3.14/100 acre tract for the beginning place. Thence running East along the North line of the said 3.14/100 acre tract at 155 feet to a stake set on the West line of the S. A. U. & G. R. R. for the Southeast corner of this tract. Thence running North along the West line of said S. A. U. & G. R. R. to a stake set for the N.E. corner of this tract. Thence running along the N.E. line of the John Kalka survey No. 710 where said survey intersects with the Pleasanton Road a stake set for the N.W. corner of this tract. Thence South along the East side of the Pleasanton Road to the place of beginning.

**Lot B:**

Beginning at an iron pipe set for the Southeast corner of Tract 20, of the J. B. Couric Sub. Bexar County Plat Record Vol. 642, Pg. 267, thence with a projection of this South line of TR. 20 in an Easterly direction a distance of 20.0 feet to a RR Spike set in center-line of old Pleasanton Road; thence in a Southwesterly direction with said center-line of Old Pleasanton Road a distance of 313.7 ft. to RR spike; thence N. 43° 30' E a distance of 58.1 to an iron pin set in East property-line of Old Pleasanton Road, same being set for the Southwest corner of herein described tract and point of beginning;

THENCE continuing N. 43° 30' E. a distance of 193.5 ft. to an iron pin set in the West property line of No. Pac. RR r-o-w, same being set for the Southeast cor. of this tract;

THENCE N. 8° 30' W. along the West property line of said RR r-o-w a distance of 906.0 feet to an iron pin set for the Northeast corner of this tract;

THENCE S. 43°50 W. a distance of 197.0 ft. along old fence to an iron pin set in the East property line of old Pleasanton Road for the Northwest corner of this tract;

THENCE S. 5° 27 E a distance of 147.0 ft. along the East property line of Old Pleasanton Road to an iron pin set at angle point;

THENCE continuing in a Southeasterly direction along the East r-o-w of said Road a distance of 770.0 ft. to an iron pin set for Southwest corner and point of beginning containing 3.12 acres more or less.

Bexar County Property Tax ID: 181781.

**Lot C:**

All that certain property situated in the County of Bexar, State of Texas, described as follows, to-wit:

Second Tract out of the John Kalka survey No. 710, and better described as follows, beginning at the Southeast corner of the J.H. Nass 3.14/100 acre tract for the beginning place.

Thence running south along the West line of the S. A. U. & G. R. R. to a stake set at 300 feet for the S.E. corner of this tract the same being the N.E. corner of the Haiduk tract of land.

Thence running West along the North line of the Haiduk Tract and parallel with the South line of the J.H. Nass 3.14/100 acre tract for the S.W. corner of this tract.

Thence running North along the East line of the Pleasanton Road to a stake set at 300 feet for the N.W. corner of this tract. Thence running East along the J.H. Nass 3.14/100 acre tract at 140 feet to the place of beginning.

**TRACT 6:**

**Lot A:**

A certain tract of land containing 100 acres, comprising parts of Tracts 3, 4, 5, 6, 7, 8 and 9 of the J.B. Couric subdivision of 565.64 acres out of Survey Nos. 710, 1386 and 1386Y2, situated about 18 miles in a southerly direction from the Courthouse in Bexar County, Texas, according to the plat thereof of said Couric Subdivision, recorded in Volume 642, Page 267, Plat Records of Bexar County, Texas, said 100 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" X 4" cedar post on the west line of said Couric Subdivision and being the northwest corner of said Tract No. 5;

THENCE with the north line of Tract No. 5, N 89° 59' E, 2,370 feet to an iron pipe at the south-east corner of a tract of 50 acres;

THENCE N 00° 01' W, 847.2 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet;

THENCE with the north line of Tract No. 3, S 79° 44' E, 1,133.4 feet to an iron pipe for a corner of this tract;

THENCE S 13° 16' W, 661.9 feet to an iron pipe on the north line of Tract No. 5 for a corner;

THENCE with the north line of Tract No. 5, N 89° 59' E, 1,031.2 feet to an iron pipe on the west line of Old Pleasanton Road for a corner of this tract;

THENCE with the west line of Pleasanton Road, S 16° 28 1/2' E, 131 feet to an iron pipe for a corner;

THENCE S 89° 59' W, 826.4 feet to an iron pipe for corner;

THENCE S 15° 21' E, 666 feet to an iron pipe at an angle;

THENCE S 10° 19' E, 304.95 feet to an iron pipe, the southeast corner of said 100 acres;

THENCE W 3,234.4 feet to an iron pipe, the southwest corner of said 100 acres; THENCE N 00° 01' E, 681.57 feet to an auto axle for a corner of this tract;

THENCE N 65° 54' W, 679.7 feet to another auto axle for a corner of this tract;

THENCE with fence, N 24° 12 'A' E, 119.4 feet to the PLACE OF BEGINNING, according to field notes and survey by James C. Adams, Licensed State Land Surveyor, dated January 1953;

**SAVE AND EXCEPT:**

Ten thousand (10,000) square feet of land out of a 565.64 acre tract located approximately one mile from the county line between Bexar County and Atascosa County on Pleasanton Road in Bexar County, Texas, out of Survey No. 1386 V2, and being the same tract of land conveyed by deed of Texas State Bank, July 28, 1926, to J.B. Couric, said deed being recorded in Volume 905, Page 152, Deed Records of Bexar County, Texas, said 10,000 square feet of land being described by metes and bounds as follows, to-wit:



BEGINNING at a stake on the property line between Lots 4 and 5 of the said Couric property, at a point 1,126 feet due West of the west side of Pleasanton Road and 60 feet due East of a point at the intersection of the high line of the Comal Power Company from San Antonio to Pleasanton and the property line between Lot 4 and Lot 5 of the Couric property;

THENCE due South 76 feet, 6 inches to a stake;

THENCE due West 60 feet to the said high line of the Comal Power Company; THENCE due West 40 feet to a stake;

THENCE due North 76 feet, 6 inches to the property line between Lot 4 and Lot 5 of the said Couric property;

THENCE due North 23 feet, 6 inches to a stake;

THENCE due East 40 feet to the said high line of said Comal Power Company; THENCE due East 60 feet to a stake;

THENCE due South 23 feet, 6 inches to the PLACE OF BEGINNING, containing 10,000 square feet, more or less, according to Quitclaim Deed from J.B. Couric to Comal Power Company, dated April 29, 1927 and recorded in Volume 1107, Page 513, Bexar County Deed Records; and

Portion of Bexar County Property Tax ID: 347950.

**Lot B:**

A tract of land containing 50 acres, being the west part of Tracts 3 and 4 of the J.B. Couric subdivision of 565.64 acres, said 50 acres being out of the James Taylor Survey 1386, in Bexar County, Texas according to plat thereof recorded in Volume 642, Page 267 of the Deed and Plat Records of Bexar County, Texas, 50 acres being more particularly described by metes and bounds as follows, to-wit:

BEGINNING at a 4" x 4" post at the southwest corner of Tract 4 of said Couric Subdivision; THENCE with fence, N 24° 12 1/2' E, 1,294.8 feet to a 4" X 4" post, the northwest corner of Tract 3;

THENCE with the north line of Tract 3, S 79° 44' E, 1,868.8 feet to an iron pipe, the northwest corner of said 50 acres, from which a 14 inch L.O. bears N 49° 20' E, 138.2 feet and an 8 inch L.O. bears S 58° 10' E, 106.5 feet;

THENCE S 00° 01' W, 847.2 feet to an iron pipe on the south line of Tract 4, the southeast corner of said 50 acres;

THENCE S 89° 59' W, 2,370.0 feet to the PLACE OF BEGINNING and containing 50 acres of land, more or less;

Portion of Bexar County Property Tax ID: 347950.

**Lot C:**

BEING a 0.614 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.614 acre tract being more particularly described as follows:

BEGINNING at a metal pipe found in the south line of said Tract No. 4 for the most southerly corner of the herein described tract; said metal pipe found being North 89° 57' 22" West, 1031.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west Right-of-Way (R.O.W.) line of Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 13° 28' 25" West, 352.01 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 85° 15' 00" East, 160.00 feet along the north line of said Tract No. 4 to a 1/2" iron rod set for the northeast corner of the herein described tract;

THENCE, South 13° 14' 27" West, 338.06 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**Lot D:**

BEING a 0.871 acre tract of land out of Tract No. 4, J.B. Couric Subdivision, recorded in Volume 642, Page 267, Deed and Plat Records, Bexar County, Texas out of the Chris Thieme Survey No. 1386 1/2, Abstract 755, County Block 4169, Bexar County, Texas, said 0.871 acre tract being more particularly described as follows:

BEGINNING at a 1/2" iron rod set in the south line of said Tract No. 4 for the southeast corner of the herein described tract, said 1/2" iron rod set being North 89° 57' 22" West, 840.09 feet along the south line of said Tract No. 4 from a metal pipe found in the west R.O.W. line of said Pleasanton Rd. for the southeast corner of said Tract No. 4;

THENCE, North 89° 57' 22" West, 191.00 feet along the south line of said Tract No. 4 to a metal pipe found for the southwest corner of the herein described tract;

THENCE, North 13° 14' 27" East, 338.06 feet across said Tract No. 4 to a 1/2" iron rod set in the north line of said Tract No. 4 for the northwest corner of the herein described tract;

THENCE, South 84° 40' 21" East, 40.99 feet along the north line of said Tract No. 4 to a metal pipe found for the northeast corner of the herein described tract;

THENCE, South 12° 36' 06" East, 333.45 feet across said Tract No. 4 to the POINT OF BEGINNING.

Portion of Bexar County Property Tax ID: 347950.

**File Information**

**eFILED IN THE OFFICIAL PUBLIC eRECORDS OF BEXAR COUNTY  
LUCY ADAME-CLARK, BEXAR COUNTY CLERK**

**Document Number:** 20190110552

**Recorded Date:** June 12, 2019

**Recorded Time:** 11:18 AM

**Total Pages:** 73

**Total Fees:** \$310.00

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Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was eFILED in File Number Sequence on this date and at the time stamped hereon by me and was duly eRECORDED in the Official Public Record of Bexar County, Texas on: 6/12/2019 11:18 AM



*Lucy Adame-Clark*  
Lucy Adame-Clark  
Bexar County Clerk

# Exhibit B

I-2019-000729 Book 3199 Pg: 278  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00



**Return to:**  
**CHRISTENSEN LAW GROUP, P.L.L.C.**  
 c/o: Jon M. Miles  
 3401 N.W. 63<sup>rd</sup> Street, Suite 600  
 Oklahoma City, Oklahoma 73116

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

ML-19-3

## MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT

[illegible]

KNOW ALL MEN BY THESE PRESENTS:

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and duly authorized representative, pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corncs of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom Market and Johnson, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That the amount of the lien claimed totals Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about May 1, 2018, Market and Johnson, Inc. entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; *See Exhibit "A"* for description of the labor, materials and services furnished and provided;

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State of Oklahoma

That pursuant to the agreement and/or contract with Superior Silica Sands, LLC, Market and Johnson, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

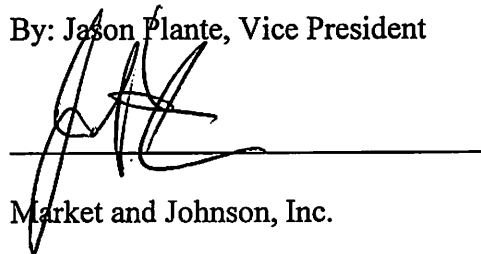
That the date upon which the labor last performed was on or about January 2, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Market and Johnson, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Market and Johnson, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

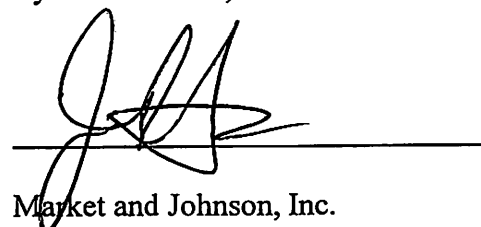


Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

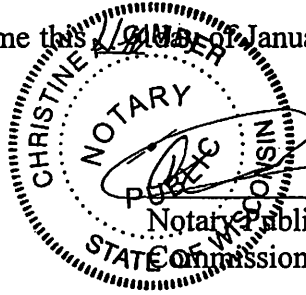


Market and Johnson, Inc.

I-2019-000729 Book 3199 Pg: 280  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 19th day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.



My Commission Expires:

Is Permanent

[SEAL]



# APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 101865

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814 Superior Silica Sands Dover -  
Oklahoma  
Dover OK 73734

Application No.: 1  
Period To: 10/31/2018

From Contractor: Market & Johnson, Inc.

Via Architect: ENDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Contract For: Eau Claire, WI 54703

Contract Date:

Project Nos:


Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

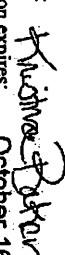
## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By:  Date: 11/13/18  
DocuSigned by: FT2010473FFMAC9...

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November 2018  
Notary Public:   
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**  
In accordance with the Contract Documents, based on on-site observation and information comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

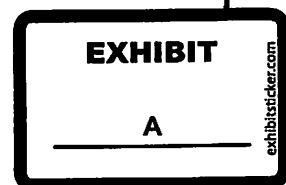
ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$1,441,745.00
5. Retainage :
  - a. 2.32% of Completed Work ..... \$33,511.00
  - b. 0.00% of Stored Material ..... \$0.00
- Total Retainage ..... \$33,511.00
6. Total Earned Less Retainage ..... \$1,408,234.00
7. Less Previous Certificates For Payments ..... \$0.00
8. Current Payment Due ..... \$1,408,234.00
9. Balance To Finish, Plus Retainage ..... \$3,195,040.00

CHANGE ORDER SUMMARY		
	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	



**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 1

Application Date: 10/31/2018

To: 10/31/2018

Architect's Project No.:

A	B	C	D		E	F	G		H		I
Item No.	Description of Work	Scheduled Value	Work Completed		This Period In Place	Materials Presently Stored  (Not in D or E)	Total Completed and Stored To Date (D+E+F)	%(G / C)	Balance To Finish (C-G)	Retainage	
			From Previous Application (D+E)								
01500	Construction Management & General (	478,334.00	0.00		77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00	
03300	Concrete Foundations	1,067,495.00	0.00		320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00	
05100	Structural Steel	637,095.00	0.00		445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00	
11990	Equipment	800,000.00	0.00		320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00	
14100	Chute Piping	100,000.00	0.00		0.00	0.00	0.00	0.00%	100,000.00	0.00	
22100	Air Piping	98,000.00	0.00		0.00	0.00	0.00	0.00%	98,000.00	0.00	
23200	Dust Collection	570,738.00	0.00		0.00	0.00	0.00	0.00%	570,738.00	0.00	
50600	Mechanical/Engineering Fees	156,394.00	0.00		156,394.00	0.00	156,394.00	100.00%	0.00	0.00	
80000	Process Equipment	354,235.00	0.00		91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00	
95000	Fee 8%	340,983.00	0.00		29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00	
Grand Totals		4,603,274.00	0.00		1,441,745.00	0.00	1,441,745.00	31.32%	3,161,529.00	33,511.00	

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01/25/2019 9:30 am Pg 0278-0297

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2  
Period To: 11/30/2018

From Contractor: Markel & Johnson, Inc.

Via Architect: ENDeCo Engineers Inc.

2350 Galloway Street  
Eau Claire, WI 54703

PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00  
2. Net Change By Change Order ..... \$0.00  
3. Contract Sum To Date ..... \$4,603,274.00  
4. Total Completed and Stored To Date ..... \$2,698,949.00  
5. Retainage :  
    a. 0.00% of Completed Work ..... \$0.00  
    b. 0.00% of Stored Material ..... \$0.00  
Total Retainage ..... \$0.00  
6. Total Earned Less Retainage ..... \$2,698,949.00  
7. Less Previous Certificates For Payments ..... \$1,408,234.00  
8. Current Payment Due ..... \$1,290,715.00  
9. Balance To Finish, Plus Retainage ..... \$1,904,325.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Markel & Johnson, Inc.

By: [Signature] Date: 12/12/18

State of: Wisconsin County of: Kingfisher  
Subscribed and sworn to before me this 12 day of December  
Notary Public: [Signature]  
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**  
In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed satisfactorily and the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 111836

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 2

Application Date: 11/30/2018

To: 11/30/2018

Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General (	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

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 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 121850

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 3

Period To: 12/31/2018

From Contractor: Market &amp; Johnson, Inc.

Via Architect: ENDeCo Engineers Inc.

2350 Galloway Street  
Eau Claire, WI 54703

PO Box 329

Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.


CONTRACTOR: Market &amp; Johnson, Inc.

By: 

Date: 1/8/19

State of: Wisconsin

Subscribed and sworn to before me this 8 day of January, 2019

Notary Public: 

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation and review of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$3,220,478.00
5. Retainage:	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$0.00
6. Total Earned Less Retainage	\$3,220,478.00
7. Less Previous Certificates For Payments	\$2,698,949.00
8. Current Payment Due	\$521,529.00
9. Balance To Finish, Plus Retainage	\$1,382,796.00

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 121850

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 3

Application Date: 12/31/2018

To: 12/31/2018

Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G/C)	I Balance To Finish (C-G)	L Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>69.96%</b>	<b>1,382,796.00</b>	<b>0.00</b>

I-2019-000729 Book 3199 Pg: 286  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 11 day of January, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jason Plante, Vice President of Market and Johnson, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 11~~th~~ day of January, 2019.

FURTHER AFFIANT SAYETH NOT.

**Jason Plante, Vice President**



I-2019-000729 Book 3199 Pg: 288

01/25/2019 9:30 am Pg 0278-0297

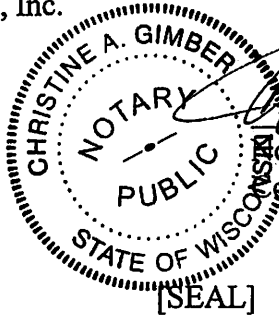
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11 day of January, 2019, by Jason Plante, Vice  
President of Market and Johnson, Inc.

My Commission Expires:

Is Permant



Notary Public

Commission No. \_\_\_\_\_



01/25/2019 9:30 am Pg 0278-0297

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT MARKET AND JOHNSON, INC., 2350 GALLOWAY STREET, EAU CLAIRE, WISCONSIN, 54703, (715) 834-1213, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., by and through Jason Plante, its Vice President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Superior Silica Sands, LLC, by and through its representatives, Josh Clements and Brian Middleton, 1512 East Division Avenue, Barron, Wisconsin, 54812, requested that Market and Johnson, Inc. provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was first supplied on or about May 1, 2018 and that the Property Owner has been served this Pre-

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

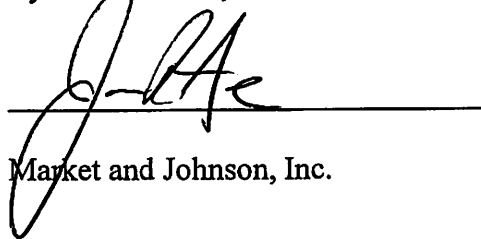
Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 2, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. is entitled to and may be entitled to a lien in the amount of Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

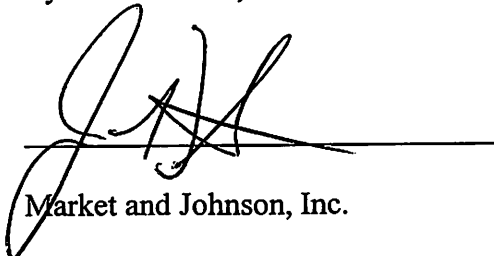


Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Pre-Lien Notice; that I have read said Pre-Lien Notice and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibit is just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President



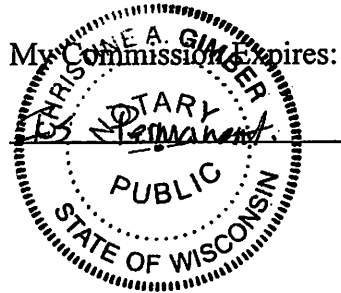
Market and Johnson, Inc.

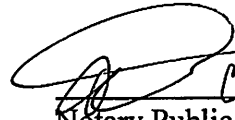
01/25/2019 9:30 am Pg 0278-0297

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 14 day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.



  
Christine A. Gimber  
Notary Public  
Commission No. \_\_\_\_\_

[SEAL]

# APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 101865

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
Dover OK 73734

Application No.: 1  
Period To: 10/31/2018

From Contractor: Market & Johnson, Inc.

Via Architect: EndCo Engineers Inc.

2350 Galloway Street  
Eau Claire, WI 54703

PO Box 329  
Marshall TX 75671-0329

Contract For:

Contract Date:


Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor


## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By:  Date: 11/13/18  
F2010473FFAC9

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November, 2018  
Notary Public:   
My Commission expires: October 16, 2022

### ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and information comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

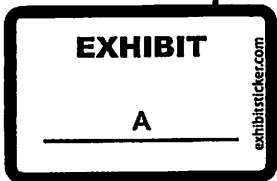
ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$1,441,745.00
5. Retainage :
  - a. 2.32% of Completed Work ..... \$33,511.00
  - b. 0.00% of Stored Material ..... \$0.00
- Total Retainage ..... \$33,511.00
6. Total Earned Less Retainage ..... \$1,408,234.00
7. Less Previous Certificates For Payments ..... \$0.00
8. Current Payment Due ..... \$1,408,234.00
9. Balance To Finish, Plus Retainage ..... \$3,195,040.00



**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No.: 1

Application Date: 10/31/2018

To: 10/31/2018

Architect's Project No.:

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

A	B	C	D		E	F	G		H	I
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not in D or E)	Total Completed and Stored To Date (D+E+F)	% (G / C)	Balance To Finish (C-G)	Retainage	
			From Previous Application (D+E)	This Period In Place						
01500	Construction Management & General (	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00	
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00	
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00	
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00	
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00	
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00	
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00	
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00	
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00	
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00	
Grand Totals		4,603,274.00	0.00	1,441,745.00	0.00	1,441,745.00	31.32%	3,161,529.00	33,511.00	

I-2019-000729 Book 3199 Pg: 293  
01/25/2019 9:30 am Pg 0278-0297

I-2019-000729 Book 3199 Pg: 293  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757Project: 2814 Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734Application No.: 2  
Period To: 11/30/2018Distribution to:  
☐ Owner  
☐ Architect  
☐ ContractorFrom Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703Via Architect: ENDeCo Engineers, Inc.  
P.O. Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

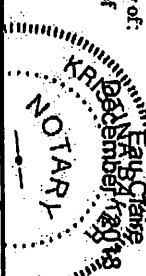
By: [Signature] Date: 12/12/18

State of: Wisconsin County of: Eau Claire

Subscribed and sworn to before me this 12 day of

Notary Public: [Signature]

My Commission expires: October 16, 2022



1. Original Contract Sum ..... \$4,603,274.00

2. Net Change By Change Order ..... \$0.00

3. Contract Sum To Date ..... \$4,603,274.00

4. Total Completed and Stored To Date ..... \$2,698,949.00

5. Retainage:

a. 0.00% of Completed Work ..... \$0.00

b. 0.00% of Stored Material ..... \$0.00

Total Retainage ..... \$0.00

6. Total Earned Less Retainage ..... \$2,698,949.00

7. Less Previous Certificates For Payments ..... \$1,408,234.00

8. Current Payment Due ..... \$1,290,715.00

9. Balance To Finish, Plus Retainage ..... \$1,904,325.00

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

**CHANGE ORDER SUMMARY**

Additions

Deductions

Total changes approved in previous months by Owner

\$0.00

\$0.00

\$0.00

Total Approved this Month

\$0.00

\$0.00

\$0.00

Net Changes By Change Order

\$0.00

\$0.00

\$0.00

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 2

Application Date : 11/30/2018

To: 11/30/2018

Architect's Project No.:

Invoice #: 111836

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

I-2019-000729 Book 3199 Pg: 295  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 121850

To Owner: Superior Silica Sands LLC

Project: 2814- Superior Silica Sands Dover -

Application No.: 3

Distribution to:

140 West Pine Street  
New Auburn, WI 54757Oklahoma  
13479 E 690 Road  
Dover OK 73734

Period To: 12/31/2018

☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Markel &amp; Johnson, Inc.

Via Architect: EnDeCo Engineers Inc.

2350 Galloway Street

PO Box 329

Project Nos:

Eau Claire, WI 54703

Marshall TX 75671-0329

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Markel &amp; Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin

Subscribed and sworn to before me this

8

County of: KRISTINA B. ADAMS  
day of: January 2019  
Eau Claire, WINotary Public: [Signature]

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation, I hereby certify that the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

The quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$3,220,478.00
5. Retainage:	
a. 0.00% of Completed Work .....	\$0.00
b. 0.00% of Stored Material .....	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$3,220,478.00
7. Less Previous Certificates For Payments .....	\$2,698,949.00
8. Current Payment Due .....	\$521,529.00
9. Balance To Finish, Plus Retainage .....	\$1,382,796.00

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	



**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No.: 3  
 Application Date: 12/31/2018  
 To: 12/31/2018  
 Architect's Project No.:

Invoice #: 121850

Contract: 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>69.96%</b>	<b>1,382,796.00</b>	<b>0.00</b>

I-2019-000729 Book 3199 Pg: 297  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

I-2019-004955 Book 3236 Pg: 77  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**Return to:**  
CHRISTENSEN LAW GROUP, P.L.L.C.  
c/o: Jon M. Miles  
3401 N.W. 63<sup>rd</sup> Street, Suite 600  
Oklahoma City, Oklahoma 73116

**FIRST AMENDED MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT**  
**[Related to Book 3199, Pages 278-297]**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**KNOW ALL MEN BY THESE PRESENTS:**

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and duly authorized representative, pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom Market and Johnson, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That the amount of the lien claimed totals Three Million Nine Hundred Fifty-Seven Thousand Eighty-Eight and 00/100ths Dollars (\$3,957,088.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about May 1, 2018, Market and Johnson, Inc. entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; See Exhibit "A" for description of the labor, materials and services furnished and provided;

I-2019-004955 Book 3236 Pg: 78  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

That pursuant to the agreement and/or contract with Superior Silica Sands, LLC, Market and Johnson, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

That the date upon which the labor last performed was on or about January 2, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Market and Johnson, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Market and Johnson, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 11<sup>th</sup> day of June, 2019.

By: Jason Plante, Vice President

  
\_\_\_\_\_  
Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

  
\_\_\_\_\_  
Market and Johnson, Inc.

I-2019-004955 Book 3236 Pg: 79  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

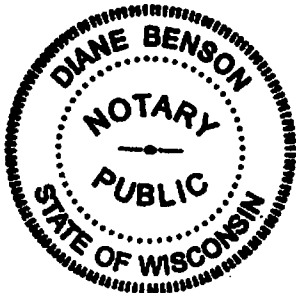
Subscribed and sworn to before me this 11<sup>th</sup> day of June, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

Diane Benson  
Notary Public, State of Wisconsin  
Commission No.                     

My Commission Expires:

6/14/2019

[SEAL]



To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
Dover OK 73734

Application No.: 1  
Period To: 10/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

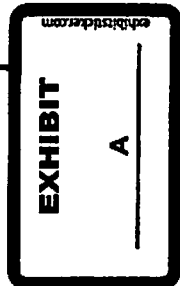
From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Contract For:



## CONTRACTOR'S APPLICATION FOR PAYMENT

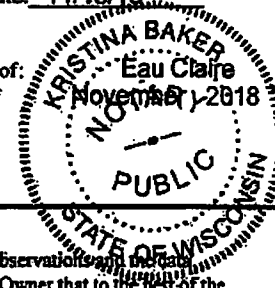
Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 11/13/18  
F7201D473FFA4C8..

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November 2018  
Notary Public: Kristina Baker  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

## ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$1,441,745.00
5. Retainage :	
a 2.32% of Completed Work	\$33,511.00
b 0.00% of Stored Material	\$0.00
Total Retainage .....	\$33,511.00
6. Total Earned Less Retainage .....	\$1,408,234.00
7. Less Previous Certificates For Payments .....	\$0.00
8. Current Payment Due .....	\$1,408,234.00
9. Balance To Finish, Plus Retainage .....	\$3,195,040.00

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 80  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeanne Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 1

Application Date : 10/31/2018

To: 10/31/2018

Architect's Project No.:

Invoice #: 101865

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	E Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			D From Previous Application (D+E)	E This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

I-2019-004955 Book 3236 Pg. 81  
 06/19/2019 2:21 pm Pg 0077-0096  
 Fee: \$ 53.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2

Period To: 11/30/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

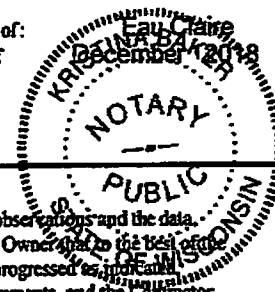
Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 12/12/18

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 12 day of December 2018  
Notary Public: [Signature]  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$2,698,949.00
5. Retainage :	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$2,698,949.00
7. Less Previous Certificates For Payments .....	\$1,408,234.00
8. Current Payment Due .....	\$1,290,715.00
9. Balance To Finish, Plus Retainage .....	\$1,904,325.00

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 82  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 2

Application Date : 11/30/2018

To: 11/30/2018

Architect's Project No.:

Invoice #: 111836

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

I-2019-004955 Book 3236 Pg. 83  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



# APPLICATION AND CERTIFICATE FOR PAYMENT

Case 1:19-cv-00128-RBO Doc 1-3 Filed 10/25/19 Page 29 of 61

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 3

Period To: 12/31/2018

Distribution to :  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$3,220,478.00
5. Retainage :	
a. 0.00% of Completed Work .....	\$0.00
b. 0.00% of Stored Material .....	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$3,220,478.00
7. Less Previous Certificates For Payments .....	\$2,698,949.00
8. Current Payment Due .....	\$521,529.00
9. Balance To Finish, Plus Retainage .....	\$1,382,796.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin  
Subscribed and sworn to before me this 8 day of January, 2019  
Notary Public: Kristina Baker  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 84  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 3

Application Date : 12/31/2018

To: 12/31/2018

Architect's Project No.:

Invoice #: 121850

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	E Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			D From Previous Application (D+E)	This Period In Place					
					(Not in D or E)	(D+E+F)			
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>69.96%</b>	<b>1,382,796.00</b>	<b>0.00</b>

I-2019-004955 Book 3236 Pg: 85  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

I-2019-004955 Book 3236 Pg: 86  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 11 day of January, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

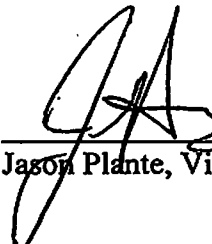
2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jason Plante, Vice President of Market and Johnson, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 11 day of January, 2019.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Jason Plante, Vice President

EXHIBIT

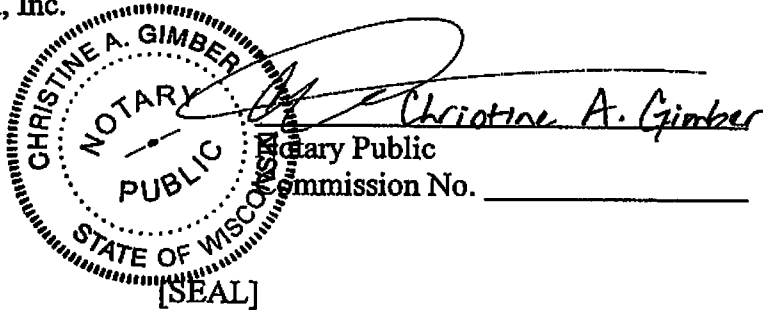
B

I-2019-004955 Book 3236 Pg: 87  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11 day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:

Is Permanent



06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT MARKET AND JOHNSON, INC., 2350 GALLOWAY STREET, EAU CLAIRE, WISCONSIN, 54703, (715) 834-1213, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., by and through Jason Plante, its Vice President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Superior Silica Sands, LLC, by and through its representatives, Josh Clements and Brian Middleton, 1512 East Division Avenue, Barron, Wisconsin, 54812, requested that Market and Johnson, Inc. provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was first supplied on or about May 1, 2018 and that the Property Owner has been served this Pre-

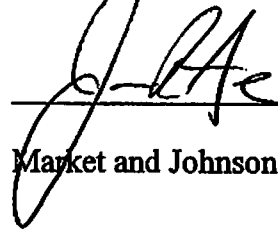
Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 2, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. is entitled to and may be entitled to a lien in the amount of Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

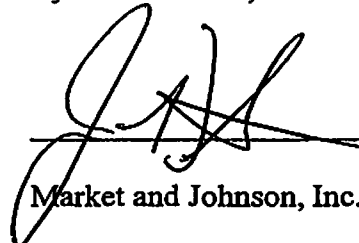


Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Pre-Lien Notice; that I have read said Pre-Lien Notice and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibit is just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

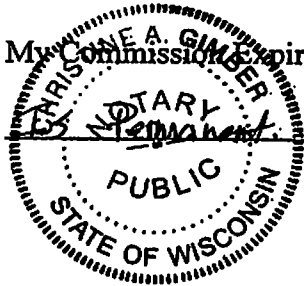



Market and Johnson, Inc.

I-2019-004955 Book 3236 Pg: 90  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 1<sup>st</sup> day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:



  
Christine A. Gimber  
Notary Public  
Commission No. \_\_\_\_\_

[SEAL]

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
Dover OK 73734

Application No. 1  
Period To: 10/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

EXHIBIT

A

**CONTRACTOR'S APPLICATION FOR PAYMENT**


Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$1,441,745.00
5. Retainage :	
a. 2.32% of Completed Work	\$33,511.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$33,511.00
6. Total Earned Less Retainage	\$1,408,234.00
7. Less Previous Certificates For Payments	\$0.00
8. Current Payment Due	\$1,408,234.00
9. Balance To Finish, Plus Retainage	\$3,195,040.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

DocuSigned by:  
By:  Date: 11/13/18  
F7201D473FFA4C9...

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November 2018  
Notary Public:   
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and a review comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	- Additions	- Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

1-2019-004955 Book 3236 Pg: 91  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 1

Application Date : 10/31/2018

To: 10/31/2018

Architect's Project No.:

Invoice #: 101865

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date  (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,987.00	0.00	445,987.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

I-2019-004955 Book 3236 Pg: 92  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814 Superior Silica Sands Doyer  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2  
Period To: 11/30/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Contract For:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$2,698,949.00
5. Retainage:	
a. 0.00% of Completed Work .....	\$0.00
b. 0.00% of Stored Material .....	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$2,698,949.00
7. Less Previous Certificates For Payments .....	\$1,408,234.00
8. Current Payment Due .....	\$1,290,715.00
9. Balance To Finish, Plus Retainage .....	\$1,904,325.00

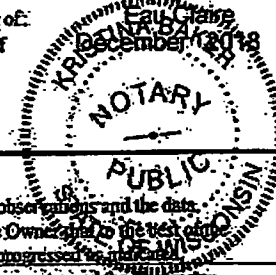
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 12/12/18

State of: Wisconsin  
Subscribed and sworn to before me this 12 day of  
Notary Public: Kristina Baker  
My Commission expires: October 16, 2022

County of: Eau Claire

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner and to the best of the Architect's knowledge, information, and belief, the Work has progressed to the extent that the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 93  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment containing:

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No.: 2

Application Date: 11/30/2018

To: 11/30/2018

Architect's Project No.:

Invoice #: 111836

Contract: 2814 Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work:	C Scheduled Value:	D Work Completed:		F Materials Presently Stored  (Not in B or E)	G Total Completed and Stored To Date  (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

1-2019-004955 Book 3236 Pg. 94  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

# APPLICATION AND CERTIFICATE FOR PAYMENT

Case 19-50738-KBO Doc 1-3 Filed 10/25/19 Page 40 of 61

Invoice #: 121850

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 3  
Period To: 12/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall, TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$3,220,478.00
5. Retainage:	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$0.00
6. Total Earned Less Retainage	\$3,220,478.00
7. Less Previous Certificates For Payments	\$2,898,949.00
8. Current Payment Due	\$521,529.00
9. Balance To Finish, Plus Retainage	\$1,362,796.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin  
Subscribed and sworn to before me this 8 day of January, 2019.  
Notary Public: [Signature]  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observation and the \$66,000.00 amount comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ 521,529.00

(Attach expansion if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg. 95  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

# CONTINUATION SHEET

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retentions for line items may apply.

Invoice #: 121850

Contract: 2814 Superior Silica Sands Dover - Oklahoma

Architect's Project No.:

Tot

12/31/2018

Application Date: 12/31/2018

Application No.:

3

A Item No.	B Description of Work	C Scheduled Value		D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C-G)	I Retainage
		From Previous	This Period	In Place	(D+E)				
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,087,495.00	880,621.00	0.00	0.00	880,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Crude Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	268,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
Grand Totals		4,603,274.00	2,698,949.00	521,529.00	0.00	3,220,478.00	69.96%	1,382,796.00	0.00

I-2019-004955 Book 3236 Pg: 96  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeanie Boevers - Kingfisher County Clerk  
State of Oklahoma

I-2019-004955 Book 3236 Pg: 77  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**Return to:**  
CHRISTENSEN LAW GROUP, P.L.L.C.  
c/o: Jon M. Miles  
3401 N.W. 63<sup>rd</sup> Street, Suite 600  
Oklahoma City, Oklahoma 73116

**FIRST AMENDED MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT**  
**[Related to Book 3199, Pages 278-297]**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**KNOW ALL MEN BY THESE PRESENTS:**

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and duly authorized representative, pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom Market and Johnson, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That the amount of the lien claimed totals Three Million Nine Hundred Fifty-Seven Thousand Eighty-Eight and 00/100ths Dollars (\$3,957,088.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about May 1, 2018, Market and Johnson, Inc. entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; See Exhibit "A" for description of the labor, materials and services furnished and provided;

I-2019-004955 Book 3236 Pg: 78  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

That pursuant to the agreement and/or contract with Superior Silica Sands, LLC, Market and Johnson, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

That the date upon which the labor last performed was on or about January 2, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Market and Johnson, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Market and Johnson, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 11<sup>th</sup> day of June, 2019.

By: Jason Plante, Vice President

  
\_\_\_\_\_  
Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

  
\_\_\_\_\_  
Market and Johnson, Inc.

I-2019-004955 Book 3236 Pg: 79  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

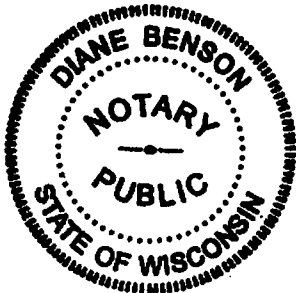
Subscribed and sworn to before me this 11<sup>th</sup> day of June, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

Diane Benson  
Notary Public, State of Wisconsin  
Commission No.                     

My Commission Expires:

6/14/2019

[SEAL]





To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
Dover OK 73734

Application No.: 1  
Period To: 10/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

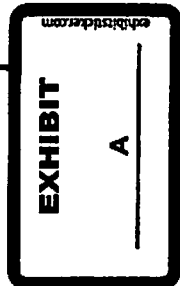
From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Contract For:



## CONTRACTOR'S APPLICATION FOR PAYMENT

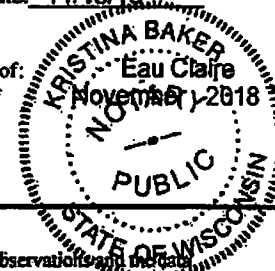
Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 11/13/18  
DocuSigned by: F7201D473FFA4C8..

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November, 2018  
Notary Public: Kristina Baker  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$1,441,745.00
5. Retainage:	
a. 2.32% of Completed Work	\$33,511.00
b. 0.00% of Stored Material	\$0.00
Total Retainage .....	\$33,511.00
6. Total Earned Less Retainage .....	\$1,408,234.00
7. Less Previous Certificates For Payments .....	\$0.00
8. Current Payment Due .....	\$1,408,234.00
9. Balance To Finish, Plus Retainage .....	\$3,195,040.00

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 80  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeanne Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 1

Application Date : 10/31/2018

To: 10/31/2018

Architect's Project No.:

Invoice #: 101865

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	E Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			D From Previous Application (D+E)	E This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

I-2019-004955 Book 3236 Pg. 81  
 06/19/2019 2:21 pm Pg 0077-0096  
 Fee: \$ 53.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2

Period To: 11/30/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00

2. Net Change By Change Order ..... \$0.00

3. Contract Sum To Date ..... \$4,603,274.00

4. Total Completed and Stored To Date ..... \$2,698,949.00

5. Retainage :

a. 0.00% of Completed Work ..... \$0.00

b. 0.00% of Stored Material ..... \$0.00

Total Retainage ..... \$0.00

6. Total Earned Less Retainage ..... \$2,698,949.00

7. Less Previous Certificates For Payments ..... \$1,408,234.00

8. Current Payment Due ..... \$1,290,715.00

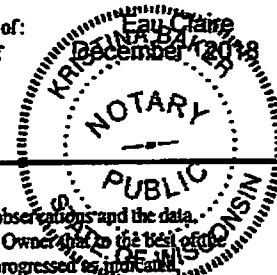
9. Balance To Finish, Plus Retainage ..... \$1,904,325.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 12/12/18

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 12 day of December 2018  
Notary Public: [Signature]  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 82  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 2

Application Date : 11/30/2018

To: 11/30/2018

Architect's Project No.:

Invoice #: 111836

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

I-2019-004955 Book 3236 Pg. 83  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

# APPLICATION AND CERTIFICATE FOR PAYMENT

Case 19-50728-RBO Doc 1-3 Filed 10/25/19 Page 49 of 61

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 3

Period To: 12/31/2018

Distribution to :  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$3,220,478.00
5. Retainage :	
a. 0.00% of Completed Work .....	\$0.00
b. 0.00% of Stored Material .....	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$3,220,478.00
7. Less Previous Certificates For Payments .....	\$2,698,949.00
8. Current Payment Due .....	\$521,529.00
9. Balance To Finish, Plus Retainage .....	\$1,382,796.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin

Subscribed and sworn to before me this 8 day of

Notary Public: Kristina Baker

My Commission expires: October 16, 2022

County of: Eau Claire  
January 8, 2019  
NOTARY PUBLIC  
STATE OF WISCONSIN

## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 84  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 3

Application Date : 12/31/2018

To: 12/31/2018

Architect's Project No.:

Invoice #: 121850

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	E Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			D From Previous Application (D+E)	This Period In Place					
					(Not in D or E)	(D+E+F)			
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>69.96%</b>	<b>1,382,796.00</b>	<b>0.00</b>

I-2019-004955 Book 3236 Pg: 85  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

I-2019-004955 Book 3236 Pg: 86  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 11 day of January, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

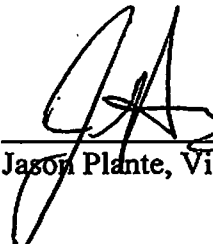
2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jason Plante, Vice President of Market and Johnson, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 11 day of January, 2019.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Jason Plante, Vice President

EXHIBIT

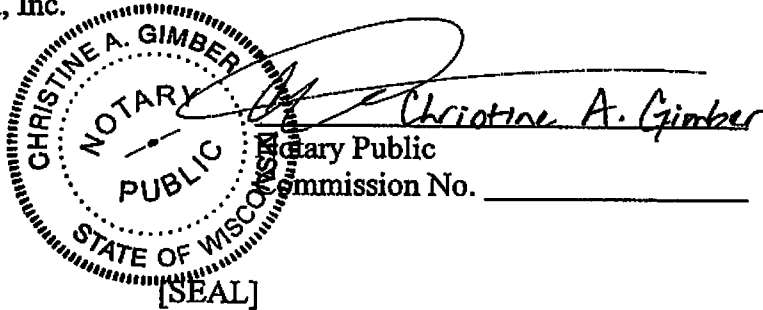
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I-2019-004955 Book 3236 Pg: 87  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11 day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:

Is Permanent





06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT MARKET AND JOHNSON, INC., 2350 GALLOWAY STREET, EAU CLAIRE, WISCONSIN, 54703, (715) 834-1213, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., by and through Jason Plante, its Vice President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Superior Silica Sands, LLC, by and through its representatives, Josh Clements and Brian Middleton, 1512 East Division Avenue, Barron, Wisconsin, 54812, requested that Market and Johnson, Inc. provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was first supplied on or about May 1, 2018 and that the Property Owner has been served this Pre-

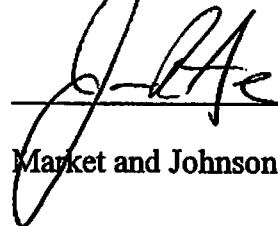
Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 2, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. is entitled to and may be entitled to a lien in the amount of Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 11<sup>th</sup> day of January, 2019.

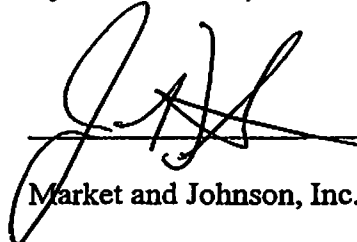
By: Jason Plante, Vice President

  
\_\_\_\_\_  
Market and Johnson, Inc.

\_\_\_\_\_  
STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Pre-Lien Notice; that I have read said Pre-Lien Notice and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibit is just, true and correct to the best of my knowledge, information and belief.

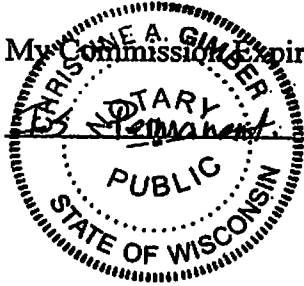
By: Jason Plante, Vice President


  
\_\_\_\_\_  
Market and Johnson, Inc.

I-2019-004955 Book 3236 Pg: 90  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 1<sup>st</sup> day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:



  
Christine A. Gimber  
Notary Public  
Commission No. \_\_\_\_\_

[SEAL]

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover-  
Oklahoma  
Dover OK 73734

Application No. 1

Period To: 10/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

**EXHIBIT****A****CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$1,441,745.00
5. Retainage :	
a. 2.32% of Completed Work	\$33,511.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$33,511.00
6. Total Earned Less Retainage	\$1,408,234.00
7. Less Previous Certificates For Payments	\$0.00
8. Current Payment Due	\$1,408,234.00
9. Balance To Finish, Plus Retainage	\$3,195,040.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

DocuSigned by:

By:

F7201D473FFA4C9...

Date: 11/13/18

State of: Wisconsin

Subscribed and sworn to before me this 13 day of November 2018

Notary Public:

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and a review comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	- Additions	- Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

1-2019-004955 Book 3236 Pg: 91  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 1

Application Date : 10/31/2018

To: 10/31/2018

Architect's Project No.:

Invoice #: 101865

Contract : 2814- Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored  (Not in D or E)	G Total Completed and Stored To Date  (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,987.00	0.00	445,987.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

I-2019-004955 Book 3236 Pg: 92  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814 Superior Silica Sands Doyer  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2  
Period To: 11/30/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
P.O. Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

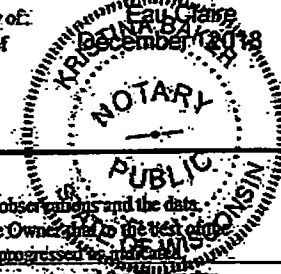
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. Original Contract Sum .....	\$4,603,274.00
2. Net Change By Change Order .....	\$0.00
3. Contract Sum To Date .....	\$4,603,274.00
4. Total Completed and Stored To Date .....	\$2,698,949.00
5. Retainage:	
a. 0.00% of Completed Work .....	\$0.00
b. 0.00% of Stored Material .....	\$0.00
Total Retainage .....	\$0.00
6. Total Earned Less Retainage .....	\$2,698,949.00
7. Less Previous Certificates For Payments .....	\$1,408,234.00
8. Current Payment Due .....	\$1,290,715.00
9. Balance To Finish, Plus Retainage .....	\$1,904,325.00

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 12/12/18

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 12 day of December 2018  
Notary Public: Kristina Baker  
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner and to the best of the Architect's knowledge, information, and belief, the Work has progressed to the extent that the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 93  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment containing:

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Application No. : 2

Application Date : 11/30/2018

To: 11/30/2018

Architect's Project No.:

Invoice #: 111836

Contract: 2814 Superior Silica Sands Dover - Oklahoma

A Item No.	B Description of Work:	C Scheduled Value:	D Work Completed		F Materials Presently Stored  (Not in B or E)	G Total Completed and Stored To Date  (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

1-2019-004955 Book 3236 Pg. 94  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

# APPLICATION AND CERTIFICATE FOR PAYMENT

Case 19-50738-KBO Doc 1-3 Filed 10/25/19 Page 60 of 61

Invoice #: 121850

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma:  
13479 E 690 Road  
Dover OK 73734

Application No.: 3  
Period To: 12/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.  
PO Box 329  
Marshall, TX 75671-0329

Project Nos:

Contract For:

Contract Date:

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$3,220,478.00
5. Retainage:	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$0.00
6. Total Earned Less Retainage	\$3,220,478.00
7. Less Previous Certificates For Payments	\$2,898,949.00
8. Current Payment Due	\$521,529.00
9. Balance To Finish, Plus Retainage	\$1,362,796.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin  
Subscribed and sworn to before me this 8 day of January, 2019.  
Notary Public: [Signature]  
My Commission expires: October 16, 2022



## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observation and the \$66,000.00 amount comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ 521,529.00

(Attach extension if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

I-2019-004955 Book 3236 Pg: 95  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



# CONTINUATION SHEET

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable payments for time items may apply.

Invoice #: 121850

Contract: 2814 Superior Silica Sands Dover - Oklahoma

Architect's Project No.:

For

12/31/2018

Application Date: 12/31/2018

Application No.:

3

A Item No.	B Description of Work	C Scheduled Value		D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C-G)	I Retainage
		From Previous	This Period	In Place	(D+E)				
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,087,495.00	880,621.00	0.00	0.00	880,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Crude Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	268,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
Grand Totals		4,603,274.00	2,698,949.00	521,529.00	0.00	3,220,478.00	69.96%	1,382,796.00	0.00

I-2019-004955 Book 3236 Pg: 96  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeanie Boevers - Kingfisher County Clerk  
State of Oklahoma

# Exhibit C



Sandra Ray <sandra@suretyteam.com>

---

**RE: Document Results Superior Silica Sands, LLC**

1 message

---

Pittman, Brock <Brock@christensenlawgroup.com>

Fri, Jul 26, 2019 at 5:22 PM

To: Sandra Ray <sandra@suretyteam.com>

Cc: "Christensen, J. Clay" <Clay@christensenlawgroup.com>, "Miles, Jonathan M." <Jon@christensenlawgroup.com>

Sandra:

After reviewing the information you have provided us and follow-up discussions with my colleagues as to the lack of a mortgage, we would like to do an additional title search on the property. For this second title report, could we go back an additional three years from where the search started last time – I believe from the Special Warranty Deed filed on October 1, 2018? We are still looking for any type of mortgage, lien, or related agreement that would encumber the real property. We would request that this matter be expedited as much as possible next week as well. Please let me know of any questions or concerns you may have on this.

Thank you and have a good weekend!

Brock Z. Pittman | Attorney  
CHRISTENSEN LAW GROUP, P.L.L.C.

The Parkway Building

3401 N.W. 63<sup>rd</sup> Street | Suite 600

Oklahoma City | Oklahoma | 73116

T: 405.232.2020 | F: 405.228.1181

[brock@christensenlawgroup.com](mailto:brock@christensenlawgroup.com)

[www.christensenlawgroup.com](http://www.christensenlawgroup.com)



*Bill add \$85<sup>00</sup>*

*These are the only  
DOCS filed since  
Oct 1, 2015*

This message is sent by CHRISTENSEN LAW GROUP, P.L.L.C., a law firm, and may contain information that is privileged and/or confidential. If you received this transmission in error, please notify the sender immediately by reply e-mail and delete the message and any attachments.

**From:** Sandra Ray [mailto:sandra@suretyteam.com]

**Sent:** Thursday, July 25, 2019 12:46 PM

**To:** Pittman, Brock <Brock@christensenlawgroup.com>

**Subject:** Document Results Superior Silica Sands, LLC

Mr. Pittman,

Please find attached packets marked A and B. I divided it into 2 separate packets because of the number of documents.

Please note that there are no Mortgages filed.

Attached are:

Mechanic Liens

Lease

Deed

Tax print out

Invoice.

Please feel free to contact us with any questions or concerns.

Thank You,

Sandra

[sandra@suretyteam.com](mailto:sandra@suretyteam.com)

Surety Title, Inc.

P.O. Box 166

Enid, OK 73702

(405) 459-0011

**Surety Title Service of Enid, Inc.**

P. O. Box 66  
Enid, OK 73702 US  
(405)459-0011  
dray@suretyteam.com

# Invoice

**BILL TO**

Brock Pittman  
Christensen Law Group,  
P.L.L.C.  
3401 N.W. 63rd Street, Suite  
600  
Oklahoma City, OK 73116

**INVOICE # 61846****DATE 07/25/2019****DUE DATE 08/24/2019****TERMS Net 30****SALES REP**

DR

ACTIVITY	QTY	RATE	AMOUNT
<b>Documents</b>	1	85.00	85.00
Document Search: Superior Silica Sands LLC			
<b>Rural Fee</b>	1	25.00	25.00
Rural Fee for Kingfisher County			
<b>Misc</b>	1	25.00	25.00
Copy Fee			
<b>Misc</b>	1	85.00	85.00
Additional Title Search			
<b>Copy \$2.00</b>	27	1.00	27.00
Additional Copies			

**BALANCE DUE****\$247.00**

I-2014-105884 Book 2755 Pg: 199

12/15/2014 11:42 am Pg 0199-0205

Fee: \$ 25.00 Doc: \$ 0.00

TERESA WOOD - Kingfisher County Clerk  
State of OklahomaSTATE OF OKLAHOMA  
LOGAN COUNTY SS  
FILED FOR RECORD

## IN THE DISTRICT COURT OF LOGAN COUNTY

STATE OF OKLAHOMA

2014 DEC -9 AM 10: 06

In the Matter of the Estate of )

Case No. PB-2014-92

VICTOR CHARLES EMMERICH, )

BY \_\_\_\_\_ DEPUTY

Deceased )

**ORDER DETERMINING HEIRS-AT-LAW  
AND FINAL DECREE OF DISTRIBUTION**

This matter coming on for hearing this 9th day of December, 2014, on the Petition for Distribution, Determination of Heirs-at-Law and Discharge as filed by Linda Huffman, now also known as Linda Huffman Best, Personal Representative of the Estate of Victor Charles Emmerich, Deceased ("Personal Representative"), and pursuant to an Order of this Court entered on the 20th day of November, 2014, and this Court having examined the Petition for Distribution, Determination of Heirs-at-Law and Discharge, and the Personal Representative being represented by the Personal Representative's attorneys, Steven C. Davis of Hartzog Conger Cason & Neville, and the Court having considered the evidence and being fully advised in the premises and there being no objections,

**FINDS, ORDERS, ADJUDGES AND DECREES AS FOLLOWS:**

1. The date of this hearing has been fixed and due notice given as required by law and by order of this Court, and as appears more fully from the Affidavits of Publication and Mailing on file. On this date this Court has full jurisdiction to hear the Petition for Distribution, Determination of Heirs-at-Law and Discharge.

2. Notice to creditors as required by law was given by the Personal Representative. The Decedent had no known creditors as of the date of death and the date of the filing of the Notice to Creditors who have not been paid in full. The Personal Representative, therefore, did not mail or personally deliver, or cause to be mailed or personally delivered, a copy of the Notice to Creditors to any person or entity. An Affidavit of Non-Mailing of Notice to Creditors of Decedent has been filed. All claims of the Decedent known to the Personal Representative have been paid in full. All claims not filed within the time permitted for the presentation of claims are nonsuited, void and forever barred, except as otherwise provided by law or any claim for which payment is approved by this Court pursuant to Section 335 of Title 58 of the Oklahoma Statutes. The Personal Representative has paid certain debts of Decedent as to which no claim was filed but which were justly due and were paid in good faith as to each such debt in the true amount of such indebtedness over and above all payments or setoffs, and the Estate was and is solvent. All of the expenses of the funeral and last illness of Decedent have been paid.

3. Upon the Personal Representative's Application, duly filed together with an acknowledged written Consent executed by the Decedent's sole devisee and legatee as determined by the Court, which Consent has not been withdrawn as of this date, the Court entered its Order waiving the filing of a final accounting by the Personal Representative and the

AFTER RECORDED,  
RETURN TO:

STEVEN C. DAVIS  
HARTZOG CONGER CASON & NEVILLE  
1600 BANK OF OKLAHOMA PLAZA  
201 ROBERT S. KERR AVENUE  
OKLAHOMA CITY, OK 73102

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necessity for presentation to the Court for approval of such final accounting, and that the Order, filed on the 4th day of November, 2014, is in full force and effect as of the date hereof and is ratified and confirmed.

4. On the 1st day of July, 2014, in the Order Admitting Will to Probate, the Personal Representative was relieved of the duty of filing in this proceeding an inventory and appraisal of the Estate of Decedent.

5. Attached as Schedule "A" is a full, true and correct list of all Estate assets remaining in the possession of the Personal Representative.

6. The Court waives a fee to the Personal Representative for services rendered to the Estate in such capacity.

7. There is allowed a reasonable fee, and a reimbursement for costs advanced, to Hartzog Conger Cason & Neville for legal services rendered to the Personal Representative and to the Estate through the closing of the Estate and the final discharge of the Personal Representative.

8. The Personal Representative is authorized and directed to pay all fees, court costs, taxes and expenses incident to the distribution and closing of the Estate.

9. A federal estate tax return has been filed and all federal estate, transfer, succession and inheritance taxes shown thereon as due and owing the United States of America have been paid in full. An Oklahoma estate tax return was not required to be filed since the Decedent died after the repeal of Oklahoma's estate tax. All income taxes due and owing by Decedent to the State of Oklahoma and to the United States of America have been paid in full. There are no ad valorem or other taxes due and unpaid and all state, county, school and municipal taxes legally levied upon personal property have been paid in full.

10. All previously unreported income received by the Personal Representative on behalf of the Estate will be reported on the final federal and state fiduciary income tax returns for the Estate, if such returns are required, reflecting a distribution of the net income or loss for the period covered by such returns to the beneficiaries of the Estate as required by law, so that the Estate will have no liability for taxes as to the final fiduciary income tax returns.

11. The Decedent is determined to have been survived by the following sole heir-at-law and no others:

Name and Relationship

Address

Linda Huffman, now also known as	613 W. Van Buren
Linda Huffman Best, daughter, heir	Crescent, OK 73028

who is of legal age. The Decedent left surviving no spouse or other child or children, or issue of any deceased child or children and no possibility of any pretermitted issue exists.

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12. The sole devisee and legatee of the Decedent is:

Name and Relationship

Address

Victor C. Emmerich Revocable  
Living Trust, dated October 24,  
2002, devisee and legatee

Linda Huffman, now also known  
as Linda Huffman Best, Co-  
Trustee  
613 W. Van Buren  
Crescent, OK 73028

13. The Decedent is determined to have died testate in the City of Crescent, County of Logan, State of Oklahoma, on or about the 17th day of November, 2013, a resident of such city, county and state at the time of death, leaving property in the State of Oklahoma.

14. The Last Will and Testament of Decedent is determined to have been admitted to probate on the 1st day of July, 2014, as a valid Last Will and Testament disposing of all the Estate of Decedent.

15. Paragraph SECOND of the Decedent's Last Will and Testament provides as follows:

"Since I have transferred all of my property into a living trust and therein have provided for my daughter above named, I hereby give, will, bequeath and devise all of the property that I may own as of the date of my death to the VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002."

Linda Huffman, now also known as Linda Huffman Best, is the current Co-Trustee of the Victor C. Emmerich Revocable Living Trust, dated October 24, 2002, and, accordingly, it is ordered that all remaining assets of the Decedent's Estate are distributed, assigned, transferred and conveyed to Linda Huffman, now also known as Linda Huffman Best, as the Trustee of the Victor C. Emmerich Revocable Living Trust, dated October 24, 2002.

16. Upon distribution and upon the final payment of all fees, costs, taxes and miscellaneous administration expenses, and upon the filing of a receipt from the beneficiary, the Personal Representative shall be entitled to a discharge from any further duties or liabilities. Notwithstanding the above, however, the Personal Representative shall continue to have authority to act on behalf of the Estate in such capacity until such time as the Personal Representative presents to the Court and this Court enters a subsequent order entitled "Final Discharge."

17. It is further ordered that title to any and all property of Decedent, whether real, personal or mixed, and wherever situated, not described in the Petition for Distribution, or this decree, that may be subsequently discovered, shall be and is vested in and any such property is distributed to Linda Huffman, now also known as Linda Huffman Best, as the Trustee of the Victor C. Emmerich Revocable Living Trust, dated October 24, 2002.



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DATED this 9th day of December, 2014.

ROBERT L. HUDSON

JUDGE OF THE DISTRICT COURT

*Steven C. Davis*

Steven C. Davis, OBA #10267  
Naomi D. Smith, OBA #30729  
HARTZOG CONGER CASON & NEVILLE  
201 Robert S. Kerr Avenue  
1600 Bank of Oklahoma Plaza  
Oklahoma City, Oklahoma 73102  
sdavis@hartzoglaw.com  
nsmith@hartzoglaw.com  
Telephone: (405) 235-7000  
Facsimile: (405) 996-3403

ATTORNEYS FOR PERSONAL REPRESENTATIVE

T:\12802.3001\PROB\Final Decree (586780).docx

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I, REJEANIA ZMEK, Court Clerk for  
Logan County, Okla., hereby certify that the  
foregoing is a true, correct and complete  
copy of the instrument herewith set out as  
appears of record in the Court Clerk's  
Office of Logan County, Okla. this 9  
day of Dec, 2014.  
REJEANIA ZMEK, Court Clerk

By [Signature] Deputy

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**ESTATE OF VICTOR CHARLES EMMERICH, DECEASED**

**SCHEDULE "A"**

**ASSETS REMAINING IN THE POSSESSION OF THE PERSONAL  
REPRESENTATIVE**

**A. Surface, Plus Any Underlying Oil, Gas and Minerals Owned by the Decedent:**

Kingfisher County, Oklahoma.

1. 104 W. Thompson Drive, Kingfisher, Oklahoma 73750, more particularly described as: Lot 31, Block 2, Cheyenne Addition to the Town of Kingfisher, County of Kingfisher, State of Oklahoma, according to the recorded plat thereof.
2. E/2 of Section 13, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
3. SE/4 of Section 1, Township 17 North, Range 5 West, Kingfisher County, Oklahoma, less and except the W/2 W/2 SE/4 and less and except a tract of land beginning at the SE/c of the SE/4 of said Section 1, thence South 89 degrees 01'15" East a distance of 645.33 feet, thence North 202.5 feet, thence North 89 degrees 01'15" East a distance of 645.33 feet, thence South 202.5 feet to the point of beginning. *[Note: Legal description is taken directly from the deed; however, there appears to be a scrivener's error on the first call of the metes and bounds "less and except", which should read "South 89 degrees 01'15" West", instead of "east", for the legal description to close.]*
4. SW/4 of Section 24, Township 17 North, Range 5 West; and West 60 acres of the SE/4 of Section 24, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
5. NW/4 of Section 25, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
6. West 50 acres of the East 100 acres of the NW/4 of Section 4, Township 17 North, Range 5 West; and South 25 acres of the East 50 acres of the NW/4 of Section 4, Township 17 North, Range 5 West; and Lot 2 (NW/4 NE/4) and SW/4 NE/4 of Section 4, Township 17 North, Range 5 West, all in Kingfisher County, Oklahoma.
7. SE/4 of Section 33, Township 18 North, Range 5 West, Kingfisher County, Oklahoma.
8. W/2 SW/4 of Section 34, Township 18 North, Range 5 West; and NW/4 of Section 34, Township 18 North, Range 5 West, all in Kingfisher County, Oklahoma.
9. S/2 NW/4 and SW/4 of Section 20, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.

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10. NW/4 and SW/4 of Section 29, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.
11. Lots 1 and 2 (W/2 NW/4) and E/2 NW/4 of Section 19, Township 18 North, Range 6 West, Kingfisher County, Oklahoma.
12. An undivided 20% (1/5th interest) in SW/4 of Section 22, Township 16 North, Range 6 West, Kingfisher County, Oklahoma.

Logan County, Oklahoma.

1. 613 W. Van Buren Street, Crescent, Oklahoma 73028, more particularly described as: Lot 2, Block 2, Shaffers Addition to the Town of Crescent, County of Logan, State of Oklahoma, according to the recorded plat thereof.
2. 515 Jon Street, Guthrie, Oklahoma 73044, more particularly described as: Lot 4, Block 7, Hill Park Addition, Guthrie, Logan County, Oklahoma.
3. A tract of land in the NE/4 SE/4 of Section 10, Township 17 North, Range 4 West, Logan County, Oklahoma.
4. E/2 NW/4 of Section 31, Township 18 North, Range 4 West, Logan County, Oklahoma.
5. SW/4 of Section 33, Township 18 North, Range 4 West, Logan County, Oklahoma.
6. E/2 NE/4 and SW/4 NE/4 of Section 7, Township 17 North, Range 4 West, Logan County, Oklahoma.
7. Lot 3 (NW/4 SW/4) of Section 7, Township 17 North, Range 4 West, Logan County, Oklahoma.
8. NE/4 of Section 9, Township 17 North, Range 4 West, Logan County, Oklahoma.

Garfield County, Oklahoma.

NE/4 of Section 15, Township 20 North, Range 5 West, Garfield County, Oklahoma.

***NOTE: Only Decedent's mineral interests, including overriding royalty interests and working interests in said Sections, are being conveyed, and no clouds are intended to be created on the title of other mineral owners.***

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B. Personal Property

1. ConocoPhillips stock
2. Phillips 66 stock
3. Crescent Cooperative stock
4. Bank of Oklahoma Advantage55 Account
5. Bank of Oklahoma Certificates of Deposit
6. Community State Bank Account
7. BancFirst Performance Checking Account
8. BancFirst Treasury Fund Accounts
9. Chase Bank Certificate of Deposit
10. F&M Bank Certificate of Deposit
11. NBC Oklahoma (National Bank of Commerce) Certificate of Deposit
12. First Bank of Okarche Certificate of Deposit
13. InterBank Accounts
14. Miscellaneous farm equipment
15. Miscellaneous cattle
16. 1981 Cadillac El Dorado, VIN: 1G6AL57N0BE642253
17. 1980 Dodge D20, VIN: 1B7HD24YXJS634098
18. 1995 Nissan KXE, VIN: 1N6SD16S6SC319722
19. 1998 Nissan KXS, VIN: 1N6DD26S9WC382253
20. 2010 Ford F3D/Deweze, VIN: 1FDWF3HR1AEA51455
21. 1991 Lincoln EXC, VIN: 1LNCM81W9MY743603
22. 2002 Nissan Pickup, VIN: 7048

T:\12802.3001\PROB\Schedule A (585139).docx

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**AFTER RECORDED, RETURN TO:**

Steven C. Davis  
Hartzog Conger Cason & Neville  
201 Robert S. Kerr Avenue, Suite 1600  
Oklahoma City, OK 73102

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**TRUSTEE'S QUIT CLAIM DEED**

THIS INDENTURE is made by and between LINDA HUFFMAN, now also known as LINDA C. BEST, Co-Trustee of the VICTOR C. EMMERICH REVOCABLE LIVING TRUST, u/t/a 10/24/2002, (hereinafter referred to as "Party of the First Part"), and LINDA C. BEST, Trustee of the LINDA C. BEST TRUST, u/t/a 1/6/2015, of 613 W. Van Buren, Crescent, Oklahoma 73028 (hereinafter referred to as "Party of the Second Part").

Now this indenture witnesseth that the Party of the First Part, under and acting by virtue of the powers in her vested (by the Trust Agreement and by the Delegation attached hereto as Exhibit "A") to convey real property pursuant to the agreement of trust for the VICTOR C. EMMERICH REVOCABLE LIVING TRUST, u/t/a 10/24/2002, and pursuant to the power to convey under the Oklahoma Trust Act, in consideration of the sum of Ten and no/100ths Dollars (\$10.00), and other valuable consideration in hand paid, the receipt of which is hereby acknowledged, does, by these presents, quitclaim, grant, bargain, sell and convey unto Party of the Second Part all of the right, title and interest (if any) of the Trust, in and to the following described real property (both surface and minerals) situated in Kingfisher County, Oklahoma, to-wit:

SEE EXHIBIT "B" ATTACHED.

**"EXEMPT FROM DOCUMENTARY STAMP TAX PER 68 O.S.  
§3202(4).**

**THIS IS NOT A TRANSFER FOR AD VALOREM TAX PURPOSES  
PER 68 O.S. §2802.1."**

together with all the improvements thereon and the appurtenances thereunto belonging, without any title or other warranties of any kind.

This conveyance is subject to any and all easements, restrictions, covenants, conditions and reservations of record, if any, applicable to the herein conveyed property or any part thereof.

TO HAVE AND TO HOLD the above described premises unto the Party of the Second Part, her heirs, successors and assigns, forever.

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Executed and delivered this 20 day of January, 2015.



LINDA HUFFMAN, now also known as  
LINDA C. BEST, Co-Trustee of the VICTOR  
C. EMMERICH REVOCABLE LIVING  
TRUST, u/t/a 10/24/2002

STATE OF OKLAHOMA )  
 ) SS:  
COUNTY OF LOGAN )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of January, 2015, by LINDA HUFFMAN, now also known as LINDA C. BEST, Co-Trustee of the VICTOR C. EMMERICH REVOCABLE LIVING TRUST, u/t/a 10/24/2002.

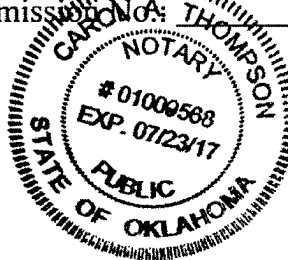


Notary Public

Commission No.:

My Commission expires:

July 23, 2017



TA\2802.300\INDEED\TQCD from VCEmmerich Trust to LCBest Trust - Kingfisher County (594979).docx

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VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002

I, Victor C. Emmerich, of Kingfisher County, Oklahoma, hereby transfer to Victor C. Emmerich, as Trustee, the property identified in the attached Schedule of property, and all investments and re-investments thereof which shall be held in Trust as provided by the terms and provisions of this document. It is also the intention of the undersigned Grantor that any property subsequently deeded or transferred to this Trust also be subject to the terms of this Trust agreement.

ARTICLE I

This instrument, as from time to time amended, is the VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002, and its situs shall be Kingfisher County, Oklahoma. It shall be construed and regulated by the Laws of the State of Oklahoma, as amended from time to time.

ARTICLE II

Commencing as of the date of this instrument and during my life, the trustee shall administer the Trust principal and any net income thereof as follows:

- A. The trustee shall distribute to me or to apply for my benefit such amounts of net income and principal no less often than annually, even to the extent of exhausting the principal, as the trustee believes desirable from time to time for my health, support and welfare as is deemed pertinent by the trustee. Any undistributed net income shall be accumulated and added to principal, as from time to time determined by the trustee. Income shall be determined without regard for depletion or depreciation.
- B. In addition, the trustee shall distribute to me or others such amounts of net income and principal as I may from time to time direct in writing, except that if the trustee believes that I am unable to manage my business affairs properly because of advanced age, illness or other cause, the trustee may, in the trustee's sole discretion distribute such amounts of net income and principal as I may need for my health, support and maintenance.

Exhibit A

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ARTICLE III

Following my death, the trustee may pay out of the trust principal (a) all of my legally enforceable debts, (b) the administration expenses payable by reason of my death, and (c) the estate and inheritance taxes, if any, payable by reason of my death.

ARTICLE IV

Following the date of my death this Trust shall terminate, if possible, by December 31st of the year following the year of my death. Prior to its termination, however, all payments herein above provided for in ARTICLE III, shall have been paid, then all assets and any undistributed income of this Trust, except as otherwise herein provided, shall be distributed to my daughter, Linda Emmerich.

In the event my daughter, Linda Emmerich, is deceased at the time this Trust should terminate, then the share of assets provided for her shall be distributed equally to my grandchildren, Robert Smith and Michael Smith.

The Trustee is hereby granted authority to delay any distribution to any grandchildren until they reach the age of twenty-one years on their respective portion and the same can be done in the Trustee's sole discretion.

ARTICLE V

In the event I, Victor C. Emmerich, Trustee of this Trust, should die, become incapacitated or resign as Trustee, I hereby name Robert Mangum and Linda Emmerich, or the survivor of them, as Successor Co-Trustees.

ARTICLE VI

The trustee shall have all of the powers authorized by the Statutes of the State of Oklahoma, as amended from time to time, and in addition thereto, the following powers shall be exercisable in the discretion of the trustee:

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- A. To sell at public or private sale, wholly or partly for cash or on credit, contract to sell, grant or exercise options to buy, convey, transfer, exchange or lease any and all real or personal property of this Trust.
- B. To borrow money from whatever source and whatever terms and conditions the trustee shall deem expedient and to mortgage or pledge property, if necessary or convenient thereto.
- C. To invest in bonds, stocks, real estate mortgages and any and all investment securities commonly traded.
- D. To exercise in person or by proxy all rights, powers or privileges to realize the benefits with respect to stocks or other securities as the trustee may deem proper.
- E.. To pay all expenses incurred in the administration of this Trust and to employ, appoint and pay reasonable compensations to any accountants, depositories, investment counselor or attorneys or agents.
- F. To compromise or abandon any claim in favor of or against the Trust.
- G. To receive any property, real or personal, which may be added to the Trust from any source whatsoever.
- H. To execute any instruments or documents that may be convenient or necessary in connection with all powers herein authorized.
- I. To make gifts of Trust real or personal property to the beneficiaries of the Trust.
- J. To perform all other acts necessary for the proper management, investment and distribution of the Trust property.

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ARTICLE VII

No interest under this Trust shall be transferrable or assignable by any beneficiary (except the grantor, Victor C.

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Emmerich) or be subject during the lifetime of any beneficiary to claims of the creditors of said beneficiary or claims for alimony or for support of a spouse, and the income and principal therefrom shall be free from control or interference of any creditor of such beneficiary or spouse and shall not be subject to attachment or be subject to assignment, either voluntarily or involuntarily.

ARTICLE VIII

The grantor, Victor C. Emmerich, does hereby reserve the right to revoke this agreement in whole or in part and to amend it from time to time in any respect. This power is personal to the undersigned grantor and shall not be exercised by any other including any legal representative. Any amendment or revocation to this trust agreement shall be in writing and executed by the grantor.

This document is signed this 24th day of October, 2002.

  
Victor C. Emmerich, Grantor

The Trust created by the following instrument is accepted as of the day and year last above written.

  
Victor C. Emmerich, Trustee

  
Robert Mangum  
Successor Co-Trustee

  
Linda Emmerich  
Successor Co-Trustee

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STATE OF OKLAHOMA, County of Kingfisher, ss.

Before me, the undersigned, a Notary Public within and for said County and State, on this 24th day of October, 2002, personally appeared Victor C. Emmerich, Grantor, and Victor C. Emmerich, Trustee, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, as such Grantor and as such Trustee, for the uses and purposes therein set forth.

WITNESS my hand and official seal the date above written.

(SEAL)

  
Notary Public

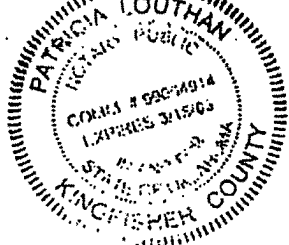
STATE OF OKLAHOMA, County of Kingfisher, ss.

Before me, the undersigned, a Notary Public within and for said County and State, on this 24th day of October, 2002, personally appeared Linda Emmerich, one of the Successor Co-Trustees, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed, as such Successor Co-Trustee, for the uses and purposes therein set forth.

WITNESS my hand and official seal the date above written.

(SEAL)

  
Notary Public



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STATE OF MISSISSIPPI, County of Louder, ss.

Before me, the undersigned, a Notary Public within and for said County and State, on this 27<sup>th</sup> day of December, 2002, personally appeared Robert Mangum, one of the Successor Co-Trustees, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed, as such Successor Co-Trustee, for the uses and purposes therein set forth.

WITNESS my hand and official seal the date above written.

(SEAL)

Cynthia Rose Rivers  
Notary Public My Commission  
Expires 1/5/04.

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**DELEGATION**

WHEREAS, on the 24<sup>th</sup> day of October 2002, VICTOR C. EMMERICH, as Grantor, and VICTOR C. EMMERICH, as Trustee, entered into an Agreement whereby the VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002 (the "Trust Agreement") was created; and

WHEREAS, on the 12<sup>th</sup> day of April, 2012, VICTOR C. EMMERICH was determined to be incapacitated and Letters of Special Guardianship were issued to LINDA HUFFMAN, in the District Court of Logan County, State of Oklahoma, Case No. PG-2013-16; and

WHEREAS, on the 17<sup>th</sup> day of November, 2013, VICTOR C. EMMERICH died; and

WHEREAS, Article V of the Trust Agreement appoints ROBERT MANGUM and LINDA EMMERICH as Successor Co-Trustees upon the death or incapacity of the Trustee, VICTOR C. EMMERICH; and

WHEREAS, Article VI of the Trust Agreement provides in part that the Trustee shall have all of the powers authorized by the statutes of the State of Oklahoma, as amended from time to time.

NOW THEREFORE, pursuant to Article VI of the Trust Agreement, ROBERT MANGUM hereby delegates, individually and collectively, all of the duties and powers of the Co-Trustees of the VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002, (whether arising under the Trust Agreement or by law, without limitation) to LINDA HUFFMAN, the other Co-Trustee, so that any and all of the powers and duties of the Co-Trustees may be exercised by LINDA HUFFMAN, acting alone. ROBERT MANGUM, as a Co-Trustee, hereby authorizes third persons to rely on any action taken by LINDA HUFFMAN with respect to any and all Trust assets, liabilities, and other Trust matters. ROBERT MANGUM shall be entitled to receive copies of, and have access to, all Trust financial records and information, upon his request, at all times while this Delegation is in effect. Notwithstanding the foregoing, in the event of the death, incapacity or resignation of LINDA HUFFMAN, ROBERT MANGUM will, in such event, serve as the sole Trustee of the Trust and shall thereafter have the right to exercise all powers of the Trustee.

VIEW ADDITIONAL LAND RECORDS AT

-1-  
**OKCOUNTYRECORDS.COM**

I-2015-000695 Book 2762 Pg: 260  
01/26/2015 1:47 pm Pg 0251-0263  
Fee: \$ 37.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

IN WITNESS WHEREOF, the Co-trustees have executed this Delegation this 15<sup>th</sup>  
day of January, 2014.

Robert T Mangum  
ROBERT MANGUM, Co-Trustee

Linda Huffman  
LINDA HUFFMAN, Co-Trustee

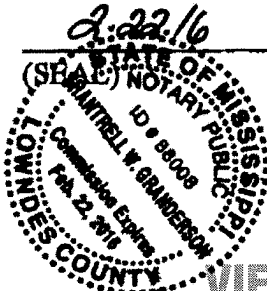
**ACKNOWLEDGMENTS**

STATE OF Mississippi )  
COUNTY OF Lauderdale ) SS:

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of January, 2014, by ROBERT MANGUM, as Co-Trustee of the VICTOR C. HMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2009.

Randall H. Brander  
Notary Public  
Commission No. 88008

My Commission Expires:



VIEW ADDITIONAL LAND RECORDS AT

**OKCOUNTYRECORDS.COM**

I-2015-000695 Book 2762 Pg: 261  
01/26/2015 1:47 pm Pg 0251-0263  
Fee: \$ 37.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

STATE OF Oklahoma )  
 ) SS:  
COUNTY OF Logan )

The foregoing instrument was acknowledged before me this 11 day of Feb, 2014, by LINDA HUFFMAN, as Co-Trustee of the VICTOR C. EMMERICH REVOCABLE LIVING TRUST DATED OCTOBER 24, 2002.

Kate Childers  
Notary Public  
Commission No. 09003002

My Commission Expires:

4/3/17  
(SEAL)



VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-000695 Book 2762 Pg: 262  
01/26/2015 1:47 pm Pg 0251-0263  
Fee: \$ 37.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

**EXHIBIT "B"**

Surface, Plus Any Underlying Oil, Gas and Minerals Owned by Party of the First Part:

Kingfisher County, Oklahoma.

1. 104 W. Thompson Drive, Kingfisher, Oklahoma 73750, more particularly described as: Lot 31, Block 2, Cheyenne Addition to the Town of Kingfisher, County of Kingfisher, State of Oklahoma, according to the recorded plat thereof.
2. E/2 of Section 13, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
3. SE/4 of Section 1, Township 17 North, Range 5 West, Kingfisher County, Oklahoma, less and except the W/2 W/2 SE/4 and less and except a tract of land beginning at the SE/c of the SE/4 of said Section 1, thence South 89 degrees 01'15" East a distance of 645.33 feet, thence North 202.5 feet, thence North 89 degrees 01'15" East a distance of 645.33 feet, thence South 202.5 feet to the point of beginning. **[Note: Legal description is taken directly from the deed; however, there appears to be a scrivener's error on the first call of the metes and bounds "less and except", which should read "South 89 degrees 01'15" West", instead of "east", for the legal description to close.]**
4. SW/4 of Section 24, Township 17 North, Range 5 West; and West 60 acres of the SE/4 of Section 24, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
5. NW/4 of Section 25, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.
6. West 50 acres of the East 100 acres of the NW/4 of Section 4, Township 17 North, Range 5 West; and South 25 acres of the East 50 acres of the NW/4 of Section 4, Township 17 North, Range 5 West; and Lot 2 (NW/4 NE/4) and SW/4 NE/4 of Section 4, Township 17 North, Range 5 West, all in Kingfisher County, Oklahoma.
7. SE/4 of Section 33, Township 18 North, Range 5 West, Kingfisher County, Oklahoma.
8. W/2 SW/4 of Section 34, Township 18 North, Range 5 West; and NW/4 of Section 34, Township 18 North, Range 5 West, all in Kingfisher County, Oklahoma.
9. S/2 NW/4 and SW/4 of Section 20, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.



I-2015-000695 Book 2762 Pg: 263  
01/26/2015 1:47 pm Pg 0251-0263  
Fee: \$ 37.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

10. NW/4 and SW/4 of Section 29, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.
11. Lots 1 and 2 (W/2 NW/4) and E/2 NW/4 of Section 19, Township 18 North, Range 6 West, Kingfisher County, Oklahoma.
12. An undivided 20% (1/5th interest) in SW/4 of Section 22, Township 16 North, Range 6 West, Kingfisher County, Oklahoma.

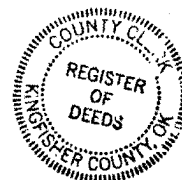
***NOTE: Only the Party of the First Part's mineral interests, including overriding royalty interests and working interests in said Sections, are being conveyed, and no clouds are intended to be created on the title of other mineral owners.***

VIEW ADDITIONAL LAND RECORDS AT

T:\12802.3004\DEED\Exhibit B to Deed - Kingfisher County (595209).docx

**OKCOUNTYRECORDS.COM**

I-2018-009817 Book 3173 Pg: 7  
10/10/2018 11:21 am Pg 0007-0008  
Fee: \$ 15.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



AFTER RECORDING RETURN TO:  
CIMARRON ELECTRIC COOPERATIVE  
ATTN: RECORDS DEPT.  
PO BOX 299  
KINGFISHER, OK 73750

### EASEMENT

**KNOW ALL MEN BY THESE PRESENTS: THAT Linda C Best Trust, U/T/A 1-6-2015, a revocable trust with Linda C Best as Trustee,** for a good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant unto CIMARRON ELECTRIC COOPERATIVE, an Oklahoma Cooperative Corporation, whose post office address is PO Box 299, Kingfisher, OK 73750, and to its successors or assigns, a perpetual easement with the right to enter upon all that certain real property, situated in the **County of Kingfisher, State of Oklahoma, Township Eighteen North (18N), Range Seven West (07W), Section Twenty (20), in the Southwest Quarter (SW4),** and more particularly described as follows:

The South 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18N, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, more particularly described as beginning at the South Quarter Corner of said Section 20; thence South 88°49'47" West along the South Line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East Line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East Line a distance of 1320.00 feet to the Point of Beginning, containing 40.000 acres, more or less. Tract ID# 0000-20-18N-07W-3-000-0, Assessor Office, Kingfisher County, Oklahoma.

and to visibly assess, construct, reconstruct, rephase, repair, assess power outage locations, operate, inspect, and maintain on or above the above-described lands and in or upon all streets, roads, or highways abutting said lands, an electric transmission or distribution line or system, appurtenant facilities, including anchors and guy wire assemblies; and to cut, trim and control the growth by chemical means, machinery or otherwise of trees and shrubbery located within ten (10) feet of the center line on single-phase and fifteen (15) feet of the centerline on three-phase or to the extent necessary to keep them clear of said electric line or system; and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling, to keep said easement area clear of all buildings, structures or other obstructions, or if any or all of said system is placed underground that areas over buried vaults and cables shall remain free and clear of structures, trees, shrubbery and any other physical encumbrances and that free access to all buried facilities will be allowed. Assessments of the physical condition of the line or system and power outage locations may include the operation of unmanned aerial vehicles operating within the easement, as authorized by the Federal Aviation Administration, and or applicable State laws.

The Cooperative, and its successor and assigns, agree to indemnify, defend, and hold Grantor, Grantor's heirs, agents, successors, and assigns, harmless from and against any and all losses, damages, claims, demands, and suits (and all reasonable attorneys' fees and court costs) (collectively, "Claims"), which Grantor may suffer or incur, or to which Grantor may be made liable, that arise out of or are in any way connected with the cooperative's performance or failure to perform under this Agreement, including any Claims for injuries to or loss of life of any person, or for damages to or loss of any property, EXCEPT that Grantee shall not be liable for losses, damages, claims, demands, suits, reasonable attorney fees, and court costs, caused by Grantor's, Grantor's employees, representatives, agents, contractors, or invitees, negligence or willful misconduct. Grantor reserves the right to use the easement area, and operate roadways across said easement so long as any such use and such roadway(s) does not interfere with Grantee's rights herein.

The undersigned agrees that all poles, wires, and other facilities including any main service entrance equipment, installed on the above-described lands at the Cooperative's expense shall remain the property of the Cooperative, removable at the option of the Cooperative, upon termination of service to or on said lands for twenty-four consecutive months. The undersigned covenant that they are the owners of the above-described lands and that the said lands are free and clear of encumbrances and liens of whatsoever character except those held by the following persons:

I-2018-009817 Book 3173 Pg: 8  
10/10/2018 11:21 am Pg 0007-0008  
Fee: \$ 15.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 24<sup>th</sup> day of

September, 2018

X (Sign) Linda C Best (Grantor)

X (Sign) \_\_\_\_\_ (Grantor)

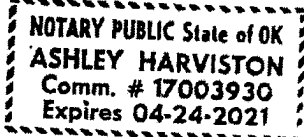
Linda C. Best, Trustee of the Linda C. Best Trust u/t/a 1-6-2015

(Print Name) \_\_\_\_\_

STATE OF Oklahoma County of Kingfisher in the year of 2018. Before me, the undersigned, a Notary Public in and for the State of Oklahoma appeared

Linda C. Best, Trustee of the Linda C. Best Trust u/t/a 1/6/2015, Known to me to the person(s) whose name is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same. IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)



Ashley Harviston  
Notary Public

Work Order # 18-464

Account #'s 4531300

SrvMapLoc: 5G-20-P2

Description: SUPERIOR SILICA DOVER SAND PLANT

Notary Expires: 04-24-21

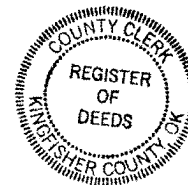
VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-011147 Book 2832 Pg: 350

11/17/2015 1:28 pm Pg 0350-0354

Fee: \$ 21.00 Doc: \$ 0.00

TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma



# NOT A N

## MEMORANDUM OF WIND LEASE OPTION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that Linda C. Best, Trustee of the Linda C. Best Trust, u/t/a 1/6/2015, whose address is 613 W. Van Buren, Crescent, Oklahoma 73028 ("Owner"), and Red Dirt Wind Project, LLC, a Delaware limited liability company, whose address is 16105 West 113th Street, Suite 105, Lenexa, Kansas 66219 ("Project Company"), have entered into a Wind Lease Option Agreement (the "Agreement") made, dated and effective as of November 1, 2015 (the "Effective Date"), pursuant to which Owner has granted to Project Company, its successors and assigns, a one-year exclusive option to lease the Premises described in Exhibit A attached hereto (the "Premises"), with a lease term for a period of 48 years from the date such lease is executed for the development and operation of a wind energy generation facility. Such Wind Lease Option Agreement expires on November 1, 2016.

The terms, conditions and covenants of the Agreement are incorporated herein by reference as though fully set forth herein, including, without limitation, Project Company's one-year exclusive wind energy generation facility development rights. The Premises shall be held, conveyed, hypothecated, encumbered, leased, used and occupied subject to the covenants, terms and provisions set forth in the Agreement and herein, which shall run with the Premises and each portion thereof and interest therein as equitable servitudes, and shall be binding upon and inure to the benefit of Owner and Project Company and any other person and entity having any interest therein during their ownership thereof, and their respective grantees, heirs, executors, administrators, successors and assigns, and all persons claiming under them.

This Memorandum may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which shall collectively constitute a single instrument.

***[Rest of Page Left Blank; Signature on Next Page]***

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-011147 Book 2832 Pg: 351  
11/17/2015 1:28 pm Pg 0350-0354  
Fee: \$ 21.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

IN WITNESS WHEREOF, Project Company and Owner have entered into this Memorandum of Wind Lease Option Agreement as of the Effective Date.

PROJECT COMPANY:

RED DIRT WIND PROJECT, LLC,  
a Delaware limited liability company

By: Geoff A. Coventry

Name: Geoff A. Coventry

Title: Vice President

STATE OF Kansas

COUNTY OF Johnson

) ss.

BE IT REMEMBERED that on this 22<sup>nd</sup> day of September, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Geoff A. Coventry, to me personally known, who being by me duly sworn did say that he is the Vice President of Red Dirt Wind Project, LLC, a Delaware limited liability company, and that the within instrument was signed and delivered on behalf of said Red Dirt Wind Project, LLC by authority thereof, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal in the date herein last above written.

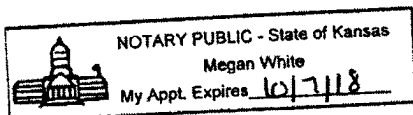
My Commission Expires:

10/7/2018

[SEAL]

Megan White  
Notary Public in and for said County and State

Print Name: Megan White



VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-011147 Book 2832 Pg: 352  
11/17/2015 1:28 pm Pg 0350-0354  
Fee: \$ 21.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

OWNER:

The Linda C. Best Trust, u/t/a 1/6/2015

By: Linda C Best  
Linda C. Best, Trustee

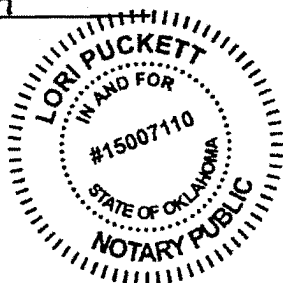
STATE OF Oklahoma )  
COUNTY OF Beckham ) ss.

BE IT REMEMBERED that on this 24<sup>th</sup> day of September, 2015, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Linda C. Best, Trustee of the Linda C. Best Trust, u/t/a 1/6/2015, to me personally known, who being by me duly sworn did say that she is the Trustee of the Linda C. Best Trust, u/t/a 1/6/2015, and that said instrument was signed and delivered not in her individual capacity, but on behalf of said trust and that said Trustee acknowledged said instrument to be her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial seal in the date herein last above written.

My Commission Expires:

8-3-2019  
[SEAL]



[Signature]  
Notary Public in and for said County and State

Print Name: LORI PUCKETT

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-011147 Book 2832 Pg: 353  
11/17/2015 1:28 pm Pg 0350-0354  
Fee: \$ 21.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

**EXHIBIT A**

**Description of the Premises**

THE FOLLOWING REAL PROPERTY LOCATED IN THE COUNTIES OF KINGFISHER AND LOGAN, STATE OF OKLAHOMA:

Tract 1:

E/2 NW/4 of Section 31, Township 18 North, Range 4 West, Logan County, Oklahoma.

Tract 2:

SW/4 of Section 33, Township 18 North, Range 4 West, Logan County, Oklahoma.

Tract 3:

Lot 3 (NW/4 SW/4) of Section 7, Township 17 North, Range 4 West, Logan County, Oklahoma.

And

E/2 NE/4 and SW/4 NE/4 of Section 7, Township 17 North, Range 4 West, Logan County, Oklahoma.

Tract 4:

NE/4 of Section 9, Township 17 North, Range 4 West, Logan County, Oklahoma.

Tract 5:

SE/4 of Section 1, Township 17 North; Range 5 West, Kingfisher County, Oklahoma, less and except the W/2 W/2 SE/4 and less and except a tract of land beginning at the SE/c of the SE/4 of said Section 1, thence South 89 degrees 01'15" West a distance of 645.33 feet, thence North 202.5 feet, thence North 89 degrees 01'15" East a distance of 645.33 feet, thence South 202.5 feet to the point of beginning.

Tract 6:

West 50 acres of the East 100 acres of the NW/4 of Section 4, Township 17 North, Range 5 West; and South 25 acres of the East 50 acres of the NW/4 of Section 4, Township 17 North, Range 5 West, all in Kingfisher County, Oklahoma.

Tract 7:

E/2 of Section 13, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.

Tract 8:

SW/4 of Section 24, Township 17 North, Range 5 West; and West 60 acres of the SE/4 of Section 24, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.

Tract 9:

SE/4 of Section 33, Township 18 North, Range 5 West, Kingfisher County, Oklahoma.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2015-011147 Book 2832 Pg: 354  
11/17/2015 1:28 pm Pg 0350-0354  
Fee: \$ 21.00 Doc: \$ 0.00  
TERESA WOOD - Kingfisher County Clerk  
State of Oklahoma

Tract 10:

W/2 SW/4 of Section 34, Township 18 North, Range 5 West; and NW/4 of Section 34, Township 18 North, Range 5 West, all in Kingfisher County, Oklahoma.

And

The East Half (E/2) of the Southwest Quarter (SW/4) of Section Thirty-four (34), Township Eighteen (18) North, Range Five (5) West of the Indian Meridian, Kingfisher County, Oklahoma.

Tract 11:

NW/4 of Section 25, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.

Tract 12:

S/2 NW/4 and SW/4 of Section 20, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.

Tract 13:

NW/4 and SW/4 of Section 29, Township 18 North, Range 7 West, Kingfisher County, Oklahoma.

Tract 14:

Southeast Quarter (SE/4) of Section 23, Township 17 North, Range 5 West, Kingfisher County, Oklahoma.

Tract 15:

E/2 SW/4 of Section 19, Township 18 North, Range 4 West, Logan County, Oklahoma.

Tract 16:

A tract of land in the Northwest Quarter of Section 19, Township 18 North, Range 6 West of the Indian Meridian, described as follows: BEGINNING at the Northwest Corner of the Northwest Quarter, Thence East 1320 feet; Thence South 330 feet; Thence West 1320 feet; Thence North 330 feet to the point of beginning, Kingfisher County, Oklahoma.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**



**Surety Title Service of Enid, Inc.**

P. O. Box 66  
Enid, OK 73702 US  
(405)459-0011  
dray@suretyteam.com

# Invoice

**BILL TO**

Brock Pittman  
Christensen Law Group,  
P.L.L.C.  
3401 N.W. 63rd Street, Suite  
600  
Oklahoma City, OK 73116

**INVOICE #** 61846

**DATE** 07/25/2019

**DUE DATE** 08/24/2019

**TERMS** Net 30

---

**SALES REP**

DR

ACTIVITY	QTY	RATE	AMOUNT
<b>Documents</b>	1	85.00	85.00
Document Search: Superior Silica Sands LLC			
<b>Rural Fee</b>	1	25.00	25.00
Rural Fee for Kingfisher County			
<b>Misc</b>	1	25.00	25.00
Copy Fee			

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**BALANCE DUE**

**\$135.00**

# Tax Roll Inquiry



20180018429

## Kingfisher County Treasurer

### Robin L. Rother, Treasurer

101 South Main, Room 4, Kingfisher, OK 73750

Phone: 405-375-3827

Fax: 405-375-3986

Email: kfcotreasurer@pdi.net

### Owner Name and Address

SUPERIOR SILICA SANDS LLC  
5600 CLEARFORK MAIN ST STE 400  
FT WORTH TX 76109-0000

### Taxroll Information

**Tax Year** 2018  
**Property ID** 0000-20-18N-07W-3-001-00  
**Location**  
**School District** I2A DOVER RURAL **Mills: 76.82**  
**Type of Tax** Real Estate  
**Taxroll\_Item#** 18429

### Legal Description and Other Information:

S 1320' OF E 1320' SW4 20-18N-07W 40.00 Acres

Assessed Valuations	Amount	Tax Values	Amount
Land	794	Base Tax	61.00
Improvements	0	Penalty	0.00
Exemptions	0	Fees	0.00
Net Assessed	794	Payments	61.00
		Total Paid	61.00
		Total Due	0.00

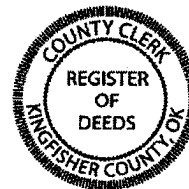


Tax payments updated through 7/23/19 business.

Date	Receipt	Paid with	Payment For	Amount	Paid By
02/04/2019	13596	Check	Taxes	61.00	SUPERIOR SILICA SANDS->Check# 644
02/04/2019	13596	Check	Penalty	1.83	
02/04/2019	13596	Check	Other	-1.83	* OVER/UNDER PAYMNT 975

Powered by TM Consulting, Inc.

I-2018-009522 Book 3170 Pg: 0477  
10/01/2018 09:34 AM Pg 0477-0481  
Fee: \$ 21.00 Doc: \$ 376.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



Upon recording return to:

Hunton Andrews Kurth LLP  
951 East Byrd Street  
Richmond, VA 23219  
Attn: J.C. Chenault V, Esq.

Property ID No: Portion of Property ID No.  
0000-20-18N-07W-3-000-00

**SPECIAL WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

That **LINDA C. BEST TRUST, U/T/A 1-6-2015**, a revocable trust with Linda C. Best as trustee ("Grantor") in consideration of Ten and No/100 Dollars and other good and valuable consideration, in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto **SUPERIOR SILICA SANDS LLC**, a Texas limited liability company, having an address of 5600 Clearfork Main Street, Suite 400, Ft. Worth, TX 76109, Attention: Richard J. Shearer ("Grantee"), that certain tract of real property (including, without limitation, all sand located therein) situated in Kingfisher County, Oklahoma, but specifically excluding all oil, gas and other minerals, to wit:

See Exhibit A attached hereto.

in fee simple, subject however, to the permitted exceptions attached hereto as Exhibit B and incorporated herein by reference, together with improvements thereon and the appurtenances thereunto belonging, and warrants title to the same against any and all acts, conveyances, liens and encumbrances affecting such property made or suffered to be made or done by, through or under Grantor, but not otherwise, except as may be set forth above.

This land herein conveyed is subject to a purchase option in favor of Grantor as set forth in that certain unrecorded Agreement of Purchase and Sale between Grantor and Grantee dated May 11, 2018, the relevant portion of which is attached hereto as Exhibit C.

TO HAVE AND TO HOLD said described premises unto Grantee, Grantee's successors and assigns forever.

[Signature and Acknowledgement Appear on Following Page]

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

Signed and delivered this 24 day of September 2018.

LINDA C. BEST TRUST, U/T/A 1-6-2015,  
a revocable trust with Linda C. Best as trustee

By: Linda C. Best

Name: Linda C. Best

Title: Trustee

STATE OF OKLAHOMA  
COUNTY OF OKLAHOMA

On this 24<sup>th</sup> day of September, 2018, before me the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Linda C. Best, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last written above.

Kellie C. McGhee  
Notary Public

My commission expires: 4-26-22



[NOTARIAL SEAL]

VIEW ADDITIONAL LAND RECORDS AT

OKCOUN  
I-2018-009522 Book 3170 Pg: 0478  
10/01/2018 09:34 AM Pg 0477-0481  
Fee: \$ 21.00 Doc: \$ 376.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma  
RECORDS.COM

I-2018-009522 Book 3170 Pg: 0479  
10/01/2018 09:34 AM Pg 0477-0481  
Fee: \$ 21.00 Doc: \$ 376.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

EXHIBIT A

Description of the Real Property

The South 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

Containing 40.00 acres more or less.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2018-009522 Book 3170 Pg: 0480  
10/01/2018 09:34 AM Pg 0477-0481  
Fee: \$ 21.00 Doc: \$ 376.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

EXHIBIT B

Permitted Exceptions

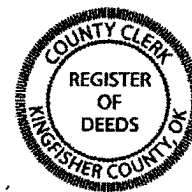
1. Fees, taxes and assessments for the year 2018, which are not yet due and payable.
2. Water rights, claims or title to water, whether or not shown by the public records.
3. Section line road easement created under Title 43 USC Section 1095 and any rights therein granted to others by the Board of County Commissioners of the county in which the Land is located or by the city in which the Land is located.
4. Right of Way Grant in favor of Phillips 66 Natural Gas Co. recorded in Book 1246, page 215, subject to Special Warranty Assignment of Agreements from Phillips Petroleum Company to GPM Gas Company, LP recorded in Book 1726, page 259.
5. Right of Way Grant in favor of Tom-Stack, LLC, a Delaware limited liability company, recorded in Book 3079, page 461.
6. Grant of Right of Way recorded in Book 370, page 246, assigned to Continental Pipe Line Company by Conveyance and Assignment recorded in Book 404, page 387.
7. Right of Way Agreement in favor of Continental Pipe Line Company recorded in Book 580, page 158.
8. Pipeline Right of Way Grant and Release of Damages in favor of Continental Resources, Inc. recorded in Book 1245, page 292.
9. The following matters as shown on the ALTA/ACSM Land Title Survey prepared by Earl N. Strom, P.L.S. No. 1724 on behalf of Commercial Surveying Specialists, Inc., dated July 9, 2018, last revised Sept. 27, 2018, and designated as Job No. 180544:
  - a. Fence surrounding the land does not correspond with property lines.
  - b. Physical access to the leased tract identified as Parcel 2, Tract 1 is over the property.
10. That certain unrecorded Easement, dated September 24, 2018, between the Linda C. Best Trust U/T/A 1-6-2015 and Cimarron Electric Cooperative, affecting the South 1320' of the East 1320' of the Southwest Quarter of Section 20-18N-7W.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

EXHIBIT CPurchase Option

In the event that Grantee determines, in its sole discretion, to (i) sell the Land and any improvements located thereon, or (ii) permanently (as opposed to temporarily) cease operations on the Land, Grantor shall have and is hereby granted the right and option to purchase the Demised Premises from Grantee. Upon Grantee's election to do so, Grantee shall advise Grantor in writing and Grantor shall have thirty (30) days within which to agree in writing to acquire the Land and any improvements located thereon. In the event that Grantor declines to purchase in writing or fails to respond in writing to Grantee within such 30-day period, this purchase option shall terminate and be null and void and thereafter, Grantee shall have the right to sell the Land and any improvements located thereon to any third party of Grantee's choosing without hindrance from Grantor. Should Grantor properly elect to purchase the Land and improvements located thereon, the purchase price shall be One Dollar and 00/100 (\$1.00) provided that Grantee has successfully constructed and operated a Sand Silica Plant (the "Plant") for a minimum of five (5) years. If, however, Grantee is unable to obtain the appropriate governmental permits and authorizations for the construction and operation of the Plant, the purchase price for the Land and improvements will be the Purchase Price that Grantee paid to purchase the Land. This Section shall survive the Closing. Notwithstanding the aforementioned, the Grantor's purchase option shall not be applicable to any transaction in which all or substantially all of the assets of, or a controlling interest in, Grantee is being sold, transferred or conveyed, or in connection with the sale of this mine, including an assignment of the Royalty Lease Agreement, dated May 11, 2018, between Grantor and Grantee. However, the purchase option described in this paragraph shall be deemed a covenant running with the land and shall be binding on Grantee's successors and assigns. For purposes of this paragraph, Grantee shall be deemed to have permanently ceased operations on the Land if the Royalty Lease Agreement has expired or been terminated and Grantor receives no processing payments for a continuous period of two (2) years. In any event, Grantee shall be given a reasonable period of time to remove its processing facilities and trade fixtures before Grantor acquires the Land.

I-2018-009521 Book 3170 Pg: 0471  
10/01/2018 09:34 AM Pg 0471-0476  
Fee: \$ 23.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



When recorded return to:

Hunton & Williams LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074  
Attn: JC. Chenault V, Esq.

Property ID Nos.:  
0000-20-18N-07W-2-002-00;  
0000-29-18N-07W-2-000-00;  
0000-29-18N-07W-3-000-00;  
0000-30-18N-07W-1-001-00;  
and a portion of Property ID No.  
0000-20-18N-07W-3-000-00;

### MEMORANDUM OF LEASE

WITNESSETH: This is a Memorandum of that certain Royalty Lease Agreement, described below, wherein Landlord demised and leased and does by these presents demise and lease to Tenant those certain premises hereinafter described:

LANDLORD:	<b>Linda C. Best Trust, U/T/A 1-6-2015,</b> a revocable trust with Linda C. Best as trustee
TENANT:	<b>Superior Silica Sands LLC,</b> a Texas limited liability company
EFFECTIVE DATE OF LEASE:	<b>May 11, 2018</b>
TERM:	25 years, expiring on the 25 <sup>th</sup> anniversary of the January 1 following Effective Date, subject to all terms and provisions of the Lease Agreement and possible extension for up to two (2) consecutive additional 5-year terms
PREMISES:	All land, including, without limitation, all sand and improvements located thereon, more particularly described as <b><u>Exhibit A</u></b> attached hereto

The mailing addresses of  
Landlord and Tenant are as follows:

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**



LANDLORD:

Linda C. Best Trust, U/T/A 1-6-2015  
613 West Van Buren  
Crescent, OK. 73028  
Attn: Linda and Bryan Best

TENANT:

Superior Silica Sands LLC  
5600 Clearfork Main Street, Suite 400  
Fort Worth, Texas 76109  
Attn: Richard Shearer

[Signature Pages to Follow]

NOT AN  
OFFICIAL  
COPY

VIEW ADDITIONAL LAND RECORDS AT  
OKCOUNTYRECORDS.COM  
1-2018-009521 Book 3170 Pg. 0472  
10/01/2018 09:34 AM Pg 0471-0476  
Fee: \$ 23.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Agreement on the date hereinabove written.

LANDLORD:

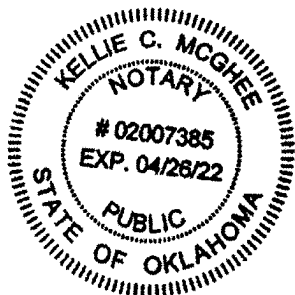
LINDA C. BEST TRUST, U/T/A 1-6-2015,  
a revocable trust with Linda C. Best as trustee

By: Linda C. Best  
Name: Linda C. Best  
Its: Trustee

STATE OF OKLAHOMA )  
COUNTY OF OKLAHOMA ) ss:

The foregoing instrument was acknowledged before me on September 24, 2018, by Linda C. Best, as the Trustee of the Linda C. Best Trust, U/T/A 1-6-2015, a revocable trust with Linda C. Best as trustee, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kellie C. McGhee  
Notary Public, State of OKLAHOMA  
My Commission expires: 4-26-22

I-2018-009521 Book 3170 Pg: 0474  
10/01/2018 09:34 AM Pg 0471-0476  
Fee: \$ 23.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

TENANT:

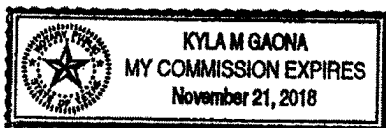
SUPERIOR SILICA SANDS LLC,  
a Texas limited liability company

By: Richard J. Shearer  
Name: Richard J. Shearer  
Its: President/CEO

STATE OF Texas )  
COUNTY OF Tarrant ) ss:

The foregoing instrument was acknowledged before me on September 27 2018, by Richard J. Shearer, as the President/CEO of Superior Silica Sands LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Kyla M. Gaona  
Notary Public, State of Texas  
My Commission expires: 11-21-18

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2018-009521 Book 3170 Pg: 0475  
10/01/2018 09:34 AM Pg 0471-0476  
Fee: \$ 23.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**EXHIBIT A**

**Legal Description of the Premises**

**Tract 1**

The South half of the Northwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

**Tract 2**

The Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

Less and except:

The South 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

**Tract 3**

The West half of Section 29, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

**Tract 4**

The East half of the Northeast Quarter of Section 30, Township 18 North, Range 7 West of the Indiana Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

**ALSO DESCRIBED AS FOLLOWS:**

THE SOUTH HALF OF THE NORTHWEST QUARTER, THE SOUTHWEST QUARTER, LESS THE EAST 1320 FEET OF THE SOUTH 1320 FEET OF SECTION 20, TOWNSHIP 18 NORTH, RANGE 7 WEST OF THE INDIAN MERIDIAN, THE WEST HALF OF SECTION 29, TOWNSHIP 18 NORTH, RANGE 7 WEST OF THE INDIAN MERIDIAN, AND THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP

OKCOUNTYRECORDS.COM

18 NORTH, RANGE 7 WEST OF THE INDIAN MERIDIAN, ALL IN KINGFISHER COUNTY, OKLAHOMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 18 NORTH, RANGE 7 WEST; THENCE SOUTH 89°15'14" WEST ALONG THE SOUTH LINE OF SAID SECTION 29, A DISTANCE OF 2617.68 FEET TO A FOUND 1/2 INCH IRON ROD AT THE SOUTHWEST CORNER OF AFORESAID SECTION 29; THENCE NORTH 00°15'16" WEST ALONG THE WEST LINE OF SAID SECTION 29, A DISTANCE OF 2619.70 FEET TO A FOUND 3/8 INCH IRON ROD AT THE WEST 1/4 CORNER OF SAID SECTION 29, ALSO BEING THE EAST QUARTER CORNER OF AFORESAID SECTION 30; THENCE SOUTH 89°45'16" WEST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 1310.26 FEET TO A FOUND 1/2 INCH IRON ROD; THENCE NORTH 00°14'37" WEST, A DISTANCE OF 2622.42 FEET TO A FOUND 1/2 INCH IRON ROD BEING A POINT ON THE NORTH LINE OF AFORESAID SECTION 30; THENCE NORTH 89°53'44" EAST ALONG SAID NORTH LINE OF SECTION 30, A DISTANCE OF 1309.95 FEET TO A FOUND 1/2 INCH IRON ROD AT THE NORTHWEST CORNER OF AFORESAID SECTION 29, ALSO BEING THE SOUTHWEST CORNER OF AFORESAID SECTION 20; THENCE NORTH 01°07'05" WEST ALONG THE WEST LINE OF SAID SECTION 20, A DISTANCE OF 2637.25 FEET TO A FOUND 3/8 INCH IRON ROD AT THE WEST 1/4 CORNER OF SAID SECTION 20; THENCE NORTH 01°07'28" WEST CONTINUING ALONG THE WEST LINE OF SAID SECTION 20, A DISTANCE OF 1318.18 FEET TO A FOUND 1/2 INCH IRON ROD; THENCE NORTH 88°44'05" EAST, A DISTANCE OF 2629.92 FEET TO A FOUND 1/2 INCH IRON ROD ON THE EAST LINE OF THE WEST 1/2 OF SAID SECTION 20; THENCE SOUTH 00°50'44" EAST ALONG SAID EAST LINE A DISTANCE OF 2639.85 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1320 FEET OF AFORESAID SECTION 20; THENCE SOUTH 88°49'47" WEST ALONG SAID NORTH LINE, A DISTANCE OF 1320.00 FEET TO A POINT ON THE WEST LINE OF THE EAST 1320.00 FEET OF SAID SECTION 20; THENCE SOUTH 00°50'44" EAST ALONG SAID WEST LINE, A DISTANCE OF 1320.00 FEET; THENCE NORTH 88°49'47" EAST, A DISTANCE OF 1320.00 FEET TO A FOUND 60d NAIL IN PAVEMENT AT THE SOUTH 1/4 CORNER OF SAID SECTION 20, ALSO BEING THE NORTH 1/4 CORNER OF AFORESAID SECTION 29; THENCE SOUTH 00°19'44" EAST, ALONG THE EAST LINE OF THE WEST HALF OF SAID SECTION 29, A DISTANCE OF 5258.17 FEET TO THE POINT OF BEGINNING.

CONTAINING 591.873 ACRES MORE OR LESS.

1-2019-004955 Book 3236 Pg: 77  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



Return to:  
CHRISTENSEN LAW GROUP, P.L.L.C.  
c/o: Jon M. Miles  
3401 N.W. 63<sup>rd</sup> Street, Suite 600  
Oklahoma City, Oklahoma 73116

**FIRST AMENDED MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT**  
[Related to Book 3199, Pages 278-297]

STATE OF WISCONSIN )  
 ) ss:  
COUNTY OF EAU CLAIRE)

**KNOW ALL MEN BY THESE PRESENTS:**

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and duly authorized representative, pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom Market and Johnson, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That the amount of the lien claimed totals Three Million Nine Hundred Fifty-Seven Thousand Eighty-Eight and 00/100ths Dollars (\$3,957,088.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about May 1, 2018, Market and Johnson, Inc. entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; See Exhibit "A" for description of the labor, materials and services furnished and provided;

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2019-004955 Book 3236 Pg: 78  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

That pursuant to the agreement and/or contract with Superior Silica Sands, LLC, Market and Johnson, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

That the date upon which the labor last performed was on or about January 2, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Market and Johnson, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Market and Johnson, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 11<sup>th</sup> day of June, 2019.

By: Jason Plante, Vice President

Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

Market and Johnson, Inc.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2019-004955 Book 3236 Pg: 79  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11<sup>th</sup> day of June, 2019, by Jason Plante, Vice  
President of Market and Johnson, Inc.

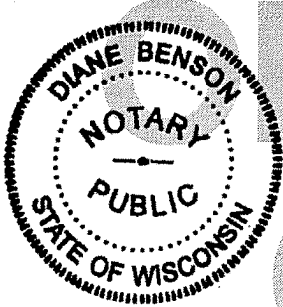
My Commission Expires:

6/14/2019

Diane Benson  
Notary Public, State of Wisconsin

Commission No.                     

[SEAL]





UCCSIGN ENVELOPE 10/19/2019/2019-4248-AU02-148/85081818-A

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner: Superior Silica Sands LLC

Project: 2814 Superior Silica Sands Dover-

Oklahoma

140 West Pine Street  
New Auburn, WI 54757

Dover OK 73734

Application No.: 1

Period To: 10/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor:

Market &amp; Johnson, Inc.

2350 Galloway Street

PO Box 329

Project Nos:

Eau Claire, WI 54703

Marshall TX 75671-0329

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Contribution Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$1,441,745.00
5. Retainage:
  - a. 2.32% of Completed Work ..... \$33,511.00
  - b. 0.00% of Stored Material ..... \$0.00
  - Total Retainage ..... \$33,511.00
6. Total Earned Less Retainage ..... \$1,408,234.00
7. Less Previous Certificates For Payments ..... \$0.00
8. Current Payment Due ..... \$1,408,234.00
9. Balance To Finish, Plus Retainage ..... \$3,195,040.00

CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 11/13/18  
F7201D473FFAAC0..

State of: WISCONSIN County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November, 2018  
Notary Public: [Signature]  
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and information comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Contribution Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**EXHIBIT**

10032321019192

1-2019-004955 Book 3236 Pg 80

06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of OklahomaVIEW ADDITIONAL LAND RECORDS AT  
OKCOUNTYRECORDS.COM

# CONTINUATION SHEET

Page 2 of 2

Application and Certification for Payment, containing Contractor's signed certification is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 1  
Application Date: 10/31/2018  
To: 10/31/2018  
Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G/C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
Grand Totals		4,603,274.00	0.00	1,441,745.00	0.00	1,441,745.00	31.32%	3,161,529.00	33,511.00

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project:

2814 Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.:

2

Distribution to:

☐ Owner  
☐ Architect  
☐ Contractor

From Contractor:

Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

ENDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$2,698,949.00
5. Retainage:
  - a. 0.00% of Completed Work ..... \$0.00
  - b. 0.00% of Stored Material ..... \$0.00
- Total Retainage ..... \$0.00
6. Total Earned Less Retainage ..... \$2,698,949.00
7. Less Previous Certificates For Payments ..... \$1,408,234.00
8. Current Payment Due ..... \$1,290,715.00
9. Balance To Finish, Plus Retainage ..... \$1,904,325.00

CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 12/12/18

State of:

Wisconsin

County of:

Subscribed and sworn to before me this

12

day of

Notary Public:

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**  
 In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed satisfactorily and the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM

1-2019-004955 Book 3236 Pg 82

06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 111836

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 2  
 Application Date: 11/30/2018  
 Tax: 11/30/2018  
 Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place				
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	143,453.00	0.00
95000	Fee 8%	340,963.00	29,980.00	93,126.00	0.00	123,106.00	217,877.00	0.00
Grand Totals		4,603,274.00	1,441,745.00	1,257,204.00	0.00	2,698,949.00	1,904,325.00	0.00

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 121850

To Owner: Superior Silica Sands LLC

140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -

Oklahoma  
13479 E 680 Road  
Dover OK 73734

Application No.: 3

Period To: 12/31/2018

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Market &amp; Johnson, Inc.

2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: EnDeCo Engineers Inc.

PO Box 329  
Marshall TX 75674-0329

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum	\$4,603,274.00
2. Net Change By Change Order	\$0.00
3. Contract Sum To Date	\$4,603,274.00
4. Total Completed and Stored To Date	\$3,220,478.00
5. Retainage:	
a. 0.00% of Completed Work	\$0.00
b. 0.00% of Stored Material	\$0.00
Total Retainage	\$0.00
6. Total Earned Less Retainage	\$3,220,478.00
7. Less Previous Certificates For Payments	\$2,698,949.00
8. Current Payment Due	\$521,529.00
9. Balance To Finish, Plus Retainage	\$1,382,796.00

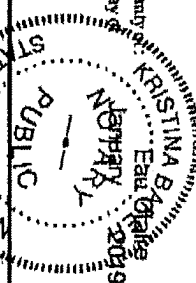
CHANGE ORDER SUMMARY	
Total changes approved in previous months by Owner	Additions
	\$0.00
Total Approved this Month	Deductions
	\$0.00
TOTALS	\$0.00
Net Changes By Change Order	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By:  Date: 1/8/19

State of: Wisconsin  
Subscribed and sworn to before me this 8 day of January, 2019  
Notary Public: Kristina B. Adams  
My Commission expires: October 16, 2022



**ARCHITECT'S CERTIFICATE FOR PAYMENT**  
In accordance with the Contract Documents, based on on-site observation and review of the documents comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 121850

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 3  
 Application Date: 12/31/2018  
 To: 12/31/2018  
 Architect's Project No.:

A	B	C	D		E	F	G	H		I
Item No.	Description of Work	Scheduled Value	Work Completed From Previous Application (D+E)	This Period In Place	Materials Presently Stored	Total Completed and Stored To Date (D+E+F)	% (G/C)	Balance To Finish (C-G)	Retainage	
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00	
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00	
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00	
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00	
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00	
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00	
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00	
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00	
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00	
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00	
Grand Totals		4,603,274.00	2,698,949.00	521,529.00	0.00	3,220,478.00	69.96%	1,382,796.00	0.00	

I-2019-004955 Book 3236 Pg: 86

06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 11 day of January, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jason Plante, Vice President of Market and Johnson, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 11 day of January, 2019.

FURTHER AFFIANT SAYETH NOT.

  
Jason Plante, Vice President

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

EXHIBIT

B

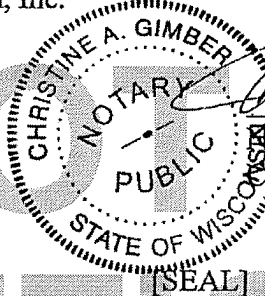


I-2019-004955 Book 3236 Pg: 87  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11 day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:

Is Permanent



Notary Public  
Commission No. \_\_\_\_\_

NOTARY  
OFFICIAL  
COPY

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**



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06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT MARKET AND JOHNSON, INC., 2350 GALLOWAY STREET, EAU CLAIRE, WISCONSIN, 54703, (715) 834-1213, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., by and through Jason Plante, its Vice President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Superior Silica Sands, LLC, by and through its representatives, Josh Clements and Brian Middleton, 1512 East Division Avenue, Barron, Wisconsin, 54812, requested that Market and Johnson, Inc. provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was first supplied on or about May 1, 2018 and that the Property Owner has been served this Pre-

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Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 2, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. is entitled to and may be entitled to a lien in the amount of Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Pre-Lien Notice; that I have read said Pre-Lien Notice and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibit is just, true and correct to the best of my knowledge, information and belief.

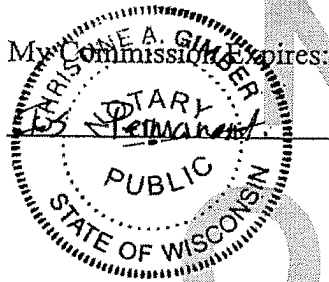
By: Jason Plante, Vice President

Market and Johnson, Inc.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2019-004955 Book 3236 Pg: 90  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 1<sup>st</sup> day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.



Notary Public  
Commission No. \_\_\_\_\_

[SEAL]

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

DocuSign Envelope ID: AD26DEAE-ADA7-42A8-A002-746785D816FA

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner: Superior Silica Sands LLC

Project: 2814- Superior Silica Sands Dover-

140 West Pine Street

Oklahoma

New Auburn, WI 54757

Dover OK 73734

Application No. 1

Period To: 10/31/2018

Distribution to:

☐ Owner☐ Architect☐ Contractor

From Contractor: Market &amp; Johnson, Inc.

Via Architect: ENDeCo Engineers Inc.

2350 Galloway Street

PO Box 329

Eau Claire, WI 54703

Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By:  Designated by:

Date: 10/23/18

F201D17EFMAC9

State of: Wisconsin

County of: Eau Claire

13

day of

November 2018

Notary Public:

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation of the work comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

9. Balance To Finish, Plus Retainage

\$3,195,040.00

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

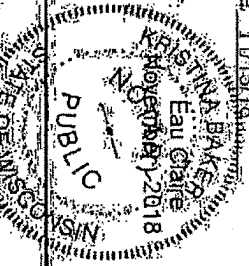
By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY		Additions	Debititions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

NOT A CONTRACT



VIEW ADDITIONAL LAND RECORDS AT OKCOUNTYRECORDS.COM

1-2019-004955 Book 3236 Pg. 91

08/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

EXHIBIT

A

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing  
Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 1  
Application Date: 10/31/2018  
To: 10/31/2018  
Architect's Project No.:

Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored	Total Completed and Stored To Date	%	Balance To Finish (C-G)	Retainage
			From Previous Application (D+E)	THIS PERIOD In Place		(Not in D or E) (D+E+F)			
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
96000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

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06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project:

2814 Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.:

2

Period To:

11/30/2018

From Contractor:

Markel & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

EndeCo Engineers, Inc.  
P.O. Box 329  
Marshall, TX 75674-0329

Project No:

Contract Date:

Distribution to:

☐ Owner☐ Architect☐ Contractor**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. Original Contract Sum \$4,603,274.00
2. Net Change By Change Order \$0.00
3. Contract Sum To Date \$4,603,274.00
4. Total Completed and Stored To Date \$2,898,949.00
5. Retainage:
  - a. 100% of Completed Work \$0.00
  - b. 0.00% of Stored Material \$0.00
- Total Retainage \$0.00
6. Total Earned Less Retainage \$2,698,949.00
7. Less Previous Certificates For Payments \$1,408,234.00
8. Current Payment Due \$1,290,715.00
9. Balance To Finish, Plus Retainage \$1,904,325.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Markel &amp; Johnson, Inc.

By:  Date: 12/12/18

State of: Wisconsin County of: Adams

Subscribed and sworn to before me this 12 day of

Notary Public: 

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the design, I certify that the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

AMOUNT CERTIFIED \$1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named therein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved to previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes By Change Order	\$0.00	

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM

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06/19/2019 2:21 pm Pg 0077-0096

Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment containing:

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 111836 Contract: 2814- Superior Silica Sands Dwyer - Oklahoma

Application No.: 2  
 Application Date: 11/30/2018  
 To: 11/30/2018  
 Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date	H % (G/C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	806,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,383.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,277.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

VIEW ADDITIONAL LAND RECORDS AT

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 06/19/2019 2:21 pm Pg 0077-0096  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma



## APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 121850

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project:

2814 Superior Silica Sands Dover  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.:

3

Period of:

12/31/2018

From Contractor:

Markel & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Name:

Contract Date:

Distribution to:

☐ Owner

☐ Architect

☐ Contractor

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Confirmation Sheet is attached.

1. Original Contract Sum: \$4,603,274.00
2. Net Change By Change Order: \$0.00
3. Contract Sum To Date: \$4,603,274.00
4. Total Completed and Stored To Date: \$3,220,478.00
5. Retainage:
  - a. 0.00% of Completed Work: \$0.00
  - b. 0.00% of Stored Material: \$0.00
 Total Retainage: \$0.00
6. Total Earned Less Retainage: \$3,220,478.00
7. Less Previous Certificates For Payments: \$2,698,949.00
8. Current Payment Due: \$521,529.00
9. Balance To Finish, Plus Retainage: \$1,382,796.00

CHANGE ORDER SUMMARY		
	Additions:	Deductions:
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
Net Changes by Change Order	\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

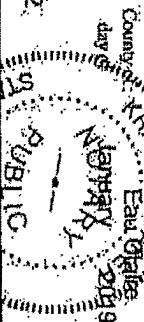
CONTRACTOR: Markel &amp; Johnson, Inc.

By:



Date: 1/8/19

State: Wisconsin  
Subscribed and sworn to before me this 8 day of January, 2019  
Notary Public: Kristina B. Adams  
My Commission expires: October 16, 2022



**ARCHITECTS CERTIFICATE FOR PAYMENT**  
In accordance with the Contract Documents, based on on-site observation and verification in accordance with the Contract Documents, the Architect certifies to the Owner that the work of the Contractor is complete, satisfactory, and that the work has progressed as indicated, the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ 521,529.00

(Attach a statement of amount certified, unless the amount is agreed, initial all figures on this Application and on the Confirmation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By:

Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

VIEW ADDITIONAL LAND RECORDS AT

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1-2019-004955 Book 3236 Pg 95  
06/19/2019 2:21 pm Pg 0077-0096  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



## CONTINUATION SHEET

Page 2 of 2

Application and Certification for Payment, containing Contractor's signed certification is attached.  
In tabulations below, amounts are stated to the nearest dollar.  
Use Column F for Contracts where variable retainerage for time items may apply.

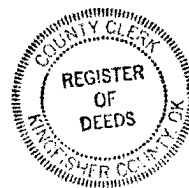
Invoice #: 121850

Contract: 2814-Superior Silica Sands Dwyer - Oklahoma

Application No.: 3  
Application Date: 12/31/2018  
To: 12/31/2018  
Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date		H Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place		(D+E+F)	(G/C)		
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	880,621.00	0.00	0.00	880,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Crude Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
Grand Totals		4,603,274.00	2,698,949.00	521,529.00	0.00	3,220,478.00	69.96%	1,382,796.00	0.00

1-2019-004443 Book 3231 Pg: 51  
05/28/2019 12:34 pm Pg 0051-0109  
Fee: \$ 131.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



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ML-19-20

## LIEN STATEMENT

State of Oklahoma  
County of Kingfisher

Notice is hereby given that this Mechanic's Lien ("Lien") is filed as of May 20, 2019 (the "Effective Date"), by **RB SCOTT COMPANY, INC.**, a Wisconsin corporation with a principal address of 1011 Short Street, Eau Claire, Wisconsin 54701 ("Claimant"), claims a construction lien in the sum of **\$834,345.50** for labor, services, materials and/or equipment furnished for improvement of certain real property owned by **SUPERIOR SILICA SANDS LLC** ("Owner"), located at 13479 E0690 Road, Dover, OK 73734, County of Kingfisher, State of Oklahoma, as such real property is more particularly described in **Exhibit A** attached hereto (the "Property"). This Lien is claimed, separately and severally, as to both buildings and improvements thereon, and the said land.

Claimant and Owner entered into a contract on or about June 7, 2018, attached hereto as **Exhibit B**, whereby Claimant provided the following labor, services, materials and/or equipment to the Property (collectively, the "Work"): *see attached Exhibit B*, for the total amount of \$2,521,029.00. The total contracted amount for the Work was adjusted after the agreement was signed, adding an additional \$67,894 of agreed upon changes (*see attached Exhibit C*), for a new total contract amount of \$2,588,923.00.

The first day of the Work on the Property by the Claimant was November 13, 2018. The last day of the Work on the Property by the Claimant was May 6, 2019 (the "Completion Date").

As of the Effective Date, Claimant has received payment of \$1,008,411.60. The total balance of \$834,345.50, after deducting all just credits and offsets, together with interest at the rate of 10% per annum from the Completion Date (the "Balance Due") is still due to Claimant as of the Effective Date.

Owner has failed to pay the Balance Due despite demands and requests for payment. Accordingly, Claimant declares that its claim of \$834,345.50 is justly due to Claimant.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

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05/28/2019 12:34 pm Pg 0051-0109  
Fee: \$ 131.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Claimant declares that the contents of this Lien are true and correct to the best of his or her knowledge.

Subscribed and sworn as of the Effective Date.

RB SCOTT COMPANY, INC.

By:

  
John Mickelson, President

VERIFICATION

STATE OF WISCONSIN

EAU CLAIRE COUNTY

I, John Mickelson, and the President of the above-named Claimant and am authorized to make this verification. I have read the foregoing claims and have knowledge of the facts, and to the best of my knowledge believe the foregoing claims to be true.

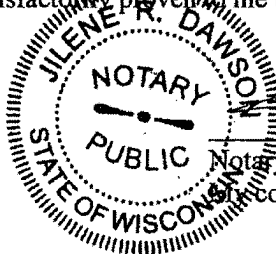
  
John Mickelson

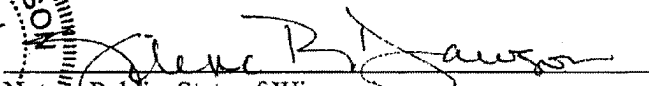
NOTARY ACKNOWLEDGEMENT

STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF EAU CLAIRE    )

This instrument was acknowledged before me on May 20, 2019, by **John Mickelson**, who is personally known to me or satisfactory proof to me to be the person whose name is subscribed to this instrument.

[Seal]



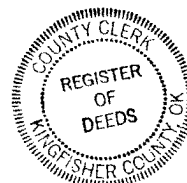
  
Notary Public, State of Wisconsin

commission expires: 11-20-2020

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

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I-2019-003003 Book 3218 Pg: 520  
04/05/2019 2:49 pm Pg 0520-0532  
Fee: \$ 39.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma



39

MECHANIC OR MATERIALMAN'S LIEN STATEMENT

ML-19-10

STATE OF TEXAS

SS.  
COUNTY OF *Fayette*

KNOW ALL MEN BY THESE PRESENTS:

That Pownall Services LLC, at P.O. Box 312 Round Top, Texas 78954, by and through Mr. Harry Pownall, duly authorized representative and Managing Partner, pursuant to 42 O.S. Sec. 141, et seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements, the processing facilities and trade fixtures thereon or therein, as located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The South 1320.00 Feet of the East 1320 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South 88 degrees 49 feet 47 inches West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00 degrees 50 feet 44 inches West a distance of 1320.00 feet; thence North 88 degrees 49 feet 47 inches East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00 degrees 50 feet 44 inches East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the buildings(s), the appurtenances and improvements thereon or therein, and the processing facilities and trade fixtures thereon or therein, are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and the processing facilities and trade fixtures thereon or therein, and against which Pownall Services LLC claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC.

That the amount of the lien claimed totals \$1,598,738.31 as of February 20<sup>th</sup>, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about June 20<sup>th</sup>, 2018 through February 5<sup>th</sup>, 2019, Pownall entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and proved an furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements, processing facilities and trade fixtures thereon or therein; See Exhibit "A" for description of the labor, materials and services furnished and provided;

That pursuant to the agreement and / or contract with Superior Silica Sands, LLC, Pownall Services LLC performed labor and furnished materials and services used on or for the land, buildings, the appurtenances, and improvements, processing facilities and trade fixtures thereon or therein, for which the land is more, as fully described heretofore;

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State of Oklahoma

That the date upon which the labor last performed and/or materials furnished, was on or about February 5<sup>th</sup>, 2019 and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Pownall Services LLC has attached and makes a part of this lien statement an affidavit regarding the pre-lien notice to Superior Silica Sands, LLC 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Pownall Services LLC claims and has a lien upon the land, the building(s), the appurtenances and the improvements, the processing facilities and trade fixtures thereon or therein as described above, and against Superior Silica sands, LLC, in the amount of \$1,598,738.31, which is owed as of February 20<sup>th</sup>, 2019, together with accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 4<sup>th</sup> day of March, 2019.

BY: Mr. Harry Pownall, Managing Partner

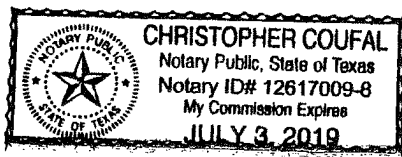
Pownall Services LLC

State of Texas

County of Fayette

Subscribed and sworn to before me on this 4<sup>th</sup> day of April 2019, by Harry Pownall, Managing Partner and duly Authorized Representative of Pownall Service, LLC.

(Seal)



Notary Public's Signature

*Christopher Coufal*

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Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

\$ 316,600.00  
\$ 450,572.50  
\$ 61,170.34  
\$ 124,213.95  
\$ 25,243.78  
\$ 22,210.63  
\$ 444,742.20  
\$ 149,404.93  
\$ 4,579.98  
\$ 1,598,738.31

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I-2019-003003 Book 3218 Pg: 523

04/05/2019 2:49 pm Pg 0520-0532

Fee: \$ 39.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Pownall Services Aged Invoices- Superior Silica Sand (Dover Plan) Dover				
Invoice	Invoice Sent	Due Date	Balance Due	
11687R	20-Jun		\$316,600.00	
11737	13-Dec	13-Jan	\$ 450,572.50	
11738	13-Dec	13-Jan	\$ 61,170.34	
1019	22-Jan	6-Feb	\$ 124,213.95	
1020	22-Jan	6-Feb	\$ 25,243.78	
1021	23-Jan	7-Feb	\$ 22,210.63	
1022	23-Jan	7-Feb	\$ 444,742.20	
1026	6-Feb		\$ 4,579.98	
1025			*****	
			\$149,404.93	
3 Payments made toward #11687R				
Date	Amount			
29-Jun	\$ 957,178.00			
5-Oct	\$ 1,091,809.50			
2-Nov	\$ 1,273,777.75			
	\$ 3,322,765.25			
Total Payments Made by Silica				

VIEW ADDITIONAL LAND RECORDS AT  
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**POWNALL  
SERVICES**

I-2019-003003 Book 3218 Pg: 524  
04/05/2019 2:49 pm Pg 0520-0532  
Fee: \$ 39.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**Invoice #11687R**

**TO: Superior Silica Sands  
OK Best Mine Site**

**June 20, 2018**

Quantity	Description	PO # 18-38
1	250'x100'x60' Building- Installed with: - Two (2) 100'x100' Bays - With three (3) sides having 12' walls that are 80'x100' and the fourth side with 3'	
8	Slab on Grade - With tunnel 400 tph (approximately 250' long) and tunnel conveyor to feed bucket elevator	
2	In-floor drive over hoppers with pneumatic gates.	
2	Product Belts to feed bins - 200tph. One belt at approx. 100' and one belt at approx. 200'	
2	12'x24' barrel silos and cone with Bintop Dust collectors and load-out spouts.  Drive-through structures for silos.  *** Installation only. - NO Electrical or site work. - Pricing figured on continuous work (single move-in).	
	<b>Terms:</b> - 30% payment with receipt of order - 30% due in 30 days - 35% due when construction starts - Balance due 30 days after install	
		<b>Sub-Total: \$3,362,000.00</b>
Please note that overdue invoices are subject to finance charges.		
<b>Submit Mailed Payments to:</b> <b>Pownall Services</b> <b>PO Box 312</b> <b>Round Top, TX 78954</b>		Amount: \$3,362,000.00
		Sales Tax: \$277,365.00
		<b>TOTAL: \$3,639,365.00</b>

VIEW ADDITIONAL LAND RECORDS AT

**OKCOUNTYRECORDS.COM**  
[www.pownallservices.com](http://www.pownallservices.com) [harry@pownallservices.com](mailto:harry@pownallservices.com)  
 832-250-2746 (Mobile) 281-813-2105 (Office) 832-532-7551 (Fax)  
 PO Box 312, Round Top, TX 78954

I-2019-003003 Book 3218 Pg: 525  
 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**Invoice** #11737

*To: Brian M*  
**TO: Superior Silica Sands**  
**OK Best Mine Site**  
**13479 East 690<sup>th</sup> Rd.**  
**Dover, OK 73734**

**December 8, 2018**

<b>Invoice</b>		
<b>Third Lane Expansion- Partial Payment</b>		
<b>Quantity</b>	<b>Description</b>	<b>Total</b>
	<ul style="list-style-type: none"> <li>Silo with Loadout Spout</li> <li>Scale</li> <li>Foundation</li> </ul>	
	<b>**Tax and Freight to be added. **</b>	
<b>Sub-Total:</b>		<b>\$450,572.50</b>
<b>***Note***</b> This invoice is your bill. Payment is due when services are rendered unless alternative arrangements have been previously reached. No further invoices will be sent .		
<b>Amount:</b>		<b>\$450,572.50</b>
<b>Sales Tax:</b>		<b>\$TBA</b>
<b>Freight:</b>		<b>\$TBA</b>
<b>Due Now:</b>		<b>\$450,572.50</b>

Please note that overdue invoices are subject to finance charges.

Submit Mailed Payments to:

**Pownall Services**

**PO Box 312**

**Round Top, TX 78954**

VIEW ADDITIONAL LAND RECORDS AT  
[www.pownallservices.com](http://www.pownallservices.com) [harry@pownallservices.com](mailto:harry@pownallservices.com)

832-250-2746 (Mobile) 281-813-2105 (Office)

PO Box 312, Round Top, TX 78954

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 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
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 State of Oklahoma

**Invoice** #11738

**TO: Superior Silica Sands**  
**OK Best Mine Site**  
**13479 East 690<sup>th</sup> Rd.**  
**Dover, OK 73734**

December 10, 2018

Location	PO Number	Terms	Due Date
Dover, OK Plant		Net 30	December 13, 2018

Quantity	Description	Unit Price	Total
1	Feeder Bin	52,588.50	\$52,588.50
	<b>Sub-Total:</b>		\$52,588.50

Please note that overdue invoices are subject to finance charges.

Submit Mailed Payments to:

**Pownall Services**  
**PO Box 312**  
**Round Top, TX 78954**

Amount: \$52,588.50

Sales Tax: \$3,023.84

Freight: \$5,558.00

**TOTAL: \$61,170.34**

VIEW ADDITIONAL LAND RECORDS AT

www.pownallservices.com harry@pownallservices.com

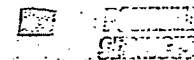
832-250-2746 (Mobile) 281-813-2105 (Office)

PO Box 312, Round Top, TX 78954

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 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
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**Pownall Services LLC**  
 PO Box 312  
 Round Top, TX 78954  
 melissa@pownallservices.com

**Invoice****BILL TO**

Superior Silica Sands  
 Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

**INVOICE #**

1021

**DATE**

01/23/2019

**TOTAL DUE**

\$22,210.63

**DUE DATE**

02/07/2019

**TERMS**

Net 15

**ENCLOSED****DATE**

01/23/2019

**ACTIVITY****DESCRIPTION****QTY****RATE****AMOUNT**

(4) Bin Level Indicators and  
 Mounting Brackets and Belt  
 Scale for Tunnel Conveyor

20,637.00

20,637.00T

01/23/2019

**Freight**

Freight

1

387.00

387.00

Please note that overdue invoices are subject to finance charges.

**SUBTOTAL**

21,024.00

**TAX**

1,186.63

**TOTAL**

22,210.63

**BALANCE DUE****\$22,210.63**

VIEW ADDITIONAL LAND RECORDS AT

Submit Mailed Payments to:

Pownall Services

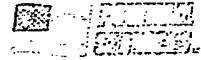
PO Box 312

Round Top, TX 78954

**OKCOUNTYRECORDS.COM**

I-2019-003003 Book 3218 Pg: 528  
 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**Pownall Services LLC**  
 PO Box 312  
 Round Top, TX 78954  
 melissa@pownallservices.com

**Invoice**

**BILL TO**  
 Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

<b>INVOICE #</b>	<b>DATE</b>	<b>TOTAL DUE</b>	<b>DUE DATE</b>	<b>TERMS</b>	<b>ENCLOSED</b>
1022	01/23/2019	\$444,742.20	02/07/2019	Net 15	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
01/23/2019		Third Lane Expansion- Elevator Foundation- North End Retaining Wall- South End Fan Foundation Transformer Foundation		420,560.00	420,560.00T

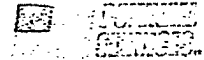
Please note that overdue invoices are subject to finance charges.

<b>SUBTOTAL</b>	420,560.00
<b>TAX</b>	24,182.20
<b>TOTAL</b>	444,742.20
<b>BALANCE DUE</b>	<b>\$444,742.20</b>

**VIEW ADDITIONAL LAND RECORDS AT**  
**OKCOUNTYRECORDS.COM**  
 Submit Mailed Payments to:  
 Pownall Services  
 PO Box 312  
 Round Top, TX 78954

I-2019-003003 Book 3218 Pg: 529  
 04/05/2019 2:49 pm Pg 0520-0532  
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**Pownall Services LLC**  
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 melissa@pownallservices.com

**Invoice**

**BILL TO**  
 Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
1019	01/22/2019	\$124,213.95	02/06/2019	Net 15	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
01/22/2019	Sales	Partial Bucket Elevator Install and Support Leg and Tail Sensors	1	117,460.00	117,460.00
01/22/2019		Freight to be Added			

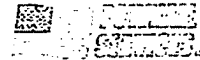
Please note that overdue invoices are subject to finance charges.

SUBTOTAL	117,460.00
TAX	6,753.95
TOTAL	124,213.95
BALANCE DUE	<b>\$124,213.95</b>

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 Pownall Services  
 PO Box 312  
 Round Top, TX 78954

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 04/05/2019 2:49 pm Pg 0520-0532  
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**Pownall Services LLC**  
 PO Box 312  
 Round Top, TX 78954  
 melissa@pownallservices.com

**Invoice**

**BILL TO**  
 Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
1020	01/22/2019	\$25,243.78	02/06/2019	Net 15	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
01/22/2019		(600) Baghouse Bags		23,370.00	23,370.00
01/22/2019	<b>Freight</b>	Freight	1	530.00	530.00
SUBTOTAL					23,900.00
TAX					1,343.78
TOTAL					25,243.78
BALANCE DUE					<b>\$25,243.78</b>

Please note that overdue invoices are subject to finance charges.

VIEW ADDITIONAL LAND RECORDS AT

**OKCOUNTYRECORDS.COM**

Submit Mailed Payments to:  
 Pownall Services  
 PO Box 312  
 Round Top, TX 78954

To: Mr. Beau Williams Page 4 of 4

2019-02-20 17:12:37 CST

12102008395 From: The Davis Group

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 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**Pownall Services LLC**  
 PO Box 312  
 Round Top, TX 78954  
 melissa@pownallservices.com

**Invoice**

Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

INVOICE #	DATE	TOTAL DUE	PAID DATE	STATUS	REMARKS
1025	02/05/2019	\$149,404.93	02/05/2019	Due on receipt	

DATE	ACTIVITY	DESCRIPTION	QTY	RATE	AMOUNT
02/05/2019	Freight	Freight of Materials and Equipment- Dover Plant	1	149,404.93	149,404.93

Please note that overdue invoices are subject to finance charges.

**BALANCE DUE****\$149,404.93**

*www.okcountysilica.com*

Submit Mailed Payments to:  
 Pownall Services  
 PO Box 312  
 Round Top, TX 78954

VIEW ADDITIONAL RECORDS AT  
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To: Mr. Beau Williams Page 3 of 4

2019-02-20 17:12:37 CST

12102008395 From: The Davis Group

I-2019-003003 Book 3218 Pg: 532  
 04/05/2019 2:49 pm Pg 0520-0532  
 Fee: \$ 39.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**Pownall Services LLC**  
 PO Box 312  
 Round Top, TX 78954  
 melissa@pownallservices.com

**Invoice**

**Bill To:**  
 Superior Silica Sands  
 13479 E. 690th Rd.  
 Dover, OK 73734

INVOICE #	DATE	TOTAL DUE	DATE DUE	TERMS
1026	02/06/2019	\$4,579.98	02/06/2019	Due on receipt

DATE	AGENCY	DESCRIPTION	QTY	UNIT PRICE	AMOUNT
02/06/2019		Conex Box			4,330.95

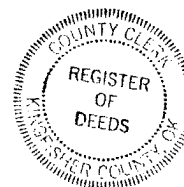
Please note that overdue invoices are subject to finance charges.

<b>SUBTOTAL</b>	4,330.95
<b>TAX</b>	249.03
<b>TOTAL</b>	4,579.98
<b>BALANCE DUE</b>	<b>\$4,579.98</b>

Submit Mailed Payments to:  
 Pownall Services  
 PO Box 312  
 Round Top, TX 78954

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04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma



**Return to:**  
CHRISTENSEN LAW GROUP, P.L.L.C.  
c/o: Jon M. Miles  
3401 N.W. 63<sup>rd</sup> Street, Suite 600  
Oklahoma City, Oklahoma 73116

ML-19-9

**MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT**

STATE OF OKLAHOMA )  
COUNTY OF CADDO ) ss:

**KNOW ALL MEN BY THESE PRESENTS:**

That EnDeCo Engineers, Inc. P.O. Box 6319, Shreveport, Louisiana 71136, (903) 935-9369, by and through Jon Bowlin, its President and a duly authorized representative pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom EnDeCo Engineers, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That Market and Johnson, Inc. is the contractor upon the project on the above-described lands for the benefit of Superior Silica Sands, LLC and hired EnDeCo Engineers, Inc. as a subcontractor to perform the work described herein on the above-described lands;

That the amount of the lien claimed totals Three Hundred Forty-Five Thousand Seven Hundred Forty-Three and 50/100ths Dollars (\$345,743.50) as of March 11, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about August 27, 2018, EnDeCo Engineers, Inc. entered into an agreement and/or contract with Market and Johnson Inc., the contractor, to perform labor, to furnish

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State of Oklahoma

material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; See Exhibit "A" for description of the labor, materials and services furnished and provided;

That pursuant to the agreement and/or contract with Market and Johnson, Inc., EnDeCo Engineers, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

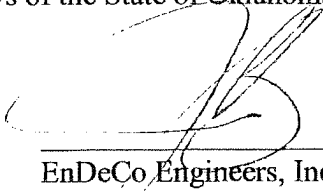
That the date upon which the labor last performed was on or about January 3, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That EnDeCo Engineers, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That EnDeCo Engineers, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Market and Johnson, Inc. 2350 Galloway Street, Eau Claire, Wisconsin, 54703, marked as Exhibit "C" hereto, mailed to the last known address of Market and Johnson, Inc., the contractor;

That said sum is just, due and unpaid, and that EnDeCo Engineers, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 15<sup>th</sup> day of March, 2019.

  
EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

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Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF CADDO )

That I, Jon Bowlin, President of EnDeCo Engineers, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

Subscribed and sworn to before me this 18th day of March, 2019, by Jon Bowlin  
of EnDeCo Engineers, Inc.

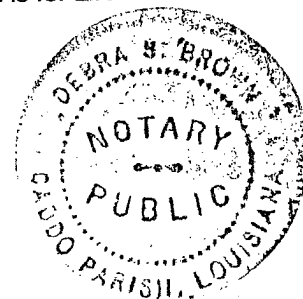
Debra S. Brown  
Notary Public  
Commission No. 1543

My Commission Expires:

For Life

[SEAL]

Debra S. Brown #1543  
Notary Public  
Caddo Parish, LA  
My Commission is for Life



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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-1**

**DATE 08/29/2018 TERMS** Due on receipt

**DUE DATE 08/29/2018**

**ACTIVITY**

**QTY**

**RATE**

**AMOUNT**

**Services**

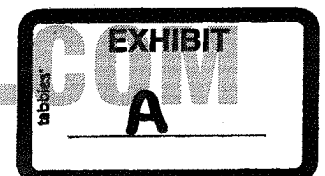
Subcontract Engineering Services for: Project #2814-100 Superior Silica  
Sands-Kingfisher, Oklahoma 73750  
Remaining Balance: 0.00

1 150,000.00 150,000.00

**TOTAL DUE**

**\$150,000.00**

VIEW ADDITIONAL LAND RECORDS AT  
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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, Wi 54702-0630

**INVOICE 1833-2**

**DATE 09/20/2018 TERMS** Due on receipt

**DUE DATE 09/20/2018**

**NOT AN OFFICIAL COPY**

**ACTIVITY**

**QTY RATE AMOUNT**

**Services**

Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK  
Cooper Engineering Invoice #33525

1 5,812.50 5,812.50

**Services**

10% Subcontract Mark up fee

1 581.25 581.25

**TOTAL DUE**

**\$6,393.75**

**VIEW ADDITIONAL LAND RECORDS AT**  
**OKCOUNTYRECORDS.COM**

**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, Wi 54702-0630

**INVOICE 1833-3**

**DATE** 12/11/2018 **TERMS** Due on receipt

**DUE DATE** 12/11/2018

**ACTIVITY**

**QTY**

**RATE**

**AMOUNT**

**Services**

Subcontract Engineering Services for: Project #2814-100 Superior Silica  
Sands-Kingfisher, Oklahoma 73750

1 100,000.00 100,000.00

**TOTAL DUE**

**\$100,000.00**

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-4**

**DATE 01/07/2019 TERMS Due on receipt**

**DUE DATE 01/07/2019**

**ACTIVITY**

**QTY**

**RATE**

**AMOUNT**

**Services**

Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK  
Cooper Engineering Invoice #33654

1 23,150.00 23,150.00

**Services**

10% Subcontractor Mark-up fee

1 2,315.00 2,315.00

**Services**

Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK  
Cooper Engineering Invoice #33753

1 12,622.50 12,622.50

**Services**

10% Subcontractor Mark-up Fee

1 1,262.25 1,262.25

**TOTAL DUE**

**\$39,349.75**

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Superior Silica Sand  
C/O Brian Mittlestadt  
1512 East Division Avenue  
Barron, WI 54812

**INVOICE 1833-5**

**DATE** 01/21/2019 **TERMS** Due on receipt

**DUE DATE** 01/21/2019

**ACTIVITY**

**QTY RATE AMOUNT**

**Services**

Engineering Services for Wet Plant Foundation Design, Oklahoma.

1 50,000.00 50,000.00

**TOTAL DUE**

**\$50,000.00**

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**SUBCONTRACT AGREEMENT**

SUBCONTRACT AGREEMENT made as of August 27, 2018, by and between Market & Johnson, Inc. ("Contractor") and ENDECO ENGINEERS INC. ("Subcontractor").

Contract Amount ..... \$ 150,000.00

Retainage ..... 5.00%

Bill Date: 25, unless instructed otherwise.

Subcontract #2814-100

(use M&J's Pay Application for all pay requests)

Subcontractor hereby agrees to furnish all materials, tools, and equipment, and to perform all work and labor necessary, including shop drawings when required, the testing of materials when required, and the securing of all field measurements necessary or required, for the completion of a portion or subdivision of the work to be performed on the following described Project in accordance with the Prime Contract between Contractor and the Owner and all Plans, Drawings and Specifications including General and Special Conditions and Addenda. This Agreement is subject to the "Terms and Conditions of Agreement between Contractor and Subcontractor" dated 10/03/2016 attached hereto and incorporated herein.

PROJECT: Superior Silica Sands Kingfisher, Oklahoma, per plans and specifications by EnDeCo Engineers Inc.

OWNER: Superior Silica Sands

*This project will also be referenced by Market & Johnson as Project #2814- Superior Silica Sands Kingfisher - Oklahoma, , Kingfisher, OK 73750*

**SCOPE OF WORK:**

M&J's Internal # 50600-01-

Dry Plant Design, Process Flow Diagrams, Equipment List & Final Design Drawings

Total: ..... \$150,000.00

All IFC drawings need to be completed as soon as possible.

Submittals will be handled electronically unless instructed otherwise.

**IF "Y", SUPPLY THESE ADDITIONAL ITEMS:**

Y Certificate of Insurance

Y Names of your subcontractors and suppliers (per attachment)

Y Lien waivers from suppliers & sub-suppliers

N Certified payroll reports

**CONTRACTOR:**

DocuSigned by:

Signature

F7201D473FFA4C9...

Name/Title Patrick Sullivan, Project Manager

Market & Johnson, Inc.

2350 Galloway Street

Eau Claire, WI 54703

715-834-1213 Fax 715-834-2331

**SUBCONTRACTOR:**

DocuSigned by:

Signature

Tanya Herrington

ESTIMOTEC

Name/Title Tanya Herrington

8/28/2018

EnDeCo Engineers Inc.

PO Box 329

Marshall, TX 75671-0329

903-935-9369 Fax

Vendor #

15351

**OKCOUNTYRECORDS.COM**

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Fee: \$ 93.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

## TERMS AND CONDITIONS OF AGREEMENT BETWEEN CONTRACTOR AND SUBCONTRACTOR

### ARTICLE 1 CONTRACT DOCUMENTS

1.1 The Contract Documents shall consist of (a) the Subcontract Agreement; (b) the contract between Contractor and Owner including all other documents referenced therein ("Prime Contract"); (c) the Plans, Specifications, and Drawings; and (d) all Addenda or Modifications issued to the Subcontract Agreement or any of the documents referenced herein all of which form and are a part of the Subcontract Agreement as if fully set forth herein ("Contract Documents"). The Subcontract Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2 Subcontractor, upon request, shall be furnished a reasonable number of sets of the Contract Documents at no charge. Contractor may charge Subcontractor for the cost of reproduction of subsequent sets of documents.

### ARTICLE 2 PERFORMANCE OF WORK

2.1 Subcontractor shall cooperate with Contractor in scheduling and performing Subcontractor's work to avoid conflict, delay, or interference with the work of Contractor, other subcontractors or other third parties.

2.2 Subcontractor agrees to participate in Weekly Progress Meetings, as necessary, to be held at the job site. Subcontractor is responsible for reviewing all Weekly Progress Meeting Minutes to determine if discussed issues pertain to them and address each issue as needed.

2.3 Subcontractor, when required by Contractor, shall promptly submit shop drawings, product data, samples, and other similar submittals with reasonable promptness and in such sequence as to cause no delay in the work or in the activities of the Contractor or other subcontractors.

2.4 Subcontractor shall provide Contractor with a schedule of values allocated to the various parts of the work to be performed by Subcontractor, aggregating the amount to be paid under this Subcontract, in such detail and supported by such evidence as Contractor may require. All applications for payment shall be based upon this schedule.

2.5 Subcontractor shall furnish, as required by Contractor, periodic progress reports on the work being performed by Subcontractor including information on the status of materials and equipment which may be in the course of preparation or manufacture.

2.6 Subcontractor agrees that the Contractor or Architect shall have the authority to reject all work performed by Subcontractor which does not conform to the Contract Documents. Contractor or Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.7 Subcontractor shall pay for all materials, equipment, and labor used in connection with the performance of Subcontractor's work through the period covered by previous payments received from Contractor and shall furnish satisfactory evidence, as requested by Contractor, to verify compliance with these requirements.

2.8 Subcontractor shall take all necessary precautions to properly protect the work of other subcontractors from damage caused by the operations of Subcontractor under this Agreement.

2.9 Subcontractor shall cooperate with Contractor, other subcontractors, Architect, and Owner in coordinating all work to be performed by Subcontractor under this Agreement. Subcontractor shall promptly report to Contractor any discrepancies, or defects in any work performed by any other party that is

unsuitable for the proper execution of Subcontractor's work. Subcontractor's failure to so report shall constitute an acceptance of the other party's work as fit and proper except as to defects which may subsequently become apparent in such work.

2.10 General Project Hoisting (crane and forklift hoisting) will be arranged with Market & Johnson with reasonable advance notice. Market & Johnson will keep track of the labor and equipment required on a Work Order to be signed by the Subcontractor's Foreman. Costs will be invoiced periodically directly to the Subcontractor for payment. Minimum time per pick is 1/2 hour. Unpaid invoices will be deducted from progress or final payments as warranted.

### ARTICLE 3 PERMITS, FEES AND NOTICES

3.1 Unless otherwise provided in the Contract Documents, Subcontractor shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of all work to be performed by Subcontractor.

3.2 Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of public authorities bearing on the performance of Subcontractor's work. Subcontractor shall comply with all federal, state, and local tax laws, Social Security Acts, Unemployment Compensation Acts and Worker's or Workmen's Compensation Acts insofar as applicable to the performance of Subcontractor's work.

### ARTICLE 4 SAFETY

4.1 Subcontractors shall apply work practices which are considered "in-compliance" with occupational safety and health standards that pertain to the subcontractors scope of work and area(s) of responsibility. Subcontractors are required to follow all Personal Protective Equipment (PPE) requirements set forth with this Article 4 and/or as required by facility/site specific policy. Subcontractors are required to attend all on-site safety meetings applicable to each individual project.

4.2 Subcontractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to all persons, materials, equipment, or other property on or at the Project whether or not under the custody or control of Subcontractor. Subcontractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority including, but not limited to OSHA, EPA, MSHA, and DNR, bearing on the safety of persons or property or their protection from damage, injury or loss.

4.3 Subcontractor shall ensure that employees under their supervision follow all Contractor and jobsite safety procedures including, but not limited to, the wearing of hard hats, safety glasses, over-the-shoulder shirts, long pants, work-boots, hi-visibility shirt, jacket, or vest when mobile equipment is present OR ansi-rated garments where required.

4.4 The subcontractor shall notify the contractor immediately following knowledge of an incident occurring at the project that resulted in injury to a person, property damage, or near-miss occurrence which could have resulted in injury to a person.

4.5 Subcontractors shall at minimum adhere to the following electrical safe work practices:

- All appliances shall meet minimum requirements of applicable regulatory standards.
- An inspection conducted by the user of electrical cords for compliant-condition prior to use.

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- The use of GFCI protection on all 110/120V appliances used with temporary power, generator, or in damp/wet environments.
- Minimum of inspecting and testing per OSHA 1926.404(b)(1)(iii)(A thru G)

4.6 Disciplinary action: Failure to follow safe work practices, site and/or facility policies, theft of personal or company property, willful damage of property belonging to another person or entity, fighting, or harassing behavior is considered grounds for disciplinary action up to and including termination of employment from the jobsite and from future Market & Johnson projects.

#### ARTICLE 5 CLEANING UP

5.1 Subcontractor shall, at all times, keep the Project free from accumulation of waste materials or rubbish caused by Subcontractor's work. At the completion of the work, Subcontractor shall remove all Subcontractor's waste materials and rubbish from and about the Project as well as all of Subcontractor's tools, construction equipment, machinery and surplus materials. If Subcontractor fails to clean up, Contractor may do so and the cost thereof shall be charged to Subcontractor.

5.2 Subcontractor agrees to participate in weekly cleanup of the job site at all times that Subcontractor's personnel are on site. The day of the week and time of weekly cleanup will be determined at the Weekly Progress Meetings and will be conducted as agreed. If Subcontractor does not participate, Market & Johnson will complete clean up and deduct the appropriate amount from Subcontractor's contract.

5.3 Market & Johnson will arrange for trash removal and sanitation services on the job site for the duration of the project. The total cost of these services will be determined prior to release of final payment. Market & Johnson will deduct the value of these services from the Subcontractor's contract via Change Order. The value will be determined on a prorated basis according to the Subcontractor's percentage of the total contract amount.

#### ARTICLE 6 WARRANTY

6.1 Subcontractor warrants to Owner and Contractor that all materials and equipment furnished by Subcontractor will be new unless otherwise specified, and that all work performed will be of good quality, free from faults and defects and in conformance with the Contract Documents. All work not so conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by Contractor, Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. The warranty period will begin on the date of substantial completion of the entire project or upon commencement of the warranty period as outlined in the Contract Documents, whichever is later. The warranty period will be 12 months or as specified in the Contract Documents, whichever is longer.

#### ARTICLE 7 CHANGES

7.1 Owner may make changes to the Prime Contract. Upon notification of such change by Contractor, issued subsequent to the execution of the Subcontract Agreement, Contractor shall promptly notify Subcontractor of said change. Unless otherwise directed by Contractor, Subcontractor shall not thereafter order materials or perform work which would be inconsistent with the change(s) made to the Prime Contract.

7.2 Subcontractor may be ordered in writing by Contractor, without invalidating the Subcontract Agreement, to make changes in the work within the general scope of the Subcontract Agreement consisting of additions, deletions or other revisions, including those required by changes to the Prime Contract issued subsequent to the execution of the Subcontract Agreement and the Contract Documents. Subcontractor, prior to the commencement of such change

or revised work, shall submit promptly to Contractor written copies of a claim for adjustment to the amount of payment and time for completion for such revised work in a manner consistent with requirements of the Subcontract Agreement.

7.3 Subcontractor shall make claims promptly to Contractor for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Agreement. A claim which will affect or become part of a claim which Contractor is required to make under the Prime Contract, within a specified time period or in a specified manner, shall be made in sufficient time to permit Contractor to satisfy the requirements of the Prime Contract. Such claims shall be received by Contractor not less than two (2) working days preceding the time by which Contractor's claim must be made. Failure of Subcontractor to make a timely claim shall bind Subcontractor to the same consequences to those to which Contractor is bound.

7.4 The Contractor's Project Superintendent or Foreman shall have the right to authorize modifications to the Subcontract Agreement only in cases when necessary to avoid Project delay. No verbal authorizations are valid. All modifications must be documented in writing. No other field employee of Contractor has or shall have any right or authority to modify, add to or change the Subcontract Agreement or execute any written order or give any written directions on behalf of Contractor.

#### ARTICLE 8 ARBITRATION

8.1 Any controversy or claim between Contractor and Subcontractor arising out of or related to the Subcontract Agreement, or the breach thereof, shall be settled by arbitration, which shall be conducted in the same manner and under the same procedure as provided in the Prime Contract with respect to claims between Owner and Contractor, except that a decision by Architect shall not be a condition precedent to arbitration. If the Prime Contract does not provide for arbitration, or fails to specify the manner and procedure for arbitration, it shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

8.2 Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Subcontract Agreement shall include, by consolidation or joinder or in any other manner, any person or entity not a party to the Subcontract Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not Architect, Architect's employee, Architect's consultant, or an employee or agent of any of them. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

8.3 Contractor shall give Subcontractor prompt written notice of any demand received or made by Contractor for arbitration if the dispute involves or relates to the work, materials, equipment, rights or responsibilities of Subcontractor. Contractor shall consent to inclusion of Subcontractor in the arbitration proceeding whether by joinder, consolidation or otherwise, if Subcontractor requests in writing to be included within ten (10) days after receipt of Contractor's notice.

8.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

8.5 This Article shall not be deemed a limitation of rights or remedies which Subcontractor may have under Federal law, under state mechanics' lien laws, or under applicable labor or material payment bonds unless such rights or remedies are expressly waived by Subcontractor.

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## ARTICLE 9 TERMINATION

9.1 Subcontractor may terminate the Subcontract Agreement for the same reasons and under the same circumstances and procedures with respect to Contractor as Contractor may terminate with respect to Owner under the Prime Contract, or for nonpayment of amounts due under the Subcontract Agreement for sixty (60) days or longer. In the event of such termination by Subcontractor for any reason which is not the fault of Subcontractor, sub-subcontractors or their agents or employees or other persons performing portions of the work under contract with Subcontractor, Subcontractor shall be entitled to recover from Contractor payment for work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

9.2 If Subcontractor shall fail to prosecute said work or furnish said material as rapidly as the Contractor shall require or if Subcontractor shall fail to comply with the terms of the Contract Documents as to quality of material or workmanship, or if Subcontractor shall fail to furnish necessary material and complete said work in such manner as to permit completion of the entire contract upon the date specified in the Contract Documents, the Contractor may on (48) hours written notice relet the said work or any part thereof, or may purchase materials as the general contractor may determine or may proceed to perform any or all portions of the subcontract, and all costs of said material and expense for such labor shall be charged to the Subcontractor and may be treated as payments to the Subcontractor. The Subcontractor shall be liable to the Contractor for any excess of expenditure so made over and above the subcontract price fixed hereinafter.

## ARTICLE 10 ASSIGNMENT

10.1 In the event of termination of the Prime Contract by Owner, Contractor may assign the Subcontract Agreement to Owner, with Owner's agreement, subject to the provision of the Prime Contract and to the prior rights of the surety, if any, obligated under bonds relating to the Prime Contract. If the work of the Prime Contract has been suspended for more than 30 days, Subcontractor's compensation shall be equitably adjusted.

10.2 Subcontractor shall not assign the work to be performed under the Subcontract Agreement without the written consent of Contractor, nor subcontract the whole or any part of the Subcontract Agreement without the written consent of Contractor.

## ARTICLE 11 TIME

11.1 Subcontractor shall commence work under this contract when notified by the Contractor, and shall complete the work covered by this subcontract in a diligent manner, following the construction schedule provided by the Contractor, so that the progress or completion of the building will not be delayed, and in such a manner that the Contractor or other Subcontractors shall not be unduly delayed or impeded in their work.

11.2 The Subcontractor agrees to be responsible for, assume, carry out and perform all time guarantees upon work or materials referred to in the Contract Documents relating to any materials furnished, or labor performed under this subcontract.

## ARTICLE 12 SUBCONTRACT PAYMENTS

12.1 Contractor shall pay Subcontractor, in current funds, for all work to be performed under this Agreement, subject to additions and deductions as provided in the Contract Documents, the sum shown in the Subcontract Agreement. The subcontract sum is understood to include all state sales taxes, excise taxes, transportation tax, unemployment compensation tax, old age benefits and Social Security taxes. Subcontractor agrees to pay all of the above and to conform to all state and federal laws in connection with such taxes. In addition, Subcontractor further agrees to withhold from all employees employed

by Subcontractor, withholding taxes and to pay the same to the appropriate state or federal agency in accordance with the federal laws and regulations pertaining thereto.

12.2 Based upon application for payment submitted to Contractor by Subcontractor, corresponding to applications for payment submitted by Contractor to Architect/Owner, and certificates for payment issued by Architect/Owner, Contractor shall make progress payments on account of the sum due Subcontractor to Subcontractor as provided below. The period covered by each application for payment shall be one calendar month ending on the last day of the month unless otherwise agreed between Contractor and Subcontractor.

12.3 Provided an application for payment is received by Contractor not later than the date of the month noted on Page 1 of this agreement, Contractor shall include Subcontractor's work covered by that application in the next application for payment which the contractor is entitled to submit to Architect/Owner. In accordance with Section 779.135, Wisconsin Statutes, within seven (7) days after receipt by Contractor from Owner or General Contractor of progress payments from Owner or General Contractor under the Contract for work reflected in Subcontractor's application for payment, Contractor shall make a payment to Subcontractor equal to the value of the approved and paid for portions of Subcontractor's Work, to the extent approved by Contractor and allowed and paid by Owner or General Contractor on account of Subcontractor's Work, less applicable retainage, less previous payments made by the Contractor, and less all charges or back charges for services, materials, equipment and other items furnished or otherwise chargeable by Contractor to Subcontractor.

12.4 As a condition precedent for each progress payment, Subcontractor shall provide a release of claims and conditional waiver of lien from Subcontractor, and, if requested by Contractor, from its subcontractors and suppliers.

12.5 Subcontractor specifically agrees that Contractor shall at all times have the right to contact Subcontractor's subcontractors, materialmen, and suppliers to assure Contractor that those individuals and entities are being promptly and properly paid by Subcontractor. In the event Contractor has reason to believe that obligations for labor, services, materials or equipment or other obligations incurred by Subcontractor in the performance of Subcontractor's Work are not being promptly paid, Contractor may take any steps which Contractor deems necessary to assure itself that payments made under this Subcontract are used to satisfy Subcontractor's obligations, including but not limited to, Contractor's right to pay Subcontractor's obligations arising under this Subcontract directly, or to bond off or otherwise discharge claims or liens arising under therefrom, or to retain out of any payments due or to become due to Subcontractor a reasonable amount to protect Contractor and Owner from any loss, damage or expense arising out of, or relating to any such obligations, claims or liens, until the obligation, claim or lien has been satisfied by Subcontractor. Notwithstanding the foregoing, Contractor has no obligation to Subcontractor or to third parties to exercise any of the foregoing rights and none of Subcontractor's laborers, subcontractors, suppliers or materialmen, or any individual or entity not a party to this Subcontract is a third-party beneficiary of the terms and content of this Subcontract.

12.6 Contractor shall have the right and privilege to make any payment due Subcontractor hereunder jointly to Subcontractor and any person, firm or corporation to whom Subcontractor is indebted for labor performed or materials furnished in the performance of the Subcontract Agreement.

12.7 Each application for payment shall be based upon the most recent schedule of values submitted by Subcontractor in accordance with the Subcontract Documents. The schedule of values shall allocate the entire subcontract sum among the various portions of Subcontractor's work and be prepared in such form and supported by such data to substantiate its accuracy as Contractor may require. This schedule, unless objected to by Contractor, shall be used as a basis for reviewing Subcontractor's applications for payment.

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12.8 Applications for payment submitted by Subcontractor shall indicate the percentage of completion of each portion of Subcontractor's work as of the end of the period covered by the application for payment. Payments for such applications shall be made based on the Contractor approved portion of the work in the schedule of values less applicable retainage of the amount of the application.

#### ARTICLE 13 FINAL PAYMENT

13.1 Final payment, constituting the entire unpaid balance of all sums due Subcontractor, shall be made by Contractor to Subcontractor when Subcontractor's work is fully performed in accordance with the requirements of the Contract Documents including, but not limited to, the submission of all Operations & Maintenance Manual information, the Architect has issued a certificate of payment covering Subcontractor's completed work and Contractor has received payment from Owner. Neither the final payment nor the remaining retainage percentage shall become due until Subcontractor submits to Contractor (a) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which Owner or his property might in any way be responsible, have been paid or otherwise been satisfied, (b) consent of surety, if any, to final payment is obtained and (c) if required by Contractor, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Subcontract Agreement, to the extent and in such form as may be designated by Contractor. If Subcontractor refuses to furnish a release or waiver required by Contractor, Subcontractor may furnish a bond satisfactory to Contractor to indemnify Owner and Contractor against any such lien. If any such lien remains unsatisfied after all payments are made, Subcontractor shall refund to Contractor or Owner all monies that either may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees.

#### ARTICLE 14 LIEN WAIVERS

14.1 Subcontractor agrees to keep the project to which the Subcontract Agreement relates free and clear of mechanic's liens or other encumbrances arising by Subcontractor act or conduct and shall, at Subcontractor's sole cost and expense, defend against any claim, lien, suit or proceeding that may be presented or filed arising out of and in the course of Subcontractor's performance of the Subcontract Agreement. Subcontractor agrees to timely sign and return lien waivers submitted to them by Contractor. Subcontractor also agrees to furnish Contractor with lien waivers from all suppliers and sub-suppliers upon request.

#### ARTICLE 15 INSURANCE/BONDS

15.1 Subcontractor shall purchase and maintain insurance of the types of coverage and limits of liability as shown in the Subcontract Agreement (see Exhibit "A"). Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruptions from date of commencement of Subcontractor's work until date of final payment and termination of any coverage required to be maintained after final payment by the Contract Documents.

15.2 Certificates of insurance acceptable to Contractor shall be filed with the Contractor prior to commencement of Subcontractor's work (see Exhibit "B"). These certificates and the insurance policies required by this Article 15 shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to Contractor. Certificates of insurance shall name Market & Johnson, Inc. as an Additional Insured on a primary and non-contributory basis. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as required in Article 13. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Subcontractor with reasonable promptness according to Subcontractor's information and belief. Compliance by the Subcontractor with the foregoing requirements, as to carrying insurance and

furnishing certificates, shall not relieve the Subcontractor of its liabilities and obligations.

15.3 Upon request, Contractor shall furnish to Subcontractor satisfactory evidence of insurance required of the Contractor under the Prime Contract.

15.4 Contractor and Subcontractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) Owner, Architect, Architect's consultants, separate contractors, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Prime Contract or other property insurance applicable to the work, except such rights as they may have to proceeds of such insurance held by Owner as fiduciary. Subcontractor shall require of Subcontractor's sub-subcontractors, agents and employees, by appropriate agreements, written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

15.5 Contractor shall promptly, upon request of Subcontractor, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under the Subcontract Agreement.

#### ARTICLE 16 INDEMNIFICATION

16.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner, Contractor, Architect, Architect's consultants, and agents and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Subcontractor's Work under this Subcontract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor, the Subcontractor's Sub-contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. In claims against any person or entity indemnified under this paragraph by an employee of the Subcontractor, the Subcontractor's Sub-contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or from the Subcontractor of the Subcontractor's Sub-contractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts. The obligations of the Subcontractor under this paragraph shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of any of them arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications or the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them, provided such giving or failure to give is the primary cause of the injury or damage.

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

17.1 The Subcontract Agreement shall be governed by the law of the State of Wisconsin.

17.2 Contractor and Subcontractor each bind itself, himself, his partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Subcontract

Agreement. Notwithstanding the foregoing, Subcontractor shall not assign the Subcontract Agreement or sublet the work to be performed thereunder without the written consent of Contractor.

17.3 Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or entity or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who give the notice.

17.4 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Contractor, Architect, or Owner shall constitute a waiver of any right or duty afforded any of them under the Contract Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

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**EXHIBIT "A"****A.1 SUBCONTRACTOR'S LIABILITY INSURANCE.**

A.1.1 The insurance required shall include: Premises – Operations, Products and Completed Operations, Personal Injury Liability with Employment Exclusions deleted, Blanket Contractual – All written contracts, Owned, Non-owned, and hired motor vehicles, Broad Form Property Damage including Completed Operation, and shall be purchased from and maintained in a company or companies properly licensed to do business in the State of Wisconsin or how are otherwise permitted to write insurance in this jurisdiction provided they agree to pay the appropriate surplus lines premium tax, and shall be written for not less than the following limits, or as required by law, whichever is greater:

TYPE OF INSURANCE	MINIMUM LIMITS OF LIABILITY
Workers' Compensation and Employer's Liability	Statutory \$100,000 Each Accident \$500,000 Disease, Policy Limit \$100,000 Disease, Each Employee

Include United State Longshoreman and Harbor Workers' coverage's (if applicable)

Commercial General Liability: Includes at a minimum the following coverage's:  
Operations of Subcontractor  
Products and Completed Operations  
Personal Injury Including Employee related claims  
Designated Construction Project(s) Aggregate Endorsement

**Limits of Commercial General Liability**

General Aggregate (other than Products and Completed Operations) .....	\$2,000,000
Products and Completed Operations Aggregate .....	\$2,000,000
Personal and Advertising Injury .....	\$1,000,000
Each Occurrence .....	\$1,000,000

**Comprehensive Automotive Liability – Limits**

Combined Single Limit Bodily Injury and Property Damage .....	\$1,000,000
Non-Owned and Hired Automotive .....	\$1,000,000

**Professional Liability (for Design/Build Subcontractors)**

Per Claim .....	\$1,000,000
General Aggregate .....	\$1,000,000

Commercial Excess Liability (Umbrella Liability) – Subcontractors shall maintain an umbrella liability policy providing the same coverages and with the same additional insured as the basic policy and in the following amounts:

a. Curtain Wall Subcontractor .....	\$5,000,000
b. Steel Subcontractor .....	\$5,000,000
c. Elevator Subcontractor .....	\$5,000,000
d. HVAC Subcontractor .....	\$5,000,000
e. Plumbing Subcontractor .....	\$5,000,000
f. Electrical Subcontractor .....	\$5,000,000
g. Excavation Subcontractor .....	\$1,000,000
h. All Other Subcontractors and Material Suppliers .....	\$2,000,000
RETENTION (\$10,000 maximum)	

Contractor's Pollution Liability: \$1,000,000 (\$5,000,000 for Asbestos Contractors, if applicable)

A.1.1.1 The insurance required by Subparagraph A.1.1 shall be written for the limits specified or limits required by law, whichever is greater. The coverages whether written on a claims made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination or any coverage required to be maintained after final payment.

A.1.1.2 The Umbrella Liability shall provide excess limits over and above the commercial general liability, employer's liability and comprehensive automobile liability as stated in Article 15.

A.1.1.3 Liability insurance may be arranged by Commercial General Liability and Comprehensive Automobile Liability policies for the full limits required, or by a combination of underlying Comprehensive Liability policies for lesser limits with the remaining limits provided by Umbrella Liability Coverage.

A.1.1.4 The types of insurance and the limits of liability indicated above are the minimum required and the Contractor does not warrant the adequacy for the types of insurance or the limits of liability.

A.1.1.5 Products and Completed Operations to be maintained for a minimum of two years after receipt of final payment.

A.1.1.6 Subcontractor is required if not protected under Contractor's insurance to take out and maintain Workers' Compensation insurance and insurance of the same kind and in the amount that the contractor considers appropriate as specified above.

A.1.1.7 Subcontractor shall carry sufficient comprehensive insurance on his equipment at site of work and on route to and from site to fully protect him. Subcontractor shall require same coverage of his sub-subcontractors. It is expressly understood and agreed that Owner and/or Architect shall have no responsibility therefore.

A.2 Furnish one copy of certificate herein required for each copy of Agreement, specifically set forth evidence of all coverage required by the Contract Documents.

A.3 The General Liability and Umbrella Liability insurance required by Paragraph A.1.1 shall include Owner and Architect and General Contractor as additional insured on a primary and non-contributing basis including Products and Completed Operation endorsement (Forms CG 20 10 07 04 and CG 20 37 07 04) to be maintained for a minimum of two years after receipt of final payment.

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**EXHIBIT "B"****Instructions to Subcontractor's Insurance Agent**Market & Johnson, Inc. requires that all certificates of insurance specify:

1. Contractor as a certificate holder with correct mailing address.
2. Insured's name, which must match that on this Agreement.
3. Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representatives of insurance company.
4. Producer of the certificate with correct address and phone number listed.
5. Additional insured status required in the Subcontract Agreement.
6. Designated Construction Project(s) Aggregate Limits required in the Subcontract Agreement.
7. Amount of any deductibles and/or retentions.
8. Cancellation, non-renewal and material reduction in coverage notification as required by this Agreement. Additionally, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon Company, its agents or representatives" shall be deleted from the cancellation provision of the ACORD 25 certificate of insurance form.
9. Primary and non-contributory status required in the Subcontract Agreement.

10. Waivers of subrogation required in the Subcontract Agreement.

Market & Johnson, Inc. further requires that copies of each of the following endorsements shall also be provided in addition to the certificate of insurance.

1. General Liability:
  - a. Additional Insured through a combination of CG 20 10 07 04 and CG 20 37 07 04 or equivalent form, including Primary and Non-Contributory Liability.
  - b. Designated Construction Project(s) Aggregate Limit CG 25 03 05 09.
  - c. Notice of Cancellation, Change and Non-renewal.
  - d. Personal Injury Contractual Liability.
  - e. Waiver of Subrogation CG 24 04 10 93
2. Auto Liability
  - a. Cancellation, Change and Non-renewal.
  - b. Waiver of Subrogation.
3. Workers' Compensation/Employer's Liability
  - a. Cancellation, Change and Non-renewal.
  - b. Waiver of Subrogation.
4. Umbrella Liability
  - a. Confirmation by endorsement of Primary and Non-Contributory coverage.

See endorsement examples attached.

If you are an insurance agent and have questions regarding the insurance requirements in Exhibits A or B, please contact  
 Keith Monahan, CEO of Market & Johnson, Inc. at 1-800-218-8788 or Keith Monahan at 1-800-218-8788 or 1-800-218-8788.

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ACORD CERTIFICATE OF LIABILITY INSURANCE				DATE (MM/DD/YYYY)	
PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED		INSURERS AFFORDING COVERAGE		NAIC #	
		INSURER A:			
		INSURER B:			
		INSURER C:			
		INSURER D:			
		INSURER E:			
COVERAGES					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
INSTRUMENT NO.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PERIL <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADJ INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOD AGG \$ 2,000,000
	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<input type="checkbox"/> DAMAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<input checked="" type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE \$ <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ enter limit AGGREGATE \$ \$ \$ \$ <input checked="" type="checkbox"/> WC/STATU- LITY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 DISEASE - POLICY LIMIT \$ 100,000
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY EMPLOYER OR PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER Pollution Liability				enter limit
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS					
Market & Johnson Inc, Owner and Architect are additional insureds with regard to General Liability per additional insured endorsements CG2010 07/04 and CG2037 07/04. Additional insured status is provided on General Liability and Umbrella Liability on a primary and non-contributory basis. Waiver of subrogation provided in favor of Market & Johnson Inc, Owner and Architect with regard to General Liability and Workers Compensation					
CERTIFICATE HOLDER			CANCELLATION		
Market & Johnson Inc PO Box 630 Eau Claire WI 54702-0630			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE		

ACORD 25 (2001/08)

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I-2019-002970 Book 3218 Pg: 298

04/04/2019 10:46 am Pg 0281-0320

Fee: \$ 93.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subcontract #: 2814-100

POLICY NUMBER:  
COMMERCIAL GENERAL LIABILITY  
CG 20 37 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement and performed for that additional insured and included in the "products-completed operations hazard".

Page 1 of 1

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CG 20 37 07 04

POLICY NUMBER:  
COMMERCIAL GENERAL LIABILITY  
CG 20 10 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:
1. Your acts or omissions; or
  2. The acts or omissions of those acting on your behalf.
- B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:**
- This insurance does not apply to "bodily injury" or "property damage" occurring after:
1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Page 1 of 1

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CG 20 10 07 04

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 Fee: \$ 93.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

Subcontract #: 2814-100

- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages caused by "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the "products-completed operations hazard" aggregate limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III - Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I - Coverage A, and for all medical expenses caused by accidents under Section I - Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above.
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable, and
2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

CG 25 03 03 09

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Page 2 of 2

POLICY NUMBER:  
 COMMERCIAL GENERAL LIABILITY  
 CG 25 03 03 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

## SCHEDULE

Designated Construction Project(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable, and
4. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
5. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expenses continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

CG 25 03 03 09

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Page 1 of 2

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*Adding Value to Everything We Do*

Market &amp; Johnson, Inc. 2350 Galloway Street Eau Claire, WI 54703 Ph. 715-834-1213 Fax 715-834-2331

I-2019-002970 Book 3218 Pg. 300  
 04/04/2019 10:46 am Pg 0281-0320  
 Fee: \$ 93.00 Doc: \$ 0.00  
 Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**SUBCONTRACT CHANGE ORDER**

TO: ENDECO ENGINEERS INC.  
 PO BOX 329  
 MARSHALL TX 75671-0329

Original Subcontract Sum was	\$150,000.00
Net change by Previous Change Orders	-
Subcontract Sum prior to this Change Order	\$150,000.00
Subcontract Sum will Increase by this Change Order	\$6,394.00
The new Subcontract Sum will be.	\$156,394.00

PROJECT 2814- Superior Silica Sands Kingfisher - Oklahoma, Kingfisher, OK 73750  
 OWNER Superior Silica Sands LLC  
 SUBCONTRACT # 2814-100 Subcontract Change Order #: 1 Date: 9/20/2018

**Changes made to scope of work under this change order**

M&J's Internal #	M&J's Phase	Description of Change	Amount
1.	50600-01-	Cooper Engineering Services - Invoice #33523	\$6,394.00

The work covered by this change order shall be performed under the same terms and conditions as those included in the Original Subcontract.  
 Modifications to this change order are not valid unless initialed and agreed upon by both parties.

CONTRACTOR:  
**Market & Johnson, Inc.**

SUBCONTRACTOR: (15351)  
**EnDeCo Engineers Inc.**

DocuSigned by:  
 By: Patrick Sullivan  
 F7201D473FFA4C9  
 Name/Title: Patrick Sullivan, Project Manager

DocuSigned by:  
 By: Tanya Herrington  
 E6334DA07A2A00  
 Name/Title: Tanya Herrington 9/20/2018

I-2019-002970 Book 3218 Pg: 301  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF ADDDO )

That EnDeCo Engineers, Inc. P.O. Box 6319, Shreveport, Louisiana 71136, (903) 935-9369, by and through Jon Bowlin, its President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 18<sup>th</sup> day of March, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

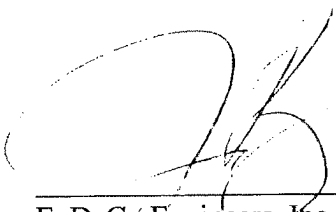
2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jon Bowlin, President of EnDeCo Engineers, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 18<sup>th</sup> day of March, 2019.

FURTHER AFFIANT SAYETH NOT.

  
EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

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I-2019-002970 Book 3218 Pg: 302  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 15<sup>th</sup> day of March, 2019, by Ten Powell  
of EnDeCo Engineers, Inc.

My Commission Expires:

For Life

Notary Public

Commission No. 1543

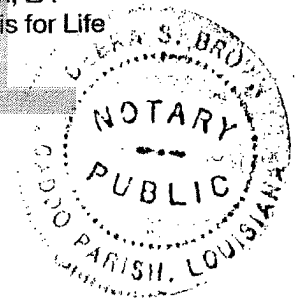
Debra S. Brown #1543

Notary Public

Caddo Parish, LA

My Commission is for Life

[SEAL]



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I-2019-002970 Book 3218 Pg: 303  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF CADDO )

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT ENDECO ENGINEERS, INC. P.O. BOX 6319, SHREVEPORT, LOUISIANA 71136, (903) 935-9369, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc., by and through Jon Bowlin, its President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, by and through its representative Patrick Sullivan, the contractor on the project for the benefit of Superior Silica Sands, LLC, on the above-described lands, requested that EnDeCo Engineers, Inc., a subcontractor, provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was

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04/04/2019 10:46 am Pg 0281-0320  
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Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

first supplied March 2018 through January 2019 and that the Property Owner has been served this Pre-Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 3, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc. is entitled to and may be entitled to a lien in the amount of Three Hundred Forty-Five Thousand Seven Hundred Forty-Three and 50/100ths Dollars (\$345,743.50) as of March 11, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 18th day of March, 2019.

EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

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04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF CADDO )

That I, Jon Bowlin, President of EnDeCo Engineers, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

[Signature]  
EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

Subscribed and sworn to before me this 18th day of March, 2019, by Jon Bowlin  
\_\_\_\_\_ of EnDeCo Engineers, Inc.

My Commission Expires:

For Life

[Signature]  
Notary Public

Commission No. 1543

Debra S. Brown #1543

Notary Public

Caddo Parish, LA

My Commission is for Life

[SEAL]

VIEW ADDITIONAL LAND RECORDS AT  
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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



I-2019-002970 Book 3218 Pg: 306  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-1**

**DATE** 08/29/2018 **TERMS** Due on receipt

**DUE DATE** 08/29/2018

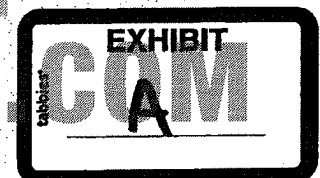
NOT  
OFFICIAL

	QTY	RATE	AMOUNT
<b>Services</b> Subcontract Engineering Services for: Project #2814-100 Superior Silica Sands-Kingfisher, Oklahoma 73750 Remaining Balance: 0.00	1	150,000.00	150,000.00

**TOTAL DUE**

**\$150,000.00**

VIEW ADDITIONAL LAND RECORDS AT  
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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



I-2019-002970 Book 3218 Pg: 307  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-2**

**DATE** 09/20/2018 **TERMS** Due on receipt

**DUE DATE** 09/20/2018

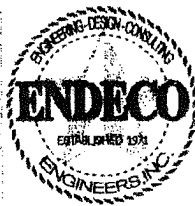
	QTY	RATE	AMOUNT
<b>Services</b>			
Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33525	1	5,812.50	5,812.50
<b>Services</b>			
10% Subcontract Mark up fee	1	581.25	581.25

**TOTAL DUE**

**\$6,393.75**

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



I-2019-002970 Book 3218 Pg 308  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-3**

**DATE** 12/11/2018 **TERMS** Due on receipt

**DUE DATE** 12/11/2018

	QTY	RATE	AMOUNT
<b>Services</b>			
Subcontract Engineering Services for: Project #2814-100 Superior Silica Sands-Kingfisher, Oklahoma 73750	1	100,000.00	100,000.00

**TOTAL DUE \$100,000.00**

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
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State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-4**

**DATE** 01/07/2019 **TERMS** Due on receipt

**DUE DATE** 01/07/2019

SERVICE	QTY	RATE	AMOUNT
<b>Services</b> Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33654	1	23,150.00	23,150.00
<b>Services</b> 10% Subcontractor Mark-up fee	1	2,315.00	2,315.00
<b>Services</b> Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33753	1	12,622.50	12,622.50
<b>Services</b> 10% Subcontractor Mark-up Fee	1	1,262.25	1,262.25

**TOTAL DUE**

**\$39,349.75**

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Endeco Engineers, Inc  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



I-2019-002970 Book 3218 Pg: 310  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Superfor Silica Sand  
C/O Brian Mittlestadt  
1512 East Division Avenue  
Barron, WI 54812

**INVOICE 1833-5**

**DATE** 01/21/2019 **TERMS** Due on receipt

**DUE DATE** 01/21/2019

NOT  
OFFICIAL  
COPY

	QTY	RATE	AMOUNT
<b>Services</b>			
Engineering Services for Wet Plant Foundation Design, Oklahoma	1	50,000.00	50,000.00

**TOTAL DUE \$50,000.00**

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I-2019-002970 Book 3218 Pg: 311  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO CONTRACTOR**

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF CADDO )

That EnDeCo Engineers, Inc. P.O. Box 6319, Shreveport, Louisiana 71136, (903) 935-9369, by and through Jon Bowlin its President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 15<sup>th</sup> day of March, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Market and Johnson, Inc. 2350 Galloway Street, Eau Claire, Wisconsin, 54703, the contractor on the project for the benefit of Superior Silica Sands, LLC, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

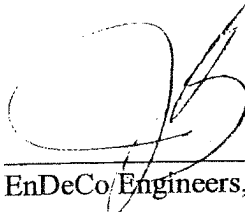
2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

4. That Jon Bowlin, President of EnDeCo Engineers, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 18<sup>th</sup> day of March, 2019.

FURTHER AFFIANT SAYETH NOT.

  
EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**





I-2019-002970 Book 3218 Pg: 312  
04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 18<sup>th</sup> day of March, 2019, by Teri Brown,  
of EnDeCo Engineers, Inc.

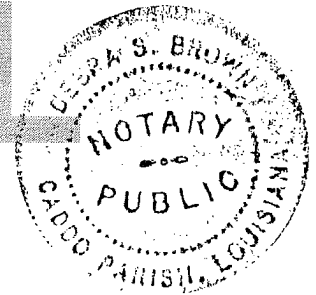
My Commission Expires:

For Life

[SEAL]

Debra S. Brown  
Notary Public  
Commission No. 1543

Debra S. Brown #1543  
Notary Public  
Caddo Parish, LA  
My Commission is for Life



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Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO CONTRACTOR**

STATE OF LOUISIANA )  
COUNTY OF CADDO ) ss:

**TO: MARKET AND JOHNSON INC.  
2350 GALLOWAY STREET  
EAU CLAIRE, WISCONSIN, 54703**

YOU ARE HEREBY NOTIFIED THAT ENDECO ENGINEERS, INC. P.O. BOX 6319, SHREVEPORT, LOUISIANA 71136, (903) 935-9369, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc., by and through Jon Bowlin, its President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, by and through its representative Patrick Sullivan, the contractor on the project for the benefit of Superior Silica Sands, LLC, on the above-described lands, requested that EnDeCo Engineers, Inc., a subcontractor, provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was

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State of Oklahoma

first supplied March 2018 through January 2019 and that the Property Owner has been served this Pre-Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 3, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that EnDeCo Engineers, Inc. is entitled to and may be entitled to a lien in the amount of Three Hundred Forty-Five Thousand Seven Hundred Forty-Three and 50/100ths Dollars (\$345,743.50) as of March 11, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 18<sup>th</sup> day of March, 2019.

EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

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04/04/2019 10:46 am Pg 0281-0320  
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State of Oklahoma

STATE OF LOUISIANA )  
 ) ss:  
COUNTY OF CADDO )

That I, Jon Bowlin, President of EnDeCo Engineers, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

  
EnDeCo Engineers, Inc.

By: Jon Bowlin

Title: President

Subscribed and sworn to before me this 18<sup>th</sup> day of March, 2019, by Jon Bowlin  
\_\_\_\_\_ of EnDeCo Engineers Inc.

My Commission Expires:

For Life

[SEAL]

  
Notary Public

Commission No. 1543

Debra S. Brown #1543

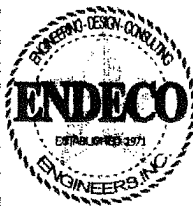
Notary Public

Caddo Parish, LA

My Commission is for Life

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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04/04/2019 10:46 am Pg 0281-0320  
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State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-1**

**DATE 08/29/2018 TERMS** Due on receipt

**DUE DATE 08/29/2018**

**SERVICES**

Subcontract Engineering Services for: Project #2814-100 Superior Silica  
Sands-Kingfisher, Oklahoma 73750  
Remaining Balance: 0.00

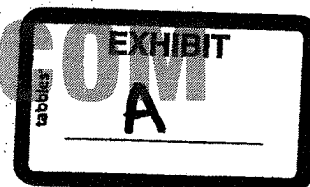
**QTY RATE AMOUNT**

1 150,000.00 150,000.00

**TOTAL DUE**

**\$150,000.00**

VIEW ADDITIONAL LAND RECORDS AT  
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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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04/04/2019 10:46 am Pg 0281-0320  
Fee: \$ 93.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**BILL TO**  
Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-2**

**DATE** 09/20/2018 **TERMS** Due on receipt

**DUE DATE** 09/20/2018

	QTY	RATE	AMOUNT
<b>Services</b>			
Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33525	1	5,812.50	5,812.50
<b>Services</b>			
10% Subcontract Mark up fee	1	581.25	581.25

**TOTAL DUE**

**\$6,393.75**

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**Endeco Engineers, Inc**  
P O Box 6319  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



I-2019-002970 Book 3218 Pg: 318

04/04/2019 10:46 am Pg 0281-0320

Fee: \$ 93.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma**BILL TO**

Market & Johnson  
C/O Patrick Sullivan  
PO Box 630  
Eau Claire, WI 54702-0630

**INVOICE 1833-3****DATE** 12/11/2018 **TERMS** Due on receipt**DUE DATE** 12/11/2018

NOT  
OFFICIAL  
COPY

**SERVICES****Services**

Subcontract Engineering Services for: Project #2814-100 Superior Silica  
Sands-Kingfisher, Oklahoma 73750

QTY RATE AMOUNT

1 100,000.00 100,000.00

**TOTAL DUE****\$100,000.00**

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Endeco Engineers, Inc  
 P O Box 6319  
 Shreveport, LA 71136  
 (903)935-9369  
 jbowlin@endeco.net



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**BILL TO**  
 Market & Johnson  
 C/O Patrick Sullivan  
 PO Box 630  
 Eau Claire, WI 54702-0630

**INVOICE 1833-4**

**DATE 01/07/2019 TERMS** Due on receipt

**DUE DATE 01/07/2019**

DESCRIPTION	QTY	RATE	AMOUNT
<b>Services</b> Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33654	1	23,150.00	23,150.00
<b>Services</b> 10% Subcontractor Mark-up fee	1	2,315.00	2,315.00
<b>Services</b> Engineering Services for 2814-Superior Silica Sands-Kingfisher-Oklahoma, OK Cooper Engineering Invoice #33753	1	12,622.50	12,622.50
<b>Services</b> 10% Subcontractor Mark-up Fee	1	1,262.25	1,262.25

**TOTAL DUE**

**\$39,349.75**

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Endeco Engineers, Inc  
P O Box 6318  
Shreveport, LA 71136  
(903)935-9369  
jbowlin@endeco.net



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State of Oklahoma

**BILL TO**  
Superior Silica Sand  
C/O Brian Mittlestadt  
1512 East Division Avenue  
Barron, WI 54812

**INVOICE 1833-5**

**DATE** 01/21/2019 **TERMS** Due on receipt

**DUE DATE** 01/21/2019

**ACTIVITY**

**QTY RATE AMOUNT**

**Services**

Engineering Services for Wet Plant Foundation Design, Oklahoma.

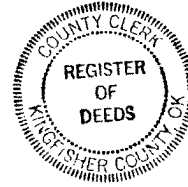
1 50,000.00 50,000.00

**TOTAL DUE**

**\$50,000.00**

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I-2019-002084 Book 3211 Pg: 5  
03/11/2019 2:11 pm Pg 0005-0008  
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State of Oklahoma



**MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT**

(Pursuant to Okla. Stat. tit. 42, § 143)

ML# 19-6

**BEFORE ME**, the undersigned authority, personally appeared Mike Marx, who upon an oath, deposed and stated the following:

1. My name is Mike Marx and I am a resident of Hays County, Texas. I am over 18 years of age. I am competent and authorized to make this affidavit. I have personal knowledge of the facts stated herein.

2. I am the President CEO of TMT Solutions, Inc. (hereinafter referred to as the "**Claimant**"). Claimant was organized under the laws of the State of Texas. Claimant's address and telephone number is 4041 FM 1978 San Marcos, Texas 78666-2162, (512) 392-9211.

3. Pursuant to Okla. Stat. tit. 42, § 143, Claimant claims a mechanic's and materialman's lien upon the following described real property, land, building, structures, appurtenances and improvements commonly known as the Superior Silica Sands Dover Wet and Dry Plant located at or near 13479 E. 690 Road, Kingfisher and/or Dover, Oklahoma 73734, which is legally described as:

Tract 1: The South half of the Northwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

Tract 2: The Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

Tract 3: The West half of Section 29, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

Tract 4: The East half of the Northeast Quarter of Section 30, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, according to the United States Government Survey thereof.

Which is more particularly described by Metes and Bounds as:

BEGIN AT THE SOUTH QUARTER CORNER OF SECTION 29, TOWNSHIP 18 NORTH, RANGE 7 WEST; THENCE SOUTH

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State of Oklahoma

89°15'14" WEST ALONG THE SOUTH LINE OF SAID SECTION 29, A DISTANCE OF 2617.68 FEET TO A FOUND 1/2 INCH IRON ROD AT THE SOUTHWEST CORNER OF AFORESAID SECTION 29; THENCE NORTH 00°15'16" WEST ALONG THE WEST LINE OF SAID SECTION 29, A DISTANCE OF 2619.70 FEET TO A FOUND 3/8 INCH IRON ROD AT THE WEST 1/4 CORNER OF SAID SECTION 29, ALSO BEING THE EAST QUARTER CORNER OF AFORESAID SECTION 30; THENCE SOUTH 89°45'16" WEST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 30, A DISTANCE OF 1310.26 FEET TO A FOUND 1/2 INCH IRON ROD; THENCE NORTH 00°14'37" WEST, A DISTANCE OF 2622.42 FEET TO A FOUND 1/2 INCH IRON ROD BEING A POINT ON THE NORTH LINE OF AFORESAID SECTION 30; THENCE NORTH 89°05'44" EAST ALONG SAID NORTH LINE OF SECTION 30, A DISTANCE OF 1309.95 FEET TO A FOUND 1/2 INCH IRON ROD AT THE NORTHWEST CORNER OF AFORESAID SECTION 29, ALSO BEING THE SOUTHWEST CORNER OF AFORESAID SECTION 20; THENCE NORTH 01°07'05" WEST ALONG THE WEST LINE OF SAID SECTION 20, A DISTANCE OF 2637.25 FEET TO A FOUND 3/8 INCH IRON ROD AT THE WEST 1/4 CORNER OF SAID SECTION 20; THENCE NORTH 01°07'28" WEST CONTINUING ALONG THE WEST LINE OF SAID SECTION 20, A DISTANCE OF 1318.18 FEET TO A FOUND 1/2 INCH IRON ROD; THENCE NORTH 88°44'05" EAST, A DISTANCE OF 2629.92 FEET TO A FOUND 1/2 INCH IRON ROD ON THE EAST LINE OF THE WEST 1/2 OF SAID SECTION 20; THENCE SOUTH 00°50'44" EAST ALONG SAID EAST LINE A DISTANCE OF 2639.85 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1320 FEET OF AFORESAID SECTION 20; THENCE SOUTH 88°49'47" WEST ALONG SAID NORTH LINE, A DISTANCE OF 1320.00 FEET TO A POINT ON THE WEST LINE OF THE EAST 1320.00 FEET OF SAID SECTION 20; THENCE SOUTH 00°50'44" EAST ALONG SAID WEST LINE, A DISTANCE OF 1320.00 FEET; THENCE NORTH 88°49'47" EAST, A DISTANCE OF 1320.00 FEET TO A FOUND 60d NAIL IN PAVEMENT AT THE SOUTH 1/4 CORNER OF SAID SECTION 20, ALSO BEING THE NORTH 1/4 CORNER OF AFORESAID SECTION 29; THENCE SOUTH 00°19'44" EAST, ALONG THE EAST LINE OF THE WEST HALF OF SAID SECTION 29, A DISTANCE OF 5258.17 FEET TO THE POINT OF BEGINNING.

CONTAINING 591.873 ACRES MORE OR LESS.

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03/11/2019 2:11 pm Pg 0005-0008  
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State of Oklahoma

4. Upon information and belief, **Superior Silica Sands, LLC**, whose last known address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109 owns a leasehold interest in all of the Property and owns a fee simple interest in a 40 acre tract out of the Property described as:

The south 1320.00 feet of the East 1230.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described by metes and bounds as:

Begin at the South Quarter corner of said Section 20; thence South  $88^{\circ}49'47''$  West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North  $00^{\circ}50'44''$  West a distance of 1320.00 feet; thence North  $88^{\circ}49'47''$  East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South  $00^{\circ}50'44''$  East along said East line a distance of 1320.00 feet to the point of beginning. Containing 40 acres more or less (hereinafter referred to as the "SSS Property"):

5. Upon information and belief **Linda C. Best Trust, U/T/A 1-6-2015**, whose last known address is 613 West Van Buren, Crescent, OK 73028, owns the fee simple interest in the all of the Property, except for the SSS Property.

6. Claimant furnished labor, materials, and/or equipment for the improvement of the Property that is generally described as programming and software, lighting panels, lane expansion packages, and additional motors and loadouts, which is described in more detail in Claimant's attached Invoice Numbers 180065-TMT-1055, 180092-TMT-1063, 180091-TMT-1062; and 180065-TMT-1061, which is a true and correct copy of the original and is incorporated herein. Claimant furnished the above describe work from September 29, 2018 through December 29, 2018.

7. Claimant furnished the above described work pursuant to a contract with **Superior Silica Sands, LLC**, whose last known address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109, (817) 841, 8070.

8. Claimant agreed to provide the above-described materials for a total price of \$2,117,778.20. **Superior Silica Sands, LLC** has made payments totaling \$1,100,000.00 which leaves an outstanding balance due and owing to Claimant of \$1,017,778.20 after allowing for all lawful offsets payments, and credits.

9. I hereby certify that a true and correct copy of this Mechanic's Lien Statement was mailed by certified mail, return receipt requested, to **Superior Silica Sands, LLC** and **Linda C. Best Trust, U/T/A 1-6-2015** at their addresses identified herein.

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03/11/2019 2:11 pm Pg 0005-0008  
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State of Oklahoma

10. I hereby certified that this Lien Statement has been filed with the County Clerk within ninety (90) days of Claimant's finishing its work at the Property on December 29, 2018.

TMT SOLUTIONS, INC.

By: 

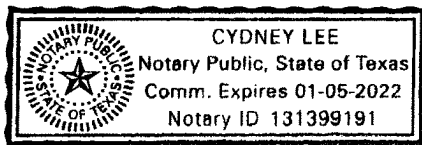
Mike Marx, President and CEO

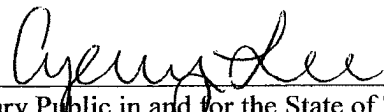
STATE OF TEXAS

COUNTY OF HAYS

BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, on this day personally appeared Mike Marx, President and CEO of TMT Solutions, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and subscribed and sworn before me, as well as acknowledged to me such person executed the same for the purposes and consideration therein expressed, and swore that the facts contained therein are true and correct.

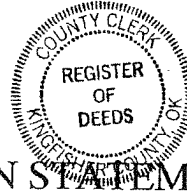
GIVEN UNDER MY HAND AND SEAL OF THIS OFFICE the 27 day of FEB, 2019.



  
Notary Public in and for the State of Texas  
My Commission on Expires: 01-05-2022

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I-2019-002056 Book 3210 Pg: 496  
 03/08/2019 2:52 pm Pg 0496-0501  
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 State of Oklahoma



25

## MECHANIC'S AND MATERIALMAN'S LIEN STATEMENT

Party(ies) entitled under 42 O.S. § 143.1 to notice from County Clerk or to be sent notice by Clerk at Claimant's request.

ML-19-5

<b>Property Owner</b>	Superior Silica Sands, L.L.C. 5600 Clearfork Main Street, Suite 400 Ft. Worth, Texas 76109
-----------------------	--

Party(ies) not entitled under 42 O.S. § 143.1 to notice from County Clerk.

<b>Original Contractor (General Contractor)</b>	Jerry's Concrete, L.L.C. 2405 Litehaus Ind Suite 107 New Braunfels, Texas 78130
<b>Claimant's Customer</b>	Bollenbach Concrete, Inc. P O Box 736 Kingfisher, OK 73750

<b>Legal Description</b>	See attached exhibit A
<b>Claim Amount</b>	\$29,574.01
<b>Date of Last Supply or Performance</b>	December 7, 2018

<b>Ret - Claimant</b>	Bollenbach Concrete, Inc. P O Box 736 Kingfisher, OK 73750
<b>Claimant's Representative</b>	Mitchell D. Rozin 4045 N.W. 64 <sup>th</sup> Street, Suite 510 Oklahoma City, OK 73116

**LIEN CLAIM.** Notice is hereby given that the above-named Claimant claims a lien in the amount shown above on the above-described property owned by the above-named Owner. This lien is claimed by virtue of labor performed and materials furnished in the improvement or repair of the above-described property under a contract between Claimant and Claimant's Customer named above. The last of said labor was performed and the last of said materials were furnished on the date stated above. A true and correct itemized statement of said labor performed and said materials furnished is attached hereto, marked Exhibit B and made a part hereof.

**AFFIDAVIT OF COMPLIANCE.** Claimant hereby swears or affirms that Claimant has complied with the pre-lien notice requirements of 42 O.S. § 142.6 if and as applicable to this project as a condition precedent to the recording of the mechanics' and materialmen's lien statement which is submitted herewith for recording.

**BOND CLAIM.** If any bond(s) have been issued or posted to assure that mechanics and materialmen are fully paid for labor performed or materials supplied in the construction, repair or improvement of the

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State of Oklahoma

above described property, then this document shall also serve as a claim upon such bond(s). In the event that any such bond(s) exist(s), but the information provided in this document is insufficient to present a prima facie claim upon such bond(s) or if notice to any additional persons or entities is required in order to present a prima facie claim upon such bond(s), or if there is any other condition precedent which must be satisfied in order to present a prima facie claim upon such bond(s) then all persons and entities who have notice of this document are hereby requested promptly to advise regarding the particulars of such bond(s) and the requirements for unpaid mechanics and materialmen to present a prima facie claim upon such bond(s).

CLAIMANT

By: Mitchell D. Rozin  
Mitchell D. Rozin  
4045 N.W. 64<sup>th</sup> Street, Suite 510  
Oklahoma City, OK 73116  
405-848-1444

STATE OF OKLAHOMA )

COUNTY OF OKLAHOMA ) ss.

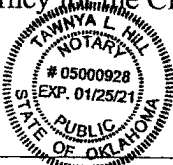
Individual Form

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

Representative Form

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of March, 2019, by Mitchell D. Rozin Attorney for the Claimant.

(SEAL)



Tawnya L Hill  
NOTARY PUBLIC, commission no.

Commission expires: \_\_\_\_\_

1-25-2021

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2019-002056 Book 3210 Pg: 498  
03/08/2019 2:52 pm Pg 0496-0501  
Fee: \$ 25.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**EXHIBIT A**

The South 1320.00 feet fo the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corner of said Section 20; thence South  $88^{\circ}49'47''$  West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North  $00^{\circ}50'44''$  West a distance of 1320.00 feet; thence North  $88^{\circ}49'47''$  East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South  $00^{\circ}50'44''$  East along said East line a distance of 1320.00 feet to the point of beginning.

Containing 40.00 acres more or less.

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**



Bollenbach Concrete, Inc.

P.O. Box 736  
Kingfisher, OK 73750  
(405) 375-4745

I-2019-002056 Book 3210 Pg: 499  
03/08/2019 2:52 pm Pg 0496-0501  
Fee: \$ 25.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**Invoice**

Date	Invoice #
12/5/2018	11955

<b>Bill To</b>
Jerry's Concrete LLC 2405 Litehaus Ind Suite 107 New Braunfels, TX 78130

P.O. No	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
16	4000# Ready Mix 12/1/18 Kingfisher County Sales Tax	114.00 5.75%	1,824.00T 104.88
A finance charge of 1.5% (18% annually) will be applied if not paid by 10th of month.		<b>Total</b>	\$1,928.88

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

Bollenbach Concrete, Inc.

P.O. Box 736  
Kingfisher, OK 73750  
(405) 375-4745

I-2019-002056 Book 3210 Pg: 500  
03/08/2019 2:52 pm Pg 0496-0501  
Fee: \$ 25.00 Doc: \$ 0.00  
Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**Invoice**

Date	Invoice #
10/18/2018	11663

**Bill To**

Jerry's Concrete LLC  
2405 Litehaus Ind Suite 107  
New Braunfels, TX 78130

P.O. No.

Terms

Project

2830&amp;690, 75W

Net due 10th of month

Quantity	Description	Rate	Amount
166	4000# Ready Mix 10/12/18	107.00	17,762.00T
1	Pump Truck 10/12/18	2,055.00	2,055.00T
	Sales Tax	9.085%	1,800.38
MMS hauled 50 yds			
A finance charge of 1.5% (18% annually) will be applied if not paid by 10th of month.			
<b>Total</b>			\$21,617.38

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

P.O. Box 736  
Kingfisher, OK 73750  
(405) 375-4745

Date	Invoice #
12/7/2018	11979

**Jerry's Concrete LLC**  
2405 Litehaus Ind Suite 107  
New Braunfels, TX 78130

P.O. No.	Terms	Project
2830 & 690	Due on receipt	

Quantity	Description	Rate	Amount
50	4000# Ready Mix 12/5/18	114.00	5,700.00
	Kingfisher County Sales Tax	5.75%	327.75

A finance charge of 1.5% (18% annually) will be applied if not paid by 10th of month.

## Total

\$6,027.75

I-2019-000729 Book 3199 Pg: 278  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00



**Return to:**  
CHRISTENSEN LAW GROUP, P.L.L.C.  
c/o: Jon M. Miles  
3401 N.W. 63<sup>rd</sup> Street, Suite 600  
Oklahoma City, Oklahoma 73116

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

ML-19-3

## MECHANIC'S OR MATERIALMAN'S LIEN STATEMENT

STATE OF WISCONSIN )  
 ) ss:  
COUNTY OF EAU CLAIRE)

### KNOW ALL MEN BY THESE PRESENTS:

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and duly authorized representative, pursuant to 42 O.S. § 141, et. seq., has and claims a lien upon the land, the building(s), the appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

That the land, the building(s), the appurtenances and improvements are owned by Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, being the owner of the land, the appurtenances and improvements and against whom Market and Johnson, Inc. claims a lien, and that the property is presently owned of record by Superior Silica Sands, LLC;

That the amount of the lien claimed totals Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses;

That on or about May 1, 2018, Market and Johnson, Inc. entered into an agreement and/or contract with Superior Silica Sands, LLC to perform labor, to furnish material and provide and furnish services to be used on and for the benefit of the land, the building(s), the appurtenances and all improvements; See Exhibit "A" for description of the labor, materials and services furnished and provided;

OKCOUNTYRECORDS.COM

I-2019-000729 Book 3199 Pg: 279  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

That pursuant to the agreement and/or contract with Superior Silica Sands, LLC, Market and Johnson, Inc. performed labor and furnished materials and services used on or for the land, building(s), the appurtenances improvements as fully described hereafter;

That the date upon which the labor last performed was on or about January 2, 2019; and that this lien statement has been filed with the county clerk within ninety (90) days of said date;

That Market and Johnson, Inc. attached and makes a part of this lien statement an affidavit regarding pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, marked as Exhibit "B" hereto, mailed to the last known address of Property Owner;

That said sum is just, due and unpaid, and that Market and Johnson, Inc. claims and has a lien upon the land, the building(s), the appurtenances and the improvements described above, and against Superior Silica Sands, LLC, in the amount as set forth above, plus all accruing interest, legal fees and costs, according to the laws of the State of Oklahoma.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Mechanic's or Materialman's Lien Statement; that I have read said lien statement and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibits are just, true and correct to the best of my knowledge, information and belief.

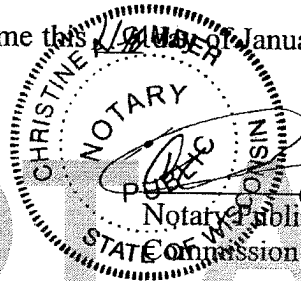
By: Jason Plante, Vice President

Market and Johnson, Inc.

I-2019-000729 Book 3199 Pg: 280  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 19th day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.



My Commission Expires:

Is Permanent

[SEAL]

NOTARY  
OFFICIAL  
COPY

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

DocuSign Envelope ID: AD26DEAE-ADA7-42A8-A002-746785D816FA

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project:

2814 Superior Silica Sands Dover -  
Oklahoma

Application No.:

1

Dover OK 73734

Period To: 10/31/2018

From Contractor:

Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

EnDeCo Engineers, Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$1,441,745.00
5. Retainage:
  - a 2.32% of Completed Work ..... \$33,511.00
  - b 0.00% of Stored Material ..... \$0.00
- Total Retainage ..... \$33,511.00
6. Total Earned Less Retainage ..... \$1,408,234.00
7. Less Previous Certificates For Payments ..... \$0.00
8. Current Payment Due ..... \$1,408,234.00
9. Balance To Finish, Plus Retainage ..... \$3,195,040.00


CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By:  Date: 11/13/18

DeSigned By: FT2010437FFAC9

State of: Wisconsin  
County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November, 2018  
Notary Public:   
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and information comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

EXHIBIT

2019-000729 Book 3199 Pg: 281  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

VIEW ADDITIONAL LAND RECORDS AT  
OKCOUNTYRECORDS.COM

# CONTINUATION SHEET

Page 2 of 2

**Application and Certification for Payment, containing**  
Contractor's signed certification is attached.  
In tabulations below, amounts are stated to the nearest dollar.  
Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 1  
Application Date: 10/31/2018  
To: 10/31/2018  
Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,495.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,246.00	16,012.00
05100	Structural Steel	637,095.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,128.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
Grand Totals		4,603,274.00	0.00	1,441,745.00	0.00	1,441,745.00	31.32%	3,161,529.00	33,511.00



**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project:

2814 Superior Silica Sands Dover-  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.:

2

Period To: 11/30/2018

Distribution to:

☐ Owner☐ Architect☐ Contractor

From Contractor:

Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

ENDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos.

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment as shown below, in connection with the Contract.  
Continuation Sheet is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 12/12/18State of: Wisconsin County of: [Signature]Subscribed and sworn to before me this 12 day of [Signature]

Notary Public:

My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed satisfactorily and the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY		
Total Changes Approved in previous months by Owner	Additions	Deductions
	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
	TOTALS	\$0.00
Net Changes By Change Order		\$0.00

1. Original Contract Sum \$4,603,274.00
2. Net Change By Change Order \$0.00
3. Contract Sum To Date \$4,603,274.00
4. Total Completed and Stored To Date \$2,698,949.00
5. Retainage:
  - a. 0.00% of Completed Work \$0.00
  - b. 0.00% of Stored Material \$0.00
- Total Retainage \$0.00
6. Total Earned Less Retainage \$2,698,949.00
7. Less Previous Certificates For Payments \$1,408,234.00
8. Current Payment Due \$1,290,715.00
9. Balance To Finish, Plus Retainage \$1,904,325.00

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM

1-2019-000729 Book 3199 Pg 283  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 111836 Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 2  
 Application Date: 11/30/2018  
 To: 11/30/2018  
 Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H % (G / C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,453.00	445,967.00	135,456.00	0.00	581,453.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
22200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	31,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
96000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.53%</b>	<b>1,904,325.00</b>	<b>0.00</b>

VIEW ADDITIONAL LAND RECORDS AT

1-2019-000729 Book 3199 Pg 284  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 121850

To Owner: Superior Silica Sands LLC

140 West Pine Street  
New Auburn, WI 54757

Project: 2814 Superior Silica Sands Dover -

Oklahoma

13479 E 690 Road  
Dover OK 73734

Application No.: 3

Period To: 12/31/2018

From Contractor: Market &amp; Johnson, Inc.

2350 Galloway Street  
Eau Claire, WI 54703

Via Architect: ENDeCo Engineers Inc.

PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$3,220,478.00
5. Retainage:
  - a. 0.00% of Completed Work ..... \$0.00
  - b. 0.00% of Stored Material ..... \$0.00
- Total Retainage ..... \$0.00
6. Total Earned Less Retainage ..... \$3,220,478.00
7. Less Previous Certificates For Payments ..... \$2,698,949.00
8. Current Payment Due ..... \$521,529.00
9. Balance To Finish, Plus Retainage ..... \$1,382,796.00

CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
	TOTALS	\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due

CONTRACTOR: Market &amp; Johnson, Inc.

By: [Signature] Date: 1/8/19

State of: Wisconsin  
 Subscribed and sworn to before me this 8 day  
 Notary Public: [Signature]  
 My Commission expires: October 16, 2022

County: Kristina B. B...  
 Notary Public  
 2019

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation and the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM

2019-000729 Book 3199 Pg 285  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 121850

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 3  
 Application Date: 12/31/2018  
 To: 12/31/2018  
 Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place				
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	98,000.00	0.00
23200	Dust Collection	570,738.00	142,685.00	102,315.00	0.00	245,000.00	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>1,382,796.00</b>	<b>0.00</b>

NOT AN OFFICIAL COPY

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2019-000729 Book 3199 Pg. 286  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

I-2019-000729 Book 3199 Pg: 287  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**AFFIDAVIT RE: PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That Market and Johnson, Inc., 2350 Galloway Street, Eau Claire, Wisconsin, 54703, (715) 834-1213, by and through Jason Plante, its Vice President and a duly authorized representative, of lawful age, being first duly sworn, upon his oath, deposes and states:

1. That on the 11 day of January, 2019, in compliance with 42 O.S. § 142.6, Market and Johnson, Inc., by and through its representative, CHRISTENSEN LAW GROUP, P.L.L.C., 3401 N.W. 63<sup>rd</sup> Street, Suite 600, Oklahoma City, Oklahoma 73116, served a pre-lien notice to Superior Silica Sands, LLC, 5600 Clearfork Main Street, Suite 400, Ft. Worth, Texas 76109, the property owner, at the last known address by certified mail, postage pre-paid, return receipt requested;

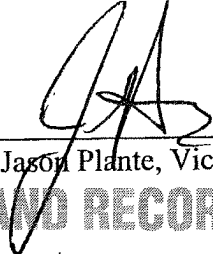
2. That the pre-lien notice was written and contained a statement that the notice is a pre-lien notice; the complete name, address and telephone number of the claimant; the date the material, services, labor and/or equipment was supplied; a description of the material, services, labor and/or equipment supplied; the name and last known address of the person who requested that the claimant provide the material, services, labor and/or equipment; the address, legal description and/or location of the property to which the material, services, labor and/or equipment had been supplied; the amount claimed; a statement that the dollar amount of the material, services, labor and/or equipment furnished or to be furnished exceeds Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00); and a statement that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

3. The Pre-Lien Notice of Lien to Property Owner was served prior to the filing of the lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and

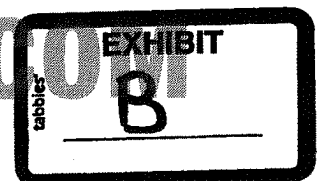
4. That Jason Plante, Vice President of Market and Johnson, Inc. and duly authorized representative, attaches and makes a part of this affidavit a copy of the served Pre-Lien Notice of Lien to Property Owner.

DATED this 11 day of January, 2019.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Jason Plante, Vice President

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**



I-2019-000729 Book 3199 Pg: 288

01/25/2019 9:30 am Pg 0278-0297

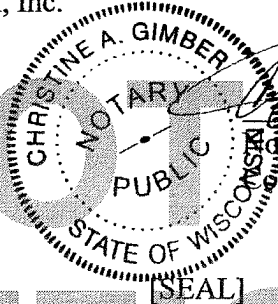
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 11th day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.

My Commission Expires:

Is Permanent



Notary Public

Commission No. \_\_\_\_\_

NOTARY  
OFFICIAL  
COPY

VIEW ADDITIONAL LAND RECORDS AT  
**OKCOUNTYRECORDS.COM**

I-2019-000729 Book 3199 Pg: 289  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**PRE-LIEN NOTICE OF LIEN TO PROPERTY OWNER**

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

**TO: SUPERIOR SILICA SANDS, LLC  
5600 CLEARFORK MAIN STREET, SUITE 400  
FT. WORTH, TEXAS 76109**

YOU ARE HEREBY NOTIFIED THAT MARKET AND JOHNSON, INC., 2350 GALLOWAY STREET, EAU CLAIRE, WISCONSIN, 54703, (715) 834-1213, IS ENTITLED TO OR MAY BE ENTITLED TO LIEN RIGHTS PURSUANT TO 42 O.S. § 141, ET SEQ. AND THAT THIS NOTICE IS A PRE-LIEN NOTICE OF LIEN SERVED IN ACCORDANCE WITH 42 O.S. § 142.6.

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc., by and through Jason Plante, its Vice President, is entitled to or may be entitled to a lien upon the land, building(s), appurtenances and improvements located and situated at E0690 Road, Dover, Oklahoma 73734, in the County of Kingfisher, State of Oklahoma, and more particularly described as:

The south 1320.00 feet of the East 1320.00 feet of the Southwest Quarter of Section 20, Township 18 North, Range 7 West of the Indian Meridian, Kingfisher County, Oklahoma, being more particularly described as follows:

Begin at the South Quarter corners of said Section 20; thence South 88°49'47" West, along the South line of the Southwest Quarter of said Section 20, a distance of 1320.00 feet; thence North 00°50'44" West a distance of 1320.00 feet; thence North 88°49'47" East, a distance of 1320.00 feet to a point on the East line of the Southwest Quarter of said Section 20; thence South 00°50'44" East along said East line a distance of 1320.00 feet to the point of beginning.

YOU ARE FURTHER NOTIFIED that Superior Silica Sands, LLC, by and through its representatives, Josh Clements and Brian Middleston, 1512 East Division Avenue, Barron, Wisconsin, 54812, requested that Market and Johnson, Inc. provide the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements described above and as set forth on the invoices attached hereto as Exhibit "A".

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. provided the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements as set forth on Exhibit "A" attached hereto which is incorporated herein by reference;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and improvements, all described above, was first supplied on or about May 1, 2018 and that the Property Owner has been served this Pre-

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State of Oklahoma

Lien Notice of Lien prior to the filing of a lien statement pursuant to 42 O.S. § 143.1 and no later than seventy-five (75) days of the date the material, services, labor and/or equipment was supplied; and that the date upon which the labor last performed was on or about January 2, 2019;

YOU ARE FURTHER NOTIFIED that the material, services, labor and/or equipment described herein were not supplied in connection with a residential project;

YOU ARE FURTHER NOTIFIED that Market and Johnson, Inc. is entitled to and may be entitled to a lien in the amount of Three Million Two Hundred Twenty Thousand Four Hundred Seventy-Eight and 00/100ths Dollars (\$3,220,478.00) as of January 10, 2019, plus accruing interest, all filing costs, and accrued and accruing legal expenses, with said amount exceeding Two Thousand Five Hundred and 00/100ths Dollars (\$2,500.00), for the material, services, labor and/or equipment used on or for the land, building(s), appurtenances and/or improvements as described herein and above.

DATED this 11<sup>th</sup> day of January, 2019.

By: Jason Plante, Vice President

Market and Johnson, Inc.

STATE OF WISCONSIN     )  
  ) ss:  
COUNTY OF EAU CLAIRE)

That I, Jason Plante, Vice President of Market and Johnson, Inc., being of lawful age and first duly sworn under oath, deposes and states: That I am a duly authorized representative of the claimant mentioned in the foregoing Pre-Lien Notice; that I have read said Pre-Lien Notice and know the contents thereof; that the amount claimed, the name of the owner, the description of the property upon which the lien is claimed, and the information set forth in the itemized and described list and the attached Exhibit is just, true and correct to the best of my knowledge, information and belief.

By: Jason Plante, Vice President

Market and Johnson, Inc.

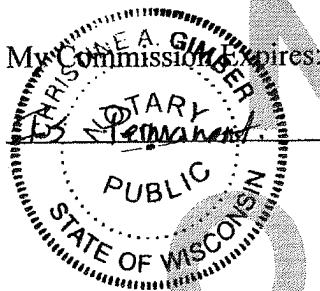
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I-2019-000729 Book 3199 Pg: 291  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

Subscribed and sworn to before me this 14th day of January, 2019, by Jason Plante, Vice President of Market and Johnson, Inc.



Christine A. Gimber  
Notary Public  
Commission No. \_\_\_\_\_

[SEAL]

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DocuSign Envelope ID: AD26DEAE-ADA7-42A8-A002-746785D816FA

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 101865

To Owner: Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757

Project: 2814- Superior Silica Sands Dover -  
Oklahoma

Application No. 1

Dover OK 73734

Period To: 10/31/2018

From Contractor: Market &amp; Johnson, Inc.

Via Architect: EnDeCo Engineers Inc.

2350 Galloway Street  
Eau Claire, WI 54703

PO Box 329

Marshall TX 75671-0329

Project Nos:

Contract For:

Contract Date:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor

**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached.


1. Original Contract Sum \$4,603,274.00
2. Net Change By Change Order \$0.00
3. Contract Sum To Date \$4,603,274.00
4. Total Completed and Stored To Date \$1,441,745.00
5. Retainage:
- a. 2.32% of Completed Work \$33,511.00
- b. 0.00% of Stored Material \$0.00
- Total Retainage \$33,511.00
6. Total Earned Less Retainage \$1,408,234.00
7. Less Previous Certificates For Payments \$0.00
8. Current Payment Due \$1,408,234.00
9. Balance To Finish, Plus Retainage \$3,195,040.00

CHANGE ORDER SUMMARY		Additions	Deductions
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total Approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00
Net Changes By Change Order		\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market & Johnson, Inc.

By:  Date: 11/13/18

State of: Wisconsin County of: Eau Claire  
Subscribed and sworn to before me this 13 day of November 2018  
Notary Public:   
My Commission expires: October 16, 2022

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and information comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,408,234.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**EXHIBIT**

2019-000729 Book 3199 Pg 292  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

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**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 101865

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 1  
 Application Date: 10/31/2018  
 To: 10/31/2018  
 Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date		H Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place		(D+E+F)	(G / C)		
01500	Construction Management & General	478,334.00	0.00	77,178.00	0.00	77,178.00	16.13%	401,156.00	0.00
03300	Concrete Foundations	1,067,485.00	0.00	320,249.00	0.00	320,249.00	30.00%	747,236.00	16,012.00
05100	Structural Steel	637,085.00	0.00	445,967.00	0.00	445,967.00	70.00%	191,118.00	0.00
11990	Equipment	800,000.00	0.00	320,000.00	0.00	320,000.00	40.00%	480,000.00	16,000.00
14100	Chute Piping	100,000.00	0.00	0.00	0.00	0.00	0.00%	100,000.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	0.00	0.00	0.00	0.00%	570,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	0.00	156,394.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	354,235.00	0.00	91,977.00	0.00	91,977.00	25.96%	262,258.00	0.00
95000	Fee 8%	340,983.00	0.00	29,980.00	0.00	29,980.00	8.79%	311,003.00	1,499.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>0.00</b>	<b>1,441,745.00</b>	<b>31.32%</b>	<b>3,161,529.00</b>	<b>33,511.00</b>

**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 111836

To Owner:

Superior Silica Sands LLC  
140 West Pine Street  
New Auburn, WI 54757Project: 2614- Superior Silica Sands Dover -  
Oklahoma  
13479 E 690 Road  
Dover OK 73734

Application No.: 2

Period To: 11/30/2018

From Contractor:

Market & Johnson, Inc.  
2350 Galloway Street  
Eau Claire, WI 54703

Via Architect:

EnDeCo Engineers Inc.  
PO Box 329  
Marshall TX 75671-0329

Project Nos:

Contract Date:

Distribution to:  
☐ Owner  
☐ Architect  
☐ Contractor**CONTRACTOR'S APPLICATION FOR PAYMENT**

Application is made for payment as shown below. In connection with the Contract Continuation Sheet is attached.

1. Original Contract Sum ..... \$4,603,274.00
2. Net Change By Change Order ..... \$0.00
3. Contract Sum To Date ..... \$4,603,274.00
4. Total Completed and Stored To Date ..... \$2,698,949.00
5. Retainage:
  - a. 0.00% of Completed Work ..... \$0.00
  - b. 0.00% of Stored Material ..... \$0.00
 Total Retainage ..... \$0.00
6. Total Earned Less Retainage ..... \$2,698,949.00
7. Less Previous Certificates For Payments ..... \$1,408,234.00
8. Current Payment Due ..... \$1,290,715.00
9. Balance To Finish, Plus Retainage ..... \$1,904,325.00

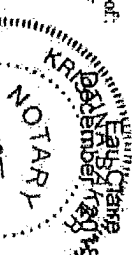


CHANGE ORDER SUMMARY		
	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	\$0.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Market &amp; Johnson, Inc.

By: 

Date: 12/12/18

State of: Wisconsin County of:   
 Subscribed and sworn to before me this 12 day of   
 Notary Public:   
 My Commission expires: October 16, 2022

**ARCHITECTS CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observations and the data, comprising the above application, the Architect certifies to the Owner that the test of the Architect's knowledge, information, and belief, the Work has progressed to the point that the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 1,290,715.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: 

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

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I-2019-000729 Book 3199 Pg 294  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing:

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

Invoice #: 111836

Contract: 2814 Superior Silica Sands Dover - Oklahoma

Architect's Project No.:

Application No.: 2

Application Date: 11/30/2018

To: 11/30/2018

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total		H Balance To Finish (C-G)	I Retainage
			From Previous Application (D+E)	This Period In Place		(Not in D or E)	Completed and Stored To Date (D+E+F)		
01500	Construction Management & General	478,334.00	77,178.00	51,088.00	0.00	128,266.00	26.82%	350,068.00	0.00
03300	Concrete Foundations	1,067,495.00	320,249.00	480,372.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	445,967.00	135,496.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	320,000.00	80,000.00	0.00	400,000.00	50.00%	400,000.00	0.00
14100	Chute Piping	100,000.00	0.00	100,000.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	0.00	142,685.00	0.00	142,685.00	25.00%	428,053.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	91,977.00	174,437.00	0.00	266,414.00	65.00%	143,453.00	0.00
95000	Fee 8%	340,983.00	29,980.00	93,126.00	0.00	123,106.00	36.10%	217,877.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>1,441,745.00</b>	<b>1,257,204.00</b>	<b>0.00</b>	<b>2,698,949.00</b>	<b>58.63%</b>	<b>1,904,325.00</b>	<b>0.00</b>

1-2019-000729 Book 3199 Pg 295  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

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**APPLICATION AND CERTIFICATE FOR PAYMENT**

Invoice #: 121850

To Owner: Superior Silica Sands LLC

Project: 2814 - Superior Silica Sands Dover -

Application No.: 3

Distribution to:

140 West Pine Street  
New Auburn, WI 54757Oklahoma  
13479 E 690 Road  
Dover OK 73734

Period To: 12/31/2018

☐ Owner  
☐ Architect  
☐ Contractor

From Contractor: Markel &amp; Johnson, Inc.

Via Architect: EnDeCo Engineers Inc.

2350 Galloway Street

PO Box 329

Project Nos:

Eau Claire, WI 54703

Marshall TX 75671-0329

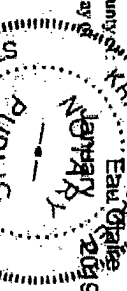
Contract For:

Contract Date:

**CONTRACTOR'S APPLICATION FOR PAYMENT**Application is made for payment, as shown below, in connection with the Contract.  
Continuation Sheet is attached:

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief, the work covered by this Application for Payment has been completed in accordance with the Contract Documents. That all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Markel &amp; Johnson, Inc.

By:  Date: 1/8/19State of: Wisconsin County: Eau Claire  
Subscribed and sworn to before me this 8 day of January, 2019  
Notary Public: Kristina B. Baker  
My Commission expires: October 16, 2022  
**ARCHITECT'S CERTIFICATE FOR PAYMENT**

In accordance with the Contract Documents, based on on-site observation and review of the work comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief, the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 521,529.00

(Initial explanation if amount certified differs from the amount applied; initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

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

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment, and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	Additions	Deductions
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total Approved this Month	\$0.00	\$0.00
<b>TOTALS</b>	<b>\$0.00</b>	<b>\$0.00</b>
Net Changes By Change Order	<b>\$0.00</b>	

1. Original Contract Sum \$4,603,274.00
2. Net Change By Change Order \$0.00
3. Contract Sum To Date \$4,603,274.00
4. Total Completed and Stored To Date \$3,220,478.00
5. Retainage:
  - a. 0.00% of Completed Work \$0.00
  - b. 0.00% of Stored Material \$0.00
 Total Retainage \$0.00
6. Total Earned Less Retainage \$3,220,478.00
7. Less Previous Certificates For Payments \$2,698,949.00
8. Current Payment Due \$521,529.00
9. Balance To Finish, Plus Retainage \$1,362,796.00

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2019-000729 Book 3199 Pg. 296  
01/25/2019 9:30 am Pg 0278-0297  
Fee: \$ 53.00 Doc: \$ 0.00Jeannie Boevers - Kingfisher County Clerk  
State of Oklahoma

**CONTINUATION SHEET**

Page 2 of 2

Application and Certification for Payment, containing

Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainerage for line items may apply.

Invoice #: 121850

Contract: 2814- Superior Silica Sands Dover - Oklahoma

Application No.: 3

Application Date: 12/31/2018

To: 12/31/2018

Architect's Project No.:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed and Stored To Date	H % (G/C)	I Balance To Finish (C-G)	J Retainage
			From Previous Application (D+E)	This Period In Place					
01500	Construction Management & General	478,334.00	128,266.00	37,107.00	0.00	165,373.00	34.57%	312,961.00	0.00
03300	Concrete Foundations	1,067,495.00	800,621.00	0.00	0.00	800,621.00	75.00%	266,874.00	0.00
05100	Structural Steel	581,463.00	581,463.00	0.00	0.00	581,463.00	100.00%	0.00	0.00
11990	Equipment	800,000.00	400,000.00	200,000.00	0.00	600,000.00	75.00%	200,000.00	0.00
14100	Chute Piping	100,000.00	100,000.00	0.00	0.00	100,000.00	100.00%	0.00	0.00
22100	Air Piping	98,000.00	0.00	0.00	0.00	0.00	0.00%	98,000.00	0.00
23200	Dust Collection	570,738.00	142,665.00	102,315.00	0.00	245,000.00	42.93%	325,738.00	0.00
50600	Mechanical/Engineering Fees	156,394.00	156,394.00	0.00	0.00	156,394.00	100.00%	0.00	0.00
80000	Process Equipment	409,867.00	266,414.00	143,453.00	0.00	409,867.00	100.00%	0.00	0.00
95000	Fee 8%	340,983.00	123,106.00	38,654.00	0.00	161,760.00	47.44%	179,223.00	0.00
<b>Grand Totals</b>		<b>4,603,274.00</b>	<b>2,698,949.00</b>	<b>521,529.00</b>	<b>0.00</b>	<b>3,220,478.00</b>	<b>69.96%</b>	<b>1,382,796.00</b>	<b>0.00</b>

1-2019-000729 Book 3199 Pg 297  
 01/25/2019 9:30 am Pg 0278-0297  
 Fee: \$ 53.00 Doc: \$ 0.00

Jeannie Boevers - Kingfisher County Clerk  
 State of Oklahoma

VIEW ADDITIONAL LAND RECORDS AT

OKCOUNTYRECORDS.COM