

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

THE EARLY CONSTRUCTION CO.

307 County Road 120
South Point, Ohio 45680

Plaintiff,

v.

**AMERICAN ELECTRIC POWER
SERVICE CORPORATION**

c/o CT Corporation System
5098 Washington St W Suite 407
Charleston, WV 25313-1561

and

**AEP WEST VIRGINIA TRANSMISSION
COMPANY, INC.**

c/o CT Corporation System
5098 Washington St W Suite 407
Charleston, WV 25313-1561

and

AEP TRANSMISSION COMPANY, LLC

c/o CT Corporation System
5098 Washington St W Suite 407
Charleston, WV 25313-1561

and

**AMERICAN ELECTRIC POWER
COMPANY, INC.**

1 Riverside Plaza, 29th Floor
Columbus, OH 43215

and

CASE NO.: _____

JUDGE: _____

COMPLAINT

JOEL SIGLER
2835 Cannon Circle
Lewis Center, Ohio 43035

and

JOHN AND JANE DOES 1-10,

Defendants.

COMPLAINT

Now comes Plaintiff, The Early Construction Co. (“Early”), by and through the undersigned counsel, and for its Complaint against Defendants, American Electric Power Service Corporation as agent for AEP West Virginia Transmission Company, Inc. (“AEPSC”), AEP West Virginia Transmission Company, Inc. (“AEP WV”), AEP Transmission Company, LLC (“AEPTC”), American Electric Power Company, Inc. (“AEP”), Joel Sigler (“Mr. Sigler”), and John and Jane Does 1-10 (“Doe Defendants”) alleges as follows:

PARTIES

1. Early is a West Virginia corporation with its principal place of business located at 307 County Road 120, South Point, Ohio 45680
2. AEPSC is a New York corporation with a principal place of business at 1 Riverside Plaza, Columbus, Ohio 43215.
3. AEPSC is the agent of and/or affiliated entity of AEP WV for purposes of the Project relevant to this matter.
4. AEP WV is a West Virginia corporation with a principal place of business at 1 Riverside Plaza, Columbus, Ohio 43215.
5. For purposes of this Complaint, AEPSC and AEP WV shall be jointly referred to as “AEP.”

6. AEPTC is a Delaware limited liability company with its principal place of business at 1 Riverside Plaza, Columbus, Ohio 43215.

7. AEPTC is the parent company of AEP WV and controls and/or owns all of AEP WV's shares that have been issued and are outstanding.

8. AEPTC is a wholly-owned subsidiary of AEPC

9. AEPC is a New York corporation with a principal place of business at 1 Riverside Plaza, Columbus, Ohio 43215.

10. Mr. Sigler is an individual residing in Delaware County, Ohio at 2835 Cannon Circle, Lewis Center, Ohio 43035, and at all times relevant, was and is an employee, agent, and/or representative of AEP, AEPTC, and/or AEPC, whose principal place of business is 1 Riverside Plaza, Columbus, Ohio 43215.

11. AEP, AEPTC, and AEPC are vicariously and strictly liable for the conduct of their officers, directors, employees, agents, and/or servants.

12. Upon information and belief, the Doe Defendants are persons or entities, the specific identities of which are currently unknown, who may be owners, investors, operators, managers, agents, representatives, employees, servants, affiliated entities, partners, subsidiaries, lessors, lessees, and/or otherwise connected to, have interests in, benefited from, and/or are affiliated with AEP, AEPTC, AEPC, and/or the Project, and may also be liable for the damages sought by Early.

JURISDICTION AND VENUE

13. This is a civil action seeking damages in excess of \$14,000,000.00, exclusive of all other relief this Court deems proper.

14. This Court has jurisdiction over the parties hereto and the subject matter of this action, and pursuant to W.Va. Code § 56-1-1(a)(1), venue is proper in the Circuit Court of Putnam County.

15. This Court has jurisdiction over this controversy because the contract which gives rise to this dispute was to be performed in Putnam County, West Virginia regarding real property located in Putnam County, West Virginia.

16. This Court has personal jurisdiction because the Defendants operated and/or conducted business in the State of West Virginia to commit the actions alleged herein.

17. This dispute arises from, among others, a contract between Plaintiff and Defendants for the services rendered in relation to the construction of the AEP Hurricane Service Center located at 455 Hodges Branch Road, Hurricane, WV 25526 (“Project”).

18. Venue is also proper based upon the applicable contact herein.

FACTS

19. On June 4, 2018, AEP’s issued its Project Requirements (“Requirements”) in furtherance of soliciting bids for the construction of the Project.

20. Attached hereto as **Exhibit A** and incorporated herein by reference is a true and accurate copy of the Requirements.

21. The Requirements included AEP’s Instructions to Bidders (“Instructions”), AEP’s General Terms and Conditions for Engineering, Procurement and Construction Work (“Terms”), and General Project Requirements (“GPR”).

22. On June 12, 2018, a representative of Early attended a Pre-bid Conference for the Project that was held at AEP’s Call Center in Hurricane, West Virginia, (“Pre-Bid Conference”).

23. Pre-Bid Conference Meeting Minutes (“Minutes”) were prepared by AEP and distributed to those parties, including Early, which attended the Pre-Bid Conference.

24. Attached hereto as **Exhibit B** and incorporated herein by reference is a true and accurate copy of the Minutes.

25. Per the Minutes at Section 1.1.1, Joel Sigler (“Mr. Sigler”), an employee and/or agent of AEP, and Brian Szuch (“Mr. Szuch”), an employee and agent of the ms consultants (“MS”), AEP’s Project Engineer, were introduced as the contact personnel for AEP and the AEP’s Project design team.

26. For purposes of this Complaint and at all times relevant, Mr. Sigler has been and still is an employee, agent, and/or representative of AEP.

27. Per the Minutes at Sections 2.1.1 through 2.1.4, the scope of work for the Project included, among others, the following: (A) construction of a 91,000 square foot service building to be used as offices, shops, storage, vehicle repair, and truck parking; (B) construction of a 12,000 square foot detached garage for wash bay and mobile transformer units; (C) construction of a 3,000 square foot detached 3-sided shed for exterior storage; and (D) extensive earth work for the Project site for parking, paving, and materials laydown yard.

28. Per the Minutes at Section 4.1 at Item 6, AEP notified the attendees, including Early, that the start of construction may be delayed as far out as November 1, 2018 due to various environmental permits.

29. On June 13, 2018, AEP issued Addendum No. 1 (“Addendum 1”) concerning the Project.

30. Attached hereto as **Exhibit C** and incorporated herein by reference is a true and accurate copy of Addendum 1.

31. On June 22, 2018, AEP issued Addendum No. 2 (“Addendum 2”) concerning the Project.

32. Attached hereto as **Exhibit D** and incorporated herein by reference is a true and accurate copy of Addendum 2.

33. On July 9, 2018, AEP issued Addendum No. 3 (“Addendum 3”) concerning the Project.

34. Attached hereto as **Exhibit E** and incorporated herein by reference is a true and accurate copy of Addendum 3.

35. On July 12, 2018, Early submitted its Bid Form and Clarifications (“Bid”) to AEP for work on the Project.

36. Attached hereto as **Exhibit F** and incorporated herein by reference is a true and accurate copy of the Bid.

37. Within the Bid, Early clarified, among others, the following: (1) Per GPR-14 section 3, Early excluded underground obstructions, which included, but was not limited to, rock or unstable soil; (2) Early’s price breakdown was for evaluation purposes only and was not to be used for scope additions or deletions; (3) Early did not include any B&O type taxes and if required, they would be added at cost; (4) all payments to Early were due 30 calendar days after invoice date; (4) all possible liquidated damage type charges from AEP were excluded; and (5) any rework, modifications, or extra work to the scope overview would be grounds for additional compensation.

38. On July 24, 2018, Mr. Sigler sent email correspondence to Kaileb Legge (Mr. Legge), an employee of Early, concerning Early’s bid and stated, among others, “[w]e know that you have the project as tax exempt.”

39. On August 9, 2018, AEP sent a letter and email correspondence to Early informing it that while its bid was “very competitive,” it was awarding the work for the Project to another bidder.

40. On August 16, 2018, representatives of Early met with representatives of AEP in Columbus, Ohio to discuss Early’s Bid.

41. On August 23, 2018, Mr. Sigler sent email correspondence to Early’s representatives thanking them for meeting in Columbus, Ohio to discuss its bid. In addition, the correspondence stated, among others, the following: (1) cost is always a major factor in selecting a contractor, but not the only factor; (2) as much as AEP enjoyed meeting with Early and the positive experience AEP has had with Early on another project, AEP had decided to engage another contractor for the Project; (3) Early should not to consider AEP’s decision to engage another contractor as a negative reflection of AEP’s opinion of Early; (4) AEP’s confidence in Early as a partner with AEP has grown even stronger; and (5) Early will certainly be a sought after bidder for future AEP work.

42. On September 10, 2018, Mr. Sigler sent email correspondence to Early indicating that AEP had some new development with the bid approval and asked whether Early would be interested in the Project and if Early had capacity to do the Project.

43. On September 18, 2018, after Early indicated it was interested and could handle the Project, Mr. Sigler sent email correspondence to Early indicating that AEP’s legal team was reviewing the Limited Notice to Proceed, which would be provided to Early in the new few days.

44. On September 26, 2018, AEP sent the Limited Notice to Proceed to Early (“Notice to Proceed”), which was executed by Early and returned to AEP the same day.

45. Attached hereto as **Exhibit G** and incorporated herein by reference is a true and accurate copy of the executed Notice to Proceed.

46. Within the Notice to Proceed, it indicated, among others, the following: (1) the Notice to Proceed sets forth certain understandings between Early and AEP regarding the performance of certain initial work for the Project; (2) AEP and Early intend to negotiate a definitive agreement with respect to the Project and the contract number is pending; (3) AEP shall pay Early at the rates specified in Early's Bid; (4) Early shall perform the preliminary activities in accordance with the Bid; (5) the general terms and conditions for the preliminary activities on the Project shall be the Terms; (6) when AEP and Early enter into a contract, all activities performed by Early shall be subsumed by said contract and considered part of the work to be performed by Early under said contract; (7) the Notice to Proceed shall terminate upon, among others, the parties executing the Contract or the parties failing to enter into a definitive contract by October 31, 2018; and (8) the Notice to Proceed shall be governed by and construed in accordance with the laws of the State of Ohio.

47. In accordance with the Notice to Proceed, Early began performing its work.

48. On October 2, 2018, a Pre-Construction Meeting took place between Early, AEP, and others.

49. On October 23, 2018, Mr. Sigler sent a letter to Brad McNeil ("Mr. McNeil"), Early's VP of Operations, the contract for the Project.

50. On October 31, 2018, Early entered into Contract No. 03015866X383 with AEP for the Project ("Contract").

51. Attached hereto as **Exhibit H** and incorporated herein fully by reference is a true and accurate copy of the Contract.

52. Pursuant to the Contract, AEP and Early agreed that the work would be performed in accordance with the Requirements (Ex. A), Minutes (Ex. B), Addendum 1 (Ex. C), Addendum 2 (Ex. D), Addendum 3 (Ex. E), Post-Bid Meeting minutes, the Project's construction drawings from ms consultants, and the Bid (Ex. F).

53. Pursuant to the Contract, AEP accepted Early's clarifications, deviations and exceptions contained in its Bid.

54. Pursuant to the Contract, the claims in this lawsuit are governed by the laws of the State of Ohio.

55. Subsequent to the Contract, Early began performing work and continues to this day to perform the work in accordance with the Contract.

56. On December 4, 2018, Early's work on the Project was stopped due to a delay caused by and/or related to the Army Corp. of Engineers.

57. The Army Corp. of Engineers delay lasted for nine months and Early was not fully released back to work until August 16, 2019.

58. On September 3, 2019, Progress Meeting # 09 took place via conference call between Early, AEP, and others.

59. Per AEP's meeting minutes for Progress Meeting # 09, it noted, among others, the following: (1) the Army Corp. of Engineers Nationwide Permit remained under review; (2) Early had demobilized as no work could be performed since June 10, 2019; (3) the Project's status was closed as of August 16, 2019; (4) the EPA's corrective measures were expected to take 14 to 21 days to complete, weather permitting; and (5) Project delays were noted.

60. On October 1, 2019, Progress Meeting # 11 took place on site between Early, AEP, and others.

61. Per AEP's meeting minutes, it noted, among others, the following: (1) the Project submittals were well ahead of schedule; (2) no critical submittals were needed; (2) WCP-01 was issued to Mr. Sigler concerning changes related to the SWPPP and AEP Procurement was to issue a Contract Amendment; (3) Early had re-sequenced the site work to minimize breaches in the SWPPP controls, which would push the building pad and foundation work to early spring 2020; and (4) Project delays were noted.

62. On October 21, 2019, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Szuch, concerning issues with rock encountered at the Project, which stated: "As we are working we have ran into some rock at Hurricane, I have attached some photos and a marked up drawing to where it is at on the site. Just wanted to know how you wanted to proceed in getting it removed or getting it tested to see how deep it goes. Please let me know how you want proceed in removing the rock."

63. On October 21, 2019, Mr. Sigler sent email correspondence to, among others, Michael Wilcox ("Mr. Wilcox"), an employee of Early, wherein he stated: "How did you bid removing the rock? It's really up to you. I believe at the pre-bid you said you would not be blasting."

64. On October 22, 2019, Mr. Legge sent email correspondence to, among others, Mr. Sigler, which stated: "We don't think blasting will be necessary, but we're just now opening this up. We don't actually know how big this is. We just wanted you to be aware of what was happening. As far as our bid, we excluded underground obstructions. And so did the sub. They are able to work in other areas for the time being if necessary, or they can proceed with rock removal on a T&M basis."

65. On October 22, 2019, Mr. Wilcox sent email correspondence to Marc Montgomery, an employee and/or agent of CTL Engineering (“CTL”), AEP’s geo-technical engineer, wherein he stated: “We have encountered some rock at the AEP Hurricane site, please see attached document that we agreed to with AEP. Please advise your Geo tech going forward on what needs to be done. Thanks.”

66. On October 31, 2019, RFI No. 013 was submitted by Early to MS, which stated: “Problem: We have tried to remove the rock that we have encountered on site with a ripper on the back of the dozer with no luck. We were hoping to be able to rip out three to four foot by using the ripper but are only achieving about a foot depth. Our other option is to bring in a bigger excavator with a hammer and bust the rock out in pieces, our concern with this method is the time impact it will have on the schedule if the rock is more significant than we think. GPR -14 Section 3 states that blasting is prohibited. However, at this current juncture, blasting will speed up the process considerably. That being said, would AEP consider a variance on GPR14/3 and allow blasting? I have contacted the city of Hurricane and the Fire Marshall to confirm blasting would be allowable. According to them, the only requirements are for the blasting company to file for a permit with the city and the Fire Marshall has to OK everything before we would proceed. The time frame for reference is as follows: with the estimated size of the current obstruction would take an approximate two to three weeks with an excavator and hammer. The same amount of work can be completed without bringing in any additional equipment in about 2 days. A significant time saver. Please advise.”

67. On November 5, 2019, Progress Meeting # 13 took place on site between AEP, Early, and others.

68. Per AEP's meeting minutes for Progress Meeting # 13, it noted, among others, the following: (1) there were delays; (2) no site work was [performed] due to rock and blasting being coordinated; (3) Early had encountered rock; (4) Early was able to remove the first few feet of rock; (5) blasting may be needed; (5) AEP was looking for internal approvals for the corresponding work; and (6) and general contractor is to verify approval with local authorities and provide AEP with the blasting company's blast safety program and qualifications.

69. On November 8, 2019, Mr. Wilcox sent email correspondence to, among others, Mr. Sigler, wherein he stated the following: "Please see attached documents for the new blasting company we would like to use, Virginia Drilling is the new company. Wapum has decided to step away from the project at this time. Please let me know if you need anything else." The documents attached to this email included the blasting plan from Virginia Drilling.

70. On November 8, 2019, Mr. Sigler sent email correspondence to, among others, Matthew Forshey ("Mr. Forshey"), an employee and/or agent of AEP, wherein he stated the following: "Here is some information on the Blasting sub-contractor Early would like to use. It does appear that they have worked on other AEP sites."

71. For purposes of this Complaint and at all times relevant, Mr. Forshey has been and still is an employee, agent, and/or representative of AEP.

72. From November 11, 2019 to January 31, 2020, Early had performed obstruction ripping of the rock at the Project.

73. On November 26, 2019, Mr. Forshey sent email correspondence to, among others, Mr. Legge and Mr. Wilcox, wherein he stated the following: "If you are still interested in conducting blasting we would need to see the proposed blasting plan, have a call with our safety group to discuss, ensure that the local permitting departments have approved the plan, and also

have the subcontractor sign up through Vero. Attached are a couple of safety plans that we have received from other vendors. Please let us know how you intend to proceed.”

74. On December 2, 2019, Mr. Sigler sent email correspondence to, among others, Mr. Forshey, Mr. Wilcox, and Mr. Legge, wherein he stated: “The plan is to blast. Working on defining scope, approvals, and paper work.”

75. On December 3, 2019, Progress Meeting # 16 took place via conference call between AEP, Early, and others.

76. Pursuant to AEP’s meeting minutes for Progress Meeting # 16, it noted, among others, the following: (1) the blasting company was working on a safety plan with local authorities; (2) there were lingering issues with the SWPPP/Sediment Pond, which required an additional meeting to resolve said problems; (3) rock excavation had continued without blasting; (4) Early had re-sequenced the site work to minimize issues in the SWPPP controls; (5) delays were still occurring; (6) blasting of the rock was acceptable to AEP; (7) MS was to provide EIR to mapping of the rock; (8) the rock excavation was proceeding better than expected; and (9) there may not need to blast, but AEP was preparing to blast if needed.

77. On January 3, 2020, Mr. Sigler sent email correspondence to Mr. Legge concerning Vero that stated: “Have you been contacted by AEP Procurement and informed of the VERO requirements? This is intended to replace ISN.”

78. On January 3, 2020, Mr. Legge sent email correspondence to Mr. Sigler concerning Vero that stated: “We have. It’s either in place already, or being put in place.”

79. On January 5, 2020, Mr. Legge sent email correspondence to Mr. Sigler concerning Vero that stated: “VERO is in place with use and relevant subs. Also pictures won’t be a problem on blasting.”

80. On January 7, 2020, Progress Meeting # 17 took place on site between AEP, Early, and others.

81. Per AEP's meeting minutes for Progress Meeting # 17, it noted, among others, the following: (1) work change proposals and work changes included rock excavation; (2) Area 1A – rock excavation continues without blasting; (3) Area 1B – unchanged; (4) Area 1C – no work; (5) Area 2- unchanged; (6) the civil engineer has one week of work before delayed by pond work; (7) delays noted; (8) permits in place for blasting; (9) foundation survey completed in one week; and (10) Early was told not to do any blasting until formal approval in writing was received from AEP.

82. On January 21, 2019, Progress Meeting # 18 took place via conference call between AEP, Early, and others.

83. Per AEP's meeting minutes for Progress Meeting # 18, it noted, among others, the following: (1) delays noted; (2) permits for blasting in place; (3) foundation survey has been completed; (4) Early told not to do any blasting until formal approval in writing is received from AEP; (4) blasting on hold pending Seismic Refraction Report; (5) MS Consultants is soliciting Terracon to provide EIR to mapping of the rock and Terracon preparing cost; (6) CTL approved to do the work, but waiting on report from CTL; and (7) rock excavation proceeding better than expected, the rock hammer has not been needed, and blasting may not be needed, but preparing to blast if needed.

84. On January 30, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning Extra Work Order (“EWO”) 005A, which stated: “Please see the attached EWO005A for the rock removal that was accumulated in NOV. If you have any questions, let me know. I will be sending Decembers and Januarys also.” Attached to this email was EWO 005A, CTL's Daily Activity Reports, and Allard's billings.

85. Attached hereto as **Exhibit I** and incorporated herein by reference is a true and accurate copy of EWO 005A.

86. On January 30, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning EWO 005B, which stated: “Please see attached EWO005B for the Rock removal that was accumulated in DEC. if you have any questions, let me know. I will be sending Januarys also.” Attached to this email was EWO 005B, CTL’s Daily Activity Reports, and Allard’s Billings.

87. Attached hereto as **Exhibit J** and incorporated herein by reference is a true and accurate copy of EWO 005B.

88. On January 30, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning EWO 005C, which stated: “Please see attached EWO005C for the Rock removal that was accumulated in JAN. If you have any questions, let me know. Thanks for your time.” Attached to this email was EWO 005C, CTL’s Daily Activity Reports, and Allard Billings.

89. Attached hereto as **Exhibit K** and incorporated herein by reference is a true and accurate copy of EWO 005C.

90. On January 31, 2020, Mr. Sigler sent email correspondence to, among others, Mr. Legge, concerning EWO 005A, which stated that “[w]e are going to need to discuss this.”

91. On February 3, 2020, took place via conference call between AEP, Early, and others.

92. Per AEP’s meeting minutes for Progress Meeting # 21, it noted, among others, the following: (1) work relating to rock excavation would be limited to what is needed for the second sediment pond construction; (2) blasting was a work change proposal; (3) minimal work could be performed in certain areas until blasting was completed; (4) offsite improvements for lay down

area on adjacent property was completed; (5) delays noted; (6) a blasting schedule was received with a test shot tentatively scheduled for March 10th; (7) schedule could not be accurately updated until blasting was approved; and (8) Early was told to not do any blasting until formal approval in writing was received from AEP.

93. On February 18, 2019, Progress Meeting # 22 took place via conference call between AEP, Early, and others.

94. Per AEP's meeting minutes for Progress Meeting # 22, it noted, among others, the following: (1) rock excavation to be limited to what is needed for second sediment pond; (2) offsite improvements for lay down yard on adjacent property were being made; (3) Area 1A – stop ripping pending blasting; (4) delays noted; (5) blasting schedule needed; (5) waiting on CTL Report; and (6) new business/issues included cost for excavation.

95. On February 19, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the blasting schedule. In particular, he stated: "I have attached a proposed blasting schedule. This reflects worst case scenario. It's based on the blasters capabilities with the limitations the city placed on the process. So that being said, the blaster can blast 4000 cubic yards a cycle. Right now, I have them blasting one day and drilling the next while Allard is clearing. If the process improves, we could potentially blast 2 out of 3 days or even every day, or some variation of all three. This is also based on assuming all remaining cutting is rock, which is about 290k yards, which is also worst case scenario. If there is less rock, it'll be faster, if they get a system down where they can blast more than every other day it will also be much faster. As the schedule shows, we should be able to have the building pad right when we planned on having it in the last construction schedule update. This is assuming weather cooperates, and assuming we have

the approval from AEP by Monday the 24th so that the blaster can mobilize by the 2nd. Hope this helps.”

96. On February 19, 2020, Mr. Sigler sent email correspondence to Mr. Legge concerning the blasting schedule, wherein he stated: “They need to get on Vero, ASAP.”

97. On March 2, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler that stated: “I have attached the revised rock excavation EWO’s 005A, B & C. As discussed, we took our markup down to 5% as a show of good faith [and] that we aren’t trying to take advantage of a bad situation. I have all the remaining rock excavation compiled. As soon as I get CTLs backup I can assemble the 005D and that will be all of the remaining rock ripping. While you’re reviewing these revisions, can we get the prior change orders added to the contract. As you know, we have paid for all but 005D already. And they are substantial. Any help would be appreciated. EWO001 - \$585,750.00 Bulletin 1 changes. EWO002 - \$430,100.00 Bulletin 2 changes. EWO003 - \$19,147.70 Building color change to premium options, changing door 152B from sectional to coiling. EWO004 - \$471,884.77 All costs associated with delays due to corps of engineers. EWO005 – A, B & C are attached.”

98. Attached hereto as **Exhibit L** and incorporated herein by reference are true and accurate copies of revised EWO 005A, 005B, and 005C.

99. On March 6, 2020, John Cox, an employee and/or agent of MS, responded to RFI No. 013 and indicated that the Request for Information had been withdrawn as AEP had elected to move forward with blasting.

100. On March 9, 2020, Mr. Sigler sent email correspondence to Mr. Legge. In particular, Mr. Sigler stated the following: “Thank you for your efforts in coordinating the proposed drilling and blasting activities with Virginia Drilling LLC (Blasting Contractor) and the

City of Hurricane. We understand that Early Construction has contacted and received all necessary permits for blasting activities from all authorities having jurisdiction. [With] these approvals and Hurt & Proffitt's professional third party review of the Blasting Contractor's "Plan of Blasting," American Electric Power finds it acceptable to move forward with blasting activities as needed for the construction of the new AEP Transmission Service Center. With safety in mind, please continue with construction activities and the "Plan of Blasting" as properly permitted by the authorities having jurisdiction.

101. Blasting of the rock started on March 12, 2020 and continued through March 3, 2021.

102. As a result of waiting for AEP's approval and then blasting of the rock, there was a thirteen month delay on the Project.

103. On March 23, 2020, Mr. Legge sent email correspondence to Mr. Sigler, which stated: "This is me checking on a few things with ZERO attitude. Were you able to make any progress with that 518k check for October? Also, I really need to get you March's bill and I really need to include the rest of the building and a good portion of these extras. Is there any way you can help me out with that? Thanks."

104. On March 23, 2020, Mr. Legge sent additional email correspondence to Mr. Sigler, which stated: "I realize tomorrow is the 25th and you need the billing by tomorrow. Have you had a chance to review the additional items I'd like to add? I.e. the rest of the building and the rock ripping extras. It would be a huge help. Thanks for your time."

105. On April 7, 2020, Progress Meeting # 23 took place via conference call between AEP, Early, and others.

106. Per AEP's meeting minutes for Progress Meeting # 23, it noted, among others, the following: (1) work change proposals and work changes to include blasting; (2) minimal work in areas until blasting is completed; (3) delays noted; (4) blasting schedule received with test shot tentatively set for March 10th; (5) Seismic Refraction Report and blasting schedule received with final review of blasting plan expected back 3/6/2020; (6) blasting contractor will need two days notification before test shot; (7) complaints from nearby residents were received; and (8) to date we are well within our blasting limits and the State Fire Marshall is monitoring the blasting and agrees we are in compliance.

107. On April 7, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning EWO 005D that stated: "Please see attached EWO005D for the remainder of the rock ripping that was accumulated in the second half of JAN. If you have any questions, let me know. The ones from here on out will be the lesser blasting and support number we discussed. Thanks for your time." Attached to this email was EWO 005D, CTL Soil Compaction Report, CTL Daily Activity Reports, and Allard's billings.

108. Attached hereto as **Exhibit M** and incorporated herein by reference is a true and accurate copy of EWO 005D.

109. On April 29, 2020, Mr. Sigler sent email correspondence to Mr. Legge concerning the blasting cost and stated: "I have [been] working on [an] estimate for blasting cost. What number are you using?"

110. On April 29, 2020, Mr. Legge sent email correspondence to Mr. Sigler concerning blasting cost that stated: "\$20/cubic yard. Our 5% is \$1.50. So \$21.50 total."

111. On May 4, 2020, Mr. Sigler sent email correspondence to, among others, Mr. Legge and Mr. McNeil. Within the same, he stated the following: "As you might imagine we have the

need to look closely at the Change Request for Rock removal. As I have been looking through the information at hand and two things have come to light in the process. One is based on the Seismic Refraction Report we can get to a reasonable quantity of Rock. MS has provided a Rock Cut Exhibit. Two, again based on the Seismic Report and Rippability Tables it seems a large portion of the requested change orders are should really already be in your base bid. I know Rock was excluded from your bid, but rock is defined on page 3 of the General Requirements. Basically, it's the objects that are larger that can't be ripped or torn. CTL's report clarifies the rippable and non-rippable materials. Take a look at [this] and let[us] plan a call later today or tomorrow."

112. On May 5, 2020, Progress Meeting # 24 took place via conference call between AEP, Early, and others.

113. Per AEP's meeting minutes for Progress Meeting # 24, it noted, among others, the following: (1) work change proposals and work changes included blasting; (2) Area 2 – blasting has been ongoing and is 80% complete; (3) offsite improvements for lay down area on adjacent property is complete; (3) Area 1B- minimal work until blasting is completed; (4) Area 2 – blasting and conventional earthwork undertaken with 95-100% of blasting complete; (5) 15 working days are needed before work on the building pad can be completed; (6) delays noted; 7) blasting is going well; and (8) the Mayor stopped work for 2 days due to complaints from blasting.

114. On May 6, 2020, Mr. Sigler sent email correspondence to Mr. Legge concerning the EPA delay, which stated: "Can you guys reduce the CR. There is a lot of discussion that the tree cutting was done without any direction from AEP. Can you do all the earthwork related changes and the EPA change for 5.5 [million]?"

115. On May 6, 2020, Mr. Legge sent email correspondence to Mr. Sigler concerning the EPA delay, which stated, among others, the following: "We're not sure how the 168k cubic

yards was quantified. Based on all available information we have, it's not quantifiable. Rock definition aside, we know we've ripped 93k cubic yards and blasted 72k. With 345k left to cut, we are basing are sum on 220k more yards of rock. Based on discussions at the time, we feel that there is plenty of emails to suggest that AEP was aware we were removing trees when we did. We weren't part of the permit process, but the timeline works out that we began clearing once we received the actual SWPPP plan, along with two weeks before receiving the SWPPP, we were instructed to plan to begin clearing in two weeks. To the best of our knowledge, we had the go ahead. You mentioned all earthwork related changes being included. This agreement would not be for all earthwork, only EWO004, i.e. the SWPPP changes and the additional pond would still be applicable."

116. On May 6, 2020, Mr. Sigler sent follow-up correspondence to Mr. Legge and Mr. McNeil, which stated: "I just wanted to follow up. We feel the rippable material shown in the seismic fraction report would be included base bid by the definition of rock in the General Requirements. It appears that 168,000 c.y. of rock is identified with some assumptions."

117. On May 11, 2020, Jessica Leiter, an employee and/or agent of MS, sent email correspondence to Mr. Sigler concerning the cut/fill exhibit after including the additional data provided by CTL and attached a copy of the exhibit.

118. On May 13, 2020, Mr. Sigler sent email correspondence to, among others, Mr. Legge, concerning the cut/fill exhibit for the Project. Within the same, he stated: "Here is the updated rock cut report from MS. It is showing approximately 132,000 c. y. of rock the needed cut. I feel the extended estimate of 168,000 c.y. of cut is fair. (168,000 by the \$21.50 is 3.612 million). Your ask for 6.4 for Rock is simply not warranted. Please review, with the rock definition

provided in the General Requirements with your sub and let's get this to a reasonable value for the "Rock" excavation. The other materials are "unclassified" should be included in your base bid.

119. On May 13, 2020, Mr. Legge sent email correspondence to Mr. Sigler, concerning the cut/fill exhibit wherein he stated, among others, the following: "The problem is, this MS cut report being referred to, is an estimate, and is also only for the two areas shot with the GPR. This accounts for a small portion of the site. It appears that less than $\frac{1}{4}$ of the building pad was even included. So this quantity is in no way representative of the entire site. I have reattached the documents for reference. That being said, for evaluation purposes, if we were to use the 168k cubic yards, the rock removal rate is 31.50, not 21.50, which is right in line with two other contracts we've had with AEP. That brings your calculation total to 5.3M not 3.6M. However, the General project requirements Page 14 section 3 subsection e, says the Geotech is to quantify the rock as it's removed. Any estimated quantities presented by MS aren't applicable here. CTL is capable of GPR-ing the entire site with estimates of quantities, but according to them, that could further delay this project for 2 more months, and I'm sure it wouldn't be cheap. Knowing how much rock has been removed up to this point and with 345k more cubic yards left to cut, there could potentially be more than double or triple MS's estimate of unrippable rock."

120. On May 14, 2020, a conference call between AEP and Early occurred concerning the rock cut report.

121. After the call on May 14, 2020, Mr. Sigler sent email correspondence to Mr. Legge concerning the cut/fill exhibit wherein he stated, among others, the following: "This really is not productive at this point. I believe the quantity estimate provided is reasonable representations of the conditions. The dispute remains in the definition of rock in terms of the contract documents."

122. On May 14, 2020, Mr. Legge sent email correspondence to Mr. Sigler, concerning the cut/fill exhibit wherein he stated the following: “The issue is the quantity you are looking at (132,000 CUYDS of non ripable rock) does not encapsulate the entire cut volume. CTL has only scanned 51% of the cut volume and this is what’s been quantified by MS. So, it seems your number is only justifying half of the cut area. If the site holds true to the scans, this 132,000 yds will essentially double and would have approximately 264,000 yds of unripable rock. Using \$31.5 as the rate per CUYD would make the rock cost alone \$8,316,000. This doesn’t include the disputed ripable rock. We also know there’s rock outside the scanned areas because it’s been uncovered & been attempted to be ripped. We don’t see any way the MS estimated quantity is a justifiable representation of the entire cut volume of unripable rock. It’s important to understand this in evaluating where we’re getting our numbers. So again, the MS quantities are only based on 51% of the cut area.”

123. On May 18, 2020, Mr. Legge sent email correspondence to, among others, Mr. Sigler which enclosed the Rock Cut Overlay.

124. On May 19, 2020, Progress Meeting # 25 took place via conference call between AEP, Early and others.

125. Per AEP’s meeting minutes for Progress Meeting # 25, it noted, among others, the following: (1) work change proposals and work changes include blasting; (2) Area 1A – no blasting and 80% complete; (3) Area 1B – no blasting in this area; (4) Area 1C – no work (unchanged); (5) Area 2 – blasting has been going and is 80% complete; (6) Area 3 – no work (unchanged); (7) Area 1B – minimal work until blasting in this area is completed; (8) Area 2 – will be blasting and doing conventional earthwork; (9) 15 more working dates are needed before work on the building pad can be completed; (10) delays noted with rain being an issue; and (11) blasting is going well.

126. On May 19, 2020, Mr. Sigler sent email correspondence to Mr. Legge, which stated: “Let’s review this. I will call later.” Attached to this email was the Est. Rippability Tables 20.02.07.

127. On May 22, 2020, Mr. Sigler sent email correspondence to Mr. Legge, which stated: “We are getting half the cost on other sites. This is going to be a problem. The following information is from the Amos landfill construction project: Rock Excavation - \$4.50 to \$5.50 per CY. Rock Blast Excavation - \$8.75 to \$10.75 Per CY.”

128. On June 2, 2020, Progress Meeting # 26 took place via conference call between AEP, Early, and others.

129. Per AEP’s meeting minutes for Progress Meeting # 26, it noted, among others, the following: (1) Area 1A – no blasting and no changes; (2) Area 1B – unchanged; (3) Area 1C – unchanged; (4) Area 2 – blasting is ongoing with 80% complete and one additional blast; (5) Area 3 – unchanged; (6) delays noted with rain being an issue; (7) AEP issued work stoppage for site work Change Order – directed to stop work on 5/5/2020; (8) resume site work/construction activities on 5/29/2020; (9) Early meeting the AEP exceptions and conditions, which were noted as difficult; (10) Vassel recommends getting to final grade as quickly as possible and stabilizing; and (11) verbal approval given to resume blasting and Contract Amendment will be provided.

130. On June 19, 2020, Mr. Sigler sent email correspondence to Mr. Legge that pertained to AEP’s internal spend forecast for the Project.

131. On June 23, 2020, Mr. Legge sent email correspondence to Mr. Sigler stating the following: “My bosses are good with holding the 2020 total billing amount. They did want this months over 1.5 to help with the rock. It ended up being \$1,525,690.10. That’s within 100k of what we discussed. If that works, I’ll send it over. Also please see attached updated lien waivers.”

132. On June 29, 2020, Mr. Legge sent email correspondence to Mr. Sigler concerning EWO 001R1 and EWO 002R1, which stated: “Take a look at this and see if this is what you had in mind.” Attached to this email were EWO 001R1 and EWO 002R1.

133. Within EWO-002R1, it indicated rock removal was not to exceed 187,718 cubic yards at a unit price of \$31.50.

134. Subsequent to the above, multiple conversations were had between AEP and Early, in which AEP, via Mr. Sigler and/or Mr. Forshey, assured Early that it would be paid for rock removal in excess of the 187,718 cubic yards as the total amount of rock was unknown by all parties, including the Project engineers.

135. On or around July 27, 2020, Change Order No. 1 (“CO #1”) was sent to Early.

136. Within CO #1 at Section C, Paragraph 5, it stated: “Contractor shall furnish all supervision, labor, equipment, and specified materials necessary for the following work: 5. Excavation – Excavate all known and unknown rock, boulders, suitable soils, unsuitable soils, and all other classified and unclassified sub-grade materials to the full extent required for completion of the project (“Excavation”). Owner verified hazardous materials are the only sub-surface materials excluded from Contractor’s Excavation Scope of Work.”

137. Within CO #1 at Section D, it stated, among others, the following: Owner hereby accepts Contractor’s proposals for additional work, which are attached hereto as EWO-001R1 and EWO-002R1, and made part of the contract ...resulting in the net addition to the contract.

138. On August 3, 2020, based on the prior representations, assurances, and discussions with AEP, CO #1 was fully executed by AEP and Early.

139. Attached hereto as **Exhibit N** and incorporated herein by reference is a true and accurate copy of CO # 1.

140. On August 4, 2020, Progress Meeting # 30 took place via conference call between AEP, Early, and others.

141. Per AEP's meeting minutes for Progress Meeting # 30, it noted, among others, the following: (1) SWPPP phase 2 is complete and current controls are working well; (2) Area 1A – no new work or unchanged; (3) Area 1B – blasting is ongoing with cut material going to pond; (4) Area 1C – no work; (5) Area 2 – earthwork is 100% complete towards building pad, proof rolling is 100% complete, and blasting has been ongoing; (6) Area 3 – 55% complete, pond 5% complete, and repairs were needed due to rain; and (7) delays noted.

142. On August 28, 2020, a telephone conference between AEP and Early occurred to discuss the financial controls of the Project.

143. On October 22, 2020, a Project meeting via telephone conference took place with attendees from AEP, Early, and MS.

144. On October 22, 2020, Jessica Leiter, an employee and/or agent of MS, sent email correspondence to the meeting attendees, which stated: "Please see meeting minutes attached from today's call. Please note that I have also included the original Geotech Report with Slope Recommendations on page 11, along with the ms drawing sheets C4.0, C4.1, and C4.2 that reflect that information for your reference. Please send any corrections or additions to these minutes to my attention and I will revise and redistribute. Thanks!"

145. The meeting minutes for the October 22, 2020 meeting indicated, among others, the following: (1) there has been obvious movement – 4-5' of drop in this section since yesterday and the hillside is moving; (2) it is believed to be a global stability issue, not a superficial issue; and (3) the slope will continue to move."

146. On January 5, 2021, Progress Meeting # 39 took place on site and via conference call between AEP, Early, and others.

147. Per AEP's meeting minutes for Progress Meeting # 39, it noted, among others, the following: (1) Area 1 A – unchanged; (2) Area 1 B – blasting has been on going and weather limited the number of blasts to 3 with 8 blasts remaining; (3) Area 1C – no work; Area 2 – blasting 99% complete with one or two blasts at entry drive remaining; (4) Area 3 – on hold pending redesign; and (5) delays noted.

148. On March 10, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning Slip Option 1 Pricing, which stated: "Please see the attached proposal for the slip repair option 1. When I get pricing back for options 2 & 3, I'll send an updated proposal."

149. On March 22, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler concerning the blasting information, which stated: "Here's what I have so far. There's a handful missing that I haven't rounded up yet." Attached to this email was a blasting spreadsheet.

150. On March 24, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the Slip Repair Pricing, which stated: "Please see attached proposals for the slip repairs from Allard. They're are the only contractor that has gotten me all three so far. I was wrong btw, options 2 & 3 are significantly cheaper. Option 2 being preferred for Allard and Early construction. Summary: Option 1 – 4,055,426.37. Option 2 – 2,418,915.43. Option 3 – 2,580,906.09."

151. On March 30, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the revised Slip Repair Options, which stated the following: "Allard did include sales tax and B&O in their quotes. I have revised and updated the B&O amounts on our sheets." Attached to this email was Binder R1.

152. On March 31, 2021, Mr. Sigler sent email correspondence to, among others, Mr. Legge, which stated: “Below is a cost comparison between your proposals (with the corrected taxes), and an independent contractor. I believe, all parties will agree the option 2 is the path we will try for the slip repairs. As you can see, there is about 360k difference, for option 2, between the two contractors. I think we would all agree that maintaining Allard on the slip repair would make life easier, but to do so, we feel we need to get closer to the 2.03M number. To move this forward we would like to see two things happen: Ask Allard if they can match, or come much closer to the independent contractors price which approx. 320k less. That Early, reduce your markup to 5%. Feel free to call me to review the options. My afternoon is mostly free. Thanks, for the hard work.”

153. On April 19, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Forshey concerning the Slip Repair Option 2 Pricing Revision. In particular, he stated: “Please see attached revised option 2 pricing. Per our conversation last week, ECC has agreed to reduce our markup from 10% to 5% as a show of good faith. We want to help you guys out as much as we can. We value our working relationship with AEP, and look forward to doing more projects in the future. Thanks for your time. As soon as we know when we’ll have MS’s drawings, we’ll get things rolling.”

154. On April 28, 2021, a telephone conference between AEP and Early occurred to discuss the financial controls of the Project.

155. On May 11, 2021, Early Construction submitted RFI No. 043, which stated: “Problem: Can we get a letter from MS stating that in the fire rated rooms the way we have the framing up to the bottom of the super saver roof will be sufficient for the fire rating? The fire marshal is requesting this.”

156. On June 2, 2021, a telephone conference between AEP and Early occurred to discuss the financial controls of the Project.

157. On June 3, 2021, John Saxton, an employee and/or agent of MS, sent email correspondence to, among others, Mr. Wilcox, which enclosed his response to RFI No. 043.

158. On June 3, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning change order information and an updated spending forecast, which stated: “EWO006R1 - \$ 731,258,99 (Bulletins 3 & 4. Includes in-ground lift); Bulletin 005 - no final number yet (All electrical) in the neighborhood of 6k; Bulletin 006 - Not Released to us yet for pricing; Bulletin 007 - Not Released to us yet for pricing; Bulletin 008 - no final pricing (the memorial monument. Should be very minimal); Bulletin 009 - \$2,382,417,97 (Slip Repair. Additional material quantities were added to the final drawings); Only other thing that’s out there that I can think of is the Tax/B&O. However I don’t have much put together on that, so we can revisit at a later date. The updated spend is attached. The only changes to it will be in regards to the above items.”

159. On June 28, 2021, Early submitted RFI No. 049, which stated: “Problem: When trying to prep for the install of the rock armor ditch for the slip on the east side of the property we are getting a lot of water seeping out and it has not rained in over 5 days and the pond has been removed and dry for as many days. The area for reference is around where the old gas well was located and it appears to be seeping wet all the way to the silt fence in that area. I have some photos and an area marked up on a drawing attached to this question. We are not filling in this area anymore until we can get some clarification on how to address the water seeping. Please advise.”

160. On June 29, 2021, Jesse Lee, an employee and/or agent of MS, provided the response to RFI No. 049, which stated: “Before providing a solution we are requesting a few items

to better understand the situation. Please provide the daily inspection reports for the pond removal and filling and field reporting of any liner installed in the proximity. Also please more precisely identify the seepage location and footprint observed with dimensions. If possible a few coordinates would be helpful.”

161. On July 6, 2021, MS responded to RFI No. 043 and stated: “Refer to the attached letter as requested.”

162. On July 8, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Saxton, Kyle Bickle, an employee and/or agent of MS, and Mr. Sigler, wherein he stated: “The fire Marshall has rejected the letter from RFI043 he wants the studding to go to the deck. It all seems to be coming from the roof insulation, he wants proof that the insulation is 1 hour fire rated and wants the UL rating for it. A few other comments he had were that all rooms that are listed as fire rated need to go to hard deck, and to check and see the rules on rooms listed as meeting rooms, his comment on that is that a room listed as a meeting room may be considered an assembly area and may have to be fire rated also. His last comment was that if he gets a direct written letter stating that all rooms are 1 hour fire rated as is, and the owner/architect takes responsibility for the way it is installed in case of fire then we can leave as installed.”

163. On July 12, 2021, Change Order No. 2 (“CO # 2”) was executed.

164. CO # 2 included Change Request 6R1, Bulletins 3 and 4 (including in-ground lift), Change Request Bulletin 9, and Slip Repair-Option 2 R1.

165. Attached hereto as **Exhibit O** and incorporated herein by reference is a true and accurate copy of CO # 2.

166. On July 12, 2021, Early submitted RFI No. 051 to AEP, wherein it stated: “Problem: Is it possible to raise the elevation on the lower laydown yard? We are in the process of

raising it per the new design and it seems that we are going to have a lot of excess material after we fill in the temporary pond and fix the slip. Please advise if this is acceptable.”

167. On July 12, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox, which stated: “See attached RFI response and let us know as soon as you can on estimated quantities of excess materials.”

168. On July 12, 2021, Mr. Lee responded to RFI-051, which stated: “Is it possible to roughly estimate the anticipated excess material and provide a cubic yard quantity? While in general raising the lower laydown area further may very well be an option we want to understand the magnitude of the impact before direction is provided.”

169. On July 13, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Bickle, which stated: “Without doing a topo of the whole site we are estimating a range of 80 thousand CYs – 120 thousand CYs.”

170. On July 13, 2021, Mr. Lee sent email correspondence to, among others, Mr. Wilcox, which stated: “Michael are you saying there’s nearly 100,000 CY of extra material after raising the entire laydown 3’ from Bullet 9?”

171. On July 13, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Lee that stated: “Yes sir, remember I’m just estimating but it seems to be a lot of material on the ground left to move.”

172. On July 13, 2021, Mr. Lee sent email correspondence to, among others, Mr. Wilcox that stated: “Understood on estimating but that still seems very high. Could you please provide a site plan markup shading the areas that the laydown is near final grade. Also please include the area yet to come down to final grade in the hill.”

173. On July 13, 2021, David Jackson (Asphalt Contractors and Site Work, Inc.) sent email correspondence to Mr. Wilcox that stated: “See attached. This is simply as estimate based on the grade stakes we currently have in the field. Of course the temporary pond is also within the yellow area and is not yet filled in due to the fact that the new pond is not operational. Once again, its 3:30 in the afternoon and we don’t have a fill location for tomorrow. I need answers asap.”

174. On July 14, 2021 – Mr. Legge sent email correspondence to Mr. Lee, which stated: “Without having the surveyors come back out and shoot more elevations, there’s no way for us to give you these answers. If that’s what must be done to make a decision, we can make it happen, but the surveyors and the downtime for the equipment will not be cheap, nor quick. I know Michael has relayed the urgency of a resolution, but as of tomorrow (7/15) there’s no place for the civil contractors to work. They’ll begin charging us 20k/day for equipment rental/downtime. That will have to be passed on to AEP. I’d really like to avoid that if possible. There is without a doubt, too much material. Hauling excess off site is not economical at all. It seems the place that will least affect the design is the laydown yard. If at all possible, we need to keep working. If you can help facilitate that without anyone incurring additional cost, that’d be much appreciated.”

175. On July 14, 2021, Mr. Lee sent email correspondence to, among others, Mr. Wilcox, which stated: “Yea I’ve looked this over and have a few questions. Do you have an average height of the stockpiled material outlined in the aqua color? Also can you briefly describe where things stand on the pond and slope reconstruction? The general thought is that there is definitely more excess material than anticipated but I’m trying to understand a few things. Why is the excess material so much more than anticipated based on the slope survey and slope/pond rework and how much can the laydown area be raised without impacting the overall design presented in bulletin 9 in terms of ditch placement and tie in slope. We may need to talk this over

a bit tomorrow to better understand true magnitude and constructability of the best solution. Is there a time that might work for a call? Any further info on progress and stockpile depth you can provide will be helpful.”

176. On July 16, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox, which stated: “As discussed, please find the attached RFI 043 clarification and letter with supporting documentation.”

177. On July 21, 2021, Mr. Lee provided an updated response to RFI-051, which stated: “As identified in the survey data received prior to design modification of the issued Bulletin No. 9 plans, the calculated earthwork of the full final proposed surface in comparison to the original survey represents an estimated 7,500 CY of excess material. As it is understood, the resulting contractor estimated excess material is roughly 80,000 - 100,000 CY. In order to accurately calculate the excess fill and provide revised design criteria, please conduct a field survey of the cited stockpile, laydown yard and pond area to identify field elevations of each and determine the appropriate extents of repurposing the excess material.”

178. On July 21, 2021, John Maynard, an employee of Early, sent email correspondence to Eddie Shepherd, an employee and/or agent of AEP, concerning Johnson Controls, wherein he stated: “I am looking at the hurricane site and we show power metering on all of the panels that have any HVAC out of them. I ask Johnson controls and they don’t show anything in there scope for them. It looks like the will talk modbus it is a siemens pac 32 meter. If you would want to add them to the BAS now would be the time to do so. For the generator do you want me to change the controller so it will talk to the BAS I spoke to my sales rep and he said he could get it done if we do it now while it was being built.”

179. On July 21, 2021, Mr. Shepherd sent email correspondence to, among others, Mr. Maynard, concerning Johnson Controls, wherein he stated: “Thank you for the heads up. Yes, let’s use the APM603 Kohler controller with the Modbus bac net communications, please see attached information. This will require 1 cat 6 plenum cable from the generator controller to the AEP network switch. It has to be less than 300’ in length from the generator to the network switch, usually in the [IT] room. If this distance is over the 300’, we cannot use this controller and will have to use the PM402. Also, we want to monitor the transfer switch operation. This is usually done by using the factory contacts in the transfer switch then monitored by JCI using a FEC controller on the JCI bus. I’m not sure on the power metering, do you have any information on this as far as what the Siemens system does and the point / control listings?”

180. On July 22, 2021, Mr. Lee sent email correspondence to Mr. Wilcox concerning to RFI-051 that stated: “I agree it makes the most sense and least impact to raise the laydown yard. If there is truly close to 100,000 CY of extra material the entire laydown will need to be raised over 7’ to balance out. Is that how you see it? I think the path forward needs to be to continue raising the laydown area as needed but if the quantity is nearly that large then the general geometry and ditches may need to be revisited. Generally everything will shift up uniformly but holding the exact same footprint will likely lead to steep than desired slopes particularly into the pond. I still feel this is the best way to proceed but the elevation raised should be monitored and the far corner may need to be pulled back a bit. Let me know what you think.”

181. On July 22, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Lee concerning to RFI-051 that stated Early was “not raising it 7ft, we would probably raise it another 1-2ft.”

182. On July 22, 2021, Mr. Lee sent email correspondence to Mr. Wilcox concerning RFI-051 that stated: “I understand you need to keep moving but my email response was meant to be more of a discussion for resolution. It is likely the best solution to raise the laydown but we need to better understand the magnitude of the excess material. Based on the information we have it doesn’t appear to be anywhere close to the quantity from your original thought of 100K CY. We need elevations verified and quantities confirmed before the design elevations begin to vary too far. A uniform raise of 1’ or so isn’t too bad but a raise of 7’ or more will require some additional modification. I believe a survey confirmation of the elevations are the most appropriate way to proceed.

183. On July 22, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Lee that stated: “We have already proceeded and have really moved a lot of dirt with the [prior] response.”

184. On July 26, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox, concerning RFI-051. In particular, he stated the following: “Based on your feedback from Thursday July 22, a decision was made in the field to raise the laydown yard using the excess material cited in RFI 051. So that we can understand the current site condition, please provide the requested survey information for this area and the stockpile noted in the attached RFI.”

185. On July 27, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Bickle, concerning RFI-051. In particular, he stated: “Since we may have Terracon back onsite to do drill holes for monitors, do you think they will need locations laid out by my surveyor? If not I will get them scheduled to come shoot elevations and dirt pile locations, if you think Terracon will need points then I’ll get it all done at once, please let me know.”

186. On July 28, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox, which stated: “At this time please conduct survey locations regarding RFI 051 only.”

187. On July 28, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Bickle, which stated: “I have tried to reach out to Mr. Chapman to see if he was ok with this and I have not been able get a hold of him. Have you guys been in contact with him? He wanted to talk or hear from you guys also.”

188. On July 29, 2021, Mr. Wilcox sent email correspondence to Mr. Sigler concerning the IT Room issues, which stated: “The issues we are having for the IT room is the fire marshal will not let us complete until we get a resolution for the fire wall. MS has a solution but no one has heard from him and I have reached out and emailed several times with no luck. We had the IT room completion for Sep. 8th but they may get pushed out due to the walls. The other issue is the power, we need permanent power to run the HVAC equipment, the roof top units use 3 phase and the temporary power will not run them. These issues will push schedule if we can’t get them resolved in a timely manner. The switch gear is scheduled for November 4th, then we have all the tests and checks for everything.”

189. On August 3, 2021, Progress Meeting # 53 took place on site and via telephone conference between AEP, Early and others.

190. Per AEP’s meeting minutes for Progress Meeting # 53, it noted, among others, the following: (1) pond earthwork halted due to moisture; (2) began raising lay-down yard; (3) pond area will be focus of site work; (4) delays noted; (5) review RFI 49 – water seepage; (6) discovered new wet areas near slip location – RFI submitted to MS, who is evaluating work and working on an answer; and (7) work change proposals and work changes included reviewing the change order log.

191. On August 3, 2021, Melissa Ratermann, an employee and/or agent of MS, sent email correspondence to, among others, Mr. Bickle, concerning the IT room issues, which stated: “Called the building dept. (Danny Brickles) and they are good, still reviewing and don’t need anything more from me at this time. Called the fire marshal (Everett Chapman) and left a voicemail. I will also send him a follow-up email.”

192. On August 3, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Sigler and Mr. Wilcox, concerning the IT room issues, which stated: “Melissa’s indicated below that the building department has received and are reviewing the most recent Bulletin plans documentation provided, including the fire rated assemblies’ letter. As indicated, we’ll wait to hear back from the State Fire Marshal after leaving a 2nd voicemail since submitting.”

193. On August 23, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, which stated: “See unit pricing for the water issue. Let me know if you want us to proceed.” Attached to this email was the Slip Seepage Repair with break down.

194. On August 23, 2021, Mr. Sigler sent email correspondence to, among others, Mr. Legge concerning the water issue and slip seepage repair, which stated: “Proceed with this as a Dispute Change Order. I want to see the backup information to support these unit cost.”

195. On August 24, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the breakdown of unit costs for the slip seepage repair, which stated: “Please see the attached breakdown of unit costs. Please note – the civil sub won’t restart this work with the cost under dispute, so we’d need full approval to move forward. Let me know if you need anything else.”

196. On August 31, 2021, Mr. Wilcox sent email correspondence to, among others, Mr. Sigler and Mr. Bickle, wherein he stated: “Any news on the state approved drawings for

Hurricane? They inspector approved us last week to pour half the fleet maintenance bay floor only (the north side). He said we couldn't pour the south side until we get state drawings approved, it has to do with the in ground lift."

197. On August 31, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox, which stated, among others, the following: "Local building authority review and approval has been received from Danny Brickles. Attached is the review letter received this morning from the State Fire Marshal's office. Items 1-2 and 8-10 are negligible boilerplate review tasks. As indicated, items 6 & 7 require plans submission by Early Construction's installer for the above ground fuel tank storage and fire alarm systems contractor."

198. On September 2, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the slip seepage repair, which stated: "I'm just following up on my below email. I still don't have an official approval from you on the seepage fix unit rates. We convinced the civil sub to proceed to avoid any additional delay costs, with the promise we'd soon have approved unit rates without any dispute. They're making great head way on these fixes but are getting uncomfortable continuing to rack up costs without final approval. If we can get them approval, it will avoid them going back to idle, kicking back in the 20k/day downtime costs. Please advise."

199. On September 2, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Wilcox and Mr. Sigler, concerning the response from the State Fire Marshall, which stated: "Per State Fire Marshal Chapman 9/2/2021: Even though this is an equipment platform and does not serve as part of the means of egress per IBC 505.3, he is requiring a physical wall and door to avoid any person from moving the washer and dryer to block the stair and door from exiting the building. The washer and dryer need to have their own separate room, the sketch I have attached

shows the added walls and door that he would require. Melissa confirmed with him that these do not need to be a rated door or rated walls, he was happy with this layout over our phone call discussion. We did push back a little given the logic behind it all, but this is what he has demanded. We will need to update our drawings to reflect this and resubmit to obtain the full permit to proceed. This revision and letter needs to be complete within 15 days of our received letter, which puts us at 9/14. So an approval is needed as soon as possible for us to implement this scope of work into the plans documentation.”

200. On September 9, 2021, Ms. Ratermann sent email correspondence to Jennifer Price (WV Office of Fire Marshall), wherein she stated: “I have attached our response letter regarding comments received on AEP Hurricane Service Center (No. 2018-PR22570) for your review. Please let me know if you have any questions or comments.”

201. On September 10, 2021, Ms. Price sent email correspondence to Ms. Ratermann, which stated: I have attached a draft copy of the Plan of Correction letter for you. You will receive the official letter with an assigned document number by mail. If you need anything else please let me know.”

202. On September 10, 2021, Ms. Raterman sent the draft copy of the Plan of Correction Letter received from Ms. Price to, among others, Mr. Sigler, Mr. Bickle, and Mr. Wilcox.

203. On September 23, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler, concerning the final site seepage repairs, which stated: “Please see the attached final site seepage repair tally. I also included the breakdown for reference. Let me know if you have any questions.” Attached to this email was EWO 18335 with the corresponding backup.

204. On October 19, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler concerning EWO 005G, EWO 009, EWO 010, and EWO 011A, which stated: “Please see

attached assorted change order requests. To summarize, the items are as follows: EWO005G - Additional funding for the rock (\$5,126,437.18); EWO009 - Overhead costs due to assorted delays (\$1,206,798.59); EWO010 - Tax and B&O excluded in the contract (\$1,446,837.46); EWO011A - Labor/Material Cost increase From Johnson Controls. (\$90,835.52). There will be more of these Labor/Material increase requests. I don't plan on asking subs for these but if they start screaming, [I will] forward them with their justifications and you can make the call. I'm sure this will warrant a phone call for discussion. Let me know what you and Matt have available."

205. Attached hereto as **Exhibit P** and incorporated herein by reference is a true and accurate copy of EWO 005G.

206. Attached hereto as **Exhibit Q** and incorporated herein by reference is a true and accurate copy of EWO 009.

207. Attached hereto as **Exhibit R** and incorporated herein by reference is a true and accurate copy of EWO 0010.

208. Attached hereto as **Exhibit S** and incorporated herein by reference is a true and accurate copy of EWO 011A.

209. On October 19, 2021, Early submitted RFI No. 058 to AEP, which stated: "Problem: Can we get the ok to raise the laydown yard at our discretion? We are needing to do this to keep from handling dirt multiple times. We are wanting to start working from east to west grading out the property and where the parking structure sits and along the north side of the property are small cuts that need to be made. If we can spread the dirt out evenly along the laydown area we wouldn't have to stock pile and move again. We will make sure the drainage system still works properly and give MS a final grade when we are finished. Please advise."

210. On October 20, 2021, an on-site meeting to discuss EWO 05G occurred between Mr. Legge, Mr. McNeil, and Mr. Forshey, and Mr. Sigler attended the meeting via telephone.

211. During the October 20, 2021 meeting, Mr. Forshey told Mr. Legge and Mr. McNeil that AEP would review EWO 05G, that “it is what it is” as it relates to the associated costs, and that AEP would consider the costs if they were substantiated.

212. October 21, 2021, Mr. Sigler sent email correspondence to, among others, Mr. Bickle, concerning the earthwork surplus materials – RFI 58, which stated: “To avoid delays and other additional cost related to surplus cut materials the contractor is needing an answer to RFI 58. As I understand things the contractor would disperse the surplus materials in compacted 1 foot lifts starting on the high end of the lay down yard working to the low end. They would likely have multiple lifts. When completed they would provide an as built survey for review and comment for adjustments. I realize the RFI was only issued on Monday. If you could make this a priority we would greatly appreciate the effort. We feel this effort would prevent a significant Change Order for moving the materials multiple times. Let me know if you think a conference call is needed. Thanks in advance.”

213. On October 21, 2021, Mr. Bickle sent email correspondence to, among others, Mr. Sigler, concerning the earthwork surplus materials – RFI 58, which stated: “We understand the sense of urgency regarding clarification for RFI 058 received on Tuesday 10/19. As you might recall from prior correspondence, the voluntary drone survey ms consultants finalized in the field on August 30 was performed to assist with a solution for redistribution of the excess fill which had a high degree of variance from our estimated quantities for our Bulletin 9 design, in addition to understanding the existing elevation of the laydown yard where Early Construction had previously laid excess fill. In the Tuesday 10/19 project meeting, we both discussed and requested from Early

Construction and their civil contractor an estimate of what the current stockpile is so that we can pair that information with what we have to provide a response to RFI 058. To get out in front of the RFI, we had the survey team wrap up a couple of items this week for Jesse to prepare a surface for quantification of the stockpile surveyed on August 30. Our initial thought is that the laydown yard can be raised an additional 2-3' without a considerable redesign of that area on the site, but as mentioned, we'll need that current estimated stockpile quantity from Early which I believe they were going to verify after final site work was performed at the permanent and temporary ponds. As soon as we receive that data from Early and have everything compiled we'll provide you with the information prior to issuing an official RFI response."

214. On October 22, 2021, Mr. Sigler sent email correspondence to, among others, Jason Christoff, an employee and/or agent of MS, concerning the earthwork surplus materials – RFI 58, which stated: "I understand Kyle is out of the office today. We have a situation that needs immediate action to prevent additional cost and delays to the project. Please see my email to Kyle below. I don't know why the site is so significantly out of balance, but we really need this to move forward as soon as possible to minimize cost. Thank you for any assistance you can provide. Call me if you have any specific questions. I am available all day today."

215. On October 22, 2021, Mr. Christoff sent email correspondence to, among others, Mr. Sigler concerning the earthwork surplus materials – RFI 58, which stated: "I spoke with the technical team, and they are actively working on a response. We understand the urgency of the situation. After speaking with the team, I have confirmed that all of Kyle's email below remains accurate, and the contractor's assistance in this solution is important. In brief, the answer is YES, the laydown yard can be raised. However, the team is looking to provide an engineered solution rather than offer only a generic RFI response. They are comparing the actual design information

to the land survey results to better understand the magnitude of the proposed laydown area overlay. We will not have a solution to offer today, but we hope to have a resolution Monday.”

216. On October 22, 2021, Mr. Sigler forwarded the email correspondence received from Mr. Christoff to, among others, Mr. Wilcox.

217. On October 22, 2021, Mr. Sigler sent email correspondence to, among others, Mr. Legge and Mr. McNeil, concerning the additional information for EWO 005, 009, and 010, and stated the following: “As discussed on the phone, please provide Lien Waivers for all sub-contractors, suppliers, and other vendor from the beginning of the project through July 2021. The total amount is highlighted in Red above. [Also] provide the following items: Construction schedules for both Hurricane and Pikeville. Who provided the safety oversight at Pikeville and Hurricane; All Invoices for the Street Sweeper, excavator, and mini excavator (Rental Equipment). If other equipment appears in the invoices, o[r] if it is easier to send it all, that is fine. Don’t delete any information; Delete the Fuel Cost. This line item is not significantly impacted by a delay; For EWO-010 provide copies of Allard’s and Kone Crane’s proposals and contracts, with contract information. Provide contract values and percentage paid for each vendor listed; Sign the Contract and invoices from Virginia Blasting and Allard; Start with EWO 005 first and lien waivers first.”

218. On October 25, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler concerning the final site seepage repairs and enclosed EWO 008 and its backup.

219. Attached hereto as **Exhibit T** and incorporated herein by reference is a true and accurate copy of EWO 008.

220. On October 25, 2021, Mr. Lee responded to RFI No. 58 and stated: “Based on the last drone fly over survey surface compared to the final design there is approximately 43,100 CY

of extra material. This is roughly 3.2' of fill over the 8.5+- acres of laydown area to balance the site and should be executed as needed. Please provide final grade elevations to ms consultants. If the contractor believes additional fill greater than 3.5' of increased height will be required to balance the site ms consultants shall be notified immediately to evaluate before proceeding.

221. On November 8, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Forshey concerning the backup and detail for EWO 005G, which stated: Please see the link below regarding the EWO 005 rock backup and detail. The documents produced via the share-file link included: Allard's AP Report, Virginia Drillings' AP report, Bid sheets for prior AEP projects, Blast Reports 1-147, Blasting Detail by date, a Cost Overview, Proposal Letter to Horizon, and Horizon's Quote."

222. November 11, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Forshey concerning the additional information for EWO 005, 009, and 010, which stated: Please see attached requested information. Also see responses to requests below in [italics]. Thanks. [Also,] provide the following items: Construction schedules for both Hurricane and Pikeville. *Pikeville Schedule Attached. It shows completion in April. The change order doesn't show 100% of Michael's time on hurricane until June. Simple spreadsheet I used to allocate time is also attached for reference;* Who provided the safety oversight at Pikeville and Hurricane? *Pikeville Safety – Brian Goff, Hurricane Safety – Mike Coburn;* All Invoices for the Street Sweeper, excavator, and mini excavator (Rental Equipment). If other equipment appears in the invoices, or if it is easier to send it all, that is fine. Don't delete any information. *Invoices attached for the following pieces of equipment. I used our standard rate sheet for the original change order. I have revised with actuals. Some were less, and some were more. Forklift; Street Sweeper; Skid Steer; Manlifts (2); Scissor lift; Company owned equipment without invoices; Second Skid*

Steer (Not Charged for); Excavator (Deere); Second Excavator (Kobelco - Not charged for); Company Truck (only charging for one); Mini Excavator; Delete the Fuel Cost. This line item is not significantly impacted by a delay. Done; For EWO-010 provide copies of Allard's and Kone Crane's proposals and contracts, with contract information. Provide contract values and percentage paid for each vendor listed. Allard's Proposal – Attached; Kone's Proposal – Attached; Allard's Contract – Attached; Kone's Contract – Not attached. Doesn't Exist; Sign the Contract and invoices from Virginia Blasting and Allard. Virginia Drilling's Contract – Doesn't exist. There was no set LS amount to use to create a contract. I will attach our AP report for total amount paid out; Start with EWO 005 first and lien waivers first. Link Sent 11-5-21.

223. A zip file was attached to the November 11th email, which included a Labor Spreadsheet for EWO 09R1, United Invoices for EWO 09R1, EWO 09R1, executed copy of Allard Excavating's Subcontract, Virginia Drilling's AP Report, the last Pikeville Schedule, Allard's Quote, and Kone's Quote.

224. Attached hereto as **Exhibit U** and incorporated herein by reference is a true and accurate copy of EWO 09R1.

225. On November 15, 2021, Change Order No. 3 ("CO #3) was executed.

226. Within CO # 3, the contract was modified to only include the cost increases for Johnson Controls and the subcontractors cost with general contractor mark-up for the seepage repairs.

227. Attached hereto as **Exhibit V** and incorporated herein by reference is a true and accurate copy of CO # 3.

228. On November 30, 2021, Jason Tolliver ("Mr. Tolliver"), an employee of Early, sent email correspondence to, among others, Mr. Forshey, wherein he stated: "I understand everyone

is working as diligently as possible to keep the Hurricane Project moving forward and meeting the deadlines by the end of December 2021. I would like to thank you all for your time and efforts, however, we have [come] to a financial crossroad for some decisions to be made by end of Thursday, 12-9-21, work day. The Early Construction Company has over 8 million dollars extended in change orders and over 3.5 million dollars in retainage on this project and given the company's limits on the line of credit and other project we perform, we can no longer finance this project to completion having [well] over 12 million extended for such a long period of time. I am respectfully requesting we meet as soon as possible with an agenda of getting a substantial amount of monies owed resolved, billed to the contract and negotiating payment terms for an expedited payment. I have cleared my schedule from now through Thursday 12-9-21 to accommodate everyone as much as possible. We are also available to meet in Columbus to help speed this process. Unfortunately, if we can't resolve this matter in the timeframe outlined in this email, financially I will be forced to close the project on 12-9-21 until the matter is resolved. I look forward to meeting with everyone."

229. On December 6, 2021, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey stating: "I haven't received a response from the below previous email last week. I wanted to follow up today before I scheduled any appointments that might possibly conflict with us having a meeting."

230. On December 7, 2021, Mr. Tolliver and Mr. Legge had a breakfast meeting with Chris Beam, an employee and/or agent of AEP, to discuss the current situation relating to the EWOs and that AEP was unwilling to meet and confer on the outstanding EWOs. Mr. Beam said he would make some calls to get the situation moving forward.

231. On December 7, 2021, Mr. Forshey sent email correspondence to, among others, to Mr. Tolliver, wherein he stated: “We appreciate your concern on this project and maintaining an active worksite while we continue to discuss your request for additional payment. Joel and I have reviewed the information that was provided and have the following comments. In addition to this email I am sending an invite to discuss this in more detail for tomorrow at 11 am. Over that past year we had at least 3 separate calls related to the financial controls on this project. Looking back on my calendar these dates were 8/28/2020, 4/28/2021, and 6/2/2021. These calls were predated by complaints we heard from sub contracts that they were not getting paid. In every call we were told that the sub-contractors were being unreasonable in their timing of payment and that was causing the issue. Additionally we asked specifically if Early had fully funded the project and we were told the project was financially solid. We also stated that we did not want any end of project surprise change requests and we were reassured that there would be none. ECC had stated that the project was financially stable, and it is financially stable, however ECC has been funding larger portions of this project due to change request not being added to the contract in a timely manner. The issue at hand is ECC needs compensation for the extra work completed because we can’t keep funding this large burden. We were not aware of any of these additional payment requests until October 19. Since then we have reviewed the information that has been provided and do not see a clear write up of what caused this increase for payment nor a proper change order request as well as full supporting documentation. The contract specifies how and when change orders are to be submitted and these demands do not meet those standards. Over the past 18 months we have worked with Early on several change orders related to rock excavation, pond slippage, and seepage. These change orders along with the original costs associated with the site work total \$16.6M. Within our amendment 1 it was agreed that the change request would cover the

excavation of all known and unknown rock, boulders, suitable soils, unsuitable soils, and all other classified and unclassified sub-grade materials to the full extend required for completion of the project. ECC submitted a formal change order on our change order form that we have used on all other change request for this project as well as the change request on the Pikeville and Pomeroy projects. If there is another form required ECC is unaware of this form, and it has not been required on any of the other change request to date. In fact, ECC had submitted this formal change request for the additional rock blasting on 10/19/21 and then after several conversations in person and telephone we have submitted additional back on 11/08/21 & 11/11/21. The justification for this change request was submitted based on the fact that we [e]xceeded the rock blasting by nearly double [what] was included in amendment 1 change request. ECC was compensated for the 187,000 cubic yards of rock blasting in amendment 1 and this change request is for the additional rock that was blasted beyond that compensated amount. ECC blasted nearly 340,000 CYDS which is an additional 150,000 cubic yards that we were compensated for in amendment 1. As originally discussed, in amendment 1 rock change request there was no way to know just how much rock would need to be blasted. At the time AEP kept saying there was around 132,000 to 160,000 cubic yards so we put in a place holder number for this amendment at 187,000 cubic yards. It was discussed in those conversations at that time if there was a significant amount more rock that estimated that there would have to be additional compensation. ECC has provided detail blast reports and other supporting documentation to show the justification for the additional compensation. The 14 month delay and labor charges we believe are related to the tree clearing permit and the stoppage issued by the WVEPA. In our opinion Early Construction was in part responsible to ensure they had all proper permits before beginning the tree clearing. Additionally, during this time, the site was not active or minimally active and there were few or no Early workers

at the site for most of that time. ECC was provided approval to install SWPPP controls for this project and in that approval, this included clearing of the trees. There are several correspondences ECC has put together detailing out the timeline of events. ECC was not responsible for these permits and was relying on AEP to tell us when things were in place for us to start. That's why we had gotten approval before starting the tree clearing and SWPPP. Regarding the taxes. We request additional details on exactly what taxes were paid and when. The support documentation shows a summary, but if Early was under the impression that taxes were not to be paid, when taxes were in effect paid and to what subcontractors. Our RFP clearly stated that taxes were to be included and it was stated in the prebid meeting minutes. If Early wanted to submit a change request for those it should have been done promptly and followed the proper change order request outline in our contract. We did not receive such requests in a prompt manner. However, based on internal conversations this is an area that we feel could reach an agreement with proper documentation. ECC had clarified in our bid proposal that we had excluded all sales tax and B&O tax on this project just like we did on Pikeville. This was acknowledged by AEP at award of project and knew that ECC would need compensated for all taxes. If there are additional pieces of information that we are not aware of please submit them.

232. On December 8, 2021, Mr. McNeil sent email correspondence to, among others, Mr. Forshey, which indicated: "Mr. Tolliver has asked me to send out this response before our meeting so we can keep the meeting productive and the agenda on task. I have a link below that has all the change request and other supporting documentation we have submitted in October and the first of November."

233. On December 8, 2021, a telephone conference between Mr. Sigler, Mr. Forshey, Mr. Tolliver, Mr. Legge, Mr. Wilcox, and Mr. McNeil occurred to discuss the pending EWOs.

During this conference, Mr. Sigler instructed Early to submit EWO 012 because it was a “legitimate EWO that you should submit.” Mr. Forshey also indicated that AEP needed lien releases and balance sheet for the EWOs.

234. On December 9, 2021, Mr. Forshey sent email correspondence to, among others, Mr. McNeil and Mr. Tolliver, which stated the following: “We have reviewed your response and the comments from our conversation with our leadership and internal legal team. Based on this review and their guidance we want to convey the following. We need a complete list of your sub-contractors on the project. Specifically, the current value of each subcontract, how much each subcontractor has been paid and how much is remaining for each subcontractor to complete the project. In addition, we also need lien waivers to validate how much each subcontractor has been paid to date. If there have been any mechanics lien notices filed we need to be made aware of them and the dollar amounts they represent. Our goal is to ensure that the sub-contractors have been paid for amounts they have billed for and that AEP had paid. Also, we are willing to review and consider an extra work order related to tax payments. In a prior submission related to this issue, you provided a summary sheet by month showing the amount of tax. This, however, is not enough information to consider any type of extra work order and is not compliant with the contract. We need to see all supporting documentation related to what was paid to the subcontractors with the taxes shown. It was acknowledged that the original bid you provided did not include taxes, but the change orders should all have included taxes as it was well know[n] at the time the change order was submitted. We need a clear understanding of which taxes were not part of our contract and which were part of the change orders. The remaining amounts related to the change order need further discussion and review before we can make a comment either way.”

235. On December 9, 2021, City of Hurricane, West Virginia approved the building for a Temporary Certificate of Occupancy upon conditions, which Early met all of those conditions.

236. On December 10, 2021, Mr. Legge sent email correspondence to, among others, Mr. Forshey, wherein he stated: “Please see attached Zip Folder containing the following regarding the Tax/B&O portion of the requested information below. Revised EWO 010R1 with Detailed Summary. Bid form and Clarifications for reference. CO 001 with backup showing whether or not Tax or B&O was included in EWO as reference in detail summary review. CO 002 with same. CO 003 with same. The Riedel-wilks quote excluding tax vs. invoicing including tax. Kone Crane quote excluding tax vs. invoicing including tax. Misc. Invoicing showing tax was paid on material. We probably need to set up a meeting to walk through all this to save confusion. Let us know when we can set it up. We’re also working on the other requested information and will have it over ASAP.”

237. On December 10, 2021, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey, wherein he stated: “During our discussion Wednesday we agreed to keep moving forward on the outstanding issues next week. I am available anytime Tuesday and Wednesday afternoon to discuss. I believe if we could block a few hours out for an in person meeting at a location that is convenient for you, we could get this matter resolved completely or extremely close to completion before the holidays. Please let me know your thoughts. I look forward to hearing from you and have a good weekend.”

238. On December 10, 2021, Mr. Forshey sent email correspondence to, among others, Mr. Tolliver, wherein he stated: “Joel has processed the invoices that were in discussion earlier and those should be coming through. We are reviewing the tax documentation, but was really looking forward to seeing the full balance sheet on the project so we could get an understanding

of all possible situations that might impact us. I'm in downtown Columbus all day Tuesday and Wednesday afternoon for other commitments at our corporate office. Right now 2 to 3pm is open on either day. There's no issue of coming up and meeting in person if you prefer or I can set up a Teams WebEx meeting.”

239. On December 14, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Forshey, which stated: “I apologize for getting this to you so late I have been focused during the day staying in front of the project to ensure we get the TOC as Mr. Tolliver promised. I have attached the project balance sheet, copy of ECC job cost and all supporting AP reports. After you get a chance to open this in the morning it would probably be very beneficial for us to have a short call to walk through all of this to make sure we are all on the same page and you are able to follow the documentation. I look forward to hearing from you in the morning.”

240. On December 14, 2021, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey and Mr. Sigler, wherein he stated: “ECC has received payment for \$186,000.00 and \$3,916.00 that I would like to thank you for. You both where emailed last night a detailed financial description (Balance Sheet) for the Hurricane project that I hope answered your request from last week's meeting. Given the limited amount of time we have in tomorrow's meeting I would like to list topics of discussion so everyone can be prepared. 1. In last week's meeting we discussed and I was under the impression we had agreed that ECC would be receiving a payment of \$1,500,000.00 this week, the payment of \$186,000.00 (received) and the scheduled payment of \$612,800.86. What is the status of the \$1,500,000.00 and \$612,800.86 payments? 2. I have guaranteed we will get this project to a position to receive the TOC for the complete building by end of the year. As we work towards that goal what is the last possible day AEP could receive this permit and still perform the necessary functions to be acceptable? 3. If the TOC is received, is

partial payment of the retainage a possibility? If so, by what date? 4. Discussion of contract amount, amount billed, amount received and the negative delta. 5. Discussion of open change orders. 6. We need to discuss how to keep this project moving forward over the next two holiday weeks. I am assuming everyone is working limited schedules, however, we need to establish set meeting times each week to continue forward progress. If anyone has additional items please feel free to modify.”

241. On December 15, 2021, a telephone conference between Mr. Sigler, Mr. Forshey, Mr. Tolliver, Mr. Legge, Mr. Wilcox, and Mr. McNeil occurred to discuss the topics noted in the above paragraph.

242. During the December 15, 2021 conference call, Mr. Forshey asked Mr. Tolliver what Early needed in order to keep the project moving, to which Mr. Tolliver said three million dollars towards the outstanding EWOs. After further discussions, Mr. Forshey agreed to pay Early two million dollars toward the pending EWOs and that the remaining amounts would be worked out.

243. Despite Mr. Forshey’s affirmation, the two million dollars was not paid to Early and AEP refused to reasonably work out the outstanding EWOs.

244. On December 15, 2021, Mr. Legge sent email correspondence to Mr. Forshey and Mr. Sigler, which attached the AEP-Simplified Tracking Sheet for the Project.

245. On December 17, 2021, Mr. Legge sent email correspondence to, among others, Mr. Sigler that attached EWO 012 and backup for the same.

246. Attached hereto as **Exhibit W** and incorporated herein by reference is a true and accurate copy of EWO 012.

247. On December 20, 2021, Change Order No. 4 (“CO # 4”) was executed by the parties.

248. Attached hereto as **Exhibit X** and incorporated herein by reference is a true and accurate copy of CO # 4.

249. On December 20, 2021, Pay Application/Invoice No. 46759 (“Invoice 46759”) was submitted to AEP, which was known by AEP and previously approved.

250. On December 22, 2021, Mr. Sigler sent email correspondence to, among others, Mr. Legge, Mr. McNeil, and Mr. Tolliver, wherein he stated the following: “The Change Order for EWO-010 related to the project taxes related to the original Contract Cost for \$1,085,096.75 has been fully executed by all parties. The subsequent invoice has been received and is processing for payment as early as today. In regard to the remaining requests/change orders, AEP needs to receive and verify the requested Lien Waivers from the Project sub-contractors and suppliers. As mentioned before, receipt of the Lien Waivers is critical. As I suggested on the phone, a summary spread sheet could be provided indicating the supplier/vender, the amount of the lien release, the contract balance, and the contact information if not provided on the lien waivers themselves. Please let me know when these will be available. We are trying to be accommodating by verifying the information quickly, and the sooner we get it the better. If AEP can verify the information provided to its satisfaction, AEP may be able to provide up to an additional \$4,032,241.95 to settle all of the current and outstanding change order requests for the project. This would include all items requested in EWO-0005G, EWO-09, unaccounted items in EWO-010, the portable generator and other various items identified in recent RFI’s and EWO’s not listed.”

251. On December 22, 2021, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey and Mr. Sigler, wherein he stated the following: “Early Construction Company’s management team has worked diligently for the past month to try and resolve the outstanding change orders. We have been exercised outside the normal industry standards to valid work that is certified by third parties, completed and financed by ECC funds. I continued to work in good faith from our discussion’s contingent that certain agreements and timeframes would be met. As of today, absolutely none of the agreements, timeframes or funds agreed to have been achieved. You have managed, with deception, to put in jeopardy the goal of having the TCO for the entire facility and doubled ECC’s efforts to reach that goal by 12-30-21. AEP does not have a TCO until the final demands of the inspector is completed by ECC and those are becoming increasingly hard to achieve by the end of next week. I am also putting you on notice that the Early Construction Company will accept no responsibility for any issue’s for the LEED credits arising from the facility being put in service before the scheduled series of sequential events not being followed correctly. In our weekly one hour meetings, I had offered not to submit change order EWO012 for \$1,176,609.32 in exchange that EWO05G, EWO009, EWO010 would be paid in full. As of today, none of the EWO’s listed have been paid, and if I understand Mr. Sigler’s email correctly, EWO010 may potentially be paid today but at a significantly reduced amount. I can no longer hold back unsubmitted EWO’s in exchange for agreements not to be followed through and unrealistic offers being made when substantial concessions have been made by Early Construction Company. Therefore, I am officially submitting EWO012 for payment and will be submitting two additional EWO’s for material increases arising from the delay of this project and interest charge. Those two EWO’s are estimated to be \$985,000.00. I have exhausted ECC subcontractors, ECC staff and myself to keep this project moving forward. Unfortunately, I can

no longer demand such performance from those individuals with no guarantee to be reimbursed for validated work already performed. Regrettably, unless payment of EWO005G, EWO009, EWO010 and EWO012 are paid in full by end of day 12-30-21, I will be forced to close the project site. This will also put in question the completion of tasks to achieve the goal of obtaining the TCO.”

252. On December 23, 2021, a telephone conference between Mr. Tolliver and Mr. Forshey occurred to discuss the EWOs.

253. During the December 23, 2021 conference call, Mr. Tolliver consistently tried to discuss moving forward with a resolution to the EWOs and to schedule a meeting to address the same, but Mr. Forshey kept deflecting.

254. During the December 23, 2021 conference call, Mr. Forshey then told Mr. Tolliver to provide the lien releases and AEP would “get this thing going” and have an in-person meeting.

255. During the December 23, 2021 conference call, Mr. Forshey told Mr. Tolliver that “nobody at AEP is fighting Early on these EWOs” and that the information was needed to “validate the EWOs to get Early paid.” Mr. Tolliver informed Mr. Forshey that Early was working on the lien releases and would have those over to AEP soon.

256. On December 29, 2021, Mr. Tolliver sent further email correspondence to, among others, Mr. Forshey and Mr. Sigler, wherein he stated the following: “As previously stated the Early Construction Company has or will have completed by the end of the day Thursday, December 30th, 2021, all critical paths to achieve the goal of obtaining a TCO for the Hurricane project. This TCO is above and beyond the requirement of just the administration portion of the building but encompasses the entire facility. Attached is the Early Construction Company’s formal submittal of the TCO for the Hurricane project. Regarding the email sent last week concerning the

outstanding EWO's and the closure of the project at the end of the day tomorrow, I haven't received any correspondence from AEP to rectify these issues. I will again list the EWO's below with a simple explanation in an effort to keep this project moving forward. EWO 05G [-] It was agreed to move 187,718 CYDS of rock at an established rate per CYD. It has been validated and easily certified by a third party that an additional 151,326.5 CYDS of rock was removed. This work had to be performed, was performed, and again, is easily validated while the rates had been previously established. Early Construction Company should be paid in full for the work performed. EWO 09R1 [-] Early Construction Company was issued a proceed-to-work notice from AEP. The seven month delay of a permit issue is no fault of ECC as obtaining permits on behalf of AEP is an unknown to ECC and outside of ECC's control. Once the proceed-to-work notice is issued, ECC understands AEP has done all of the necessary due diligence for ECC to begin work. There has been discussion concerning this EWO, but all items questioned have been answered and validated and therefore should be paid in full. EWO 010 [-] This EWO is regarding taxes. AEP was made aware multiple times throughout the bid process and bid reviews that taxes [were] excluded. This EWO has been validated but regardless is self-explanatory and should be paid in full. EWO 012 [-] This EWO was submitted last week and is for the additional rock/debris that had to be distributed on the site. This EWO alone validates itself and EWO 05G that AEP's estimates [were] wrong. The simple fact that this much extra CYD existed defines AEP's estimates [were] grossly underestimated or the extra CYD would not exist. The issue of non-payment seems to revolve to some degree around release of liens. I have exhausted the sub-contractors to unbelievable degrees to get the TCO requirement completed in the defined timeframe. I will continue to stress the importance of release of liens. However, I have little control to when they submit them to Early Construction Company. This is a moot point as AEP has a

safety net in the manner of 3 million plus dollars in retainage. A simple solution is to get these EWO's resolved, keep this project moving forward, and make the payment of retainage contingent on submittal of release of liens. There are several simple solutions to achieve the necessary goals to keep this project open and moving forward. If I continue to have no correspondence tomorrow I will assume AEP does not have the same desire and the project will be closed at end of the workday."

257. On January 3, 2022, Mr. Sigler sent email correspondence to, among others, Mr. Tolliver and Mr. Legge, wherein he stated the following: "I[t] has been reported that Cornerstone has largely left the project. We've heard that it is related to non-payment. Could you tell us how much is owed to Cornerstone, and do you agree with the payment(s) they are asking for? What are your plans to resolve the situation?"

258. On January 3, 2022, Mr. Tolliver sent email correspondence to, among others, Mr. Sigler, which stated: "Thank you for your quick response to the concerns of Cornerstone and what appears to be related to nonpayment. Cornerstone, like all other subcontractors and vender's, are paid to date and are not leaving the jobsite due to non-payment, as you have mentioned. Rumors such as these can inflict catastrophic damage to a contractor's reputation and a project. I would like to know, if not you, who began this false narrative for future reference if such damages were to occur. As Mr. Legge provided in his return email to you, there was a release of lien stating Cornerstone has been paid. However, that release of lien is not current as more payments have been made to Cornerstone, plus other subcontractors that the Early Construction Company is awaiting additional lien waivers to be returned. As soon as the updated release of liens are delivered, they will be forwarded to you ASAP. In regards to what payment Cornerstone is owed, they are paid to date and we do agree with what small amount is still owed but Cornerstone has

not asked for any payment. In regards to our plans to resolve the situation, I am unaware of any situation that needs to be resolved with Cornerstone or other subcontractors. The management, supervision and field labor for Early Construction Company and its subcontractors have done a remarkable job, if not unbelievable, over the past three weeks to make getting the TCO for the entire facility a reality. Your request for Cornerstone's percentage complete, total contract amount for the project, along with the other subcontractor's information was emailed to you on 12-14-21 with detailed information and backup for validation. As I mentioned above, I appreciate your quick response to what appeared to be a nonpayment to Cornerstone. There are several nonpayment issues regarding the Early Construction Company that you were made aware of on 10-19-21, followed up with an onsite meeting on 10-20-21. Since that meeting, I have been given a one hour meeting on 12-8-21 and another one hour meeting on 12-15-21 with no resolution. It is disheartening that Early Construction Company, the general contractor, hasn't received the same quick response in regards to what is truly a matter of nonpayment. Before this matter erodes further, I am available Tuesday, Wednesday and Thursday of this week to resolve all issues regarding nonpayment to the Early Construction Company and hear AEP's detailed plan of resolving the situation.

259. On January 4, 2022, Mr. Tolliver sent email correspondence to Mr. Beam, which stated: "I hope the [Temporary Certificate of Occupancy] for the Hurricane project's entire facility was an asset for AEP. I have labored for several days with respect to sending this email to you. Since our breakfast meeting, as you requested, I have exhausted my efforts in trying to work through the Hurricane project's financial issues with Mr. Forshey and Mr. Sigler with no success. I have been forwarded the opportunity for one onsite meeting on October 20th, 2021 and two telephone conference calls each only scheduled for one hour on December 8th, 2021 and December

15th, 2021. We have given enormous amounts of paper work to Mr. Forshey and Mr. Sigler, at their request to validate the requested change order that results in confusion or no response. I am respectfully asking for your help in regards to an in person meeting with someone in the AEP organization that has the authority to resolve these issues and bring closure to them.”

260. On January 5, 2022, Mr. Sigler sends email correspondence to Mr. Tolliver and Mr. Legge, wherein he states the following: “I was told by our construction coordinator that Cornerstone was leaving the site, and it was related to payment issues. Our coordinator was told this by one of Cornerstone’s crewmen. I don’t know why you would threaten AEP with damages over this. In your email below you state that Cornerstone is fully paid to date, but then say it is still owed money, but they haven’t asked for it. This is somewhat confusing. Is there any dispute with Cornerstone? The Cornerstone lien waiver you’ve sent is what we have been asking for all of the vendors. The requested lien waivers are the tools we need to help validate much of the information Kaileb has sent us. For each vendor and sub-contractor, send similar lien waiver releases with their contract amount as soon as possible. Ideally, a spreadsheet with the contract total and the current amount of lien released with the specific lien waivers attached. You mention other non-payment issues. Currently, Early has been paid over \$31,500,000.00, which is nearly the entire contracted amount for the project. The payments to date include an additional \$1,765,801.71 for items requested in October. The contract would allow for retention to [be] held for over \$3,150,000. Currently, we are holding \$2,076,445.65 in retention. I think it is clear that AEP has fully funded the project with much of the funding provided ahead of most accrued expenses. The remaining items that you are requesting additional funding for aren’t supported by the information provided. It still remains that we have a reduced workforce on a project that

continues to fall behind schedule. We would like to see an updated schedule indicating completion of the Service Center, as well as, the site and other accessory buildings.

261. On January 6, 2022, a telephone conference between Mr. Tolliver and Mr. Forshey occurred, but Mr. Forshey informed Mr. Tolliver that he was hesitant to speak with him because “other” people from AEP were now involved with the EWO issues.

262. On January 10, 2022, Mr. Sigler sent email correspondence to Mr. Legge and Mr. Forshey, wherein he stated the following: “The Lien Waivers need to show the dollar amounts released. I sent you an email about this before. I’d like to see one Lien Waiver for the total amount paid to Horizon. I don’t understand why there are 5.”

263. On January 11, 2022, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey, wherein he stated the following: “In regards to Joel’s email below ECC has issued five separate contracts to Horizon for the work they are performing, therefore we have requested a release of lien for each contract. It is my understanding from our phone conversation on 12-17-21 that AEP’s concern was the payments to sub-contractors needed verified for AEP to avoid the liability of unpaid balances due to sub-contractors. We have submitted, as requested, various forms of information [that] should substantiate any validation process needed to verify that sub-contractors for this project have been paid in full or are being paid. AEP’s contract and ECC’s subcontractor contract eliminates the possibility of a lien being placed on this project. This process was tested and proven through Allard’s attempts to file a lien but our legal team was successful in having the lien removed. ECC has performed two other project[s] similar to the Hurricane project with no issues of subcontractor’s being paid or lien release’s required. The amount of information submitted, retainage held by AEP, ECC’s history and reputation should more than alleviate any concerns of sub-contractor being paid. If necessary to move this project forward to completion

and resolve outstanding issues, I have spoken to ECC's insurance carrier and we are willing to bond the remaining financial portion of this project to alleviate any and all concerns. The critical path for this project is to resolve EWO 05G, EWO 09R1, the remaining portion of EWO 010 and EWO 012. We have went to exhausting lengths to gather and submit requested information for months regarding release of liens, only to be exercised again after each submittal. Its past time these exercise's be concluded, ECC be recognized for work performed, our efforts that resulted in a TCO for the entire facility, and this project come to a completion. As requested multiple times, I am respectfully requesting an at length, in person meeting to resolve payment issue's surrounding ECC. Attached are four additional release of liens and the corresponding excel spreadsheet per Joel's request."

264. On January 12, 2022, Early submitted RFI No. 063 to AEP stating the following: "Problem: Since we have raised the laydown area roughly 3ft, we will need to raise the elevations of the light pole bases to match the current elevations we have now. Is this acceptable?"

265. On January 13, 2022, Mr. Lee responded to RFI No. 063 indicating that "[m]atching elevations of the light poles with the current elevations in the laydown yard is acceptable."

266. On January 13, 2022, Mr. Forshey sent email correspondence to, among others, Mr. Tolliver, wherein he stated the following: "The lien waivers are to get clarification with the subcontractors regarding their payment status. Even though this is a "no lien" contract there are other reasons AEP wants this information. This was to help resolve the request for additional payment that your team is requesting. Last year we asked for lien waivers several times and received a couple of them in June. Those waivers also simply stated 'paid in full' and we made it clear at that time that we needed additional information to be shown. It should not be a surprise to your group what we were expecting to see on those waivers. As owner of the project we have

the right to request this information, either in support of our evaluation of your requested EWO's or in a full blown audit—which we have not requested at this time. We are asking for the lien waivers from the rest of the subs plus the additional information requested on each waiver. In the Waiver Log you show the total contract, amount paid and amount due. It is reasonable for us to ask that we get confirmation from the subs that they are in agreement with those values. Having them state 'paid in full' does not show agreement on the \$ amounts. Had the waivers you sent included that, we would be in a position to have a productive meeting and discuss what those values represent regarding the overall financial status of the project. Regarding the resolution of the EWO's what I can say is that our expectation under the contract and is our normal process is for the contractor to bring these to our attention prior to the expense occurring. If you look at how our teams responded to the slip and seepage we followed those procedures, we agreed to a change order, and paid the invoices when submitted. With the bulk of the current request for additional payment basically occurring in the past this puts us at a disadvantage in being able to fully understand those costs and, more importantly, it prevents us from providing necessary input and approval feedback before the costs are incurred. Once we have received the information that has been requested, we would like to schedule a meeting regarding the overall financial status of the project and discuss your EWO's. It would not be productive to have a meeting in advance of AEP receiving the information it has requested. We would like to reach an agreement on these items as much as Early so we can complete the service center and get this lengthy project to conclusion.”

267. On February 1, 2022, Mr. Tolliver sent email correspondence to, among others, Mr. Forshey, which stated: “As requested, attached are the lien waivers in the format that has been requested. As this process of requesting information, submitting information then requesting more information has become challenging and our year end financials process underway, I have

involved and included in this email our CFO/Accountants in this matter. If you or any AEP accounting personnel need to speak with Ric Perry, Ren Perry or both you have my permission. I would expect with the overall amount of information given and the attachment of lien waivers, this will be sufficient for AEP to perform their due diligence and we may begin to move forward. Once again, I am respectfully requesting for an in person, at length meeting to resolve all outstanding issues and that it be made a priority.”

268. On February 4, 2022, Mr. Forshey sent email correspondence to, among others, Mr. Tolliver, wherein he stated the following: “Jason, is your team available Tuesday (8th) after 2 pm? If so I can set up a conference call to discuss our review of the information. I’m also agreeable to an in person meeting but depending on location may not be able to meet until Friday the 11th after 1 pm.”

269. On February 8, 2022, a telephone conference between Mr. Sigler, Mr. Forshey, Mr. Amoh (AEP), Mr. Tolliver, Mr. Legge, Mr. Wilcox, Mr. McNeil occurred to discuss the pending EWOs.

270. During the February 8, 2022 conference call, AEP claimed it could not substantiate cost and would not discuss any of the EWOs other than vague statements about EWO 05G.

271. During the February 8, 2022 conference call, Mr. Forshey agreed that the extra rock noted in EWO 05G was removed on the Project.

272. During the February 8, 2022 conference call, Mr. Forshey again indicated that “additional information” was needed yet neither he nor anyone else from AEP would identify with any specificity what information AEP needed.

273. During the February 8, 2022 conference call, AEP presented their spreadsheet “220202-Hurricane Lien Waiver Summary,” wherein they used the information from the lien

waivers received February 1 to reconcile the information provided on the “AEP Hurricane Balance Sheet 12-13-21,” which was previously provided by Early. In doing so, AEP took the stance that the costs represented on the balance sheet were overstated and unilaterally took the position that total projected job costs would be decreased by the amount overstated. In response, Early attempted to explain to AEP that the amounts shown were incorrect and that Early was going to re-submit a corrected balance sheet.

274. On February 10, 2022, Mr. Legge sent email correspondence to, among others, Mr. Forshey and Mr. Sigler, wherein he stated the following: “As mentioned in the meeting on 2-8-22, we need to address the remainder of “EWO008 – Site Seepage” that wasn’t fully added to the contract. The two items that needed added to the contract at the time (regarding AEP CO003 signed on 11/15/21) were the site seepage (\$958,352.20) and the material/labor increase from Johnson Controls (\$90,835.52) totaling \$1,049,187.72. Being over 1 million, AEP needed to break [them] up [in] to smaller amounts. The total amount added on CO003 was \$680,704.96, which was the JCI \$90,835.52 and a portion of the site seepage \$589,869.44. This leaves \$368,482.76 still to be added. This contract addition was initiated because of our invoice #46407 for the \$958,352.20 for the site seepage that had already been completed & paid to the subcontractor. There was not enough remaining on the contract to cover the 958k so a contract addition was necessary to process the billing. With the contract addition of the 680k on CO003 and what was remaining on the contract, Invoice 46407 could be processed. That being said, the 368K that was deducted to keep the CO under 1 million was never added. This left our available contract billing 368k short. ECC has not submitted a December billing due to no clear answer as to the amount left available for us to bill, nor have we submitted a January billing for the same issue. We are now approaching February billing with no resolution. Attached is the original change order with

backup, along with your CO003 where you added the above referenced portion. ECC invoice# 46407 for \$862,516.98 (the full seepage amount of \$958,352.20 less retainage) was paid out on 11/19/21. But again, the \$368,482.72 of the contract amount used to [pay] this invoice was never added.”

275. On February 10, 2022, a telephone conference occurred between Mr. Tolliver and Mr. Forshey.

276. During the February 10, 2022 conference call, Mr. Tolliver again reiterated that the additional information in support of the EWOs was forthcoming.

277. During the February 10, 2022 conference call, Mr. Tolliver also again requested that Mr. Forshey give him a roadmap as to what AEP was specifically looking for in order to get the EWOs resolved. Mr. Forshey would not provide him with such information.

278. Unbeknownst to Mr. Forshey, Mr. McNeil and Mr. Legge were in Mr. Tolliver’s office when the February 10, 2022 conference call took place and heard the entirety of the call.

279. On February 14, 2022, Mr. Sigler sent email correspondence to, among others, Mr. Legge, wherein he stated the following: “The seepage Change Order was written for the amount of the subcontractor’s cost plus 10%. The cost from the subcontractor for all materials and labor (including 447,000 for equipment down time) was \$536,244.99. 10% of that is \$53,624.45. The upcharge from Johnson controls for \$90,835.52. By my calculations the full amount of the contract Amendment/Change Order 03 is \$680,704.96. It is true, that Contracts and Change Order under one million dollars can be approved slightly more quickly. In this case, it was not a factor, and if I thought it was, I would have simply put the Johnson controls line item in a future Change Order. To state this as clearly as possible. The seepage change order, Change Order 03, was written for the amount of the subcontractor’s cost plus 10%.”

280. On February 17, 2022, Early received a letter from AEP's counsel on behalf of AEP ("Letter") concerning the EWOs and Project schedule.

281. The Letter, which was sent one week after the February 10, 2022 meeting, blindsided Early as it had reversed or negated all of the prior representations, assurances, and/or promises made by Early relating to the EWOs.

282. Within the Letter, AEP falsely claimed that Early had submitted "limited materials" and has indicated that it has "no additional documents supporting the requested EWOs."

283. Within the Letter, AEP then denied the pending EWOs because it erroneously claimed that there was "no basis on which to claim additional incremental costs, no basis to which to support notice of any such claims, and insufficient documentation to support either."

284. Within the Letter, AEP demanded that Early provide an action plan to regain lost time to achieve substantial completion by March 31, 2022, and failure to do so would be non-conformance with the terms of the Contract and constitute an event of default thereunder."

285. On February 21, 2022, Mr. Wilcox had a telephone conference with Mr. Sigler.

286. During the February 21, 2022 conference call and in direct opposition to the Letter, Mr. Sigler indicated that he was well aware and understood that the March 31, 2022 substantial completion date was not achievable and instructed Mr. Wilcox to "keep the [updated] schedule as tight as possible."

287. On February 25, 2022, Early, via the undersigned counsel, responded to the Letter, wherein it disputed AEP's position and memorialized most, if not all of the above facts ("Response").

288. Within the Response, Early indicated that it had submitted detailed information and documentation that substantiated the EWOs and also noted that it had informed AEP during the

February 8th and 10th conference calls that additional information would be provided in support of the EWOs.

289. Within the Response, Early indicated that AEP has never informed Early as to what specific information or documentation it still needed and that AEP has never disputed that Early has performed any of the corresponding work.

290. Within the Response, Early indicated that it has acted professionally during the Project and diligently performed its work all while acting in good faith to reach an amicable resolution on the EWOs with AEP.

291. Within the Response, Early indicated that there had been consistent delays over the entirety of the Project, which were not the result of the actions or omissions of Early, and/or were outside Early's control.

292. Within the Response, Early also indicated that: (1) it worked to consistently reduce costs for AEP; (2) continuously performed its work in a timely and acceptable manner; (3) expedited work to obtain the temporary certified of occupancy for AEP; (4) expended significant time and effort to provide all of the information and documentation requested by AEP based on its assurances and representations toward the EWOs; and (7) consistently requested meetings with AEP to resolve the EWO issues/concerns.

293. In addition to the Response and as requested, Early provided AEP with an updated schedule and action plan for the Project.

294. On February 25, 2022, Mr. Legge sent email correspondence to, among others, Mr. Sigler and Mr. Forshey, which stated: "As discussed, please see attached EWO011B and backup for the cost increases accrued due to the extended length of this project. I've also attached EWO05H for the original 93k yards of ripped material. Upon further review of our clarifications,

the underground obstruction exclusion is not limited to only [‘]rock.[’] Also, in response to Joel’s reply regarding EWO008 – site seepage and the remainder to be added to the contract. I have attached the EWO breakdown sheet for review. The referred to backup used to calculate the subcontractor cost+10% was only the cost associated with the fix itself. The downtime waiting on the fix to be formulated is what hasn’t been added to the contract. There was substantial daily cost (\$20k/day) associated with ALL equipment setting still, which was addressed prior on at least two occasions. This is not to be confused with 47k for the specific pieces of equipment not able to be used for the fix. But again, I want to clarify this invoice for the fix, including the downtime has been paid in full on Invoice #46407 and to my knowledge, there’s been no disputing this downtime. It was simply not included in this contract amendment CO003 for what we were told was to streamline the process for approval to get invoice #46407 paid and that we would add the remainder to the next amendment. A side note, in using the piece of backup to calculate the amount added on CO003, instead of our EWO008 breakdown form, the B&O for the entire fix was not included. Adding the remaining \$368,482.76 will cover the 320,000 for downtime, our markup on the downtime and the B&O for the entire fix.

295. EWO 05H is a summary of and/or resubmission of EWO 05A through 05D, which relates to the underground obstructions/rock ripping that Early performed and submitted prior to CO #1.

296. On March 24, 2022, Early submitted EWO 014 to AEP concerning the remediation of the soft soils addressed in RFI 067.

297. Attached hereto as **Exhibit Y** and incorporated herein by reference is a true and accurate copy of EWO 014.

298. On or around April 14, 2022, Mr. Sigler had an in-person conversation with Mr. Wilcox at the Project site, wherein Mr. Sigler stated that he expected the issues between the parties “to go into mediation anytime so that we [could] get a settlement,” as well as stating that if he saw Mr. Tolliver “in the streets that it would be over” because he was a division one competitive athlete.

299. Upon information and belief, in March 2022, Mr. Sigler, on behalf of AEP, had communications with Jason Davis, who is an employee, agent, and/or representative of All Quality Fence (Early’s subcontractor on the Project). During this communication, Mr. Sigler intentionally, maliciously, recklessly, and falsely told Mr. Davis that Early was in financial trouble, Early was probably going bankrupt, and that if All Quality Fence had not been paid already then it might not be getting paid on the project.

300. Upon information and belief, in February 2022, Mr. Sigler, on behalf of AEP, had communications with Luke McGrew, who is an employee, agent, and/or representative of Prizm Painting (Early’s subcontractor on the Project). During this communication, Mr. Sigler asked whether Prizm had trouble being paid from Early and then intentionally, maliciously, recklessly, and falsely told Mr. McGrew that other subcontractors on the Project were having problems. As a result of this call, Prizm was made to believe that it was in danger of not being paid by Early on the Project.

301. Upon information and belief, Mr. Sigler and/or other employees, agents, and/or representatives of AEP have made similar statements and/or communications to other subcontractors on the Project, which said statements were malicious, reckless, and false and made with the intent of harming Early.

302. On May 24, 2022, Josh Morrison (“Mr. Morrison), an employee of Early, sent Pay Application/Invoice No. 47445 (“Invoice 47445”) to Mr. Sigler via email.

303. The work and corresponding costs identified in Invoice 47445 were previously known and had been approved by AEP.

304. On May 24, 2022, Mr. Sigler responded via email to Mr. Morrison wherein he asked Invoice 47445 be resubmitted to him without the materials not installed at that time.

305. On May 24, 2022, Mr. Morrison sent email correspondence to Mr. Sigler that included a revised Invoice 47445.

306. Attached hereto as **Exhibit Z** and incorporated herein by reference is a true and accurate copy of Invoice 47445.

307. On June 15, 2022, Mr. Sigler sent email correspondence to, among others, Mr. Morrison concerning Invoice 47445, wherein he rejected payment to Early for Invoice 47445 and stated, among others, the following: (A) the bulk of the work is not complete related to the panel replacement in the truck parking bays; (B) the major components to complete the work have not yet been delivered to the site; (C) it does appear that the bulk of the Meter Room work is completed, but there are number of large dollar value items not completed that far offset cost of the Meter Room Work; (D) if the current payment requested was made, the balance to finish indicated would be under \$500,000; (E) some very obvious items not completed, listed below, have a value based of on the Lien Waiver information of at least \$2,000,000[:] The Permanent Generators; Asphalt Paving; Landscaping and Fencing; Accessory storage buildings are not complete; (F) it also appears the Early Construction has fallen well behind many of the items indicated in the Recovery Schedule; (G) for these reasons and others, I can’t support the payment of you most recent

application identified as #47445 revised; and (H) thanks for the hard work to date, but we have a long way to go to meet the Substantial Completion dated of July 22, 2022.

308. Since beginning work on the Project, Early has performed and continues to perform its work in a good faith manner to push the Project towards substantial completion.

309. Despite multiple and extensive delays on the Project, which were not the result of Early's actions or omissions, Early has performed and continues to perform its work in a good faith manner to push the Project towards substantial completion.

310. AEP has previously acknowledged and does not dispute that Early has performed the work that corresponds to the pending EWOs and/or invoices in this matter.

311. AEP has never objected to Early performing the work that corresponds to the pending EWOs and/or invoices in this matter.

312. AEP has accepted all of the work that Early has performed in relation to the pending EWOs and/or invoices in this matter.

313. Despite the above and Early's continued good faith efforts to resolve the EWOs, change orders, and/or invoices, AEP has intentionally, recklessly, and/or maliciously refused to pay Early for the work performed and corresponding costs in EWO 005G (additional blasted rock), EWO 005H (original ripped obstruction of rock), EWO 008 (seepage repairs), EWO 010R1 (Taxes), EWO 009 (overhead due to work delays), EWO 11B (material cost increases), EWO 012 (laydown yard), EWO 014 (unsuitable soil remediation), Invoice 46759, and Invoice 47445, which has caused Early to incur damages in excess of \$14,000,000.00.

COUNT I
(Breach of Contract)

314. Early restates and incorporates the previous allegations as if fully rewritten herein.

315. Early and AEP entered into a valid and enforceable Contract.

316. Early complied with its obligations under the Contract and has given significant valuable consideration in the form of work and costs on the Project.

317. AEP failed to comply with its obligations under the Contract.

318. AEP was required, among others, to provide a Project site that was ready for construction, pay the Contract amounts plus all change order work and/or extra work it required and/or approved, pay for work completed, and damages it caused.

319. The pending EWOs, invoices, and/or change orders on the Project total over \$14,000,000.00, which include EWO 005G, EWO 005H, EWO 008, EWO 009, EWO 010R1, EWO 11B, EWO 012, EWO 014, Invoice 46759, and Invoice 47445.

320. To date, AEP has breached and continue to breach the Contract by intentionally, maliciously, and/or recklessly refusing to pay Early for the work performed in accordance with the pending EWOs, invoices, and/or change orders and/or in accordance with the Contract.

321. The Project was also delayed due to no fault of Early, yet AEP has refused to pay the resulting delay damages to Early in accordance with the Contract.

322. In addition to the above, every contract, including the Contract, required AEP to act in good faith and deal fairly with Early.

323. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP had to act honestly and fairly, and show good faith towards Early during the Project.

324. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not do anything that would destroy or damage Early from receiving the benefits of the Contract.

325. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP was prohibited from exercising improper discretion and performing its contractual obligations in bad faith.

326. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not act contrary to the spirit of the Contract.

327. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not to interfere with or fail to cooperate with Early's performance of the Contract.

328. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not to take opportunistic advantage in a way that could not have been contemplated at the time of the Contract.

329. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP was required to act honestly and reasonably when seeking to enforce the terms of the Contract.

330. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP was required to conduct itself in a manner that was faithful to the parties agreed common purpose and in a manner consistent with Early's justified expectations.

331. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not act in bad faith, dishonestly, or with improper motive designed to destroy or damage Early's right to receive the benefits or reasonable expectations of the contract.

332. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP had a duty not to abuse its discretionary power.

333. Pursuant to the AEP's duty to act in good faith and deal fairly with Early, AEP could not take advantage of Early's financial circumstances to its benefit.

334. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by acting dishonestly, unfairly, and showing bad faith towards Early.

335. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by destroying, damaging, and/or preventing Early from receiving the benefits of the Contract.

336. AEP breached its implied duty to act in good faith and deal fairly with Early by failing and/or refusing to make an adequate investigation or any investigation regarding the EWOs, change orders, invoices, and/or claims which, among other things, has caused a severe delay in payment to Early or providing all benefits that Early is entitled to under the Contract, and has severely prejudiced and damaged Early.

337. AEP breached its implied duty to act in good faith and deal fairly with Early by refusing and continuing to refuse to give any consideration for its actions, omissions, assurances, representations, and/or statements.

338. AEP breached its implied duty to act in good faith and deal fairly with Early by refusing and continuing to refuse to give any reasonable interpretation to the Contract or any reasonable application of its provisions to Early's claims and has acted to protect its own financial interests therein at the expense of and detriment to Early's rights.

339. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by exercising improper discretion and performing its contractual obligations in bad faith.

340. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by acting contrary to the spirit of the Contract.

341. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by failing to provide Early with any reasonable or justifiable basis for not paying the EWOs, change orders, and/or invoices.

342. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by interfering with and/or failing to cooperate with Early's performance of the Contract.

343. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by taking opportunistic advantage of Early in a way that could not have been contemplated at the time of the Contract.

344. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by failing to act honestly and reasonably when seeking to enforce the terms of the Contract.

345. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by conducting itself in a manner that was unfaithful to the parties agreed common purpose and in a manner consistent with Early's justified expectations.

346. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by acting with an improper motive designed to destroy or damage Early's right to receive the benefits and/or reasonable expectations of the Contract.

347. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by abusing its power under the Contract.

348. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by providing false information relating to Early and/or the Project to third-parties, including subcontractors/suppliers.

349. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by taking opportunistic advantage of Early's financial burdens on the Project to its benefit.

350. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by failing to timely negotiate and/or respond to EWOs.

351. AEP breached its implied duty to act in good faith and deal fairly with Early under the Contract by

352. AEP's actions, omissions, and/or breaches were done with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

353. AEP's actions, omissions, and/or breaches were done with the intent or plan that AEP obtained an advantage over Early to its benefit.

354. AEP's refusal to properly investigate, adjust, handle, process, and/or pay the EWOs, change orders, and/or invoices compelled Early to, among other things, engage counsel and to initiate litigation to recover such damages.

355. Upon information and belief, Early alleges that AEP intends to and will continue to delay, deny, and withhold, in bad faith, payments and/or amounts due to Early unless and until AEP is compelled to pay the same by final judgment of this Honorable Court.

356. AEP's actions, omissions, and/or breaches were done in bad faith, dishonestly, and/or with an improper motive that was designed to preclude and/or damage Early's right to receive the benefits or reasonable expectations of the Contract, which was a breach of its duty of good faith and fair dealing.

357. AEP's actions, omissions, and/or breaches were such that it proximately harmed Early's business, profession, trade, reputation, and/or relationships in the industry.

358. AEP's actions, omissions, and/or breaches were contrary to law and caused damages to Early for which it, along with other Defendants, are liable.

359. As a direct and proximate result of AEP's actions, omissions, delays, breaches of the Contract, and/or breaches of the implied contractual covenants of good faith and fair dealing, Early has been damaged in an amount to be determined at trial, but certainly in excess of \$14,000,000.00.

360. AEP, jointly and/or severally, is liable to Early for all amounts owed under the contract, plus interest, attorneys' fees, costs, and other damages afforded to it by the Contract and in law and/or equity.

361. Early has suffered, and will continue to suffer, damages as a result of the breach.

COUNT II
(In the Alternative to Count I - Unjust Enrichment)

362. Early restates and incorporates the previous allegations as if fully rewritten herein.

363. Early is entitled to raise this claim for unjust enrichment as an alternative theory of recovery against AEP, AEPTC, AEPC, and the Doe Defendants, should the Contract, EWOs, change orders, and/or or corresponding Contract documents be found to be invalid and/or non-binding on AEP.

364. Benefits have been and will continue to be conferred by Early upon AEP, AEPTC, AEPC, and/or the Doe Defendants as it relates to the Project and the work Early has performed on the Project, including, but not limited to, those performed in accordance with the extra work orders, change orders, and Contract.

365. Furthermore, significant monetary benefits have been and/or will be received by AEP, AEPTC, AEP, and/or the Doe Defendants as a result of Early's work on the Project, including the full utilization of the Project by the Defendants.

366. AEP, AEPTC, AEPC, and the Doe Defendants are aware of these benefits, but have retained the same under circumstances where it would be unjust to do so without payment to Early.

367. AEP, AEPTC, AEPC, and the Doe Defendants would be unjustly enriched by being permitted to retain the benefits they have received and/or will receive, and refusing to compensate Early for the same.

368. The value of the benefit received by AEP, AEPTC, AEPC, and the Doe Defendants is in excess of \$14,000,000.00.

369. AEP, AEPTC, AEPC, and the Doe Defendants, jointly and/or severally, are liable to Early for their unjust enrichment, plus interest, attorneys' fees, costs, and other damages afforded to by law and/or equity.

370. As a direct and proximate result of their unjust enrichment, Early has been damaged in an amount to be determined at trial but certainly in excess of \$14,000,000.00.

371. Early has suffered, and will continue to suffer, damages as a result of the unjust enrichment.

COUNT III
(In the Alternative to Count I – Promissory Estoppel)

372. Early restates and incorporates the previous allegations as if fully rewritten herein.

373. In exchange for Early's continued performance of work and financing/funding the Project, AEP clearly and unambiguously promised to pay Early for the pending EWOs once Early providing the supporting documentation and lien waivers, which Early complied with and provided to AEP.

374. In acting in accordance with AEP's requests, assurances, representations, and/or warranties, Early reasonably and foreseeably relied on AEP's promises to pay the EWOs.

375. AEP has failed to pay to Early the total sum of the EWOs and/or corresponding amounts owed to Early.

376. As a result of Early's reliance upon AEP's promises to pay the EWOs and/or compensate Early for the work it has performed and costs it has incurred, Early has suffered significant losses and has been damaged in an amount to be determined at trial but certainly in excess of \$14,000,000.00.

377. AEP, jointly and/or severally, is liable to Early for its promises to pay, plus interest, attorneys' fees, costs, and other damages afforded to it in law and/or equity.

COUNT IV
(Fraud)

378. Early restates and incorporates the previous allegations as if fully rewritten herein.

379. AEP, via its employees, engaged in a continual and intentional pattern of fraudulent statements, actions and/or omissions concerning the EWOs and payment for the same.

380. AEP'S fraudulent statements, actions and/or omissions were material misrepresentations, actions, and/or omissions of fact.

381. AEP knew and/or had reason to know that its fraudulent statements, actions and/or omissions were wrong and false.

382. AEP engaged in the fraudulent statements, actions and/or omissions in an effort to defraud Early of money owed, induce Early to execute contract modifications or change orders, induce Early to continue performing work on the Project, cause Early to continue to incur and/or absorb a significant financial burden/expense on the Project, and cause Early financial distress, all of which were detrimental and damaging to Early.

383. AEP's fraudulent statements, actions and/or omissions were done intentionally, with the purpose of taking advantage of Early's trust and to ultimately defraud Early of amounts it is owed, which were done to benefit AEP.

384. AEP's statements, actions and/or omissions, including its assurances, pledges, representations, and/or promises concerning the EWOs, change orders, invoices and AEP's corresponding payment for same were done with the intent to misrepresent and/or defraud Early out of compensation it is entitled to under the Contracts and/or on the Project.

385. AEP's intentional and malicious pattern or representation that payment would be made to Early upon receipt of documentation and/or information concerning the EWOs, including lien waivers, were done with the intent to misrepresent and/or defraud Early out of compensation it is entitled to under the Contracts and/or on the Project.

386. To induce Early to enter into CO # 1, AEP materially misrepresented to Early, on multiple occasions, that AEP would compensate Early for additional rock incurred over the "not to exceed" number within EWO 02R1.

387. To induce Early to enter into CO # 1, AEP materially misrepresented to Early, on multiple occasions, that the amount of rock that needed removed was significantly lower than what it knew needed to be removed.

388. When AEP, via its employees, made such representations and/or statements, it knew and/or had reason to know that the representations and/or statements were made with such utter disregard and recklessness for the falsity of such statements.

389. In entering into CO # 1, continuing to perform significant and extensive work on the Project under the EWOs or otherwise, and/or continuing to incur, absorb, and/or shoulder the financial burden expense on the Project, Early reasonably and justifiably relied on AEP's

statements, representations, assurances, pledges, warranties, actions, and/or omissions to Early's detriment.

390. Had Early known that AEP's actions and/or omissions were false and fraudulent, Early would not have entered into CO #1 and/or continued to perform the additional work or further extend their financial burden expense on the Project, which has caused Early to incur damages.

391. When AEP made each misrepresentation, statement, assurance, warranty, pledge, and/or promise, it knew, or made the same with such utter disregard and recklessness for the falsity of such statements, that it was not going to pay Early for the work and/or costs pursuant to the EWOs or otherwise.

392. As a result of AEP's false and fraudulent actions, Early has suffered significant losses and has been damaged in an amount to be determined at trial but certainly in excess of \$50,000.00, and Early is entitled to recover punitive damages, attorneys' fees, costs, and expenses.

393. AEP, jointly and/or severally, is liable to Early for its fraudulent conduct, plus interest, attorneys' fees, costs, punitive damages, and other damages afforded to it in law and/or equity.

COUNT V
(Mistake)

394. Early restates and incorporates the previous allegations as if fully rewritten herein.

395. CO # 1 was entered into between Early and AEP.

396. At all times, the parties' mutual intent was to determine reasonable compensation to Early for rock removal up to a certain amount due to the unknown amount of rock by all parties.

397. CO # 1 was consummated on circumstances concerning a mutual mistake or a unilateral mistake, or both, of fact relating to the amount of rock excavation/removal on the Project and payment by AEP to Early for the same, which did not reflect the parties intent.

398. There was no consideration paid or contemplated that the subject matter in CO # 1 would include the unknown and likely extensive scope of work that AEP now claims it covers.

399. That AEP changed it's position at the time of CO #1 and now claims that the subject matter of CO # 1 extends to cover all work, costs, and expenses of EWO 05G and EWO 05H, and that Early was required to perform all additional and/or extra work without AEP compensating Early.

400. Prior to and at the time of entering into CO # 1, Early understood that CO # 1 was meant to cover the EWO 001R1 and EWO 002R1 only.

401. Prior to and at the time of entering into CO # 1, AEP represented, on multiple times, that the amount of rock on the Project was unknown and that Early would be compensated should the amount exceed the amount listed in EWO 002R1.

402. AEP and/or Early were mistaken with respect to the materials terms of CO # 1.

403. AEP now attempts to use such mistake to their financial benefit and to the detriment of Early.

404. That as a result of such mutual mistake of fact, Early has no adequate legal remedy.

405. That as a result of such material mutual and/or unilateral mistake of fact, CO # 1 is void as to, among others, Section C, Paragraph 5 and all corresponding terms/provisions, and should be declared to be invalid.

406. That as a result of such material mutual and/or unilateral mistake of fact, Early is entitled to an equitable reformation of CO # 1 to accurately reflect the parties' intent and representations.

COUNT VI
(Declaratory Judgment)

407. Early restates and incorporates the previous allegations as if fully rewritten herein.

408. This action is brought for declaratory relief under the provisions of Ohio Revised Code Chapter 2721, for the determination of a justiciable controversy existing between AEP and Early.

409. There exists between Early and AEP a genuine dispute and controversy regarding (1) the interpretation and/or applicability of the contract definitions relating to EWO 05G and EWO 05H; and (2) CO #1 and its enforceability and/or applicability in light of AEP's fraudulent representations and/or the parties mutual mistake;

410. AEP has no adequate remedy at law and is entitled to a declaratory judgment as follows:

- A. An order declaring the meaning, applicability, and enforceability of the contract definitions relating to EWO 05G and EWO 05H
- B. An order declaring AEP committed fraud to induce Early to execute CO # 1;
- C. An Order declaring that CO # 1 was entered into by mutual mistake by AEP and Early at the time it was made concerning the excavation scope of work and payment for the same, which had a material effect on the agreed exchange of performances.
- D. An order declaring CO # 1 void as to rock excavation, or reforming CO # 1 to the amicable and reasonable interpretations of the parties at the time it was entered into.

- E. All other necessary and equitable declarations necessary and/or reasonably made by this honorable Court pursuant to the facts and arguments herein.
- F. Such other and further relief in law or in equity, including any provided for under Revised Code Chapter 2721, *et seq.*, as the Court deems appropriate.

COUNT VII
(Tortious Interference with Contract/Business Relations)

- 411. Early restates and incorporates the previous allegations as if fully rewritten herein.
- 412. Early had both contractual and business relationships with its subcontractors on the Project.
- 413. Early had reasonable expectations to said business relations with its subcontractors on the Project.
- 414. AEP and Mr. Sigler knew of Early's contractual and/or business relationships with its subcontractors
- 415. As a result of Mr. Sigler's intentional, malicious, reckless, false, and wrongful communications and/or interference with Early subcontractors, Early's business relations with its subcontractors were interfered with by Mr. Sigler.
- 416. Due to such intentional interference with said business relations, Early has suffered harm and damages.
- 417. There is a reasonable certainty that, absent AEP's and Mr. Sigler's intentional misconduct, Early would have continued the business relationship or realized the expectancy.
- 418. AEP and Mr. Sigler used improper means or methods to intentionally interfere with the contractual and/or business relations, and economic advantage.

419. AEP, jointly and/or severally, as the employer or Mr. Sigler, and Mr. Sigler, individually, are liable to Early for their tortious interference, plus interest, punitive damages, attorneys' fees, costs, and other damages afforded to it in law and/or equity.

COUNT VIII
(In the Alternative to Court I - Negligent Misrepresentation)

420. Early restates and incorporates the previous allegations as if fully rewritten herein.

421. AEP has a duty to provide accurate information, statements, and/or representations to Early regarding payment of the EWOs, invoices, and/or change orders.

422. AEP knew or reasonably should have known that Early was relying upon their representations concerning the payment of the EWOs, invoices, and/or change orders.

423. AEP failed to exercise ordinary care in its actions, statements, and/or representations to Early concerning the EWOs, invoices, and/or change orders..

424. As a result of the negligent misrepresentations by AEP, Early has been damaged and suffered monetary loss.

425. AEP, jointly and/or severally, are liable to Early for negligent misrepresentation, plus interest, attorneys' fees, costs, and other damages afforded to it in law and/or equity.

WHEREFORE, having fully stated in its Complaint, Early prays for damages as proven at trial as follows:

1. Count I – an award of damages against AEP, jointly and severally, sufficient to compensate Early for its breach of contract claim, in excess \$14,000,000.00, plus interest, costs, fees, attorneys' fees, and all other damages afforded to it by the Contract.
2. Count II – an award of damages against AEP, jointly and severally, sufficient to compensate Early for its claim of unjust enrichment, in excess \$14,000,000.00, plus interest, costs, fees, attorneys' fees, and all other damages afforded to it by the Contract.
3. Count III – an award of damages against AEP, jointly and severally, sufficient to compensate Early for its claim of promissory estoppel, in excess \$14,000,000.00, plus interest, costs, fees, attorneys' fees, and all other damages afforded to it by the Contract.

4. Count IV – an award of damages against AEP, jointly and severally, sufficient to compensate Early for its claim of fraud, in excess \$50,000.00, plus punitive damages, interest, costs, fees, attorneys’ fees, and all other damages afforded to it by the Contract.
5. Count V – an order declaring CO # 1 is void as to, among others, Section C, Paragraph 5 and all corresponding terms/provisions should be declared to be invalid due to mutual mistake, or alternatively, an equitable reformation of CO # 1 to meet the parties intent.
6. Count VI – a declaratory judgment as follows: (A) An order declaring the meaning, applicability, and enforceability of the contract definitions relating to EWO 05G and EWO 05H; (B) An order declaring AEP committed fraud to induce Early to execute CO # 1; (C) An Order declaring that CO # 1 was entered into by mistake by AEP and Early at the time it was made concerning the excavation scope of work and payment for the same, which had a material effect on the agreed exchange of performances; (D) An order declaring CO # 1 void and/or rescinded; (E) All other necessary and equitable declarations necessary and/or reasonably made by this honorable Court pursuant to the facts and arguments herein; and (F) Such other and further relief in law or in equity, including any provided for under Revised Code Chapter 2721, *et seq.*, as the Court deems appropriate.
7. Count VII - an award of damages against AEP, jointly and severally, sufficient to compensate Early for its claim of tortious interference, in excess \$50,000.00, plus punitive damages, interest, costs, fees, attorneys’ fees, and all other damages afforded to it by the Contract.
8. Count VIII - an award of damages against AEP, jointly and severally, sufficient to compensate Early for its claim of negligent misrepresentation, in excess \$14,000,000.00, plus punitive damages, interest, costs, fees, attorneys’ fees, and all other damages afforded to it by the Contract.
9. An award of damages for annoyance and inconvenience, both past and future.
10. Pre-judgment and post-judgment interest at the applicable statutory rate.
11. Early prays for and requests such other and further relief, in law and/or equity, as this Court may deem appropriate, including, without limitation, its court costs and attorneys’ fees.

PLAINTIFF DEMANDS A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

The Early Construction Co.
a West Virginia corporation,

By /s/ J.H. Mahaney _____
Counsel

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