

**CITY OF BASTROP
CONTRACT FOR CIVIL ENGINEERING CONSTRUCTION PROJECTS**

This City of Bastrop Contract for Civil Engineering Construction Projects (*Contract*) is entered between the City of Bastrop, a Texas Home-Rule Municipal Corporation (the *City/Owner*), and C.C. Carlton Industries LTD (the *Contractor*). The City and the Contractor agree to the terms and conditions of this Contract, which consists of the following:

- I. Signatures
- II. Summary of Contract Terms
- III. Standard Contractual Provisions
- IV. Contract Documents

I. SIGNATURES.

By signing below, the parties agree to the terms of this Contract:

OWNER: CITY OF BASTROP

CONTRACTOR: C.C. Carlton Industries LTD

By: _____

By: _____

Name: Sylvia Carrillo-Trevino

Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

II. SUMMARY OF CONTRACT TERMS.

The following provides a summary of the Contract Terms, which are more specifically stated in Section III and in the Contract Documents listed in Section IV.

Project: FM 969 Off-Site Wastewater Line.

Contractor: CC Carlton Industries LTD.

Name of Engineering Firm, if any: Dial Development Services, Ltd.

Name of Owner/City Project Manager: Hudson Mills, Project Manager.

Contract Price (Base Bid + 10% contingency): \$3,199,778.53, as based on Contractor's bid dated May 1, 2024, and as agreed in the Letter of Intent dated June 25, 2024, subject to adjustment by Change Orders duly approved and executed by the City as provided for herein.

Effective Date of Contract: On the latest date executed by both parties.

Date to Begin Work: Date specified in Notice to Proceed, to be issued by the City.

Substantial Completion: Contractor must achieve Substantial Completion within 120 Calendar Days from the date specified in Notice to Proceed, as the time may be adjusted by Change Order.

Final Completion: Contractor must complete the Punch List within 30 Calendar Days from Substantial Completion.

Liquidated Damage Amount for Failure to Meet Time for Substantial Completion: \$500 per Calendar Day.

Liquidated Damage Amount for Failure to Complete Punch List Items by Time for Final Completion: \$500 per Calendar Day.

III. STANDARD CONTRACTUAL PROVISIONS.

A. Definitions.

Contract means this Standard Contract for Civil Engineering Construction Projects, comprised of the:

1. Summary of Contract Terms (Section II),
2. Standard Contractual Provisions (Section III),
3. Contract Documents (listed in Section III), and
4. Signatures (Section IV).

Project means the project identified in Section I above.

Work means all labor, materials, equipment, and services necessary to construct, erect, install, equip and complete the Project.

B. Work. The Contractor will complete the Work according to the Contract requirements.

C. Payment. Subject to the terms of the Contract, the City will pay the Contractor the sum(s) as shown in Section II above plus any additional sums approved by Change Order. All payments to be made by the City to Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to other requirements of this Contract and Chapter 2251 of the Texas Government Code.

D. Law Governing and Venue. Texas law governs this Contract and any lawsuit on this Contract must be filed in a court that has jurisdiction in Bastrop County, Texas.

E. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.

F. Independent Contractor. Contractor will perform the Work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or Contractor's officers or employees in the means, methods, or details of the Work to be performed by Contractor under this Contract. The Contractor will perform the Work in a workmanlike manner and take proper care and precautions to ensure the safety of Contractor's officers, employees, and agents.

G. Labor Classification and Minimum Wage Scale. The Contractor must comply with Chapter 2258 of the Texas Government Code. This statute, among other things, requires all contractors and subcontractors performing public works contracts for a municipality to:

1. Pay the prevailing wage rate as determined by the municipality, a copy of which is attached as the Labor Classification and Minimum Wage Scale;
2. Keep records of the name and occupation of each worker, laborer and mechanic employed by them to work on the Project and the actual per diem wages paid to each; and
3. Forfeit, as a penalty, sixty dollars per day for each laborer, worker, or mechanic who is not paid the stipulated wage for the type of work performed by him as shown in the attached Labor Classification and Minimum Wage Scale. The City is authorized to withhold the penalty amount from the Contractor's payment, as provided in the statute.

H. Compliance with Laws. The Contractor will comply with all laws and regulations applicable to its business operations and the Work. The Contractor represents that it has complied with the federal immigration and citizenship laws.

I. Severability. The provisions of this Agreement are severable and the invalidity of any part of this Agreement will not affect the validity of the remainder of this Agreement.

J. Cumulative Remedies. The rights and remedies provided in this Contract, or otherwise under applicable laws, shall be cumulative and the exercise of any particular right or remedy shall not preclude the exercise of any other right or remedies in addition to, or as an alternate of, the right or remedy.

K. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:

- (1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;
- (2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission) that includes:
 - (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
 - (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

The Commission has approved a Certificate of Interested Persons form, which must be filled out, signed

and notarized by the Contractor and submitted to the City at the time of execution of this Contract, along with the certification of filing generated from the Commission's website at <https://www.ethics.state.tx.us/filinginfo/1295/> The Certificate of Interested Persons form is available on the Commission's website and the Contractor must follow the Commission's filing process adopted pursuant to the statute. The Contractor's notarized Certificate of Interested Persons and certification of filing are attached to this Contract.

IV. CONTRACT DOCUMENTS.

The Contractor must comply with the following additional Contract Documents, which are part of this Contract and are incorporated by reference:

1. General Conditions
2. Special Conditions, if any
3. Engineer's Plans and Specifications
4. Contractor's Bid for the Project
5. Performance Bond
6. Payment Bond
7. Labor Classification and Minimum Wage Rates
8. State of Texas Workers' Compensation Insurance Coverage Addendum
9. Minimum Insurance Policy Limits for Large Construction Projects
10. Change Orders, if any
11. Conflict of Interest Questionnaire

If there is a conflict between or among the terms of the Contract, the City will determine which provision applies.

1. GENERAL CONDITIONS

1. DEFINITIONS. These definitions and the definitions in the Instructions to Bidders apply to the General Conditions:

1.1 *Change Order* means a written order issued by Owner after the Contract has been awarded that specifies a change to the Contract Price, including an addition, deletion, or revision in the Work, or the time to achieve Substantial Completion.

1.2 *Claim* means the Contractor's demand or assertion that it should be paid more than the Contract Price or granted more time to achieve Substantial Completion or Final Completion by the Owner because of action or inaction by the Owner, Owner's representative, Engineer, or any party for whom the Owner is responsible or with which the Owner has separately contracted for other portions of the Project. A demand for money or services by a third party is not a claim.

1.3 *Contract* means this Contract for the Project that includes the Contract Documents and is executed by the Owner and the Contractor. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

1.4 *Contract Documents* means the documents enumerated as Contract Documents in the section of the Contract entitled Contract Documents.

1.5 *Contract Price* means the dollar amount the City has agreed to pay the Contractor under the Contract.

1.6 *Contractor* means the person, firm or corporation that has executed the Contract.

1.7 *Drawings* mean plans, profiles, details, and graphic and pictorial sheets that define the character and scope of the Work, as prepared and approved by Engineer.

1.8 *Engineer or Owner's Representative* means the engineering firm, corporation or entity named as the Engineering Firm in this Contract.

1.9 *Environmental Laws* means any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure.

1.10 *Final Completion* means the date that the Punch List is completed and the City accepts the Project as finally complete.

1.11 *Force Majeure* means lightning, earthquakes, hurricanes, floods, named storms, strikes, lockouts, riots, wars, civil disturbances, explosions, fires, or other unforeseeable events that are not within the control of the Contractor and are not caused by the Contractor's negligence or fault, but not including material or labor shortages, price increases or escalations, or Subcontractor default.

1.12 *Hazardous Substance* means any element, constituent, chemical, substance, compound, or mixture defined as a hazardous substance by any local, state or federal law, rule or regulation.

1.13 *Laboratory* means a testing laboratory that the Owner designates or approves for the Project.

1.14 *Notice to Proceed* means the Owner's written notice to the Contractor establishing the date to begin the Work.

1.15 *Owner* means the City of Bastrop, Texas.

1.16 *Plans* mean the Engineer's plans, profiles, cross-sections, working drawings, and supplemental drawings that show the location, character, dimensions, and details of the Work.

1.17 *Punch List* means the list of Work items that the Contractor must correct in compliance with the Contract after Substantial Completion to achieve Final Completion.

1.18 *Retainage* means the part of the Contract payment withheld by the Owner to secure performance of the Contract.

1.19 *Shop Drawings* means the drawings, diagrams, illustrations, brochures, schedules or other data prepared by the Contractor, Subcontractors, manufacturers, Suppliers, or distributors to illustrate specific portions of the Work.

1.20 *Specifications* includes the technical written descriptions for and other documents that show the materials, equipment, construction systems, standards and workmanship for the Project contained in the Contract Documents and designated as Specifications.

1.21 *Subcontractor* means a person or entity contracting with the Contractor to perform part of the Work at the Project site, including a subcontractor contracting with the Subcontractor.

1.22 *Substantial Completion* means the date at which the Owner or Engineer certifies that the Owner may occupy, use or operate the Project for its intended purpose. Partial use or occupancy of the Project does not qualify as Substantial Completion.

1.23 *Superintendent* means the Contractor's representative with authority to act for the Contractor.

1.24 *Supplier* means a person or entity that provides only materials, supplies or equipment for the Work.

1.25 *Work* means all labor, materials, equipment, and services necessary to construct, erect, install, equip and complete the Project in strict accordance with the Contract Documents.

1.26 *Work Change Directive* means a documented, written direction or instruction from the Owner Project Manager to Contractor to perform a specific task or change, regardless of agreement, that does not change the Contract Price or Contract Times.

1.27 *Working Day* means a calendar day, not including Sunday or holidays observed by the Owner, in which weather permits the performance of the Work for a continuous period of not less than five hours between 7 a.m. and 6 p.m.

2. SCHEDULES, REPORTS, AND OTHER DOCUMENTS

2.1 Preconstruction Meeting Submittals. At the preconstruction meeting the Contractor will make a submittal to the Owner that includes the:

- (1) Project schedule showing the order in which the Work will be performed, the dates at which the various parts of the Work will begin, meetings with the Owner and its representatives, and the estimated date of completion for each part of the Work, as set forth in the Contract;
- (2) Schedule of values (for lump sum Work items) shall include quantities and prices of items which, when added together, equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. The mobilization value shall not exceed 5.0 (five) percent of the Contract Price.
- (3) Owner and Contractor each shall designate, in writing, a specific individual to act as authorized representative with respect to the services and responsibilities under the Contract. To the extent permitted by law, such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.
- (4) The proposed dates to provide Shop Drawings to the Owner;
- (5) Proposed dates to start the manufacture, testing and installation of materials, supplies and equipment; and
- (6) Anticipated schedule for and amount of monthly invoices.
- (7) List of proposed subcontractors.

The schedule for submittals must coordinate with the construction schedule and allow the Owner and Engineer reasonable time to review a submittal. If the Contractor fails to include a schedule in a required submittal, the Owner is not required to approve an increase in the Contract Price or grant an extension of time to the Substantial Completion date based on the time required to review a submittal.

2.2 Approval of Project Schedules and Submittals. The Contractor's Project schedules and submittals are subject to the Owner's approval and are not effective until approved by the Owner. If a submittal or schedule is not approved, the Contractor must revise the schedule or submittal to comply with the Owner's or Engineer's recommendations and make a new submittal or schedule to the Owner for approval.

2.3 Updates to Submittals. The Contractor must update each of the schedules and submittals required by this Contract and submit them electronically to the Owner with the Contractor's monthly pay applications. Updated construction schedules must reflect actual conditions and must identify any delays previously encountered and how the Contractor intends to overcome them. Owner may withhold payment until the Contractor provides the updated schedules and submittals.

2.4 Additional Submittals, Drawings and Instructions. During construction of the Project the Contractor must submit to the Owner any other documents required by law or requested by the Owner that relate to the Work. The Contractor must comply with the Owner's revised or additional Plans, Drawings, Specifications, and instructions issued during the Work.

2.5 Intent of Contract Documents. The Contract Documents are intended to include all items necessary for the proper execution and completion of the Work. The Contractor must perform the Work consistent with the Contract Documents and reasonably inferable from the Contract Documents as being necessary to produce the indicated results. To facilitate construction and coordination, before starting each portion of the Work, the Contractor must carefully:

- (1) Study and compare the Contract Documents pertaining to that portion of the Work;
- (2) Review and study the information furnished by the Owner;
- (3) Take field measurements of existing conditions related to that portion of the Work; and
- (4) Observe site conditions that may affect that portion of the Work.

2.6 Inconsistent Contract Documents. In its capacity as a contractor and not as a licensed design professional, the Contractor must promptly report, in writing, to the Owner and Engineer any errors, inconsistencies, or omissions in the Contract

Documents known to the Contractor. The Contractor must pay to the Owner any costs and damages that arise from Contractor's failure to comply with this paragraph.

2.7 Street Work Schedule. For street, roadway, and utility projects, the Contractor may remove and replace concrete only between the hours of 7:30am to 6:00pm, Monday through Friday of each week. Unless the Contractor receives the Owner's prior written consent, the Contractor's Work must not interfere with peak traffic. The Contractor may saw cut at any time, but concrete must be replaced within ten Working Days of the removal.

3. **SHOP DRAWINGS**

3.1 Submission. The Contractor must submit for the Owner's approval, and in accordance with the accepted Schedule of Submittals, Contractor's Shop Drawings and samples of materials and equipment to be installed in the Work prior to performing work to which they apply. The Contractor must request and obtain Owner's approval of a Change Order prior to submitting a Shop Drawing that deviates from the Contract Documents. In submitting Shop Drawings, product data, samples, and similar submittals, the Contractor represents that the Contractor has:

- (1) Reviewed and approved them;
- (2) Verified materials, field measurements, and field construction criteria related to them; and
- (3) Checked and coordinated the information contained in them with the requirements of the Contract Documents and the Work.

If the Contract Documents require the Contractor to submit Shop Drawings, product data, samples or similar submittals to the Owner for approval, the Contractor must not perform the portion of Work to which they apply until the Owner and Engineer approve them.

3.2 Review. The Owner, or its designated representative, will review the submitted Shop Drawings and samples and provide a response to the Contractor within 21 days of receipt of the Shop Drawings or samples. The Owner's approval of a Shop Drawing or sample of material or equipment, however, does not release the Contractor from its responsibility to comply with the Contract Documents.

3.3 Availability. The Contractor must keep the approved Shop Drawings at the Project site and make them available to the Owner and Engineer.

4. **MATERIALS AND EQUIPMENT**

4.1 Materials and Equipment Incorporated into the Work. Materials, equipment, and articles that will be incorporated into the Work must:

- (1) Be stored in a manner that preserves their quality and fitness for the Work;
- (2) Be free from defects and flaws and shall be performed and furnished in strict accordance with the Contract Documents;
- (3) Be kept in a location that allows for Owner's prompt inspection;
- (4) Conform to the samples provided by the Contractor and approved by the Owner;
- (5) Not be subject to a security interest or any other interest retained by the seller;
- (6) Not be used for any purpose prior to incorporation into the Work unless the Owner consents in writing; and
- (7) Be applied, installed, connected, erected, used, cleaned and conditioned as directed in the Contract.

4.2 Supply Source. Before the Contractor orders materials, equipment, supplies, or articles, the Owner may require the Contractor to obtain the Owner's prior written approval of the supply source.

4.3 Substitutions. Materials, equipment, or articles specified by trade name, brand name, or catalogue number set the standard of quality and performance required for the material, equipment, or article. With the Owner's approval the Contractor may use a material, equipment, or article *equivalent to* or *equal to* the specified material, equipment, or article. The Contractor warrants that an approved substituted material, equipment or article will not affect the function or design of the Project. The Contract Price may be adjusted by Change Order in the amount of the cost differential between the specified material, equipment, or article and the approved substitution. But, the Contractor must pay the cost of any additional component parts required for the substituted material, equipment, or article.

5. INSPECTION AND TESTING

5.1 Requirements. All materials, equipment, articles, and supplies used to construct the Project:

- (1) Must be tested and inspected according to the requirements of the Contract and the requirements of public agencies or authorities with jurisdiction over any portion of the Work. The Contractor must furnish the Owner with certificates of any inspection, testing or approval required by public agencies;
- (2) That require a Laboratory test will be tested at a Laboratory that the

Owner selects and the Owner will pay for the tests directly, unless specified otherwise in the Contract;

(3) May be inspected at the factory or fabrication plant of the supply source;

(4) If approved by the Owner, may be submitted as representative samples to be inspected and tested; and

(5) Must be retested at Contractor's sole cost if the initial test shows that the Contractor's Work does not comply with the Contract (Contractor to reimburse the Owner for the retesting cost).

5.2 Advance Notice. The Contractor must notify the Owner at least:

(1) 48 hours before starting any part of the Work;

(2) 24 hours before testing any part of the Work; and

(3) 48 hours before working on a Saturday.

5.3 Removal and Replacement. The Contractor must:

(1) Remove and replace material, articles, supplies, equipment, or any part(s) of the Work that do not meet the Contract Documents requirements within the time required by Owner at Contractor's expense, including fees for required additional testing, inspections, engineering services, or other consulting services;

(2) Uncover and replace at its sole cost any portion of the Work that has been covered without the required testing or contrary to the Owner's written directives; and

(3) Even if the Contract Documents do not require a test or inspection prior to covering up the Work, uncover, expose or make available any portion of the Work for inspection or testing if the Owner determines that it is necessary. If the covered part of the Work does not comply with the Contract, the Contractor must pay the

costs associated with uncovering, testing, inspecting, and replacing that part of the Work. If that part of the Work complies with the Contract, the Owner will issue a Change Order that provides for an increase in the Contract Price or an extension of Contract Time, or both, directly related to the Contractor's expense of uncovering, inspecting, testing, and re-covering that part of the Work.

5.3.1 The Contractor, or the Surety upon Owner's demand and absent any other default by Contractor, must pay the additional costs specified in this Section 5.3

within 10 days of Owner's written notice to Contractor or Surety, or if sufficient funds remain payable in the Contract, the Owner may deduct the additional costs from Contractor's next payment(s) due. If the Contractor does not remove, replace and correct the rejected part of the Work according to the Owner's notice, the Owner may remove, replace or correct the rejected part of the Work and store salvageable materials, all at Contractor's or its Surety's expense.

5.4 Access to Project Site. The Contractor must:

- (1) Allow the Owner, and federal and state agencies participating in the Project, access to the Project site and records relating to the Project; and
- (2) Provide proper facilities for access, inspection and testing.

The Owner may enter the Project site to observe and inspect the Work and to construct or install collateral work.

5.5 Owner Approval. The Owner's approval of tests, inspections, or replacement of Work does not relieve the Contractor of its obligation to perform the Work according to the Contract Documents.

6. SURVEYS AND PERMITS

6.1 Surveys. The Owner will establish control points for locating the principal component parts of the Work together with a suitable number of bench marks adjacent to the Work, as shown in the Contract Documents. The Contractor must:

- (1) Furnish all necessary construction staking and markers at its expense;
- (2) Contract with a qualified surveyor to stake Work required by the Contract;
- (3) Pay the cost to replace stakes or markers removed or destroyed by Contractor's negligence; and
- (4) Maintain a suitable Architect's or Engineer's level at the Project site.

6.2 Permits and Licenses. The Contractor must obtain and pay for all permits and licenses required to perform the Work, unless otherwise provided for in the Contract Documents. The Contractor will comply with and give notices required by applicable laws, rules, regulations, and requirements of public authorities. The Contractor must obtain and pay all charges for street closings and traffic control necessary to perform the Work. The Contractor bears the cost of correcting violations of the applicable laws, rules, regulations and requirements of public authorities.

7. PROTECTION OF WORK, PROPERTY AND PERSONS

7.1 Safety. The Contractor must initiate, maintain and supervise all safety precautions and programs in connection with the Work, including:

- (1) Protecting the safety of and preventing injury, loss, or damage to its employees, Subcontractors, Owner's employees, and other persons at or adjacent to the Project site during the Work;
- (2) Where applicable, furnishing and erecting barricades, fences, lights, and any other safety precautions required by the most current version of the Texas Manual on Uniform Traffic Control Devices;
- (3) Establishing adequate detours for streets blocked to traffic;
- (4) Preventing damage to property on or adjacent to the Project site not designated for removal, relocation or replacement during the Work, including trees, shrubs, plants, lawns, sidewalks, pavement, roadways, structures and utilities
- (5) Preventing injury or damage to any part of the Work and the materials or equipment to be incorporated into the Work, whether stored on or off site;
- (6) Not removing trees, plants or shrubs without the Owner's prior written consent;
- (7) Providing suitable temporary bridges across trenches that block driveways, as directed by the Owner; and
- (8) Providing temporary drainage, as necessary.

7.2 Damage to Property. The Contractor must:

- (1) Monitor and promptly replace barricades and warning devices that are damaged or removed;
- (2) Except as provided in this Section, replace or repair, at its sole cost, public or private property damaged, destroyed or removed by the Contractor during the Work;
- (3) Repair or pay for the repair or replacement of underground utility, cable, telecommunications and other facilities covered by the Act that are damaged by Contractor; and
- (4) Not unload any track type construction machinery on existing pavement, or cross over any existing pavement or curb with the track type construction machinery.

7.3 Utilities and Underground Facilities. The Contractor must:

- (1) Locate all underground obstacles. The Owner does not represent that the Plans and Drawings accurately show the location of all sewer, water, gas, telephone, cable, electric, petroleum or other underground facilities;
- (2) Not interrupt utility services unless necessary to perform the Work;
- (3) Before excavating, contact the Texas Underground Facility Notification Corporation as required by the Underground Facility Damage Prevention and Safety Act (Chapter 251, Texas Utilities Code); and
- (4) Contact the Owner and other companies not subject to Chapter 251, Texas Utilities Code, that have facilities in, on, under, or adjacent to the Project site at least one week before performing any Work that will affect the Owner or any of the other companies' facilities. The Contractor must comply with the Owner's reasonable requirements to minimize the impact or the interruption of utilities to utility customers.

7.3 Project Site Clean Up. The Contractor must:

- (1) Keep the Project site reasonably clean at all times;
- (2) Dispose of surplus materials;
- (3) Clean up the Project site at the end of the Work and remove all remaining equipment, scrap materials, and temporary structures;
- (4) Restore existing facilities and property to a comparable condition as they were in when the Work began; including re-vegetative measures for all disturbed areas within City ROW.
- (5) Secure equipment and materials in advance of a hurricane or other natural disaster as required by the Owner.
- (6) Unless not feasible using commercially reasonable best efforts, stockpiles shall be contained and securely protected from wind.

8. CONTRACTOR STATUS AND SUPERVISION. The Contractor is an independent contractor and not an agent or servant of Owner. The Contractor must supervise and direct the Work according to the Contract requirements and is *solely* responsible for the means, methods, techniques, sequences and procedures of construction. The Contractor must employ and maintain at the Project site a qualified Superintendent whose name has been submitted to the Owner. The Superintendent

must:

- (1) Have authority to act on behalf of the Contractor and all communications given to the Superintendent are binding on the Contractor; and
- (2) Keep in daily contact with and be able to effectively communicate with the Owner's representative and Engineer during the Work.

9. CONTRACT CHANGES

9.1 Change Orders Required. The Contract Price and/or the time in which the Contractor must achieve Substantial Completion may only be changed by a Change Order approved by the Owner.

9.2 Owner Changes. During the Contractor's performance of the Work the Owner may:

- (1) Order changes to the Work;
- (2) Make necessary changes to the Plans, Drawings, or Specifications; or
- (3) Increase or decrease the quantity of Work to be performed or materials, equipment, or supplies to be furnished.

If the Owner and Contractor agree that the change increases or decreases the Contract Price or the time to achieve Substantial Completion, the Owner will issue a Change Order within 30 days of the decision to equitably adjust the Contract Price or Substantial Completion time. The Contractor must continue the Work pending Contractor's receipt of the Owner's executed Change Order. Minor changes that are consistent with the scope of the Work or do not affect the time for Substantial Completion will not result in a Change Order to increase the Contract Price or to extend the time to achieve Substantial Completion.

9.3 Contractor Changes. The Contractor may request changes to the Work, by submitting a written request to the Owner describing the:

- (1) Proposed change;
- (2) Reason for the change; and
- (3) Effect on the Contract Price and time for Substantial Completion.

The Contractor must submit all documentation reasonably required by Owner that supports Contractor's Change Order request. If the Owner determines that the change is necessary or beneficial and increases or decreases the Contract Price or time to achieve Substantial

Completion, the Owner will issue a Change Order within 30 days of the Owner's determination to issue a Change Order that equitably adjusts the Contract Price or time to achieve Substantial Completion. The Contractor must continue performing the Work pending Contractor's receipt of the Owner's executed Change Order.

9.4 Disputed Change Orders and Effect of Agreement. The Contractor may file a Claim as specified in these General Conditions if the Contractor disputes Owner's determination as to a requested Change Order. An agreement on any Change Order is a final settlement of all the Contractor's Claims arising out of or relating to the change to the Work that is the subject of the Change Order, including all direct, indirect, and impact costs associated therewith and any adjustments to the Contract Price and time for Substantial Completion and Final Completion.

9.5 Delays. The Contractor may request a Change Order to extend the time to achieve Substantial Completion for a delay to the Work caused by:

- (1) Force Majeure; or
- (2) Owner's changes to the Work, as specified above.

Within five calendar days of the beginning of the delay, the Contractor must give written notice to the Owner and Engineer identifying the cause of the delay and the anticipated effect of the delay on the progress of the Work. Within five days of the date that the delay ends, the Contractor may submit to the Owner a written Change Order request for an extension of time for Substantial Completion of the Work. The written request must state the:

- (1) Cause of the delay;
- (2) Date the delay began and ended;
- (3) The effect of the delay on the progress of the Work;
- (4) Number of calendar days or Working Days requested for the time extension;
- (5) Facts that show the delay and the need for a time extension; and
- (6) Any other relevant information reasonably requested by the Owner or Engineer.

THE CONTRACTOR'S SOLE REMEDY FOR A DELAY, HINDRANCE, INTERRUPTION OR OBSTRUCTION TO THE WORK IS AN EXTENSION OF TIME TO ACHIEVE SUBSTANTIAL COMPLETION. THE CONTRACTOR WILL NOT RECEIVE ANY COMPENSATION OR DAMAGES FOR A DELAY, HINDRANCE, INTERRUPTION OR OBSTRUCTION TO THE WORK.

9.6 Value of Work. The Owner will determine the value of any Work covered by a claim for an increase or decrease in the Contract Price by using one or more of the following methods in the listed order of precedence:

- (1) Unit prices previously approved;
- (2) An agreed-upon lump sum amount; or
- (3) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the item of Work *plus* an agreed upon amount not to exceed 15 percent of the actual cost of the item of Work to cover the cost of the Contractor's general overhead and profit.

9.7 Changes to Contract Price. The Contract Price:

- (1) May not be increased by more than 25% through Change Orders; and
- (2) May not be reduced by more than 25% through Change Orders without the Contractor's consent.

9.8 Claims.

9.8.1 Authorized Changes in the Work

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). A change in the Contract Price or the Contract Times shall be accomplished only by a written Change Order. Accordingly, no course of conduct or dealings between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that the owner has been unjustly enriched by any alterations or additions to the Work shall be the basis of any Claim for an increase in any amount due under the Contract Documents or a change in any time period provided for in the Contract Documents. Under no circumstances will an act or failure to act on the part of the Owner or Engineer constitute a waiver of the written Change Order requirement for extra work. A written Change Order is a strict condition precedent for payment for extra work.

B. Upon request of Owner or Engineer, Contractor shall without cost to Owner submit to Engineer, in such form as Engineer may require, an accurate written estimate of the cost of any such proposed extra Work or change. The estimate shall indicate the quantity and unit cost of each item of materials, and the number of hours of work and hourly rate for

each class of labor, as well as the description and amounts of all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of material shall be shown if required by Engineer. Contractor shall promptly revise and resubmit such estimate if Engineer determines that it is not in compliance with the requirements of this Article, or that it contains errors of fact or mathematical errors. If required by Engineer, Contractor shall obtain and furnish to Engineer bona fide proposals from recognized suppliers for furnishing any material included in such work. Such estimates shall be furnished promptly so as to occasion no delay in the Work, and shall be furnished at Contractor's expense. Contractor shall state in the estimate any extension of time required for completion of the Work if the change or extra work is ordered.

C. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefore as provided herein Section 9.8.

9.8.2 Unauthorized Changes in the Work: Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents amended, modified, or supplemented as provided for with Owner's approval and execution of a Contract amendment or Change Order.

9.8.3 Notice of Claim. The Contractor must submit a written document to the Owner and Engineer clearly titled "Notice of Claim" within five days of Contractor's discovery of an event that may result in a Claim. The Notice must clearly identify the basis for the complaint and the impact or damages that may happen or have happened. If the impact or damages cannot be assessed as of the date of the Notice, the Contractor must provide a good faith explanation and estimate of the impact or damages and the anticipated date by which the Contractor will be able to amend the Notice to clearly identify the impact or damages. The Owner must have timely, specific Notice of a Claim so that problems or potential problems can be mitigated promptly.

9.8.4 Claim. In addition to the Notice of Claim above, the Contractor must file with the Owner and Engineer a document titled "Claim" within 60 days of the event resulting in a claim for damages, which Contractor agrees is a reasonable notice requirement.

9.8.5 Receipt of Notice of Claim. After receipt of a Notice of Claim, the Owner may refer the matter to the Engineer or another party for review and recommendation for the Owner's consideration. The Contractor must attend meetings scheduled to review and discuss the Claim and must furnish reasonable factual back-up for the Claim. The Contractor must diligently continue performing the Contract during pendency of the Claim, excepting termination of the Contract or Owner's direction to stop the Work.

9.8.6 Waiver of Claims. The Contractor waives a Claim or portion of a Claim that is not the specific subject of a Notice of Claim or Claim under Section 9.8.

9.8.7 Resolution of Claims. If a Claim is not resolved within three months of the date of Contractor's application for final payment through the Claim procedures or mediation, the Contractor is entitled to institute litigation on the Claim in a court with jurisdiction in Bastrop, Texas.

9.8.8 Calculation of Claim Amount. In calculating the amount of a Claim:

- (1) Indirect or consequential damages are not allowed;
- (2) Recovery cannot be based on a comparison of planned expenditures to total actual expenditures, a comparison of planned manloading to actual manloading, estimated losses of labor efficiency, or any other analysis used to show damages indirectly;
- (3) Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong;
- (4) Home office overhead, other home office charges or any Eichlay formula calculation is not allowed;
- (5) No profit is allowed.

10. TIME TO COMPLETE WORK AND LIQUIDATED DAMAGES

10.1 Contract Time. The Contractor must:

- (1) Begin the Work on the date specified in the Notice to Proceed;
- (2) Achieve Substantial Completion within the time specified in this Contract;
and
- (3) Complete the Punch List by the Final Completion Date.

10.2 Liquidated Damages.

10.2.1 Failure to Achieve Substantial Completion Date. If the Contractor fails to achieve Substantial Completion within the time required by this Contract, the Owner may assess liquidated damages in the amount shown in the Contract for each consecutive Calendar Day beyond Substantial Completion that Contractor fails to achieve Substantial Completion and may deduct the amount from the money due to the Contractor.

10.2.2 Failure to Achieve Final Completion Date. If the Contractor fails to complete the Punch List by the Final Completion Date the Owner may assess liquidated damages in the amount shown in the Contract for each consecutive Calendar Day beyond the Final Completion Date that Contractor fails to complete the Punch List and may deduct the amount from the money due to the Contractor.

10.2.3 Force Majeure. The Owner will not assess liquidated damages for a delay caused by Force Majeure.

10.2.4 Not a Penalty. The liquidated damages required by this Contract are not a penalty but a reasonable forecast of just compensation to the Owner for harm caused by the Contractor's delay that is difficult or impossible to determine at the time of execution of this Contract.

11. DIFFERING SITE CONDITIONS

11.1 Disturbance of Condition. Except in cases of emergency the Contractor must give the Owner at least a three-days written notice before the Contractor disturbs a subsurface condition, latent physical condition, unknown physical condition, or unusual physical condition, if any of those conditions differ materially from a condition indicated in the Contract.

11.2 Investigation. When the Owner receives the Contractor's written notice, the Owner will promptly investigate the condition. If the Owner determines that the condition materially differs from the Contract and will cause an increase or decrease in the Contract Price or time for Substantial Completion, the Owner will issue a Change Order to equitably adjust the Contract Price or time for Substantial Completion.

12. SUSPENSION OR TERMINATION OF WORK

12.1 Owner's Termination for Contractor Default.

12.1.1 Basis for Termination. The Owner may declare the Contractor in default of the Contract if the Contractor:

- (1) Violates a term of the Contract;
- (2) Does not employ or use skilled workers on the Project or an adequate number of workers;
- (3) Does not timely pay its Subcontractors, workers or Suppliers;
- (4) Does not comply with laws, regulations, rules and orders applicable to the Work;
- (5) Disregards the Owner's or Engineer's authority under the Contract; or

(6) Ceases to perform the Work at the Project site and does not resume the Work within ten Calendar Days after receiving written notice from the Owner to resume the Work.

12.1.2 Notice of Default. The Owner will give the Contractor and Surety notice of the default in writing citing the terms of the Contract that have been breached and what action the Contractor must take to cure the default. If the Contractor fails to cure the default within 30 days of the Owner's notice, the Owner may, without prejudicing any other rights or remedies, provide a second written notice to the Surety and Contractor that terminates the Contract.

12.1.3. Contractor's Obligations Upon Receipt of Notice. Upon receipt of Owner's notice of termination of the Contract, the Contractor must:

- (1) Stop the Work;
- (2) Not remove any materials, equipment or supplies located at the Project site;
- (3) Not enter into any Subcontracts or place any further orders for Supplies or products for the Work;
- (4) Terminate all orders and Supplier and Subcontractor contracts that relate to the remainder of the Work or, as directed by Owner, assign to the Owner all the Contractor's rights and interest in Supplier and Subcontractor contracts;
- (5) Protect and preserve property related to the Work at the Project site; and
- (6) Perform safety measures to protect the Work already performed at the Project site.

12.1.4 Use of Materials and Equipment. The Owner, Surety, or the completing contractor of either the Owner or Surety, may use the materials, equipment, and supplies located at the Project site to complete the Work, which will be reflected in the cost to complete the Work and for which the Contractor will not receive a credit to or reduction in the Contract Price.

12.1.5 Surety's Failure to Comply with Performance Bond. If the Surety fails to take any of the prescribed actions identified in the Performance Bond within 30 days of the Surety's receipt of the Owner's termination of the Contract, the Owner may complete the Work or contract with another contractor to complete the Work. The Owner will apply the remaining Contract balance to the Owner's entire cost to complete the Work, including liquidated damages, additional engineering fees, attorney's fees and all other expenses caused by Contractor's default. Labor performed by Owner's work forces will be calculated based on each employee's hourly wage plus the cost of

benefits. If the Owner's entire cost to complete the Work exceeds the Contract balance, the Contractor and Surety must pay the Owner the entire difference between the cost to complete the Work and the remaining Contract balance. If the Owner's entire cost to complete the Work is less than the remaining Contract balance, the Owner will credit to the Contract the difference between the Contract balance and the cost to complete the Work.

12.2 Contractor's Termination or Suspension.

12.2.1 Owner's Default. The Contractor may declare the Owner in default if the Owner fails to pay the Contractor any amount due under an approved application for payment as required in the Contract. The declaration of default must be in writing and delivered to the Owner's City Manager at the address stated in the Contract Documents. If the Owner does not begin to cure the default within ten calendar days of receipt of the Contractor's written notice, the Contractor may suspend the Work until the Owner complies with the Contract or wholly abandon the Work and remove all machinery, tools and equipment from the Project site that have not been included in the Owner's payments to the Contractor.

12.2.2 Owner's Payment to Contractor. If the Contract is terminated under this Section 12.2, the Owner will pay the Contractor for the following, which is the limit of Owner's liability to Contractor:

- (1) All completed Work to the date of termination for which payment has not been made;
- (2) The Contractor's reasonable expenses incurred to perform the Work that cannot be utilized on the Project; and
- (3) Retainage held by the Owner.

12.2.3 Deductions from Payment to Contractor. The Owner may deduct from the payment any sums the Contractor owes the Owner under the Contract.

12.2.4 Suspension of Work. If the Contractor suspends the Work as allowed by this Section, the Owner will extend the time to achieve Substantial Completion by the number of calendar days or Working Days (depending on the type of Contract) that the Work was suspended.

12.3 Force Majeure. If the Work is suspended for more than 90 days because of Force Majeure the Contractor may terminate the Contract after providing at least ten days' advance written notice to the Owner. If the Contract is terminated under this Section 12.3, the Owner will pay the Contractor for:

- (1) All completed Work to the date of termination plus for which payment has not been made; and

(2) Retainage held by the Owner.

The Owner may subtract from the payment any sums the Contractor owes the Owner under the Contract.

13. PAYMENTS TO CONTRACTOR

13.1 Pay Applications.

13.1.1 Contractor's Submittal. By the 5th day of each month the Contractor must submit to the Owner a pay application for Work performed in the preceding month. The Contractor must sign the pay application request and include with it:

- (1) The estimate for Work performed during the period covered by the pay application;
- (2) Supporting data, acceptable to the Owner, that shows the Owner's title to and Contractor's insurance for, the materials and equipment stored at or near the Project site that have not been incorporated into the Work;
- (3) The Contractor's updated progress schedules and payroll documents; and
- (4) Any other data requested by the Owner, which may include releases from Contractor's Subcontractors and Suppliers for which Contractor has previously received payment.

13.1.2 Owner's Response. Within ten days of receipt of the monthly pay application the Owner will:

- (1) Approve the pay application; or
- (2) Return the pay application to the Contractor with written reasons for refusing to approve payment.

13.1.3 Pay Application Corrections. If the pay application is not approved, the Contractor may correct the pay application and resubmit it to the Owner.

13.2 Retainage.

13.2.1 Contracts Less Than \$5 Million. For Contracts with an original Contract Price less than \$5 Million the Owner will retain 10% of the amount of each payment until Final Completion. After 50% of the Work has been completed, the Contractor may request that the Retainage be reduced to 5% of each payment. If the Owner determines that the Work has been performed according to the Contract, the

Owner will reduce the Retainage to 5% of each payment.

13.2.2 Contracts \$5 Million or More. For Contracts with an original Contract Price of \$5 Million or more, the Owner will retain 5% of the amount of each payment until Final Completion.

13.2.3 Contracts \$10 Million or More (or contracts awarded using a method other than competitive bidding). For a competitively awarded contract with a value of \$10 Million or more, and for a contract that was awarded using a method other than competitive bidding, Owner and Contractor may agree to deposit in an interest-bearing account the retainage withheld on periodic contract payments.

13.3 Withholding Payment. In addition to any other remedies to which Owner may be entitled, the Owner may withhold payments or part of a payment, including but not limited to, to the Contractor if the Owner receives written notice from the Surety, a Subcontractor, or a Supplier that the Contractor has not paid a Subcontractor for Work performed or a Supplier for material, equipment or supplies furnished for the Project. The provisions of this paragraph are for the sole benefit and protection of the Owner and do not obligate the Owner to withhold payment for the protection or benefit of third parties.

13.4 Final Payment. The Owner will issue the final payment within 30 days of:

- (1) Final Completion; and
- (2) The Contractor submitting to the Owner an executed Affidavit of Bills Paid showing that all Subcontractors and Suppliers have been paid.

The Owner's issuance of final payment does not release the Contractor or the Surety from any remaining obligations under this Contract. By accepting the final payment, the Contractor relinquishes any claims against the Owner arising out of the Contract and performance of the Work.

14. PERFORMANCE AND PAYMENT BONDS.

14.1 Performance Bond and Payment Bond. The Contractor must maintain a Performance Bond and Payment Bond meeting the requirements of this Contract in effect for the duration required by this Contract.

14.2 Furnishing Information. The Contractor must furnish information to the Subcontractors and Suppliers as required by Chapter 2253, Tex. Gov. Code.

15. ASSIGNMENT. The Contractor may not assign, sell, transfer, or otherwise dispose of this Contract or any part of this Contract without the Owner's prior written consent.

16. MULTIPLE CONTRACTS. The Owner may award other contracts in connection with this Project. The Owner will notify the Contractor at the pre-bid meeting if the Owner has awarded or intends to award separate contracts as part of the Project. The Contractor must coordinate the Work with the work of the other contractors, allow reasonable storage of contractors' materials at the Project site, and connect any part of the Work that must be connected to the other contractors' work. If the Work depends on other contractors' work, the Contractor must promptly report any defects in the other contractor's work that render the Project unsuitable.

17. SUBCONTRACTS. The Contractor may use a Subcontractor to perform specialized parts of the Work, but may not award work to Subcontractors, the total value of which exceeds 50% of the Contract Price, without the Owner's prior written approval.

18. ENGINEER'S AUTHORITY. If an Engineer is listed in this Contract, the Engineer will assist the Owner during construction of the Project by providing the Owner with an opinion on the quality and acceptability of materials, equipment and supplies furnished and Work performed. The Engineer may visit the Project site and determine if the Work is proceeding as required by this Contract; however, the only the Owner shall have the authority to agree and authorize any changes in the Work.

19. LAND AND PROPERTY INTERESTS. Unless another Contract Document provides otherwise, the Owner will obtain title to all the land and all property interests, including easements and rights-of-way, needed for the Project, and will provide the Contractor with descriptions or maps of the same. The Contractor must provide, at its sole cost, any land needed for temporary construction facilities or storage of materials and equipment.

20. WARRANTY

20.1 Warranty. The Contractor warrants that for a period of one year (measured from Date of Substantial Completion or from the Date of Final Completion for Punch List items, whichever date is later) the:

- (1) Project will be free from faulty or poor quality workmanship;
- (2) Materials will not be substandard, faulty, or of poor quality; and
- (3) All parts of the Project will meet the appearance, quality and performance that applied when the Warranty period began.

20.2 Notice. The Owner will promptly notify the Contractor in writing if the Owner observes any part of the Work that does not meet the requirements of 20.1 (1)-(3) above (Nonconforming Work) during the applicable one-year warranty period. The Contractor must promptly correct the part of the Nonconforming Work at Contractor's sole expense and in a manner approved by Owner/Engineer. If the Contractor does not

correct the Nonconforming Work within 30 days of receiving the Owner's written notice, the Owner may seek any remedies provided by law, or correct the Nonconforming Work and charge the Contractor the Owner's actual cost of correcting the Nonconforming Work. If the Owner corrects the Nonconforming Work, the Contractor must pay the Owner's cost within 30 days of receipt of an invoice from the Owner. The Contractor's warranty obligations survive termination of the Contract.

21. TAXES

21.1 Payment of Taxes. The Contractor must pay all taxes that apply to the Work. The Owner is a tax exempt entity under Section 151.309, Texas Tax Code. The Owner will provide the Contractor with a copy of the Owner's tax exempt certificate for purchases that are exempt from payment of a sales tax.

22. UNIT PRICES. If any of the Work is paid on a unit price basis, the Owner will pay the Contractor based on the actual quantities of Work performed or materials furnished. The Owner will not pay the Contractor for any damages, lost profits, or any other losses or claims based on the difference between the estimated quantities shown in the Request for Bids and the actual quantities of Work performed or materials furnished. Negotiation or changes to unit prices due to material/labor price increases will not be allowed for the duration of this project. The bid unit prices of the successful bidder for the project shall govern regardless of the magnitude of price decrease or increase in material costs during the project duration.

23. AS-BUILT DRAWINGS. As-built drawings are the marked-up drawings, maintained by the Contractor on-site, that depict actual conditions and deviations from the Contract Documents. These deviations and additions may result from coordination required by, but not limited to: contract modifications; official responses to submitted Requests for Information (RFI's); direction from the Owner; design that is the responsibility of the Contractor, and differing site conditions. Maintain the as-builts throughout construction as red-line PDF files. These files serve as the basis for the creation of the record drawings.

24. RECORD DRAWINGS. The record drawings are the final compilation of actual conditions reflected in the as-built drawings. Record drawings will show the final location, final grades, sizes and types of the various facilities, equipment, piping, valves, instruments and other major items of the Work. The Contractor must furnish to the Owner this set of prints, along with a complete set of "record drawings" that show the Project as constructed, as well as final shape files and final surface files (when applicable), before the Owner releases the final payment to the Contractor. In addition to, the Contractor must supply final shape files (.shp) and final surface files (.mms)

25. NOTICE. All notices will be in writing and may be delivered by email, mail, or in person,. Mailed notice is deemed received three days after the date of deposit in the United States mail. All notices will be delivered to the following addresses:

To the Contractor: Contractor's Address Shown in the Bid Submittal Form

To the City: City of Bastrop
Attn: Hudson Mills
City of Bastrop
1311 Chestnut Street, Bastrop
Texas 78602

26. DISPUTE RESOLUTION PROCEDURES. If the Owner or Contractor disputes any matter relating to this Contract, the parties will, in good faith, before bringing any legal action, try to settle the dispute by submitting the matter to mediation before a third party selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

27. COMPLIANCE WITH LAWS.

27.1 Compliance with Laws. The Contractor must comply with all laws, ordinances, rules, and regulations that apply to the Work and Project. The Contractor, also, must comply with the following, whether or not applicable by other law, ordinance, rule or regulation:

- (1) Texas Department of Highways and Public Transportation—Texas Manual on Uniform Traffic Control Devices for Streets and Highways (for street, bridge and drainage projects);
- (2) U.S. Department of Labor Occupational Safety and Health Administration— Safety and Health Regulations for Construction—Excavation, 29 CFR 1926, Subpart P, as amended;
- (3) The City of Bastrop Stormwater Drainage Design Manual, the Texas Commission on Environmental Quality's Texas Pollutant Discharge Elimination System (TPDES) regulatory and permit requirements, and all other laws and regulations related to storm water;
- (4) The City of Bastrop Design Standards; and
- (5) Environmental Laws.

Hazardous Substances. If the Contractor encounters what it believes to be a Hazardous Substance on the Project site or that may affect the Work, the Contractor must stop work in the area immediately and report the condition to the Owner and Engineer in writing and may not resume the Work until the Owner provides written notice to the Contractor to do so.

2. SUPPLEMENTARY CONDITIONS

[City to include Supplementary Conditions, if any.]

DRAFT

3. ENGINEER'S PLANS AND SPECIFICATIONS

[Include copy of Engineer's plans and specifications, if available.]

DRAFT

4. CONTRACTOR'S BID FOR THE PROJECT

[Include copy of Contractor's bid/quote and Letter of Intent.]

DRAFT

5. PERFORMANCE BOND

Bond No. _____

Name of Surety: _____

Name of Contractor as Principal: _____

Name of Owner as Obligee: City of Bastrop, Texas

Name of Project: _____

CIP Project No. (if applicable) _____

Date of Contract: _____

(Not before Bond execution date)

Bond Amount (Contract Price): _____

RECITALS:

The Contractor has executed a Contract with the Owner for construction of the Project in the City of Bastrop. The Contract requires the Contractor to furnish this Performance Bond.

AGREEMENT:

The Surety and Contractor enter into this Performance Bond and bind themselves in favor of the Owner in the Bond Amount shown above. The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree, as follows:

1. **CONTRACT INCORPORATED.** The Contract is incorporated by reference and made a part of this Performance Bond. The Contractor and Surety will comply with all the terms and conditions of the Contract, both express and implied.
2. **DURATION OF BOND OBLIGATION.** This Performance Bond is conditioned on the faithful performance of the Work in accordance with the Contract and remains in effect until the Contractor performs all its obligations under the Contract and this Performance Bond, including the warranty period expressed in the Contract.
3. **NOTICE OF CONTRACTOR’S DEFAULT.** If the Surety receives written notice from the Owner (sent by certified or registered mail to the Surety’s

Registered Agent at the address identified in this Performance Bond) of the Contractor's default and failure to cure the default, the Surety will notify the Owner in writing within ten days of receipt of the notice which action it will take under Paragraph 4 of this Performance Bond.

4. SURETY'S OBLIGATION UPON CONTRACTOR DEFAULT. Upon the Surety's receipt of Owner's written notice of the Contractor's default and failure to cure the default, the Surety must begin to remedy the default within 30 days by taking one of the following actions:

(a) **Proceed itself.** Complete performance of the Contract, including correction of defective and nonconforming Work, through its own contractor(s), which are acceptable to the Owner, and make payments directly to the contractor(s) from the Surety's funds. During performance of the Contract the Surety will be paid only those sums that are due and payable under the Contract.

(b) **Tender a completing contractor acceptable to Owner.** Tender to the Owner a contractor acceptable to the Owner together with a contract for Owner's execution to fulfill and complete the Contract, including all corrective work, warranties and bonds required under the Contract. An acceptable contractor is one that is qualified to offer a bid or proposal on the Contract and is not affiliated with the Contractor. The completing contractor must furnish to the Owner a separate performance bond and payment bond, each in the form of those bonds previously furnished by the Contractor for the Contract. Each such bond must be in the penal sum of the total cost to complete the Contract and correct defective, nonconforming Work. The completing contractor will be paid only those sums as would have been due and payable to the Contractor. If the Owner must pay the completing contractor sums which would not have then been due and payable to the Contractor under the Contract (any sums in excess of the then remaining Contract balance less any sums due the Owner under the contract), the Surety must pay to the Owner the full amount of those sums at the time the completing Contractor is tendered to the Owner so that the Owner can use those sums to timely pay the completing contractor. The Surety's liability, however, will not exceed the Full Penal Sum of this Performance Bond.

(c) **Tender the full penal sum.** Tender to the Owner the Full Penal Sum of this Performance Bond. After the expiration of the warranties under the Contract, the Owner will refund to the Surety, without interest, any

unused portion not spent by the Owner to procure and pay a completing contractor or to complete the construction contract itself.

- (d) **Other acts.** Take any other acts the Owner and Surety mutually agree upon in writing.
- (e) **Failure to take action.** The Surety waives its right to take any of the above actions and to receive payment of the Contract balance if it does not begin work or tender a new completing contractor, as set forth above, within 30 days of the Surety's receipt of written notice that the Contractor has defaulted and not cured the default as required by the Contract.

5. **SURETY'S ADDITIONAL OBLIGATIONS.** In addition to its other obligations in this Performance Bond, the Surety must promptly pay the Owner all losses, costs, and expenses resulting from the:

- (a) Contractor's default(s), including, without limitation, liquidated damages under the Contract, and all fees, expenses and costs of procuring another contractor and for architects, engineers, consultants, testing, surveying and attorneys; and
- (b) Acts or omissions of the Surety; and
- (c) Owner's compliance with the Surety's directions or requests.

6. **SURETY'S WAIVER OF NOTICE.** The Surety waives notice of any modifications to the Contract, including changes in the Contract Price, the Substantial Completion Date, the amount of liquidated damages, or the Work to be performed. The Surety is held to have knowledge of all acts or omissions of the Contractor in matters pertaining to the Contract. Furthermore, the Surety relieves the Owner from exercising diligence in securing the Contractor's compliance with the Contract.

7. **GOVERNING LAW AND VENUE.** Texas law governs this Performance Bond and any lawsuit on this Performance Bond must be filed in a court that has jurisdiction in Bastrop County, Texas.

8. **INCORPORATION OF STATUTE.** This Performance Bond is provided in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated by reference. All liabilities on this Performance Bond shall be determined in accordance with that Chapter.

9. SURETY REPRESENTATIONS. The Surety represents that it meets the requirements of Chapter 3503 of the Texas Insurance Code, as amended.

Contractor:

Surety:

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By: _____

By: _____

(Signature—Attorney in Fact)

(Signature—Attorney in Fact)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Physical Address)

(Physical Address)

(Mailing Address)

(Mailing Address)

(Telephone No. with Area Code)

(Telephone No. with Area Code)

(Date of Execution)

(Date of Execution)

(Attach original Power of Attorney. Attach document with registered agent's name, mailing address, physical address, telephone number with area code, and facsimile number, if not same as attorney in fact).

6. PAYMENT BOND

Bond No. _____

Name of Surety: _____

Name of Contractor, as Principal: _____

Name of Owner, as Oblige: City of Bastrop, Texas

Name of Project: _____

CIP Project No. (if applicable) _____

Date of Contract: _____

(Not before Bond execution date)

Bond Amount (Contract Price): _____

RECITALS:

The Contractor has executed a Contract with the Owner for construction of the Project in the City of Bastrop. The Contract requires the Contractor to furnish this Payment Bond.

AGREEMENT:

The Surety and Contractor enter into this Payment Bond and bind themselves in favor of the Owner. The Surety and the Contractor, both jointly and severally, and for themselves, their heirs, administrators, executors, successors and assigns agree, as follows:

1. **CONTRACT INCORPORATED.** The Contract is incorporated by reference and made a part of this Payment Bond. The Contractor and Surety will comply with all the terms and conditions of the Contract, both express and implied.
2. **PAYMENT BOND BENEFICIARIES.** This Payment Bond is solely for the protection and use of the Payment Bond beneficiaries pursuant to Chapter 2253, Tex. Gov't Code.
3. **DURATION OF BOND OBLIGATION.** This Payment Bond remains in effect until the Contractor pays all the Payment Bond beneficiaries as required by Chapter 2253, Tex. Gov't Code and the Contract.
4. **SURETY'S WAIVER OF NOTICE.** The Surety waives notice of any modifications to the Contract, including changes in the Substantial Completion Date, the Contract Price, the amount of liquidated damages, or the Work to be

performed.

5. **GOVERNING LAW AND VENUE.** Texas law governs this Payment Bond and any lawsuit on this Performance Bond must be filed in a court that has jurisdiction in Bastrop County, Texas.
6. **INCORPORATION OF STATUTE.** This Payment Bond is provided in compliance with the provisions of Chapter 2253, Texas Government Code, as amended, which is incorporated by reference. All liabilities on this Payment Bond shall be determined in accordance with that Chapter.
7. **SURETY REPRESENTATIONS.** The Surety represents that it meets the requirements of Chapter 3503 of the Texas Insurance Code, as amended.

[Signatures on following page.]

Contractor:

Surety:

(Typed Firm Name)

(Typed Firm Name)

(Seal)

(Seal)

By: _____

By:

(Signature—Attorney in Fact)

(Signature—Attorney in Fact)

(Printed Name)

(Printed Name)

(Title)

(Title)

(Physical Address)

(Physical Address)

(Mailing Address)

(Mailing Address)

(Telephone No. with Area Code)

(Telephone No. with Area Code)

(Date of Execution)

(Date of Execution)

(Attach original Power of Attorney. Attach document with registered agent's name, mailing address, physical address, telephone number with area code, and facsimile number, if not same as attorney in fact).

7. LABOR CLASSIFICATION AND MINIMUM WAGE RATES

[City to Provide List of Wage Rates, consistent with Tex. Gov't Code Ch. 2258]

8. WORKERS' COMPENSATION INSURANCE COVERAGE ADDENDUM

These reporting requirements for Workers' Compensation Coverage are mandated by Section 406.096, Texas Labor Code, and the Texas Workers' Compensation Commission Rule, 28 TAC Sec. 110.110, and apply to all building or construction projects for the City of Bastrop.

1. Definitions:

Certificate of coverage ("certificate") means a copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the Contractor's employees providing services on the Project, for the duration of the Project.

Duration of the Project means the time from the beginning of the Work on the Project until the Contractor's work on the Project has been completed and accepted by the City.

Persons providing services on the Project ("subcontractor" in the Texas Labor Code §406.096) means all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

2. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, section 401.011(44), for all employees of the Contractor providing services on the Project, for the duration of the Project.

3. The Contractor must provide a certificate of coverage to the City prior to being awarded the Contract.

4. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.

5. The Contractor shall obtain from each person providing services on the Project, and provide to the City:

- (a) a certificate of coverage, prior to that person beginning work on the Project, so the City will have on file certificates of coverage showing coverage for

all persons providing services on the Project; and

- (b) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of Project.

6. The Contractor shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.

7. The Contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.

8. The Contractor shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

9. The Contractor shall contractually require each person with whom it contracts to provide services on the Project, to:

- (a) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44), for all of its employees providing services on the Project, for the duration of the Project;
- (b) provide to the Contractor, prior to that person beginning work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;
- (c) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (d) obtain from each other person with whom it contracts, and provide to the Contractor;
 - (1) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (2) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;

- (e) retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
- (f) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
- (g) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

10. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the City that all employees of the Contractor who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

11. The Contractor's failure to comply with any of these provisions is a breach of Contract by the Contractor which entitles the City to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

9. REQUIREMENTS FOR ALL INSURANCE DOCUMENTS

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Bastrop accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A. The City of Bastrop shall be named as an additional insured with respect to General Liability and Automobile Liability on a separate endorsement
- B. A waiver of subrogation in favor of The City of Bastrop shall be contained in the Workers Compensation and all liability policies and must be provided on a separate endorsement.
- C. All insurance policies shall be endorsed to the effect that The City of Bastrop will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D. All insurance policies, which name The City of Bastrop as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E. Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.
- F. All insurance policies shall be endorsed to require the insurer to immediately notify The City of Bastrop of any material change in the insurance coverage.
- G. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- H. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I. Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Bastrop.
- J. Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05) Coverage must be written on an occurrence form.
- L. Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M. Upon request, Contractor shall furnish The City of Bastrop with certified copies of all insurance policies.
- N. A valid certificate of insurance verifying each of the coverages required above shall be

issued directly to the City of Bastrop within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Bastrop, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Bastrop. The certificate of insurance and endorsements shall be sent to:

City of Bastrop
Engineering and Capital Project Management Department
1311 Chestnut Street
Bastrop, TX 78602

Or emailed to: engineering@cityofbastrop.org Ph. (512) 332-8847

[Remainder of page intentionally blank]

10. CHANGE ORDER REQUEST FORM

Date: _____
P.O. #: _____
Account #: _____

Change Order #: _____
Department: _____
Project #: _____

Requested By: _____
Contractor: _____

Phone Ext: _____
Contract Date/Time: _____

Change Order Description:

Price Impact:

A. Original Contract Amount: _____
B. Current Change Order Amount:* _____
C. Previous Change Orders: _____
D. Cumulative Change Order Amount (B + C): ** _____
E. Percent of Original Contract (D ÷ A): _____
F. Revised Contract Amount (A+D): *** _____

* Change orders in excess of \$50,000 must be taken to City Council for approval.

** Cumulative change order amount (Line D) must not exceed 25% of original PO amount.

*** If new purchase order total (Line F) exceeds \$50,000 and original purchase order amount (Line A) is less than \$50,000, change order must be taken to City Council for approval.

Schedule Impact:

Original Contract Time (Days): _____ Original _____
Completion Date: Current Change Order (Days): _____
Previous Change Orders (Days): _____
Revised Contract Time (Days): 0 Revised Completion Date: _____

Vendor Acknowledgement: _____ Date: _____

CITY CLEARANCES

Category 1: _____ Date: _____
(Required only if Line B ≤ \$4,999.99)

Category 2: _____ Date: _____
(Required only if Line B is \$5,000 - \$14,999)

Category 3: _____ Date: _____
(Required only if Line B is \$15,000 - \$24,999)

Engineering Approval: _____ Date: _____
(Required on all CIP Change Orders)

Purchasing Approval: _____ Date: _____
(Required on all Change Orders)

Category 4: _____ Date: _____
(Required only if Line B is \$25,000 - \$50,000)