

CONSTRUCTION CONTRACT DOCUMENTS

FOR

**MISCELLANEOUS ASPHALT PAVEMENT REPAIR
ON-CALL CONTRACT**

FOR THE

TOWN OF BARTONVILLE

**1941 E Jeter Road
Bartonville, Texas 76226
Phone (817)-693-5280**



August 2025

Westwood

TX REG. ENGINEERING FIRM F-11756
4060 Bryant Irvin Road, Fort Worth, Texas 76109
(817) 412-7155 Fax (817) 412-7156

WESTWOOD PROJECT NO. 0057245



08/20/2025

Section 00 01 08

TOWN OF BARTONVILLE

BID OPENING CONVENIENCE PAGE

The Town of Bartonville is soliciting sealed bids for miscellaneous asphalt pavement repair at various locations.

Designate on the front, lower left-hand corner of your response envelope, the following:

Subject: Miscellaneous Asphalt Pavement Repair On-Call Contract

Bid Closing Time:

Thursday, October 2nd, 2025 at 2:00 P.M.

For convenience at Bid Opening, enter bid on this cover page and include in sealed response envelope. (Do not place quoted prices on the outside of the envelope):

Total Cost: \$ 548,944.90

Tejas Cutters, LLC
Company Name

1562 CR 4127
Address

Decatur, Tx, 76234
City, State, and Zip Code

817-304-4369
Phone

By: Hagen Proaux
Authorized Agent

Section 00 01 10

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TOWN OF BARTONVILLE

ADVERTISEMENT FOR BIDS

Bid Due: October 2nd, 2025, at 2:00 PM

Project Name: MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT

Project No.: 43295

Project Location: TOWN OF BARTONVILLE, TX

The Town of Bartonville, Texas, will receive sealed bids for the referenced project which involves the asphalt pavement repair of various locations around the Town of Bartonville. The project is to select a contractor to provide asphalt repair for Town on an on-call basis with varying scope of work.

Bids for a Contract shall be submitted on the bid forms provided, properly signed by an officer of the company, and dated. A Bid Security in the amount of five percent (5%) of the sum of Total Amount Bid must accompany each Bid. The Town reserves the right to waive irregularities and to reject bids.

Bids will be received until 2:00 PM local time, on Thursday, October 2nd, 2025 by the Town Secretary, Town of Bartonville, 1941 E Jeter Road, Bartonville, Texas 76226. Bids received after that time will not be accepted. Bids will be opened and read at 2:02 PM on the same day in the Town Conference Room and Council Chambers.

Copies of the Bid/Contract Documents may be obtained free of charge by the prospective bidders at www.civcastusa.com under the following project name - **"MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT"**. Bid documents may be purchased at Westwood Professional Services, 4060 Bryant Irvin Road, Fort Worth, Texas 76109 for \$50.00 per set (that is not refundable), by a cashier's check, certified check, money order, company check or personal check payable to Westwood. Addenda are free of charge and will be distributed to those who obtain Bid Documents from Westwood Professional Services. For more information, you may contact Westwood at (817) 412-7155 for questions.

(Affidavit Required)

Town of Bartonville

By: _____/s
Kirk H. Riggs
Town Administrator

(Published:) Friday, September 12th, 2025

Friday, September 19th, 2025

Section 00 21 00

INSTRUCTIONS TO BIDDERS

Part 1 – GENERAL

1.1 INVITATION TO BID

- A. Sealed proposals for furnishing all labor, materials and equipment for Miscellaneous Asphalt Pavement Repair On-Call Contract are invited to be submitted to the Town of Bartonville, 1941 E Jeter Road, Bartonville, Texas 76226.
- B. The project is located in the Town of Bartonville, Denton County, Texas.

1.2 SCOPE OF PROJECT: The project consists of approximately general asphalt repair items with numbers to get a price for moving forward with on-call contract for asphalt pavement repair. It is the intent of the Town for the contract period to last one year with three additional annual renewal options.

1.3 OWNER

The OWNER of the project is the Town of Bartonville, 1941 E Jeter Road, Bartonville, Texas 76226.

1.4 ENGINEER

The ENGINEER for this project is Westwood Professional Services, Inc., 4060 Bryant Irvin, Fort Worth, Texas 76109.

1.5 PROCEDURE OF SUBMISSION

- A. Proposals shall be addressed to the OWNER and on forms furnished by the ENGINEER, which are bound with these Contract Documents. All blanks in the Proposal and Bid Form must be completed.
- B. An opaque, sealed envelope containing one copy of the Proposal Form shall be clearly marked as follows:
"Proposal of (Name of Bidder).
For: **MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL**

CONTRACT

- C. Proposals will be accepted for this project until 2:00 PM, Thursday October 20nd, 2025.

1.6 BID SECURITY

Bid Security in the amount of five percent (5%) of the sum of the Total Amount Bid must accompany each Bid.

1.7 DRAWINGS AND SPECIFICATIONS

A. Copies of the Bid/Contract Documents may be obtained free of charge by the prospective bidders at www.civcastusa.com under the following project name - **"MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT"**. Bid documents may be purchased at Westwood Professional Services, 4060 Bryant Irvin Road, Fort Worth, Texas 76109 for \$50.00 per set (that is not refundable), by a cashier's check, certified check, money order, company check or personal check payable to Westwood. Addenda are free of charge and will be distributed to those who obtain Bid Documents from Westwood Professional Services. For more information, you may contact Westwood at (817) 412-7155 for questions.

1.8 QUANTITIES IN UNIT PRICE BID FORM

The quantities of the work and materials set forth in the Unit Price Bid Form or on the plans approximately represents the work to be performed and materials to be furnished; and are for the purpose of comparing the bids on a uniform basis. Payments shall be made to the

contractor only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications; and it is understood that the quantities may be increased or decreased, without in any way invalidating the bid process. These quantities may be used during a project or may not depending on the size and scope of the project.

1.9 EXAMINATION OF PLANS, SPECIFICATIONS & SITE OF THE WORK

- A. Bidders are advised that the plan drawings, specifications and other documents provided herein shall constitute all the information which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plan drawings and read the specifications, proposal, contract and bond forms carefully; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing work or time required for its completion; and to obtain all information required to make an intelligent proposal.
- B. No information given by the OWNER or any official thereof, other than that shown on the plan drawings and contained in the specifications, proposal and other contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigation, tests and other data which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting his bid, represents and warrants: that he has prepared his bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that he has reviewed, studied and examined the bid prior to the signing and submission of same; and that he was cognizant of the terms of his proposal, verified his calculations and found them to be correct and agrees to be bound thereby.

1.10 BID DOCUMENT QUESTIONS

Questions regarding these bid documents shall be addressed to the ENGINEER for clarification. Items requiring an addendum will be issued to all those who purchase Bid Documents and will become part of the Contract. Questions received less than 96 hours before the designated bid time cannot be answered by Addendum, and oral statements at any time will not be binding to the OWNER or the Contractor.

1.11 PERMIT FEES

The Contractor shall be responsible for the payment of all permit fees associated with the construction of these improvements. No reimbursement shall be made to the Contractor for this item.

1.12 BONDS

The CONTRACTOR will be required to submit Performance, Payment and Maintenance Bonds for the project. No additional reimbursement will be made for these bonds.

END OF SECTION

Section 00 42 00

BID PROPOSAL

TO:

Town of Bartonville
c/o Town Secretary
1941 E Jeter Road
Bartonville, Texas 76226

Date: 10/2/25

Name of Bidder: Tejas Cutters, LLC

Phone: 903-644-1983

Street Address: 1562 CR4127

City and State: Decatur Texas

Zip: 76234

The undersigned BIDDER, having examined the site, Plans, Specifications and other documents, HEREBY PROPOSES to furnish all labor, materials, tools, supplies, and necessary equipment to construct, complete in place and ready for use:

Town of Bartonville –Miscellaneous Asphalt Pavement Repair On-Call Contract
For the Total Price of:

In Words: Five hundred forty-eight thousand nine hundred Dollars
and ninety Cents forty-four

In Figures: \$ 548,944.90

Maximum contract time required by the Contractor for completion of these improvements, beginning on the date specified in the Notice to Proceed, is 30 Calendar days.

Receipt is acknowledged of the following Addenda:

Addendum No. 1 _____

Addendum No. 2 _____

Addendum No. 3 _____

SUPPLEMENTS TO THIS BID:

The following Supplements are attached as an integral part of this Bid:

Document 00 42 10 – Unit Price Bid Form (If Applicable)

Document 00 43 10 - Bid Bond Form (Form May be Supplied by Bidder)

Document 00 45 10 - Form of Business

Document 00 45 13 - Statement of Bidder's Qualifications

Document 00 45 15 - Certificate of Bidder's Experience & Qualifications

Document 00 45 19 - Non-Collusion Affidavit

Document 00 45 43 - Resolution of Corporation (Form May be Supplied by Bidder)

Document 00 45 50 – Conflict of Interest Questionnaire (CIQ)

The undersigned, as Bidder, declares that the only person or parties interested in this Proposal as principals are those named herein, that this Proposal is made without collusion with any other person, firm or corporation.

Bidder: Tejas Cutters, LLC
[Type the full name of your proprietorship, partnership, corporation, or joint venture.*]

By: Hagen Proulx 10/2/25
[Signature**] [Date]

Name: Hagen Proulx Estimator
[Type name] [Title]

(Seal - if Bidder is
a Corporation)

ATTEST:

Address: 1562 CR 4127 Decatur TX 76234
[Mailing]

[Street, if different]

Telephone: 817-304-4369
[Type telephone number]

* If the Bid is a joint venture, add additional Bid form signature sheets for each member of the joint venture.

** The undersigned, as bidder, certifies that the only person or parties interested in this proposal as principals are those named herein; that the Bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Contract for the Project.

Note: This document constitutes a government record, as defined by § 37.01 of the Texas Penal Code. Submission of a false government record is punishable as provided in § 37.10 of the Texas Penal Code.

Section 00 42 00
Bid Proposal

Page 2 of 2

UNIT PRICE BID FORM

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
PAVING IMPROVEMENTS				
1	1 LS	Mobilization for Crack Sealing Two thousand Six hundred ^{fourty} five DOLLARS AND zero CENTS PER LS	\$ 2,645.00	\$ 2,645.00
2	2,000 LF	Crack Seal (0 to 4,000 LF) five DOLLARS AND eighteen CENTS PER LF	\$ 5.18	\$ 10,360.00
3	20,000 LF	Crack Seal (more than 4,000 LF) two DOLLARS AND thirty CENTS PER LF	\$ 2.30	\$ 46,000.00
4	1 LS	Mobilization for Asphalt Spot Repair Two thousand four hundred fifteen DOLLARS AND Zero CENTS PER LS	\$ 2,415.00	\$ 2,415.00
5	50 SY	Asphalt Spot Repair (0 to 100 SY) one hundred twenty-six DOLLARS AND fifty CENTS PER SY	\$ 126.50	\$ 6,325.00
6	200.0 SY	Asphalt Spot Repair (more than 100 SY) one hundred twenty DOLLARS AND Seventy-five CENTS PER SY	\$ 120.75	\$ 24,150.00
7	500.0 SY	Pothole Repair fourty-six DOLLARS AND Zero CENTS PER SY	\$ 46.00	\$ 23,000.00
8	1 LS	Mobilization for Asphalt Overlay Two thousand eight hundred ^{seventy} five DOLLARS AND Zero CENTS PER LS	\$ 2,875.00	\$ 2,875.00
9	100 TON	Type D Asphalt Overlay (0 to 200 Tons) Two hundred eighty-seven DOLLARS AND fifty CENTS PER TON	\$ 287.50	\$ 28,750.00

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
10	400 TON	Type D Asphalt Overlay (more than 200 Tons) <u>Two hundred twenty-four</u> DOLLARS AND <u>Zero</u> CENTS PER TON	\$ <u>224.00</u>	\$ <u>89,600.00</u>
11	1 LS	Mobilization for Drainage Work <u>four thousand two hundred twenty-five</u> DOLLARS AND <u>Zero</u> CENTS PER LS	\$ <u>4,225.00</u>	\$ <u>4,225.00</u>
12	1,000 LF	Ditch Grading <u>Seventeen</u> DOLLARS AND <u>Sixty-three</u> CENTS PER LF	\$ <u>17.63</u>	\$ <u>17,630.00</u>
13	10 EA	Remove Existing Culvert <u>Three hundred ninety-two</u> DOLLARS AND <u>eighty-four</u> CENTS PER EA	\$ <u>392.84</u>	\$ <u>3,928.40</u>
13	10 EA	Remove Existing Culvert <u>Three hundred ninety-two</u> DOLLARS AND <u>eighty-four</u> CENTS PER EA	\$ <u>392.84</u>	\$ <u>3,928.40</u>
14	100 LF	18" RCP Culvert <u>One hundred thirty</u> DOLLARS AND <u>fifty-three</u> CENTS PER LF	\$ <u>130.53</u>	\$ <u>13,053.00</u>
15	100 LF	24" RCP Culvert <u>One hundred sixty-eight</u> DOLLARS AND <u>Sixty</u> CENTS PER LF	\$ <u>168.60</u>	\$ <u>16,860.00</u>
16	100 LF	36" RCP Culvert <u>Two hundred twenty</u> DOLLARS AND <u>eighty</u> CENTS PER LF	\$ <u>220.80</u>	\$ <u>22,080.00</u>
17	10 EA	Safety End Treatment for 18" RCP Culvert <u>One thousand five hundred</u> DOLLARS AND <u>Zero</u> CENTS PER EA	\$ <u>1500.00</u>	\$ <u>15,000.00</u>
18	10 EA	Safety End Treatment for 24" RCP Culvert <u>Two thousand eighty-two</u> DOLLARS AND <u>Zero</u> CENTS PER EA	\$ <u>2,082.00</u>	\$ <u>20,820.00</u>

ITEM NO.	ESTIMATED QUANTITY	ITEM DESCRIPTION (SPECIFICATION NO.) PRICES TO BE WRITTEN IN WORDS	UNIT PRICE	TOTAL PRICE
19	10 EA	Safety End Treatment for 36" RCP Culvert <u>Four thousand two hundred five</u> DOLLARS AND <u>twenty - five</u> CENTS PER EA	\$ <u>4,205.25</u>	\$ <u>42,052.50</u>
20	50 CY	12" Rock Riprap <u>One hundred eighty-eight</u> DOLLARS AND <u>fourty</u> CENTS PER CY	\$ <u>188.40</u>	\$ <u>9,420.00</u>
21	30,000 LF	4" Reflectorized Pavment Markings <u>Two</u> DOLLARS AND <u>Nineteen</u> CENTS PER LF	\$ <u>2.19</u>	\$ <u>65,700.00</u>
22	1,000 SY	Block Sod (Common Bermuda) <u>Twenty-one</u> DOLLARS AND <u>eighty</u> CENTS PER SY	\$ <u>21.80</u>	\$ <u>21,804.00</u>
23	10 EA	Cleanout Culverts (Up to 27") <u>One thousand five hundred</u> DOLLARS AND <u>Zero</u> CENTS PER EA	\$ <u>1,500.00</u>	\$ <u>15,000.00</u>
24	10 EA	Cleanout Culverts (30" and Larger) <u>Two thousand one hundred</u> DOLLARS AND <u>Zero</u> CENTS PER EA	\$ <u>2,100.00</u>	\$ <u>21,000.00</u>
25	1,000 SY	Hydromulch Seeding with Curlex <u>Twenty-four</u> DOLLARS AND <u>twenty-five</u> CENTS PER SY	\$ <u>24.25</u>	\$ <u>24,252.00</u>
TOTAL BID \$			<u>548,944.90</u>	

Section 00 43 10

BID BOND FORM

BIDDER (Name and Address):

Tejas Cutters, LLC

1562 CR 4127

Decatur, TX 76234

SURETY (Name and Address of Principal Place of Business):

Merchants National Bonding, Inc.

P. O. Box 14498

Des Moines, IA 50306

OWNER (Name and Address):

Town of Bartonville

1941 E. Jeter Road

Bartonville, TX 76226

BID

BID DUE DATE:

October 2nd, 2025

PROJECT TITLE:

Miscellaneous Asphalt Pavement Repair On-Call Contract

BOND

BOND NUMBER: BID BOND

DATE (Not later than Bid due date): October 1, 2025

PENAL SUM: Five Percent of the Greatest Amount Bid

(Words)

5% GAB

(Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

BIDDER

Tejas Cutters, LLC

(Seal)

Bidder's Name and Corporate Seal

By:

Signature and Title

Attest:

Signature and Title

SURETY

Merchants National Bonding, Inc. (Seal)

Surety's Name and Corporate Seal

By:

Signature and Title Robbi Morales, Attorney-in-fact
(Attach Power of Attorney)

Attest:

Signature and Title Tina McEwan, Client Specialist

Note: (1)
(2)

Above addresses are to be used for giving required notices.

Any singular reference to Bidder, Surety, OWNER or other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder any difference between the total amount of Bidder's Bid and the total amount of the Bid of the next lowest, responsible and responsive Bidder as determined by OWNER for the Work required by the Contract Documents, provided that:
 - A. If there is no such next lowest, responsible and responsive Bidder, and OWNER does not abandon the Project, then Bidder and Surety shall pay to OWNER the penal sum set forth on the face of this Bond, and
 - B. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by Bidding Documents.
3. This obligation shall be null and void if:
 - A. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or
 - B. All Bids are rejected by OWNER, or
 - C. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and if applicable, consented to by Surety when required by paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirements of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer or proposal as applicable.

End of Section

MERCHANTS BONDING COMPANY™ POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa, and MERCHANTS NATIONAL INDEMNITY COMPANY, an assumed name of Merchants National Bonding, Inc., (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Don E Cornell; Josh Saunders; Kelly A Westbrook; Mikaela Peppers; Ricardo J Reyna; Robbi Morales; Sophie Hunter; Tina McEwan; Tonie Petranek

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the By-Laws adopted by the Board of Directors of the Companies.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner - Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 2nd day of June, 2025



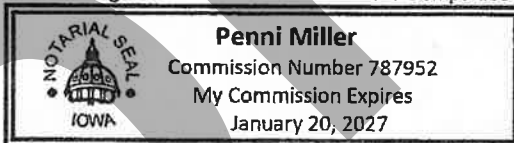
MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.
MERCHANTS NATIONAL INDEMNITY COMPANY

By

President

STATE OF IOWA
COUNTY OF DALLAS ss.

On this 2nd day of June, 2025, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL), MERCHANTS NATIONAL BONDING, INC., and MERCHANTS NATIONAL INDEMNITY COMPANY; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



(Expiration of notary's commission
does not invalidate this instrument)

Notary Public

I, Elisabeth Sandersfeld, Secretary of MERCHANTS BONDING COMPANY (MUTUAL), MERCHANTS NATIONAL BONDING, INC., and MERCHANTS NATIONAL INDEMNITY COMPANY do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 1st day of October, 2025



Secretary



MERCHANTS BONDING COMPANY (MUTUAL) • MERCHANTS NATIONAL BONDING, INC.
P.O. BOX 14498 • DES MOINES, IOWA 50306-3498 • (800) 678-8171 • (515) 243-3854 FAX

IMPORTANT NOTICE

Have a complaint or need help?

If you have a problem with a claim or your premium, call your insurance company first. If you can't work out the issue, the Texas Department of Insurance may be able to help.

Even if you file a complaint with the Texas Department of Insurance, you should also file a complaint or appeal through your insurance company. If you don't, you may lose your right to appeal.

Merchants Bonding Company (Mutual)

To get information or file a complaint with your insurance company:

Call: Compliance Officer at 800-678-8171

Toll-free: 1-800-678-8171

Email: regulatory@merchantsbonding.com

Mail: P.O. Box 14498, Des Moines, IA 50306-3498

To get insurance information you may also contact your agent:

Call:

Mail:

The Texas Department of Insurance

To get help with an insurance question or file a complaint with the state:

Call with a question: 1-800-252-3439

File a complaint: www.tdi.texas.gov

Email: ConsumerProtection@tdi.texas.gov

Mail: MC 111-1A, P.O. Box 149091, Austin, TX 78714-9091

FORM OF BUSINESS

Fill in the appropriate area describing your firm's form of business and include the relevant attachments.

Corporation:

Corporate Name: _____
State of Incorporation: _____
Mailing Address: _____

- Certificate of Assumed Name, if operating under a name different than that on the corporate charter (the Certificate must have been issued within the past ten years to be valid)
- Certificate of Good Standing*
- Certificate of Existence (if non-Texas corporation, Certificate of Authority) *

Partnership/Joint Venture:

Partnership/Joint Venture Name: Tejas Cutters, LLC
Mailing Address: 1562 CR 4127 Denton, TX 76234

- Copy of the Partnership or Joint Venture Agreement, or Affidavit with the name of the partnership or joint venture, the names of the individual partners or participants in the joint venture, and a statement that the partnership or joint venture is in existence
- Certificate of Assumed Name, (the Certificate must have been issued within the past ten years to be valid)
- If firm is a limited partnership, the Certificate of Limited Partnership
- If any partner or joint venture is a corporation, the above information relating to corporation must be included as to each sum partner or joint venture.

Sole Proprietorship

Name: _____
Mailing Address: _____

- Certificate of Assumed Name, if operating under a name different than that of the sole proprietor (the Certificate must have been issued within the past ten years to be valid)

* *Must be furnished upon request of the Owner and must be less than 90 days old.*

Hagen Prolix Estimator
[Typed Name and Title of Authorized Representative]

Hagen Prolix
[Signature of Authorized Representative]

10-2-2025
[Typed Date]

END OF SECTION

STATEMENT OF BIDDER'S QUALIFICATIONS

The Bidder may provide his Statement of Bidder's Qualifications on separate typewritten sheets including all the information requested herein:

BIDDER: Texas Cutters, LLC

1. ORGANIZATION

1.1 How many years has your organization been in business as a Contractor? 7

1.2 How many years has your organization been in business under its present business name?

7

1.2.1 Under what other or former names has your organization operated?

N/A

1.3 If your organization is a corporation, answer the following:

1.3.1 Date of incorporation: _____

1.3.2 State of incorporation: _____

1.3.3 President's name: _____

1.3.4 Vice-president's name(s): _____

1.3.5 Secretary's name: _____

1.3.6 Treasurer's name: _____

1.4 If your organization is a partnership, answer the following:

1.4.1 Date of organization: 2018

1.4.2 Type of partnership
(if applicable): 2 owners

1.4.3 Name(s) of general
partner(s): James Proulx, Tamas Proulx

1.5 If your organization is individually owned, answer the following:

1.5.1 Date of organization: _____

1.5.2 Name of owner: _____

1.6 If the form of your organization is other than those listed above, describe it and name the principals:

2. LICENSING

2.1 On a separate sheet attached hereto, list jurisdictions and trade categories in which your organization is legally qualified to do business, and indicate registration or license numbers, if applicable. Indicate name, license number and expiration date for Master Plumber or other trade required under the Instructions to Bidders section of this Bid.

2.2 On a separate sheet attached hereto, list jurisdictions in which your organization's partnership or trade name is filed.

3. EXPERIENCE

3.1 On a separate sheet attached hereto, list the categories of work that your organization normally performs with its own forces.

3.2 Claims and Suits. (If the answer to any of the questions below is yes, please attach details.)

3.2.1 Has your organization ever failed to complete any work awarded to it?

3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

3.2.3 Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract? (If the answer is yes, please attach details.)

3.4 On a separate sheet attached hereto, list major construction projects your organization has in progress, giving the name of project, owner, architect, contract amount, percent complete and scheduled completion date.

3.4.1 State total worth of work in progress and under contract.

3.5 On a separate sheet attached hereto, list the major projects your organization has completed in the past five years, giving the name of project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.

3.5.1 State annual amount of construction work performed each year during the past five years.

3.6 On a separate sheet attached hereto, list the construction experience and present commitments of the key individuals of your organization. Submit on separate sheets attached hereto, resumes

of Key Personnel as defined in the Instructions to Bidders. Bidder hereby certifies that the Resident Superintendent has the authority to act on behalf of the Contractor at all times.

- 3.7 Provide form 00423 "Certification of Bidder's Qualifications" as evidence that the Bidder meets the minimum criteria called out in the Instructions to Bidders.

4. REFERENCES

- 4.1 Trade References (3):

Attached

- 4.2 Bank References (2):

First Financial Bank Decatur TX 76234

- 4.3 Surety:

Name and telephone number of Bonding Company:

AON Surety

Name, telephone and address of Agent:

Robbi Morales

214-489-2411

5005 LBJ Fwy Suite 1500

Dallas, TX, 75244

5. FINANCING

- 5.1 Financial Statement

- 5.1.1 Attach a financial statement, preferably audited, including your organization's latest balance sheet and income statement showing the following items:

- a. Cash Flow Statement
- b. Notes to Financial Statement
- c. Auditor Statement
- d. Comparison Statements, if available
- e. Name and address of firm preparing attached financial statement, and date thereof.

- 5.1.2 Is the attached financial statement for the identical organization named on page one?

Yes, please see attached up-to-date statements

If not, on a separate sheet attached hereto, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent-subsiary).

- 5.2 Will the organization whose financial statement is attached act as guarantor of the contract for construction?

yes

6. SIGNATURE

- 6.1 To be executed by a Principal of the firm authorized to certify the foregoing information:

Hagen Proulx, being duly sworn, deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

- 6.2 Dated at Limestone County this 2nd day of October, 2025.

Name of Organization:

Tejas Cutters, LLC

By:

Hagen Proulx

Printed Name:

Hagen Proulx

Title:

Estimator

CERTIFICATE OF BIDDER'S
EXPERIENCE & QUALIFICATIONS

The undersigned bidder certifies that he is, at the time of bidding, and shall be, throughout the period of the Contract, licensed by the State of Texas to do the type of work required under terms of the contract documents. Bidder further certifies that he is skilled and regularly engaged in the general class and type of work called for in the contract documents.

The bidder represents that he is competent, knowledgeable and has special skills on the nature, extent and inherent conditions of the work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the construction of the particular facilities that may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that he is aware of such peculiar risks and that he has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the construction work with respect to such hazards.

Signed this 2nd day of October, 2025.

Texas Cutters, LLC
Name of Bidder

Contractor's License No. and State

Hagen Rung
Signature of Bidder

Estimator
Title of Signatory

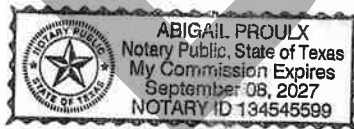
END OF SECTION

NON-COLLUSION AFFIDAVIT

State of Texas §County of Limestone §Hagen Proulx

being duly sworn, deposes and says that:

- (1) He (she) is an Estimator of Texas
Cutters, LLC, the Bidder submitting the attached Proposal;
- (2) He (she) is fully informed respecting the preparation and contents of the attached Bid and any and all appurtenances thereof;
- (3) Such Bid is genuine and is not a collusive Bid;
- (4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with another Bidder, firm or person to submit a collusive Bid in connection with the Contract for which the attached bid has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix an overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Owner or any other person interested in the proposed contract; and
- (5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

Signature: Hagen ProulxTitle: EstimatorSubscribed and sworn to me this 2 day of October, 2025By: Abigail ProulxNotary Public in and for Limestone

County, Texas

My commission expires September 8, 2027

END OF SECTION

RESOLUTION OF CORPORATION

I hereby certify that it was RESOLVED by a quorum of the directors of

[Name of Corporation / Contractor]

meeting on this _____ day of _____, 20____, that _____,

[Corporate Representative]

be, and hereby is, authorized to act on behalf of the Corporation, as its representative, in all business transactions conducted in the State of Texas, and that the above resolution was unanimously ratified by the Board of Directors at said meeting and that the resolution has not been rescinded or amended and is now in full force and effect; and in authentication of the adoption of this resolution, I subscribe my name and affix the seal of the Corporation on this

_____ day of, _____, 20____.

Secretary/Assistant Secretary

[Seal]

END OF SECTION

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☒ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☒ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 
Signature of vendor doing business with the governmental entity

10-2-2026
Date



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/26/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER First Choice Insurance Partners 26717 Westheimer Parkway Suite 201 Katy TX 77494		CONTACT NAME: Todd Carter PHONE (A/C, No, Ext): (832) 437-4180 E-MAIL: todd.carter@firstchoiceinsurancepartners.net FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: CERTAIN UNDERWRITERS LLOYDS, LONDON (AC) NAIC # 086485 INSURER B: GEICO CNTY MUT INS CO 29181 INSURER C: Texas Mutual Insurance Company 22945 INSURER D: INSURER E: INSURER F:	
INSURED TEJAS CUTTERS LLC 1562 COUNTY ROAD 4127 DECATUR TX 76234-5022			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	SCG1709625	05/30/2025	05/30/2026	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	☐ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Y	9300186480	07/29/2025	07/29/2026	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			SCX1711425	05/30/2025	05/30/2026	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	☐ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ Y	N/A	Y	0002112765	06/26/2025	06/26/2026

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

All terms and conditions as per policy wording.

CERTIFICATE HOLDER**CANCELLATION**

The City of Bartonville

1941 E Jeter Road

Bartonville TX 76226

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Todd Carter



Founded seven years ago, **Tejas Cutters, LLC** began as a specialized saw cutting business, primarily focused on sidewalk and road demolition. Over time, we have grown into a full-service demolition and replacement company, offering comprehensive solutions for a wide range of construction needs. Our operations now span across the Dallas-Fort Worth area and beyond, serving commercial, industrial, and residential clients.

Core Services

1. Sidewalk and Road Demolition & Replacement

We specialize in the demolition and replacement of sidewalks and roadways, utilizing a variety of materials including asphalt, flex base, and concrete. Our team ensures efficient and precise demolition, followed by the professional installation of new infrastructure to meet the highest standards of quality and durability.

2. Dirtwork & Site Preparation

Our dirtwork services cover a wide range of essential site preparation tasks. This includes the placement of culverts, building of house pads, and construction of drainage ditches. We ensure that the foundation for any project is properly prepared to support future construction, providing essential groundwork for commercial, industrial, and residential developments.

3. Specialized Saw Cutting

Originally founded as a saw cutting company, we continue to provide specialized saw cutting services as part of our operations. Our team is equipped with advanced cutting tools to handle intricate and precise cuts required for various construction needs, from sidewalk repairs to road modifications.

Geographic Reach and Market Segments

We proudly serve the Dallas-Fort Worth metroplex and extend our services to surrounding areas. Our team has experience working on a variety of project types, including:

- Commercial Projects: We handle large-scale commercial demolitions, road replacements, and site preparation, ensuring that businesses have safe and reliable infrastructure.
- Industrial Projects: Our expertise extends to complex industrial requirements, including heavy-duty asphalt and concrete work for manufacturing plants, warehouses, and other industrial facilities.
- Residential Projects: We also cater to homeowners, providing services such as sidewalk repairs, culvert installations, and drainage work to improve residential properties.

Why Choose Us

- Comprehensive Service Offering: From demolition to replacement, our expertise covers all aspects of sidewalk, road, and dirtwork projects.
- Experienced Team: With seven years of experience, our team has the knowledge and skill set necessary to handle projects of all sizes and complexities.
- Quality & Safety: We prioritize quality craftsmanship and safety on every job site, ensuring that projects are completed to the highest standards while maintaining a safe working environment.
- Local Expertise: As a company based in the DFW area, we have a deep understanding of local requirements, regulations, and customer needs.

REFERENCES

1. The City of Frisco

Contact Name: Tin Nguyen -Construction Manager/Engineer

Address: 6101 Frisco Square Blvd Frisco, Texas 75034

Phone: 469-514-9748 Email: TNguyen@friscotexas.gov

2. The City of Lucas

Contact Name: Jeremy Bogle -Public Works Supervisor

Address: 665 Country Club Road Lucas, Texas 75002

Phone: 972-912-1210 Email: jbogle@lucastexas.us

3. TX DOT

Contact Name: Brandon Gibbs- Inspector

Address: 100 SW County Rd #1000 Corsicana, Texas 75110

Phone: 903-388-3862 Email: Brandon.Gibbs@txdot.gov

4. The City of Southlake

Contact Name: Josue Hernandez- Civil Engineer

Address: 1400 Main Street Suite 320 Southlake, Texas 76092

Phone: 817-748-8274 Email: jhernandez@ci.southlake.tx.us

5. The City of Keller

Contact Name: Rick Hardcopf -Capital Projects Manager

Address: 1100 Bear Creek Parkway Keller, Texas 76248

Phone: 817-743-4089 Email: rhardcopf@cityofkeller.com

Statement of Cash Flows

Tejas Cutters, LLC

January 1-September 30, 2025

FULL NAME	TOTAL
OPERATING ACTIVITIES	
Net Income	786,773.29
Adjustments to reconcile Net Income to Net Cash provided by operations:	
Accounts Payable (A/P)	-3,300.00
Accounts Receivable (A/R)	-584,950.31
Accumulated Depreciation	-20,400.00
Direct Deposit Payable	0.00
Payroll Liabilities	0.09
Payroll Liabilities:Federal Taxes (941/944)	2,298.07
Payroll Liabilities:Federal Unemployment (940)	59.84
Payroll Liabilities:TX Unemployment Tax	7,125.43
Prepaid Expenses	2,000.00
Texas State Comptroller Payable	0.00
WIP Over Billing	103,869.00
WIP Under Billing	-8,746.00
Total for Adjustments to reconcile Net Income to Net Cash provided by operations:	-\$502,043.88
Net cash provided by operating activities	\$284,729.41
INVESTING ACTIVITIES	
2014 Ford 350 VIN4677	-18,000.00
2022 Ford Lariat (VIN2198)	82,033.33
2025 Excavator VIN4858	-126,199.62
2025 GMC Sierra VIN1917	-99,643.31
2025 Load Trail GP 323 VIN4752	-24,617.38
2025 Track Loader VIN0956	-88,264.72
2025 Vibration Roller VIN1250	-61,119.06
Machinery & Equipment	-210.93
N/R A&D Paving	28,314.05
Net cash provided by investing activities	-\$307,707.64
FINANCING ACTIVITIES	
LOC First Financial	45,000.00
N/P 2017 Toyota Tundra VIN3776	-5,829.36
N/P 2021 Ford Truck (VIN0466)	-9,482.22
N/P 2022 Lariat (VN2198)	-45,087.08
N/P 2023 Saw	-4,990.47
N/P 2025 Excavator	125,699.62
N/P 2025 GMC Sierra	82,395.04
N/P 2025 Track Loader	87,764.72
N/P 2025 Vibration Roller	61,119.06
N/P New Holland C332	-10,692.24
Owner's Equity - J. Proulx:Distributions - J. Proulx	-19,250.00
Owner's Equity - T. Proulx:Distributions - T. Proulx	-18,450.00

Statement of Cash Flows

Tejas Cutters, LLC

January 1-September 30, 2025

FULL NAME	TOTAL
PPP Loan	31,882.21
Net cash provided by financing activities	\$320,079.28
NET CASH INCREASE FOR PERIOD	\$297,101.05
Cash at beginning of period	\$136,319.48
CASH AT END OF PERIOD	\$433,420.53

POST-BID PROCEDURES

1.0 DOCUMENT INCLUDES

- A. Notice of Intent to Award.
- B. Agreement.
- C. Requirements of Bidder.
- D. Failure of Bidder to comply with requirements.
- E. Notice to Proceed.
- F. Pre-construction Conference.
- G. Starting the Project.

2.0 NOTICE OF INTENT TO AWARD

- A. Owner will provide written Notice of Intent to Award (the Contract) to the Lowest Responsive Responsible Bidder, stating that upon compliance with the conditions listed herein within 14 days after receipt of the notice, and on approval by Owner, Owner will execute and deliver the Agreement.

3.0 FORM OF AGREEMENT

- A. The Agreement shall be Document 00 52 00 - Agreement Between the Owner and Contractor, together with Supplements enumerated in and attached thereto.

4.0 REQUIREMENTS OF BIDDER

- A. Within 14 days of receipt of the Notice of Intent to Award, the Low Bidder shall execute and deliver to the Engineer for the Owner's approval those documents indicated by an "X" below:

- ☒ Document 00 52 00 – Standard Form of Agreement
- ☒ Document 00 61 10 - Performance Bond
- ☒ Document 00 61 15 - Payment Bond
- ☒ Document 00 61 20 – Maintenance Bond
- ☒ Document 00 61 25 – Certificate of Insurance (Form to be Supplied by Contractor)
- ☒ Document 00 61 30 – State Sales Tax - Separated Contract Certificate
- ☒ Document 00 61 40 – Contractor's Act of Assurance
- ☒ Document 00 61 45 – Certificate of Interested Parties (Form 1295 – Completed Online)
- ☒ Document 00 61 50 – Certification Regarding Debarment, Suspension, and other Responsibility Matters

5.0 FAILURE OF BIDDER TO COMPLY WITH REQUIREMENTS

- A. Should the Bidder on receipt of the Notice of Intent to Award fail to comply with requirements of this Section 00 46 00 within the stated time, the Owner may declare the award in default and require forfeiture of the Security Deposit.
- B. After Owner's written notice of default to the Bidder, Owner may award the Contract to the responsible Bidder whose offer is the next lowest bid, and the Security Deposit of the Bidder in default shall be forfeited to the Owner in accordance with the provisions of Section 00 21 00 - Instructions to Bidders.

6.0 NOTICE TO PROCEED

- A. Upon Owner's execution of the Agreement and delivery to Contractor, the Engineer shall give the Contractor Notice to proceed within 30 days after the Effective Date of the Agreement, which notice shall establish the Date of Commencement of the Work.

7.0 PRE-CONSTRUCTION CONFERENCE

- A. Not later than 10 days after the date of Notice to Proceed, but before Contractor starts work at the site, Owner will convene a Pre-construction Conference as specified in Section 01 31 10 - Coordination and Meetings.

8.0 STARTING THE PROJECT

- A. Contractor shall start performance of the Work at the site on the Date of the Commencement of the Work, but no Work shall be done at the site prior to that date.

END OF DOCUMENT

**STANDARD FORM OF AGREEMENT
BETWEEN THE TOWN OF BARTONVILLE AND CONTRACTOR**

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2025 by and between the Town of Bartonville (hereinafter called OWNER) and

_____ of the City of _____,

County of _____, State of TEXAS (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. PROJECT SCOPE

The PROJECT for the WORK detailed under the Contract Documents (see Article 8 of this Agreement for items included in the Contract Documents) is generally identified as following:

MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT

Article 2. CONTRACT TIME.

The Work will be completed within the time stated in the Bid Proposal, and ready for payment in accordance with Item 103 of the General Provisions.

Article 3. CONTRACT PRICE.

3.1. OWNER shall pay CONTRACTOR the prices in the CONTRACTOR'S bid proposal plus additional work performed or when authorized by OWNER.

Article 4. PAYMENT PROCEDURES.

4.1. Payment to CONTRACTOR will be monthly upon receipt of invoices from the CONTRACTOR. All charges are to be less sales tax as OWNER is tax exempt.

Article 5. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into this agreement, CONTRACTOR makes the following representations:

5.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents and Specifications.

5.2. CONTRACTOR has correlated the results of all such observations and studies with the terms and conditions of the Contract Documents.

5.3. CONTRACTOR has given OWNER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution by OWNER is acceptable to CONTRACTOR.

Article 6. MISCELLANEOUS.

6.1. ASSIGNMENTS: No assignments by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without written consent of the party sought to be bound; and specifically but without limitation moneys that may come due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in written consent to an assignment will release the assignor from any duty or responsibility under the Contract Documents.

6.2. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

6.3. TERMINATION: OWNER may terminate the Contract by giving CONTRACTOR notice in writing. Upon delivery of such notice by OWNER to CONTRACTOR, CONTRACTOR shall discontinue all services in connection with the performance of the Contract and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Contract. As soon as practicable after receipt of notice of termination, CONTRACTOR shall submit a statement, showing in detail the services performed under this Contract to the date of termination. OWNER shall then pay CONTRACTOR that portion of the prescribed charges which the services actually performed under this Contract bear to the total services called for under this Contract less such payments on account of the charges as have been previously made.

6.4. SUBCONTRACTING:

1. CONTRACTOR shall not award any work to any subcontractor until CONTRACTOR submits to OWNER a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as OWNER may require.
2. CONTRACTOR shall be fully responsible to OWNER for the acts and omissions of his subcontractors, and of persons either directly or indirectly employed by them, as he is for acts and omissions of persons directly employed by him.
3. Nothing contained in this Contract shall create any contractual relation between any subcontractor and OWNER. CONTRACTOR is an independent contractor.

Article 7. GOVERNING LAWS, VENUE.

The Contract shall be construed according to the laws of the State of Texas; and, venue shall lie in the State district courts of Denton County, Texas.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between the OWNER and CONTRACTOR, same being attached hereto and incorporated herein as Exhibit A, consist of the following:

- 8.1 The Contract Documents consist of the documents listed in the table of contents of the Project Manual and the drawings listed on the Sheet Index in the Drawings.
- 8.2 Addenda numbers _____, inclusive.
- 8.3 Contractor's References

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General

Conditions.

Article 9. INDEMNIFICATION.

The CONTRACTOR hereby agrees to defend, indemnify, and hold the Town and all of its officers, agent, employees, and elected officials whole and harmless against any and all claims for damages, cost, and expenses of persons or property that may arise out of, or be occasioned by, of from any negligent act, or omission of the CONTRACTOR, or any agent, servant, or employee of the CONTRACTOR in the execution of performance of this Contract, without regard to whether such persons are under the direction of Town agents or employees.

Executed on behalf of the CONTRACTOR by its owner shown below, and on behalf of the OWNER by its Town Manager, or authorized representative, this agreement will be effective

on the _____ day of _____, 2025.

OWNER:

TOWN OF BARTONVILLE
1941 E. JETER ROAD
BARTONVILLE, TX 76226

CONTRACTOR:

Name: _____

Address: _____

City: _____

State & Zip: _____

By: _____

Kirk H. Riggs, Town Administrator
Print Name

By: _____

Print Name

Telephone Number

CONTRACTOR'S Seal
(if incorporated)

(Town Attorney review if Contracted Service Cost is Greater than \$15,000)

Approved as to Form and Legality this _____ day of _____, 2025.

OWNER's Attorney

PERFORMANCE BOND

STATE OF TEXAS §
 §
COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That _____, whose address is _____, hereinafter called Principal, and _____ a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter called "Surety", are jointly and severally held and firmly bound unto the **TOWN OF BARTONVILLE, TEXAS**, Type A General Law Municipal Corporation, hereinafter called "Beneficiary", in the penal sum of _____ **Dollars (\$00.00)** lawful money of the United States, to be paid in the Town of Bartonville, Denton County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. The penal sum of this Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, and such increase shall occur automatically without further notice to the Surety, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the Town of Bartonville, the Beneficiary, dated on or about _____ which is incorporated herein and made a part hereof by reference, for the construction of certain public improvements that are generally described as follows:

**MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT
BARTONVILLE, TEXAS**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform and fulfill all of the undertakings, covenants, terms, conditions and agreements of such Contract in accordance with the plans, specifications and contract documents during the original term thereof and any extension thereof which may be granted by the Beneficiary, with or without notice to the Surety, and during the life of any guaranty or warranty required under this Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of such Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; and, if the Principal shall fully indemnify and save harmless the Beneficiary from all costs and damages which Beneficiary may suffer by reason of failure to so perform herein and shall fully reimburse and repay Beneficiary all outlay and expense which the Beneficiary may incur in making good any default or deficiency, then this obligation shall be void; otherwise, it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Denton County, Texas.

Bond No.

AND PROVIDED FURTHER, that such Surety, for value received, hereby stipulates and agrees that no change, extension of time, increase in Contract price by Supplemental Agreement or Change Order, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Denton County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this, the ____ day of ____, ____.

PRINCIPAL:

BY: _____

TITLE: _____

SURETY: _____

BY: _____
Name

TITLE: _____

ATTEST:

ATTEST:

The Resident Agent of the Surety in Denton County, Texas, for delivery of notice and service of process is:

NAME:

STREET ADDRESS:

CITY, STATE, ZIP:

NOTE: Date on Page 1 of Performance Bond must be same date that Town Council awarded Contract.
Date on Page 2 of Performance Bond must be after the date that Town Council awarded the Contract.
If Resident Agent is not a corporation, give a person's name.

PAYMENT BOND

STATE OF TEXAS §
 §
COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS:

That _____ whose address is _____ hereinafter called "Principal", and _____, a corporation organized and existing under the laws of the State of _____, and fully licensed to transact business in the State of Texas, hereinafter "Surety", are jointly and severally held and firmly bound unto the **TOWN OF BARTONVILLE, TEXAS**, a Type A General Law Municipal Corporation, hereinafter called "Beneficiary", and unto all persons, firms, and corporations who may furnish materials for, or perform labor upon the building or improvements described below, in the penal sum of _____ **Dollars (\$00.00)** in lawful money of the United States, to be paid in Denton County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. The penal sum of Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, and such increase shall occur automatically without further notice to the Surety, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

WHEREAS, the Principal entered into a certain Contract with the Beneficiary, dated on or about _____ which is incorporated herein and made a part hereof by reference, for the construction of certain public improvements that are generally described as follows:

**MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT
BARTONVILLE, TEXAS**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties and make prompt payment to all persons, firms, subcontractors, corporations and claimants supplying labor and/or material in the prosecution of the Work provided for in such Contract and any and all duly authorized modifications of such Contract that may hereafter be made, notice of which modification to the Surety is hereby expressly waived, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed on this Bond, exclusive Venue shall lie in Denton County, Texas.

AND PROVIDED FURTHER, that such Surety, for value received, hereby stipulates and agrees that no change, extension of time, increase in Contract price by Supplemental Agreement or Change Order, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

Bond No.

This Bond is given pursuant to the provisions of V.T.C.A., Government Code Section 2253.001, et seq., and any other applicable statutes of the State of Texas.

The undersigned and designated agent is hereby designated by the Surety herein as the Resident Agent in Denton County to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship, as provided by V.A.T.S., Insurance Code Article 7.19-1.

IN WITNESS WHEREOF, this instrument is executed in ____ copies, each one of which shall be deemed an original, this the _____ day of _____, _____.

PRINCIPAL:

BY: _____

ATTEST:

TITLE: _____

SURETY: _____

BY: _____
Name

ATTEST:

TITLE: _____

The Resident Agent of the Surety in Denton County, Texas, for delivery of notice and service of the process is:

NAME:

STREET ADDRESS:

CITY, STATE, ZIP:

NOTE: Date on Page 1 of Payment Bond must be same date that Town Council awarded Contract. Date on Page 2 of Payment Bond must be after the date that Town Council awarded the Contract. If Resident Agent is not a corporation, give a person's name.

MAINTENANCE BOND

STATE OF TEXAS §
 §
COUNTY OF DENTON §

KNOW ALL MEN BY THESE PRESENTS: That _____, whose address is _____ hereinafter called "Principal", and _____, a corporation organized under the laws of the State of _____ and authorized to do business in the State of _____, hereinafter called "Surety", are jointly and severally held and firmly bound unto the **TOWN OF BARTONVILLE, TEXAS**, a Type A General Law Municipal Corporation, located in Denton County, Texas, hereinafter called "Beneficiary", in the amount of **Dollars (\$00.00)** in lawful money of the United States, to be paid in the Town of Bartonville, Denton County, Texas, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors and assigns, jointly and severally; and firmly by these presents. The penal sum of this Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, and such increase shall occur automatically without further notice to the Surety, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

WHEREAS, Principal entered into a certain written Contract with the Town of Bartonville, Texas, dated _____ which is made a part hereof by reference, to furnish all materials, equipment, labor, supervision, and other accessories necessary for:

**MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT
BARTONVILLE, TEXAS**

in the Town of Bartonville, Texas, as more particularly described and designated in the above-referenced contract such contract being incorporated herein and made a part hereof as fully and to the same extent as if written herein word for word.

NOW, THEREFORE, if Principal will maintain and keep in good repair the work herein contracted to be done and performed for a period of two (2) years from the date of final acceptance and do and perform all necessary work and repair any defective condition, it being understood that the purpose of this section is to cover all defective conditions arising by reason of defective materials, work or labor performed by Principal; then this obligation shall be void, otherwise it shall remain in full force and effect; and in case Principal shall fail to do so it is agreed that the Town may do such work and supply such materials and charge the same against Principal and Surety on this obligation.

PROVIDED, FURTHER, that if any legal action be filed on this Bond, exclusive venue shall lie in Denton County, Texas.

Bond No. _____

AND PROVIDED FURTHER, that such Surety, for value received, hereby stipulates and agrees that no change, extension of time, increase in Contract price by Supplemental Agreement or Change Order, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in anywise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work or to the Specifications.

The undersigned and designated agent is hereby designated by Surety as the resident agent in Denton County to whom all requisite notice may be delivered and on whom service of process may be had in matters arising out of this suretyship.

IN WITNESS WHEREOF, this instrument is executed on this the _____ day of _____, ____.

PRINCIPAL: _____

BY: _____

ATTEST:

TITLE: _____

SURETY: _____

BY: _____
Name

ATTEST:

TITLE: _____

The Resident Agent of the Surety in Denton County, Texas, for delivery of notice and service of the process is:

NAME: _____
STREET ADDRESS: _____
CITY, STATE, ZIP: _____

NOTE: Date on Page 1 of Maintenance Bond must be same date that Town Council awarded Contract. Date on Page 2 of Maintenance Bond must be after date that Town Council awarded the Contract. If Resident Agent is not a corporation, give a person's name.

Certificate of Insurance

Insert Certificate of Insurance in compliance with the applicable provisions
of the contract following this sheet.

END OF SECTION

STATE SALES TAX - SEPARATED CONTRACT CERTIFICATE

DATE: _____

PROJECT: **2025 MISCELLANEOUS ASPHALT PAVEMENT REPAIR AT VARIOUS LOCATIONS**PROJECT ID: WW 43295TO: Town of BartonvilleSUMMARY SEPARATION OF MATERIALS AND LABOR:

The total amount bid shall be separated into Materials Costs and Services Charges, which result in a "Separated Contract". The Bidder is expected to comply with all the requirements of the State Sales Tax Law, plus separate the total Contract amount, for the total amount bid listed in the Proposal into material costs and services charges as provided below.

Materials which are incorporated into or become part of the project are exempt from sales tax. The Contractor is expected to execute a resale certificate instead of paying the sales tax at the time of purchase. The Corporation will issue an exemption certificate for the materials as long as they are a part of the finished project.

If the Contractor does not issue a resale certificate, then the amount of sales tax must be included in the prices quoted. No additional compensation, beyond the prices quoted, is due the Contractor for sales tax.

MATERIALS.....\$ _____
 SERVICES.....\$ _____
 TOTAL AMOUNT BID.....\$ _____

PRINCIPAL(_____) _____
TELEPHONE NUMBER_____
SIGNATURE_____
NAME & TITLE

END OF SECTION

CONTRACTOR'S ACT OF ASSURANCE

THE STATE OF TEXAS

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas,

on this day personally appeared _____, Affiant,
[Affiant]

who being by me duly sworn on his oath stated that he is _____, of
[Title]

the _____, Contractor, that he is authorized to represent Contractor
[Contractor]

pursuant to provisions of a resolution adopted on this _____ day of _____, 20____. A duly
certified copy of such resolution is attached to and is hereby made a part of this document.

Affiant, in such capacity declares and assures the Owner that Contractor will construct the Project in accordance
with sound construction practice, all laws of the State of Texas, and the regulations of the Owner.

[Affiant]

SWORN AND SUBSCRIBED before me on this _____ day of _____, 20____.

Notary Public in and for the State of TEXAS

[Print or Type Notary Public Name]

My Commission Expires: _____
[Expiration Date]

[Seal]

END OF DOCUMENT

FORM 1295 – CERTIFICATE OF INTERESTED PARTIES

The Texas Ethics Commission has a new ethics law. It prohibits a governmental entity or state agency from entering into certain contracts with a business entity unless the business entity submits a disclosure of interested parties Form 1295.

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

A business entity must file Form 1295 electronically with the Texas Ethics Commission using the online filing application.

https://www.ethics.state.tx.us/whatsnew/FAQ_Form1295.html

The Town of Bartonville must acknowledge the receipt of the filed Form 1295 not later than the 30th day after the date the contract binds all parties to the contract. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

The Commission's rules provide that the business entity must include on the form an "identification number used by the Town to track or identify the contract for which the form is being filed."

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Tejas Cutters, LLC
Decatur, TX United States

Certificate Number:
2025-1371660

Date Filed:
10/02/2025

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Town of Bartonville

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MISCELLANEOUS ASPHALT PAVEMENT
Construction Services

4 Name of Interested Party

City, State, Country (place of business)

Nature of interest
(check applicable)

Controlling

Intermediary

5 Check only if there is NO Interested Party.



6 UNSWORN DECLARATION

My name is Hagen Proulx, and my date of birth is 9/4/99

My address is 1440 LCR 244, Mexia TX 76667 US
(city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Limestone County, State of Tx, on the 2nd day of October, 2025.
(month) (year)

Hagen Proulx

Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATION REGARDING DEBARMENT,
SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State, or local department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction: violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Section 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both.

[Typed Name of Company:]

[Typed Name & Title of Authorized Representative]

[Signature of Authorized Representative]

[Date]

If unable certify the above statements, explanation is attached.

END OF SECTION

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

Section 00 72 00

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

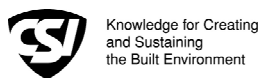
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AMERICAN SOCIETY OF CIVIL ENGINEERS

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The Associated General Contractors of America



Construction Specifications Institute

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Council of Engineering Companies
1015 15th Street, N.W., Washington, DC 20005

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400

These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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DRAFT

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

3. *Application for Payment*--The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidder*--The individual or entity who submits a Bid directly to Owner.

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

9. *Change Order*--A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. *Contract Price*--The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any, (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.

15. *Contractor*--The individual or entity with whom Owner has entered into the Agreement.

16. *Cost of the Work*--See Paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.

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

19. *Engineer*--The individual or entity named as such in the Agreement.

20. *Field Order*--A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

22. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

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

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

25. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

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

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. *Notice to Proceed*--A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. *Owner*--The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. *PCBs*--Polychlorinated biphenyls.

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

32. *Progress Schedule*--A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.

33. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

34. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

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

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

37. *Resident Project Representative*--The authorized representative of Engineer who may be assigned to the Site or any part thereof.

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

39. *Schedule of Submittals*--A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

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

42. *Site*--Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

44. *Subcontractor*--An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

45. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

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

49. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

51. *Work*--The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. Intent of Certain Terms or Adjectives

1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day

1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.

F. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

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

2. a preliminary Schedule of Submittals; and

3. a preliminary Schedule of Values for all of the Work which includes 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. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 *Preconstruction Conference*

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is required by one is as binding as if required by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to Owner.

C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 *Reference Standards*

A. Standards, Specifications, Codes, Laws, and Regulations

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or

3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or

2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaption by Engineer.

B. The prohibition of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party..

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

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

4.01 *Availability of Lands*

A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

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

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer's Review*: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner's obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

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

c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

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

3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

~~G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06. G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

A. Contractor shall deliver to Owner, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.

B. Owner shall deliver to Contractor, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection

from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

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

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

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insured (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

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

3. include completed operations insurance;

4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 *Property Insurance*

~~A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:~~

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

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

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

5. allow for partial utilization of the Work by Owner;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any

deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

~~5.07 Waiver of Rights~~

~~A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.~~

~~B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them for:~~

~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~

~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.~~

~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them.~~

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or

received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner's written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.

1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment Engineer determines that:

1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole,

3) it has a proven record of performance and availability of responsive service; and

b. Contractor certifies that, if approved and incorporated into the Work:

1) there will be no increase in cost to the Owner or increase in Contract Times, and

2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.

c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented in the General Requirements and as Engineer may decide is appropriate under the circumstances.

d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

1) shall certify that the proposed substitute item will:

a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time;

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

B. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity, nor

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual

or entity except as may otherwise be required by Laws and Regulations.

D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.

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

G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, and Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 *Patent Fees and Royalties*

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of Owner or Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 *Laws and Regulations*

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 Safety and Protection

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

1. all persons on the Site or who may be affected by the Work;

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

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

B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

D. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the acceptable Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.

1. Shop Drawings

a. Submit number of copies specified in the General Requirements.

b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, Contractor shall have determined and verified:

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

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

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

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

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

3. With each submittal, Contractor shall give Engineer specific written notice of any variations, that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

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

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

B. In any and all claims against Owner or Engineer or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

A. Owner may perform other work related to the Project at the Site with Owner's employees, or via other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

7.02 *Coordination*

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's actions or inactions.

C. Contractor shall be liable to Owner and any other contractor for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's action or inactions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

A. Owner's responsibilities, if any, in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

A. Owner's responsibility in respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 *Limitations on Owner's Responsibilities*

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 *Undisclosed Hazardous Environmental Condition*

A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 *Evidence of Financial Arrangements*

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

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

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Authorized Variations in Work*

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 *Rejecting Defective Work*

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

B. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

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

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

9.07 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believe that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to, the Resident Project Representative, if any, and assistants, if any.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *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).

B. 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 therefor as provided in Paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 *Claims*

A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

B. *Notice:* Written notice stating the general nature of each Claim, shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Paragraph 11.01.B.

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

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

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

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have

resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. Costs Excluded: The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.

2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

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

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

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A and 11.01.B.

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

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

C. Contingency Allowance

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

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

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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

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

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an

allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

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

a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

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

f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted

by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 *Delays*

A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in said Paragraph 13.04.C; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to

be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

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

F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If, the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 *Owner May Stop the Work*

A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. Promptly after receipt of notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications .

D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 *Owner May Correct Defective Work*

A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress

payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

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

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

b. that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for such action.

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor's notification, , Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within 14 days after submission of the tentative certificate to Owner notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will within said 14 days execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer's issuing the definitive certificate of Substantial

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions.

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations

under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and , will be paid by Owner to Contractor.

14.08 *Final Completion Delayed*

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

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

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion),

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

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

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

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

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

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

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

15.04 *Contractor May Stop Work or Terminate*

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions, or

2. agrees with the other party to submit the Claim to another dispute resolution process, or

3. gives written notice to the other party of their intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (C-700, 2002 Edition) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions will have the meanings indicated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings indicated below, which are applicable to both the singular and plural thereof.

SC-2.03.A Delete the last sentence of paragraph 2.03.A.

SC-2.05.A.4 Add the following new paragraph immediately after paragraph 2.05.A.3;

4. the anticipated amount of the first progress payment.

SC-5.04 Add the following new paragraph immediately after paragraph 5.04.B:

- A. The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:
 1. Workers' Compensation and related coverage's under paragraphs 5.04.A.1 and A.2 of the General Conditions.

a. State:	Statutory
b. Applicable Federal (e.g., Longshoreman's):	Statutory
c. Employer's Liability	\$ <u>100,000</u> for each accident
	\$ <u>100,000</u> for disease – each employee
	\$ <u>500,000</u> disease – policy limit
 2. Contractor's General Liability under paragraph's 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

a. General Aggregate	\$ <u>1,000,000</u>
b. Products – Completed Operations Aggregate	\$ <u>1,000,000</u>
c. Personal and Advertising Injury	\$ <u>600,000</u>
d. Each Occurrence (Bodily Injury and Property Damage)	\$ <u>600,000</u>

e. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.

f. Excess or Umbrella Liability

1) General Aggregate \$ 1,000,000

2) Each Occurrence \$ 1,000,000

3. Automobile Liability under paragraph 5.04.A.6 of the General Conditions:

a. Bodily Injury:

Each Person \$ 250,000

Each Accident \$ 500,000

b. Property Damage:

Each Accident \$ 100,000

4. The Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

a. Bodily Injury:

Each Accident \$ 600,000

Annual Aggregate \$ 1,000,000

b. Property Damage:

Each Accident \$ 600,000

Annual Aggregate \$ 1,000,000

5. Additional named insureds: Owner, Engineer

SC-5.06.A. Delete paragraph 5.06.A in its entirety and insert the following in its place:

A. CONTRACTOR shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.

This insurance shall:

1. Include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

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

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and
5. Allow for partial utilization of the Work by OWNER;
6. Include testing and startup; and
7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

CONTRACTOR shall be responsible for any deductible or self – insured retention.

The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph SC-5.06 shall comply with the requirements of paragraph 5.06C. of the General Conditions.

SC-5.06.E. Delete paragraph 5.06.E in it's entirety.

SC-6.01.C Add the following new paragraph immediately after paragraph 6.01.B:

- C. At all times during the progress of the Work, CONTRACTOR shall be responsible for the security of all completed work, all materials stored but not yet incorporated into the Work, and material assets used to perform the Work.

SC-6.02.C Add the following paragraphs immediately after paragraph 6.02.B:

- C. Regular working hours are as established in General Conditions paragraph 6.02.B. If, at CONTRACTOR'S request and for his benefit, the OWNER consents to performance of work by CONTRACTOR outside of normal working hours, CONTRACTOR shall reimburse the OWNER for all reasonable costs associated with maintaining Resident Project Representative, Testing Laboratory, and Engineer functions during that or those overtime work period(s). Reasonable costs, in this instance, shall be taken to mean:

1. Payroll costs for full-time employees required to perform the Resident Project Representative and Engineer functions. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay application thereto. The expenses of performing overtime work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.
2. Supplemental costs including:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Resident Project Representative staff, and Engineer staff incurred in discharge of duties connected with the overtime work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, which are consumed in the performance of the overtime work.

- c. Rentals of equipment and machinery, and the parts thereof in accordance with rental agreements and the costs of transportation, loading, unloading, assembly, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the overtime work.
- d. Sales, consumer, use, and other similar tax related to the overtime work as imposed by Laws and Regulations.
- e. The cost of additional fuel.
- f. Minor expenses such as telegrams, long distance telephone calls, expressage, and similar petty cash items in connection with the overtime work.
- g. Testing Laboratory overtime charges.

SC-6.04.A. Add the following sentence to the end of paragraph 6.04.A;

Updated progress schedule shall be submitted at least monthly.

SC-6.08.B Add the following new paragraph immediately after paragraph 6.08.A:

- B. Work sites and easements; and permits for construction inside highway right-of-way; and licenses agreements for crossing railroads; as required to construct the Work will be acquired by the Owner. The Contractor shall comply with the provisions of such easements, permits and license agreements. Acquisition of any other special licenses and permits required will be the responsibility of the Contractor. The lands involved will be assumed to encompass at least the minimum areas needed to complete the Work, but this does not necessarily mean that all trenches or other excavations can be back-sloped without bracing or shoring. Copies of all such deeds, easements, permits, etc., shall be made available to the Contractor.

SC-6.12.B Add the following new paragraphs; immediately after paragraph 6.12.A:

- B. OWNER reserves the right to stop work for CONTRACTOR'S failure to maintain Record Drawings as described herein. CONTRACTOR shall make no claim for damages as a result of OWNER stopping work for CONTRACTOR'S failure to maintain Record Drawings.
- C. CONTRACTOR'S failure to maintain Record Drawings as described herein will result in the suspension of Progress Payment(s) until such time as the Record Drawings are made current to the OWNER'S satisfaction. CONTRACTOR shall make no claim for damages as a result of the suspension of Progress Payment(s) due to CONTRACTOR'S failure to maintain Record Drawings.

SC-9.10 Add the following paragraphs immediately after paragraph 9.09:

9.10 Resident Project Representative

- A. The authority and duties of the Resident Project Representative is limited to examining the material furnished and observing the work done, and to report findings to the OWNER and ENGINEER. The OWNER does not underwrite, guarantee or insure the work done by the Contractors, and since it is the

Contractor's responsibility to perform the work in accordance with the Contract Documents, the OWNER is not responsible or liable for the Contractor's failure to do so. Failure by any Resident Project Representative or other personnel engaged in on-the-site observation to discover defects or deficiencies in the work of the Contractors shall never relieve the Contractors for liability thereof or subject the OWNER to any liability for any such defect or deficiencies.

- B. Neither Resident Project Representative's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Resident Project Representative in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Resident Project Representative shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Resident Project Representative to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Resident Project Representative will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. Resident Project Representative will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.
- D. Resident Project Representative will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- E. Resident Project Representative's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- F. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to Resident Project Representative's assistants.

SC-11.03.D Delete paragraph 11.03.D. in its entirety and insert the following in its place:

- D. The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
 - 1. If the total cost of a particular item of Unit Price Work amounts to 10% or more of the Contract Price and the variation in the quantity of that particular item of Unit Price Work performed by Contractor differs by more than 25% from the estimated quantity of such item indicated in the Agreement;
 - 2. If there is no corresponding adjustment with respect to any other item of Work; and
 - 3. If CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof; or if OWNER believes that the quantity

variation entitles OWNER to an adjustment in the unit price, either OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 10 if the parties are unable to agree as to the effect of any such variations in the quantity of Unit Price Work performed.

SC-14.02.A.1 Revise the submittal date to the 25th of each month.

SC-14.02.A.4 Add the following new paragraph immediately after paragraph 14.02.A.3;

4. The anticipated amount of the next progress payment shall be submitted with each application for payment

SC-14.02.C.1 At the beginning of paragraph 14.02.C.1 Delete "Ten" and put in its place "Forty-Five".

SC-17.07 Add the following paragraph immediately after paragraph 17.06:

17.07 Contractor Claims and Third – Party Beneficiaries

- A. Contractors, subcontractors and equipment and materials suppliers on the PROJECT, or their sureties, shall maintain no direct action against the ENGINEER, its officers, employees, and subcontractors, for any claim arising out of, in connection with, or resulting from the engineering services performed. Only the OWNER will be the beneficiary of any undertaking by the ENGINEER.

END OF SECTION

Section 00 73 10

SPECIAL PROVISIONS

PART 1 – GENERAL

1.01 BONDS

Bidders must submit with the Bid a Cashier's or Certified Check payable to the Town of Bartonville, in the amount of 5% of the maximum price bid, or submit a Bid Bond in the same amount from a surety Company to the Town, as a guarantee that the bidder will enter into a contract and execute the required bonds after the acceptance of the bid and award of the contract.

In accordance with Chapter 2253 of the Local Government Code of Texas, V.T.C.A., the successful bidder will be required to furnish Performance, Payment, and Maintenance Bonds in the full amount of the contract. The Bonds must be executed by an approved Surety Company holding a permit from the State of Texas to act as Surety. Each Bond shall be accompanied by a "Power of Attorney" authorizing the attorney-in-fact to bind the Surety and certified to include the date of the bond.

1.02 WARRANTY

The work performed under this Contract shall be warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of acceptance. If the owner determines that the process has failed during the warranty period, the Contractor will perform and make all repairs at no additional cost to the Owner.

1.03 INSURANCE REQUIREMENTS

A. CONTRACTOR'S INSURANCE

Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the contract the CONTRACTOR and each subcontractor, at their own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. Certificates of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. Coverage shall be of the following types and not less than the specified amounts.

- (1) workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than \$100,000 for each accident, \$100,000 disease --- each employee, \$500,000 disease-policy limit.
- (2) commercial general liability insurance, including independent contractor's liability, completed operations and contractual liability, covering, but not

limited to, the liability assumed under the indemnification provisions of this contract, fully insuring CONTRACTOR'S (or subcontractor's) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth below:

General Aggregate	\$1,000,000
Products – Components/Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$ 600,000
Each Occurrence	\$ 600,000
Fire Damage (any one fire)	\$ 50,000
Medical Expense (any one person)	\$ 5,000

The policy shall include coverage extended to apply to operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with OWNER.

- (3) comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence; or separate limits of \$250,000 for bodily injury (per person), \$500,000 for bodily injury (per accident) and \$100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

B. OWNER'S PROTECTIVE LIABILITY INSURANCE

CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this contract an OWNER'S protective liability insurance policy naming the OWNER and the Engineer as insureds for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR'S liability insurance with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence and \$1,000,000 aggregate.

C. "UMBRELLA" LIABILITY INSURANCE

If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the contract term, insuring CONTRACTOR for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insureds.

D. POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

- (1) Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:

- (i) each policy shall name the OWNER as an additional insured as to all applicable coverage;
 - (ii) each policy shall require that 30 days prior to the cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to OWNER by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to OWNER is required.
 - (iii) the term "OWNER" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the OWNER and individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the OWNER;
 - (iv) the policy phrase "other insurance" shall not apply to the OWNER where the OWNER is an additional insured on the policy; and
 - (v) all provisions of the contract concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.
- (2) Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:
- (i) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final;
 - (ii) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
 - (iii) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.
- (3) CONTRACTOR agrees to the following:
- (i) CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the OWNER, it being the intention that the insurance policies shall protect all parties to the contract and be primary coverage for all losses covered by the policies;
 - (ii) companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
 - (iii) approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in

the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability; and

- (iv) no special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the contract price and the contract unit prices.

Any of such insurance policies required under this section may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

E. VEHICLES INSURANCE

The successful Bidder shall meet the minimum Texas State Financial Responsibility Act requirements for the operation of vehicle(s) used while performing services in the Town.

1.04 ASSIGNMENT

The successful Bidder's rights and duties awarded by the agreement may not be assigned to another without written consent of the Town signed by the Town's authorized agent. Such consent shall not relieve the assigner of the liability in the event of default by the assignee.

1.05 CONTRACT TIME AND LIQUIDATED DAMAGES

As time is of the essence on this Contract, the Contractor agrees to commence work under this Contract within ten (10) days from the date specified in the "Notice to Proceed" and to totally complete the work within the consecutive calendar days negotiated with the Town after the date specified in the "Notice to Proceed", subject to such extensions of time as are indicated in the General Provisions. The Contractor further agrees to pay as liquidated damages, the sum of \$120.00 for each calendar day that any work remains uncompleted after the time specified above or after any extensions of time as are provided in the General Provisions. It is understood between the parties hereto that the sum of \$120.00 per day shall be treated as liquidated damages and not as a penalty, and the Owner may withhold from the Contractor's compensation such sums as liquidated damages.

1.06 PAYMENT

Contractor shall submit to the Town a monthly invoice for services performed that month. The Town is exempt from Federal Excise and State Sales Tax; therefore, tax must not be included in the bid price.

1.07 SITE SURVEYING

The Contractor shall be responsible for all required site surveying to include: lines, grades, centerlines, off-set stakes, etc. necessary to lay out and install the paving, storm drain, water, and sanitary sewer system improvements as designed and shown on the plan sheets in these contract documents.

1.08 UTILITY LOCATES AND COORDINATION

The Contractor shall be responsible for securing the services of a utility location firm to provide "locates" for any underground utilities in the areas of the proposed construction. All coordination of such activities shall be the responsibility of the Contractor.

1.09 CITIZEN NOTIFICATION

The Contractor shall be responsible for the preparation and distribution of a Town-approved "Notice of Construction" letter to all businesses and residents who will be directly affected by the proposed paving, storm drain, water, and sewer construction activities. The Town Project Inspector will designate to the Contractor which houses/businesses are to receive the notices. This notice must include contact phone numbers for the Contractor and a brief description of the duration and general type of work to be done.

1.10 CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications. All change orders to the agreement will be made in writing and not effective unless signed by an authorized representative of the Town.

1.11 NON-DISCRIMINATION

- A. Contractor shall not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, ancestry, national origin, disability, or place of birth.
- B. Contractor shall take action to ensure that applicants are employed and treated without regard to their race, age, color, religion, sex, ancestry, national origin, disability, or place of birth. This action shall include, but not be limited to, the following; employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection of training, including apprenticeship.

1.12 LIENS

The successful Bidder agrees to and shall indemnify and save harmless the Town against any and all liens and encumbrances for all labor, goods and services which may be provided under the Town's request, by seller or seller's vendor(s) and if the Town requests, a proper release of all liens or satisfactory evidence of freedom from liens shall be delivered to the Town.

1.13 PATENT INDEMNITY

The successful Bidder hereby warrants that the use or sale of the products and materials delivered hereunder will not infringe on the rights of any patent, copyright, or registered trademark, covering such materials and the successful Bidder agrees to indemnify and hold harmless the Town for any and all costs, expenses, judgments, and damages which the Town may have to pay or incur.

1.14 INDEMNITY

The successful Bidder agrees to defend, indemnify, and hold the Town and all of its officers, agent, employees, and elected officials whole and harmless against any and all

claims for damages, costs, and expenses of persons or property that may arise out of, or be occasioned by, or from any negligent act, or omission of the successful Bidder, or any agent, servant, or employee of the successful Bidder in the execution of performance of this agreement, without regard to whether such persons are under the direction of Town agents or employees.

1.15. GRATUITIES/BRIBES

The Town may, by written notice to the successful Bidder, cancel this agreement without liability to the successful Bidder if it is determined by the Town that gratuities or bribes in the form of entertainment, gifts, or otherwise, were offered or given by the successful Bidder, or its agent or representative to any Town officer, employee or elected representative with respect to the performance of the agreement. In addition, the successful Bidder may be subject to penalties stated in Title 8 of the Texas Penal Code.

1.16 TERMINATION OF AGREEMENT

The Town reserves the right to terminate this agreement with ten (10) days written notice if the successful Bidder fails to perform in a manner deemed acceptable to the Town. Upon delivery of such notice by the Town to the successful Bidder, the successful Bidder shall discontinue all services in connection with the performance of this agreement and shall discontinue all services in connection with the performance of this agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such order or contracts are chargeable to this agreement. As soon as practicable after receipt of notice of termination, the Bidder shall submit a statement to the Town for payment of that portion of agreement successfully performed.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

Section 00 73 16

INSURANCE REQUIREMENTS

Part 1 – GENERAL

1.1 Certificate of Insurance

A. Prior to the approval of this contract by the Owner, CONTRACTOR shall furnish a completed Insurance Certificate to the Engineer's Office, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. OWNER SHALL HAVE NO DUTY TO PAY OR PERFORM THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE SHALL HAVE BEEN DELIVERED TO THE ENGINEER'S OFFICE, and no officer or employee shall have authority to waive this requirement.

1.2 Insurance Coverage Required

A. OWNER reserves the right to review the insurance requirements of this section during the effective period of the contract and to adjust insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as the CONTRACTOR.

B. Subject to CONTRACTOR'S right to maintain reasonable deductibles in such amounts as are approved by OWNER, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the OWNER, in the following type(s) and amounts:

COVERAGES	LIMITS
1. Workers' Compensation and Employers Liability 2. Commercial General (public) Liability insurance including coverage for the following: a. Premises/operations b. Independent contractors c. Products/completed operations d. Personal injury e. Contractual liability f. Medical payments g. Underground hazard h. Explosion & collapse hazards i. OWNER'S property in CONTRACTOR'S care, custody or control Page	Statutory \$100,000/500,000/100,000 Combined single limit for bodily injury and property damage of \$600,000 per occurrence or its equivalent

3. **Comprehensive Automobile Liability**

Combined single limit for bodily insurance, including coverage for injury and property damage of loading and unloading hazards, for: \$100,000 per occurrence

- a. Owned/leased vehicles or its equivalent
- b. Non-owned vehicles
- c. Hired vehicle

1.3 REQUIRED PROVISIONS

A. CONTRACTOR agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- 1. _____ (OWNER) and its officers, and employees as additional insureds, (as the interests of each insured may appear) as to all applicable coverage;
- 2. Provide for 45 days notice to OWNER for cancellation, non-renewal, or material change;
- 3. Provide for notice to OWNER at the address shown below by registered mail;
- 4. CONTRACTOR agrees to waive subrogation against the OWNER, its officers and employees for injuries, including death, property damage, or any other loss;
- 5. Provide that all provisions of this contract concerning liability, duty, and standard of care, together with the indemnification provision cited below, shall be underwritten by contractual liability coverage sufficient to include such

1.4 INDEMNITY PROVISION

A. The following is to be included in CONTRACTOR'S Insurance Certificate either by verbatim recitation or specific reference to this section.

CONTRACTOR agrees to defend, indemnify and hold OWNER, its officers, agents and employees, harmless against any and all claims, lawsuits, judgements, costs, and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of this contract, or by any other negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of OWNER, its officers, agents, or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and OWNER, responsibility, and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any defenses of the parties under Texas law. The provision of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

1.5 ADDITIONAL POLICY ENDORSEMENTS

A. OWNER shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by OWNER, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

1.6 NOTICES

A. CONTRACTOR shall notify OWNER in the event of any changes in coverage and shall give such notices not less than 45 days prior to the change, which notice must be accompanied by a replacement CERTIFICATE OF INSURANCE. All notices shall be given to OWNER at the following address:

1.7 CONTRACTOR RESPONSIBILITY

A. Approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.

Section 00 73 46

FEDERAL WAGE RATE DECISION

- 1.01 The minimum wage rates for this project are duplicated following.

END OF SECTION

DRAFT

"General Decision Number: TX20250025 01/03/2025

Superseded General Decision Number: TX20240025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination,

	if it is higher) for all hours spent performing on that contract in 2025.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025

SUTX2011-007 08/03/2011

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 14.12	**
ELECTRICIAN.....	\$ 19.80	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 13.16	**
Structures.....	\$ 13.84	**
LABORER		
Asphalt Raker.....	\$ 12.69	**
Flagger.....	\$ 10.06	**
Laborer, Common.....	\$ 10.72	**
Laborer, Utility.....	\$ 12.32	**
Pipelayer.....	\$ 13.24	**
Work Zone Barricade Servicer.....	\$ 11.68	**
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor.....	\$ 15.32	**
Asphalt Paving Machine.....	\$ 13.99	**
Broom or Sweeper.....	\$ 11.74	**
Concrete Pavement Finishing Machine.....	\$ 16.05	**
Concrete Saw.....	\$ 14.48	**
Crane Operator, Lattice		

Boom 80 Tons or Less.....	\$ 17.27	**
Crane Operator, Lattice		
Boom over 80 Tons.....	\$ 20.52	
Crane, Hydraulic 80 Tons		
or Less.....	\$ 18.12	
Crawler Tractor.....	\$ 14.07	**
Excavator, 50,000 pounds		
or less.....	\$ 17.19	**
Excavator, over 50,000		
pounds.....	\$ 16.99	**
Foundation Drill , Truck		
Mounted.....	\$ 21.07	
Foundation Drill, Crawler		
Mounted.....	\$ 17.99	
Front End Loader 3 CY or		
Less.....	\$ 13.69	**
Front End Loader, over 3 CY.	\$ 14.72	**
Loader/Backhoe.....	\$ 15.18	**
Mechanic.....	\$ 17.68	**
Milling Machine.....	\$ 14.32	**
Motor Grader, Fine Grade....	\$ 17.19	**
Motor Grader, Rough.....	\$ 16.02	**
Pavement Marking Machine....	\$ 13.63	**
Reclaimer/Pulverizer.....	\$ 11.01	**
Roller, Asphalt.....	\$ 13.08	**
Roller, Other.....	\$ 11.51	**
Scraper.....	\$ 12.96	**
Small Slipform Machine.....	\$ 15.96	**
Spreader Box.....	\$ 14.73	**
Servicer.....	\$ 14.58	**
Steel Worker (Reinforcing).....	\$ 16.18	**
TRUCK DRIVER		
Lowboy-Float.....	\$ 16.24	**
Off Road Hauler.....	\$ 12.25	**
Single Axle.....	\$ 12.31	**
Single or Tandem Axle Dump		
Truck.....	\$ 12.62	**
Tandem Axle Tractor with		
Semi Trailer.....	\$ 12.86	**
Transit-Mix.....	\$ 14.14	**
WELDER.....	\$ 14.84	**

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.75) or 13658 (\$13.30). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than

""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

MOBILIZATION

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Mobilization of construction equipment and facilities onto the site.

1.02 MEASUREMENT AND PAYMENT

- A. Measurement and payment for mobilization is on a stipulated price basis.
- B. Mobilization payments will be made in accordance with the following provisions. Sub-tasks shall be equally weighted in computation of amounts completed.
 - 1. Authorization for payment of twenty (20) percent of the Contract Price for mobilization will be made upon receipt and approval by Engineer of the following items, as applicable:
 - a. Establishment of Contractor's material and equipment storage areas (as evidenced by executed leases or rental agreements); and
 - b. Issuance of Notice to Proceed by Engineer to Contractor.
 - 2. Authorization for payment of fifty (50) percent of the Contract Price for mobilization will be eligible for payment upon receipt and approval by Engineer of the following items, as applicable:
 - a. Schedule of values;
 - b. Trench safety program;
 - c. Construction schedule.
 - d. Pre-construction photographs; and
 - f. Dewatering plan, if required.
 - 3. Authorization for payment of the remaining thirty (30) percent of the Contract Price for mobilization will be made upon completion of Work amounting to five (5) percent of the Contract Price less the Mobilization unit price.
- C. Mobilization payments will be subject to retainage amounts stipulated in the General Conditions.
- D. All cost difference between the stipulated amount and the actual cost of the initial mobilization and the cost of all subsequent mobilization shall be included in the various other prices bid.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

END OF SECTION

SUBMITTAL PROCEDURES

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Submittal procedures for:
1. Schedule of Values.
 2. Construction Schedules.
 3. Shop Drawings, Product Data, and Samples
 4. Operations and Maintenance Data.
 5. Manufacturer's Certificates.
 6. Construction Photographs.
 7. Project Record Documents.
 8. Video Tapes.
 9. Design Mixes.

1.02 SUBMITTAL PROCEDURES

- A. Scheduling and Handling:
1. Schedule submittals well in advance of the need for the material or equipment for construction. Allow time to make delivery of material or equipment after submittal has been approved.
 2. Develop a submittal schedule that allows sufficient time for initial review, correction, resubmission and final review of all submittals. The Engineer will review and return submittals to the Contractor as expeditiously as possible but the amount of time required for review will vary depending on the complexity and quantity of data submitted. In no case will a submittal schedule be acceptable which allows less than 30 days for initial review by the Engineer. This time for review shall in no way be justification for delays or additional compensation to the Contractor. Recognizing that time is of the essence, the Contractor is to stamp the top of each submittal with the words ROUTINE or CRITICAL. Routine submittals shall be processed in accordance with the timeframe set forth previously. Critical submittals are those that: were overlooked by the Contractor, involve complex coordination, or are crucial to the successful completion of a specific portion of the project. For critical submittals:
 - i. Contractor shall indicate on the submittal his realistically estimated date of when a review must be returned;
 - ii. Upon return of critical submittals, Contractor shall date-stamp the transmittal page with date and time received;
 - iii. Contractor is cautioned that the use of critical submittals is not a substitute for proper due diligence on his part. Review of critical submittals found to be routine shall be accompanied by an invoice for excess time and material expenditures that were required in order to complete the critical review as compared to a routine review. The Resident Project Representative shall make the determination as to whether a critical submittal was in fact routine.
 3. The Engineer's review of submittals covers only general conformity to the Drawings, Specifications and dimensions which affect the layout. The Contractor is responsible for quantity determination. Quantities may be verified by the Engineer. The Contractor is

responsible for any errors, omissions or deviations from the Contract requirements; review of submittals in no way relieves the Contractor from his obligation to furnish required items according to the Drawings and Specifications.

4. Submit sufficient copies of documents. Unless otherwise specified in the following paragraphs or in the Specifications, provide 6 copies in addition to the number the Contractor requires returned. For portions of the project involving electrical or signal components, provide one additional copy (7 copies in addition to the number the Contractor requires returned).
5. Revise and resubmit submittals as required. Identify all changes made since previous submittal.
6. A maximum of three (3) reviews will be conducted on any one submittal. Submittals requiring more than three (3) reviews will be considered inadequate and result in a recovery of review expenses from the Contractor.
7. The Contractor shall assume the risk for material or equipment which is fabricated or delivered prior to approval. No material or equipment shall be incorporated into the Work or included in periodic progress payments until approval has been obtained in the specified manner.

B. Transmittal Form and Numbering:

1. Transmit each submittal to the Engineer with a Transmittal Cover.
2. Sequentially number each transmittal form beginning with the number 1. Re-submittals shall use the original number with an alphabetic suffix (i.e., 2A for first re-submittal of Submittal 2 or 15C for third re-submittal of Submittal 15). Each submittal shall only contain one type of work, material, or equipment. Mixed submittals will not be accepted.
3. Identify time nature of submittal, either ROUTINE or CRITICAL.
4. Identify variations from requirements of Contract Documents and identify product or system limitations.
5. For submittal numbering of video tapes, see paragraph 1.10 Video.

C. Transmittal Cover:

1. Transmittal Cover, certifying that the items have been reviewed in detail and are correct and in accordance with Contract Documents, except as noted by any requested variance. A stamp may be used to print the information on the Transmittal Cover except for the Contractor's signature. Regardless of whether the transmittal cover is typed or stamped, the transmittal cover text shall be a minimum of fourteen (14) point.
2. As a minimum, Transmittal Cover information shall include:
 - i. Contractor's name.
 - ii. Job number.
 - iii. Submittal number.
 - iv. Certification statement that the Contractor has reviewed the submittal and it is in compliance with the Contract Documents.
 - v. Signature line for Contractor.
 - vi. Submittal type – routine or critical
3. The bottom half of the Transmittal Cover shall be kept blank.

1.03 SCHEDULE OF VALUES

- A. Submit a Schedule of Values in accordance with Section 01 29 70 - Schedule of Values.

1.04 CONSTRUCTION SCHEDULES

- A. Submit Construction Schedules as provided in Project Manual.

1.05 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

- A. Submit shop drawings in accordance with Section 01 33 20 - Shop Drawings, Product Data, and Samples.

1.06 OPERATIONS AND MAINTENANCE DATA

- A. Submit Operations and Maintenance data in accordance with Section 01 78 20 - Operations and Maintenance Data.

1.07 MANUFACTURER'S CERTIFICATES

- A. When required in Specification sections, submit manufacturers' certificate of compliance for review by Engineer.
- B. Transmittal Cover, as described in paragraph 1.02C, shall be placed on front page of the certification.
- C. Submit supporting reference data, affidavits, and certifications as appropriate.
- D. Certificates may be recent or previous test results on material or product, but must be acceptable to Engineer.

1.08 CONSTRUCTION PHOTOGRAPHS

- A. Submit Construction Photographs in accordance with Section 01 32 30 – Construction Photographs.

1.09 PROJECT RECORD DOCUMENTS

- A. Submit Project Record Documents in accordance with Section 01 78 10 - Project Record Documents.

1.10 VIDEO

- A. Submit television video tapes as required by the specification items.
- B. Transmittal forms for video tapes shall be numbered sequentially beginning with T01, T02, T03, etc.

1.11 DESIGN MIXES

- A. When specified in Specifications, submit design mixes for review.
- B. Transmittal Cover, as described in paragraph 1.02C, shall be placed on front page of each design mix.
- C. Mark each design mix to identify proportions, gradations, and additives for each class and type of design mix submitted. Include applicable test results on samples for each mix.
- D. Maintain a copy of approved design mixes at mixing plant.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION

- A. Submittals made as part of this project will become a vital portion of the project record and will be referenced by the Owner for the useful life of the project. All submittals shall be of high quality. To this end, the following requirements are made:
1. As much as possible, all catalog cuts and manufacturer's information shall be original.
 2. Copies, when required, shall be clean and entirely legible.
 3. Neither facsimiles nor copies of facsimiles are to be included as part of any submittal.
 4. Binders, if used, shall be rugged, lock-ring type. Spine of binders shall be clearly labeled with the information outlined in items 1.02 C.2.
- B. Reviewed submittals shall be returned to Contractor for distribution to subcontractors and other trades as required. As a minimum, submittals returned to the Contractor will be marked with review comments indicating findings of the review and giving instruction as to necessity of a re-submittal. The Engineer may, at his option, use a stamp for this purpose. Detailed correspondence covering the review may also accompany returned submittals.

END OF SECTION

TESTING LABORATORY SERVICES (BY CONTRACTOR)

PART 1 GENERAL

1.01 SECTION INCLUDES

- A. Testing laboratory services and Contractor responsibilities related to those services.

1.02 REFERENCES

- A. ASTM E 329 - Specification for Minimum Requirements for Agencies Engaged the Testing and/or Inspection of Materials Used in Construction.

1.03 SELECTION AND PAYMENT

- A. The Contractor shall employ and pay for the services of an independent testing laboratory, or laboratories, to perform product and material quality control, perform in-place quality control and verification identified in individual Specification sections.
- B. The cost of all testing required for this project shall be the responsibility of the Contractor. He shall coordinate all testing with the Owner's Representative. The cost of any retests required as a result of failing tests shall also be borne by the Contractor.

1.04 QUALIFICATION OF LABORATORY

- A. Meet laboratory requirements of ASTM E 329.
- B. Where a laboratory subcontracts any part of the testing services, such work shall be placed with a laboratory complying with the requirements of this Section.

1.05 LABORATORY REPORTS

- A. The testing laboratory shall provide and distribute copies of laboratory reports to the distribution list provided by the Engineer.
- B. One copy of each laboratory report distributed or faxed to the Contractor shall be kept at the site field office for the duration of the project.
- C. Before close of business on the working day following test completion and review, reports which indicate failing test results shall be transmitted immediately via fax from the testing laboratory to the material supplier, Contractor, Engineer and Owner's Representative.

1.06 LIMITS ON TESTING LABORATORY AUTHORITY

- A. Laboratory may not release, revoke, alter, or enlarge on requirements of Contract Documents.
- B. Laboratory may not approve or accept any portion of the Work.
- C. Laboratory may not assume any duties of the Contractor.
- D. Laboratory has no authority to stop the Work.

1.07 CONTRACTOR RESPONSIBILITIES

- A. Provide safe access to the Work and to manufacturer's facilities for the Engineer, Owner's Representative and for testing laboratory personnel.
- B. Provide to the testing laboratory a copy of the construction schedule and a copy of each update to the construction schedule.
- C. Notify the Owner's Representative and the testing laboratory during normal working hours of the 24 hours in advance of the expected time for operations requiring inspection and testing services.

- If the Contractor fails to make timely prior notification, then the Contractor shall not proceed with the operations requiring inspection and testing services.
- D. Request and monitor testing as required to provide timely results and to avoid delay to the Work. Provide samples to the laboratory in sufficient time to allow the required test to be performed in accordance with specified test methods before the intended use of the material.
 - E. Cooperate with laboratory personnel in collecting samples on site. Provide incidental labor and facilities for safe access to the Work to be tested to obtain and handle samples at the site and to facilitate tests and inspections including storage of test samples.
 - C. Employment of a testing laboratory by the Contractor shall not relieve Contractor of obligation to perform work in accordance with requirements of Contract Documents.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION

3.01 CONDUCTING TESTING

- A. Laboratory sampling and testing specified in individual Specification sections.

END OF SECTION

Section 02 00 00

PROJECT TECHNICAL SPECIFICATIONS

MISCELLANEOUS ASPHALT PAVEMENT REPAIR ON-CALL CONTRACT

Technical specifications for this project shall be governed generally by the North Central Texas Council of Governments (NCTCOG) - Public Works Construction Standards and Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges adopted by Texas Department of Transportation in 2024 (TxDOT), except as modified or amended by the construction contract documents. The NCTCOG and TxDOT Specifications are considered part of the Project Construction Contract Documents as if bound herein.

BID ITEM NO. 1: MOBILIZATION FOR CRACK SEALING

This item governs the movement of personnel, equipment, and supplies to and from the project site to begin work and will be in accordance with Item 01 29 10, "Mobilization". This item will be measured by the lump sum (LS) as work progresses. Payment for this item will be partial payments as depicted in Item 01 29 10 payment section and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work. Mobilization shall not exceed 5% of total contract value excluding any contingency allowance.

BID ITEM NO. 2: CRACK SEALING (0 TO 400 LF)

This item governs crack sealing of existing asphalt pavement. This involves cleaning existing joints and repairing cracks within asphalt pavement in accordance with TxDOT Item 712, "Cleaning and Sealing Joints and Cracks (Asphalt Concrete)". Traffic Control shall be subsidiary to this item. Measurement and payment for this item shall be by the contract unit price per linear foot (LF) and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work.

BID ITEM NO. 3: CRACK SEALING (MORE THAN 400 LF)

This item governs crack sealing of existing asphalt pavement. This involves cleaning existing joints and repairing cracks within asphalt pavement in accordance with TxDOT Item 712, "Cleaning and Sealing Joints and Cracks (Asphalt Concrete)". Traffic Control shall be subsidiary to this item. Measurement and payment for this item shall be by the contract unit price per linear foot (LF) and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work.

BID ITEM NO. 4: MOBILIZATION FOR ASPHALT SPOT REPAIR

This item governs the movement of personnel, equipment, and supplies to and from the project site to begin work and will be in accordance with Item 01 29 10, "Mobilization". This item will be measured by the lump sum (LS) as work progresses. Payment for this item will be partial payments as depicted in Item 01 29 10 payment section and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work. Mobilization shall not exceed 5% of total contract value excluding any contingency allowance.

BID ITEM NO. 5: ASPHALT SPOT REPAIR (0 to 100 SY)

This item governs the asphalt spot repair of asphalt pavements in the areas indicated and shall be in accordance with TxDOT Item 700, "Pothole Repair (Standard)(0"-5" Deep)". Saw-cut the sides of the repair area. Remove loose material from repair area. Grade 1-2 Type A 6" flex base repair is subsidiary to this item and shall be in accordance with TxDOT Item 247, "FL BS (CMP IN PLC)(TY A GR 1-2) (6)". Place and compact flex base. Apply tack coat to surface area. Place Type C HMA repair material to finish grade of roadway surface. Compact to full consolidation. Traffic Control shall be subsidiary to this item. Measurement and payment for this item shall be by the contract unit price bid per square yard (SY) and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work.

BID ITEM NO. 6: ASPHALT SPOT REPAIR (MORE THAN 100 SY)

This item governs the asphalt spot repair of asphalt pavements in the areas indicated and shall be in accordance with TxDOT Item 700, "Pothole Repair (Standard)(0"-5" Deep)". Saw-cut the sides of the repair area. Remove loose material from repair area. Grade 1-2 Type A 6" flex base repair is subsidiary to this item and shall be in accordance with TxDOT Item 247, "FL BS (CMP IN PLC)(TY A GR 1-2) (6)". Place and compact flex base. Apply tack coat to surface area. Place Type C HMA repair material to finish grade of roadway surface. Compact to full consolidation. Traffic Control shall be subsidiary to this item. Measurement and payment for this item shall be by the contract unit price bid per square yard (SY) and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work.

BID ITEM NO. 7: POTHOLE REPAIR

This item governs the asphalt spot repair of asphalt pavements in the areas indicated and shall be in accordance with TxDOT Item 700, "Pothole Repair (Standard)(0"-5" Deep)". Remove loose material from repair area. Apply tack coat to surface area. Place Type C HMA repair material to finish grade of roadway surface. Compact to full consolidation. Traffic Control shall be subsidiary to this item. Measurement and payment for this item shall be by the contract unit price bid per square yard (SY) and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work.

BID ITEM NO. 8: MOBILIZATION FOR ASPHALT OVERLAY

This item governs the movement of personnel, equipment, and supplies to and from the project site to begin work and will be in accordance with Item 01 29 10, "Mobilization". This item will be measured by the lump sum (LS) as work progresses. Payment for this item will be partial payments as depicted in Item 01 29 10 payment section and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work. Mobilization shall not exceed 5% of total contract value excluding any contingency allowance.

BID ITEM NO. 9: TYPE D ASPHALT OVERLAY (0 TO 200 TONS)

This item governs the installation of 2" HMA Type "D" (Method PG 64-22) and shall be in accordance with NCTCOG 302, "Asphalt Pavement". This item shall be measured by the ton (TON). Payment for this item shall be by the contract unit price and shall be full compensation for quarrying, furnishing all materials, heating, mixing, hauling, cleaning existing base course or pavement, placing asphaltic mixtures, rolling and finishing, and all labor, tools, equipment and incidentals necessary to complete the work, including the work and materials involved in the application of prime coat and tack coat.

BID ITEM NO. 10: TYPE D ASPHALT OVERLAY (MORE THAN 200 TONS)

This item governs the installation of 2" HMA Type "D" (Method PG 64-22) and shall be in accordance with NCTCOG 302, "Asphalt Pavement". This item shall be measured by the ton (TON). Payment for this item shall be by the contract unit price and shall be full compensation for quarrying, furnishing all materials, heating, mixing, hauling, cleaning existing base course or pavement, placing asphaltic mixtures, rolling and finishing, and all labor, tools, equipment and incidentals necessary to complete the work, including the work and materials involved in the application of prime coat and tack coat.

BID ITEM NO. 11: MOBILIZATION FOR DRAINAGE WORK

This item governs the movement of personnel, equipment, and supplies to and from the project site to begin work and will be in accordance with Item 01 29 10, "Mobilization". This item will be measured by the lump sum (LS) as work progresses. Payment for this item will be partial payments as depicted in Item 01 29 10 payment section and shall be full compensation for all materials, labor, tools, equipment, and incidentals necessary to complete the work. Mobilization shall not exceed 5% of total contract value excluding any contingency allowance.

BID ITEM NO. 12: DITCH GRADING

This item governs excavating and removing excess material from ditches and from around fixtures within the limits of the excavation or reshape by cleaning silt from the ditch and spreading on backslope as approved. Reshape ditches shown on the plans, or as directed. Dispose of excess material in conformance with applicable federal, state, and local regulations, or place on right of way, as directed. Maintain ditch drainage during cleaning and reshaping work. Measurement and payment for this item shall be by the contract unit price bid per linear foot (LF) and shall be full compensation for excavation, disposal of removed materials, reshaping, equipment, labor, tools, and incidentals.

BID ITEM NO. 13: REMOVE EXISTING CULVERT

This item governs the removal of reinforced concrete pipe and shall be in accordance with NCTCOG 203.1, "General Site Preparation". This item shall be measured by the linear foot (LF). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing all labor, equipment, tools, supplies and incidentals necessary to complete the work.

BID ITEM NO. 14: 18" RCP CULVERT

This item governs the furnishing, and installation of reinforced concrete pipes as indicated in the plans. The work shall be done to the lines, grades, and pipe size shown on the plan set and shall be in accordance with NCTCOG 501.6, "Reinforced Concrete Culvert, Storm Drain, Pipe and Box Section". Measurement and Payment shall be by the contract unit price bid per linear foot (LF) by size of pipe and shall be full compensation for materials, labor, equipment, tools, and incidentals necessary to complete the work.

BID ITEM NO. 15: 24" RCP CULVERT

This item governs the furnishing, and installation of reinforced concrete pipes as indicated in the plans. The work shall be done to the lines, grades, and pipe size shown on the plan set and shall be in accordance with NCTCOG 501.6, "Reinforced Concrete Culvert, Storm Drain, Pipe and Box Section". Measurement and Payment shall be by the contract unit price bid per linear foot (LF) by size of pipe and shall be full compensation for materials, labor, equipment, tools, and incidentals necessary to complete the work.

BID ITEM NO. 16: 36" RCP CULVERT

This item governs the furnishing, and installation of reinforced concrete pipes as indicated in the plans. The work shall be done to the lines, grades, and pipe size shown on the plan set and shall be in accordance with NCTCOG 501.6, "Reinforced Concrete Culvert, Storm Drain, Pipe and Box Section". Measurement and Payment shall be by the contract unit price bid per linear foot (LF) by size of pipe and shall be full compensation for materials, labor, equipment, tools, and incidentals necessary to complete the work.

BID ITEM NO. 17: SAFETY END TREATMENT FOR 18" RCP CULVERT

This item governs the installation of safety end treatment (TY II) (18 IN) (RCP) (4:1) (P) and shall be in accordance with NCTCOG 702, "Concrete Structures". This item shall be measured by each (EA). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing, transporting, and placing all concrete, pipe runners, steel reinforcement, mortar, castings for shaping of bed, jointing to new or existing structures, and all other materials, tools, equipment, labor, and incidentals necessary to perform the work prescribed above.

BID ITEM NO. 18: SAFETY END TREATMENT FOR 24" RCP CULVERT

This item governs the installation of safety end treatment (TY II) (24 IN) (RCP) (4:1) (P) and shall be in accordance with NCTCOG 702, "Concrete Structures". This item shall be measured by each (EA). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing, transporting, and placing all concrete, pipe runners, steel reinforcement, mortar, castings for shaping of bed, jointing to new or existing structures, and all other materials, tools, equipment, labor, and incidentals necessary to perform the work prescribed above.

BID ITEM NO. 19: SAFETY END TREATMENT FOR 36" RCP CULVERT

This item governs the installation of safety end treatment (TY II) (36 IN) (RCP) (4:1) (P) and shall be in accordance with NCTCOG 702, "Concrete Structures". This item shall be measured by each (EA). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing, transporting, and placing all concrete, pipe runners, steel reinforcement, mortar, castings for shaping of bed, jointing to new or existing structures, and all other materials, tools, equipment, labor, and incidentals necessary to perform the work prescribed above.

BID ITEM NO. 20: 12" ROCK RIPRAP

This item governs the installation of 12" rock riprap (18" thick) and shall be in accordance with NCTCOG 803.3, "Riprap". This item shall be measured by the cubic yard (CY). Payment for this item shall be by the contract unit price and shall be full compensation for preparing the subgrade, including excavation; for furnishing and placing all materials; for furnishing, placing, shaping and tamping backfill; for proper disposal of all surplus materials; and for all labor, filter fabric, tools, equipment, and incidentals necessary to complete the work, all in accordance with these specifications.

BID ITEM NO. 21: 4" REFLECTORIZED PAVEMENT MARKINGS

This item governs the installation of 4" solid yellow type II reflective pavement markings to the lines and locations shown on the plan set and in accordance with TxDOT Specification Item 666, "Reflective Pavement Markings". Measurement and payment for this item shall be by the contract unit price bid per linear foot (LF) and shall be total compensation for all materials, labor, equipment, tools, and incidentals necessary to complete the work.

BID ITEM NO. 22: BLOCK SOD (COMMON BERMUNDA)

This item governs the installation of block sodding and shall be in accordance with NCTCOG 204.5, "Sodding". Contractor is to verify existing grass species and provide corresponding grass sod at no separate pay. This item shall be measured by the square yard (SY). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing and placing all sod, for all rolling and tamping, for all water, for disposal of all surplus material, and for all material, labor, equipment, tools and incidentals necessary to complete the work, all in accordance with these specifications.

BID ITEM NO. 23: CLEANOUT CULVERTS (UP TO 27")

This item governs hydraulic cleaning, vacuum removal and disposal of debris in accordance with TXDOT Specification Item 764, "Pump Stations and Drainage System Cleaning". Debris is defined as dirt and other material not part of the drainage system. Furnish water that is free of industrial waste and other objectionable material. Remove and dispose of debris and wash water off the right of way in conformance with federal, state, and local regulations. Measurement and payment for this item provided under "Measurement" will be paid for at the contract unit price bid per linear foot (LF) for "Storm Sewer Cleaning" of the type and size specified and shall be full compensation for cleaning, removing, and disposing of debris and wash water, and equipment, labor, materials, tools, and incidentals.

BID ITEM NO. 24: CLEANOUT CULVERTS (30" AND LARGER)

This item governs hydraulic cleaning, vacuum removal and disposal of debris in accordance with TXDOT Specification Item 764, "Pump Stations and Drainage System Cleaning". Debris is defined as dirt and other material not part of the drainage system. Furnish water that is free of industrial waste and other objectionable material. Remove and dispose of debris and wash water off the right of way in conformance with federal, state, and local regulations. Measurement and payment for this item provided under "Measurement" will be paid for at the contract unit price bid per linear foot (LF) for "Storm Sewer Cleaning" of the type and size specified and shall be full compensation for cleaning, removing, and disposing of debris and wash water, and equipment, labor, materials, tools, and incidentals.

BID ITEM NO. 25: HYDROMULCH SEEDING (COMMON BERMUNDA) WITH CURLEX

This item governs the installation of hydromulch seeding with curlex erosion control blanket and shall be in accordance with NCTCOG 204.6, "Seeding Turfgrass" and NCTCOG 202.15 : "Erosion Control Blankets". Contractor is to verify existing grass species and provide corresponding grass sod at no separate pay. This item shall be measured by the square yard (SY). Payment for this item shall be by the contract unit price and shall be full compensation for furnishing and placing all sod, for all rolling and tamping, for all water, for disposal of all surplus material, and for all material, labor, equipment, tools and incidentals necessary to complete the work, all in accordance with these specifications.

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