

CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
CONSTRUCTION OF

RANCH HOUSE ROAD PHASE 2
(#PARKS-2023-0001)

Prepared For:



DRIPPING SPRINGS
Texas

511 Mercer Street
Dripping Springs, Texas 78620
(512) 858-4725

Prepared by:



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Austin, Texas 78748
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TBPE Registration # F-9266

April 2023



26 Apr 23

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All Standard Specifications for this Project are according to the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges 2014 Edition and the Hays County Specifications for Roadway Design, Paving and drainage Improvements 2019 Edition.

DIVISION A
BIDDING INFORMATION & REQUIREMENTS

NOTICE TO BIDDERS

Sealed bids will be received by the **City of Dripping Springs**, at its office at **511 Mercer St., City Hall Building, Dripping Springs, Texas**, until **2:00 p.m. on Thursday, May 18, 2023**, and then publicly opened, read, and taken under advisement at the same address. Bids will be for the furnishing of all necessary materials, machinery, equipment, labor, superintendence, and all other services and appurtenances required for the construction of the “Project” titled **RANCH HOUSE ROAD PHASE 2 (#PARKS-2023-0001)** and shall include acknowledgement of any addenda submitted, and all other documents included in said bid call. No bids may be withdrawn after the scheduled opening time. Any bids received after scheduled bid opening time will be returned unopened. Said bid shall be marked:

“RANCH HOUSE ROAD PHASE 2 (#PARKS-2023-0001)”

Bids must be submitted on City of Dripping Springs bid forms and must be accompanied by an acceptable bid security in the form of a cashier’s check or bid bond, payable to the City of Dripping Springs, Texas, equal to five percent (5%) of the total bid amount. Bids must be submitted in a sealed envelope plainly marked with the name of the project as shown above, and the name and address of the Bidder. When submitted in person or by courier, this envelope shall be placed in another envelope addressed to:

**City of Dripping Springs
511 Mercer St.
Dripping Springs, Texas, 78620**

2023 Ranch House Road Phase 2 (#PARKS-2023-0001) generally includes: construction of a new park access roadway consisting of 3,800 square yards of hot-mix asphaltic pavement, 3,749 square yards of 8” flexible base, 34 square yards of concrete sidewalk, minor culvert installation and channel grading, signs, and pavement markings.

Plans, Bid Forms, Specifications, and Instructions to Bidders may be obtained via email at cgilpin@cityofdrippingsprings.com and the City of Dripping Springs website <https://www.cityofdrippingsprings.com/requestforbids> beginning **April 27, 2023**.

The City reserves the right to reject any and all Bids and any nonconforming Bid and to award the Contract in a period of time not exceeding **60 days** from the Bid opening date. Bids shall remain firm for that period.

The successful Bidder must furnish a performance bond and payment bond on the forms provided, each in the amount of one hundred percent (100%) of the contract amount, from a surety company holding a permit from the State of Texas to act as surety.

Bidders are expected to inspect the site of the work and inform themselves regarding all local conditions.

An **Optional Pre-Bid conference** with prospective bidders will be held on **Thursday, May 4, 2023, at 1:00 p.m.** at the City of Dripping Springs, City Hall 511 Mercer St., Dripping Springs, Texas.

INSTRUCTIONS TO BIDDERS

1. NONRESPONSIVE BIDS: BIDS, AT A MINIMUM, WILL BE CONSIDERED NONRESPONSIVE IF FAILURE TO:
 - *Sign Bid*
 - Include *Bid Bond*: All bids shall be accompanied by a certified cashier's check upon a National or State bank in an amount not less than five percent (5%) of the total maximum bid price, payable without recourse to City, or a bid bond in the same amount from a reliable surety company, as a guarantee that the bidder will enter into a contract and execute performance and payment bonds within ten (10) days after notice of award of contract to him. Bid guarantees must be submitted in the same sealed envelope with the bid. Bids submitted without check or bid bonds will not be considered.
 - List *Unit Bid Price* for each item
 - List *Total Amount of Bid*
 - Include *Non-Collusion Statement*: Each bidder shall file a statement executed by, or on behalf of, the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation 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 submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.
 - Include *References*: The City REQUIRES bidder to supply with this Bid, a list of at least three (3) references where like services have been supplied by their firm. Include name of firm, address, telephone number and name of representative. This information is provided on the Information from Bidders forms within this bid package.
2. ALL INFORMATION REQUIRED BY THE BID FORM MUST BE FURNISHED OR THE BID WILL BE DEEMED NON-RESPONSIVE. WHERE THERE IS AN ERROR IN THE EXTENSION OF PRICE, THE UNIT PRICE SHALL GOVERN.
3. ONE (1) ORIGINAL OF ALL BIDS MUST BE SUBMITTED (THIS INCLUDES ALL DOCUMENTATION SUBMITTED WITH THE BID). BIDS MUST BE MARKED ORIGINAL. ONE (1) DIGITAL COPY OF ALL BIDS MUST BE SUBMITTED.
4. Should this solicitation fail to contain sufficient information in order for interested firms to obtain a clear understanding of the services required by the City, or should it appear that the instructions outlined in the solicitation are not clear or are contradictory, any interested firm may in writing request clarification from Chad Gilpin, P.E., no later than **5 p.m. on Tuesday May 9, 2023**. The interested firm shall email a copy of the written clarification request to Chad Gilpin, at cgilpin@cityofdrippingsprings.com and Written requests from interested firms and written responses by the City will be provided to all Applicants.
5. Prior to submitting any bid, bidders are required to read the plans, specifications, bid, contract and bond forms carefully; to inform themselves by their independent research, test and investigation of the difficulties to be encountered and judge for themselves of the

accessibility of the work and all attending circumstances affecting the cost of doing the work and the time required for its completion and obtain all information required to make an intelligent bid.

6. Each proposal and the proposal guaranty must be originals and must be sealed in an envelope plainly marked with the name of the Project, and the name and the address of the Bidder. When submitted, this envelope shall be placed in another envelope addressed as indicated in this Notice to Bidders.
7. Only bids and bid guaranties actually in the hands of the designated official at the time set in this Notice to Bidders shall be considered. Bids submitted by telephone, e-mail, or fax will not be considered.
8. In case of ambiguity or lack of clarity in the statement of prices in the bids, the City reserves the right to consider the most favorable analysis thereof, or to reject the bid. Unreasonable (or unbalanced) prices submitted in a bid may result in rejection of such bid or other bids.
9. Any quantities given in any portion of the contract documents, including the plans, are estimates only, and the actual amount of work required may differ somewhat from the estimates. The basis for the payment shall be the actual amount of work done and/or material furnished.
10. All bid securities will be returned to the respective bidders within twenty-five (25) days after bids are opened, except those which the City elects to hold until the successful bidder has executed the contract. Thereafter, all remaining securities, including security of the successful bidder, will be returned within sixty (60) days.
11. Performance and Payment Bonds: Section 262.032 and of the Texas Local Government Code and Section 2253.021 of the Texas Government Code governs the requirements for performance bonds and payment bonds for government entities making public work contracts. A performance bond is required if the contract is in excess of \$50,000 and is to be made for the full amount of the contract. A payment bond is required if the contract is in excess of \$25,000 and is to be made for the full amount of the contract. The bonds are to be executed within ten (10) days after receipt of written notification of award of contract prior to beginning work on the project and must be executed by a corporate surety or sureties in accordance with the Texas Insurance Code. In the event the bond exceeds \$100,000.00, the surety must also: (1) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or (2) have obtained reinsurance for any liability in excess of \$100,000.00 from a reinsurer that is authorized and admitted as an insurer in this state and is the holder of a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. In determining whether the surety or reinsurer holds a valid certificate of authority the City may rely on the list of companies holding certificates of authority as published in the Federal Register covering the date on which the bond is to be executed. If the public works contract is less than \$50,000 the performance bond will not be required as long as the contract provides that payment is not due until the work is completed and accepted by the City. The purpose of a performance

bond is for the protection of the government entity and is conditioned on the faithful performance of the work being done by the contractor in accordance with the plans, specifications and contract documents. The payment bond is for the protection of persons supplying labor and materials to the contractor to ensure payment.

12. Contract Times and Liquidated Damages - Bidders must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the City, and to fully complete the project within the specified time stated in the proposal. Bidders must agree to pay liquidated damages of as listed in *Section C-7* to the City for every day past the specified completion date stated in the proposal.
13. All of the items listed are to be on a "per unit" basis, stating a firm price per unit or unit quantity of each item. This price must be good from the date of Bid opening through the completion of the project. Bids which do not state a fixed price will not be considered. The City Council may award a contract for the period implied or expressly stated in the lowest and/or best Bid.
14. The City reserves the right to award the contract on the basis of the Base Bid and any combination of Alternative Bid items which appears most advantageous to the City, to reject any or all bids, to waive objections based on failure to comply with formalities and to allow the correction of obvious or patent errors. Unless all bids are rejected, Owner agrees to give Notice of Award of contract to the successful bidder within **sixty (60) days** from the date of the bid opening or for such longer period of time that the Bidder may agree to in writing upon request of Owner.
15. Bidders for the construction work must submit a satisfactory cashier's or certified check, or bidder's bond from a surety duly authorized and licensed in the State of Texas, payable without recourse to the order of the City, in an amount not less than five percent (5%) of the total bid based on the bid which check or bond shall be submitted as a guarantee that the bidder will enter into a contract and executed performance and payment bonds within ten (10) days after Notice of Award of contract is given to him for contracts in excess of \$25,000.00. Bids without the required check or bond will NOT be considered.
16. The successful bidder for the construction of the improvements must furnish a satisfactory Certificate of Insurance, and a satisfactory Performance Bond in the amount of 100% of the total contract price, and a satisfactory Payment Bond in such amount, both duly executed by such bidder as principal and by a corporate surety duly authorized so to act under the laws of the State of Texas. The successful bidder will be required to provide Performance and Payment Bonds issued by an insurance company which meets the minimum State requirements and is licensed in the State of Texas, and has a Best's Key Rating as follows:

| <u>Construction Contract</u> | <u>Rating</u> |
|------------------------------|---------------|
| 25,001 - 250,000 | None |
| 250,000 - 1,000,000 | B |
| Over - 1,000,000 | A |

All lump sum and unit prices must be stated in both script and figures.

17. Bidders are expected to inspect the site of the work and to inform themselves regarding all local conditions.

18. Sales Tax: The City is by statute, exempt from the State Sales Tax and Federal Excise Tax.

DIVISION B
BID PROPOSAL

Project: **RANCH HOUSE ROAD PHASE 2 (#PARKS-2023-0001)**

THIS BID IS SUBMITTED TO:

City of Dripping Springs
City Hall
511 Mercer St.
Dripping Springs, Texas 78620

FROM: _____
Contractor

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER agrees to commence Work under this Contract on a date to be specified in written "Notice to Proceed" of the OWNER and to reach Substantial Completion of the Work within **sixty (60) calendar days** thereafter. BIDDER further agrees to pay, as liquidated damages, the sum for each consecutive working day thereafter as provided in Division C, Section 7 thereafter that Substantial Completion has not been reached as provided in the Agreement.
3. BIDDER accepts all of the terms and conditions of the Advertisement, Notice to Bidders and Instructions to Bidders, including without limitation those dealing with the deposition of Bid Security. This Bid will remain subject to acceptance for **60 calendar days** after the day of Bid opening. BIDDER will sign and submit the Agreement with the Bonds and other documents required by the Bidding Requirements within **10 calendar days** after the date of OWNER's Notice of Award.
4. In submitting Bid, BIDDER represents, as more fully set forth in the Agreement, that:

A. BIDDER has examined copies of all the Bidding Documents and of the following Addenda (receipt of all which is hereby acknowledged):

| | | | |
|---------------|-------|--------|-------|
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |

B. BIDDER has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.

- D. BIDDER has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, and studies that pertain to the subsurface or physical conditions at the site or otherwise may affect the cost, progress, performance, or furnishing of the Work as BIDDER considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, or similar information or data are or will be required by BIDDER for such purposes.
- E. BIDDER has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, or similar information or data in respect of said Underground Facilities are or will be required by BIDDER, of the OWNER and/or the ENGINEER, in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
- F. BIDDER has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- G. BIDDER has given ENGINEER written notice of all conflicts, errors, or discrepancies that it has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to BIDDER.
- H. This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm, or corporation, and is not submitted in conformity with any Agreement or rules of any group, association, organization, or corporation; BIDDER has not directly or indirectly induced or solicited any other BIDDER to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm, or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other BIDDER or over OWNER.
5. The following documents (signed and completed) are attached to and made a condition of this Bid:
- A. Required Bid Security in the form of a Bid Bond, Cashier's Check, or Certified Check.
 - B. Non-Collusion Affidavit
 - C. Conflict of Interest Statement
 - D. Information From Bidders

RESPECTFULLY SUBMITTED on _____, 2023.

By: _____
(Authorized Signature)

Bidder, if the Bidder is an individual
Partner, if the Bidder is a Partnership
Officer, if the Bidder is a Corporation

(Typed or Printed Name and Title)

Bidder: _____
(Name of Company)

Business Address: _____

Telephone No: _____

IF Bidder is a Corporation:

ATTEST

(Signature of Witness)

(Corporate Seal)

(State of Incorporation)

IF Bidder is a Joint Venture:

Each joint venture must sign a separate copy of this page. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.

BIDDER will complete the Work for the following prices:

BASE BID

| Bid Item | TxDOT Spec | Description of Item with Unit Bid Price in Written Words | Unit | Approx Qty | Unit Amount | Total Price |
|----------|------------|---|------|------------|-------------|-------------|
| 1 | 0100 6001 | PREPARING ROW for _____ dollars and _____ cents PER ACRE | AC | 1.28 | \$ _____ | \$ _____ |
| 2 | 0104 6021 | REMOVING CONC (CURB) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 8 | \$ _____ | \$ _____ |
| 3 | 0110 6001 | EXCAVATION (ROADWAY) for _____ dollars and _____ cents PER CUBIC YARD | CY | 894 | \$ _____ | \$ _____ |
| 4 | 0110 6002 | EXCAVATION (CHANNEL) for _____ dollars and _____ cents PER CUBIC YARD | CY | 54 | \$ _____ | \$ _____ |
| 5 | 0164 6003 | BROADCAST SEED (PERM)(RURAL)(CLAY) for _____ dollars and _____ cents PER SQUARE YARD | SY | 1,407 | \$ _____ | \$ _____ |
| 6 | 0247 6382 | FL BS (CMP IN PLC)(TY A GR 5)(8") for _____ dollars and _____ cents PER SQUARE YARD | SY | 2,619 | \$ _____ | \$ _____ |
| 7 | 0310 6001 | PRIME COAT (MULTI OPTION) for _____ dollars and _____ cents PER GALLON | GAL | 534 | \$ _____ | \$ _____ |
| 8 | 0432 6031 | RIPRAP (STONE PROTECTION)(12 IN) for _____ dollars and _____ cents PER CUBIC YARD | CY | 40 | \$ _____ | \$ _____ |
| 9 | 0464 6017 | RC PIPE (CL IV)(18 IN) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 56 | \$ _____ | \$ _____ |
| 10 | 0466 6003 | HEADWALL (CH-FW-0)(DIA=18 IN) for _____ dollars and _____ cents PER EACH | EA | 1 | \$ _____ | \$ _____ |
| 11 | 0467 6356 | SET (TY II)(18 IN)(RCP)(3:1)(C) for _____ dollars and _____ cents PER EACH | EA | 2 | \$ _____ | \$ _____ |
| 12 | 0500 6001 | MOBILIZATION for _____ dollars and _____ cents PER LUMP SUM | LS | 1 | \$ _____ | \$ _____ |
| 13 | 0502 6001 | BARRICADES, SIGNS, AND TRAFFIC HANDLING for _____ dollars and _____ cents PER MONTH | MO | 2 | \$ _____ | \$ _____ |

| Bid Item | TxDOT Spec | Description of Item with Unit Bid Price in Written Words | Unit | Approx Qty | Unit Amount | Total Price |
|----------|------------|---|------|------------|-------------|-------------|
| 14 | 0506 6003 | ROCK FILTER DAMS (INSTALL) (TY 3) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 30 | \$ _____ | \$ _____ |
| 15 | 0506 6011 | ROCK FILTER DAMS (REMOVE) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 30 | \$ _____ | \$ _____ |
| 16 | 0506 6038 | TEMP SEDMT CONT FENCE (INSTALL) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 944 | \$ _____ | \$ _____ |
| 17 | 0506 6039 | TEMP SEDMT CONT FENCE (REMOVE) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 944 | \$ _____ | \$ _____ |
| 18 | 0506 6041 | BIODEG EROSN CONT LOGS (INSTL)(12") for _____ dollars and _____ cents PER LINEAR FOOT | LF | 50 | \$ _____ | \$ _____ |
| 19 | 0506 6043 | BIODEG EROSN CONT LOGS (REMOVE) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 50 | \$ _____ | \$ _____ |
| 20 | 0529 6001 | CONCRETE CURB for _____ dollars and _____ cents PER LINEAR FOOT | LF | 8 | \$ _____ | \$ _____ |
| 21 | 0529 6032 | CONCRETE GUTTER (MODIFIED) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 541 | \$ _____ | \$ _____ |
| 22 | 0531 6001 | CONC SIDEWALKS (4") for _____ dollars and _____ cents PER SQUARE YARDS | SY | 34 | \$ _____ | \$ _____ |
| 23 | 0644 6060 | IN SM RD SN SUP&AM TYTWT(1)WS(P) for _____ dollars and _____ cents PER EACH | EA | 2 | \$ _____ | \$ _____ |
| 24 | 0666 6170 | REFL PAV MRK TY II (W)4"(SLD) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 325 | \$ _____ | \$ _____ |
| 25 | 0666 6182 | REFL PAV MRK TY II (W)24"(SLD) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 42 | \$ _____ | \$ _____ |
| 26 | 0666 6197 | REFL PAV MRK TY II (W)(SYMBOL) for _____ dollars and _____ cents PER EACH | EA | 2 | \$ _____ | \$ _____ |
| 27 | 1004 6001 | TREE PROTECTION for _____ dollars and _____ cents PER EACH | EA | 20 | \$ _____ | \$ _____ |
| 28 | 3076 6003 | D-GR HMA TY-B PG64-22 (EXEMPT)(8 IN) for _____ dollars and _____ cents PER SQUARE YARD | SY | 39 | \$ _____ | \$ _____ |

| Bid Item | TxDOT Spec | Description of Item with Unit Bid Price in Written Words | Unit | Approx Qty | Unit Amount | Total Price |
|----------|------------|---|------|------------|-------------|-------------|
| 29 | 3076 6081 | D-GR HMA TY-D PG70-22 (EXEMPT)(2 IN) for _____ dollars and _____ cents PER SQUARE YARD | SY | 2,670 | \$ _____ | \$ _____ |
| 30 | 5057 6001 | PRECAST CONCRETE WHEEL STOPS for _____ dollars and _____ cents PER EACH | EA | 2 | \$ _____ | \$ _____ |

| | | | | | | |
|--|--|--|--|--|----------|----------|
| | | TOTAL BASE BID (BID ITEMS 1-30) for _____ dollars and _____ cents | | | \$ _____ | \$ _____ |
|--|--|--|--|--|----------|----------|

ADD ALTERNATE #1

| Bid Item | TxDOT Spec | Description of Item with Unit Bid Price in Written Words | Unit | Approx Qty | Unit Amount | Total Price |
|----------|------------|--|------|------------|-------------|-------------|
| A1-1 | 0100 6001 | PREPARING ROW for _____ dollars and _____ cents PER ACRE | AC | 0.43 | \$ _____ | \$ _____ |
| A1-2 | 0104 6021 | REMOVING CONC (CURB) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 8 | \$ _____ | \$ _____ |
| A1-3 | 0110 6001 | EXCAVATION (ROADWAY) for _____ dollars and _____ cents PER CUBIC YARD | CY | 315 | \$ _____ | \$ _____ |
| A1-4 | 0164 6003 | BROADCAST SEED (PERM)(RURAL)(CLAY) for _____ dollars and _____ cents PER SQUARE YARD | SY | 444 | \$ _____ | \$ _____ |
| A1-5 | 0247 6382 | FL BS (CMP IN PLC)(TY A GR 5)(8") for _____ dollars and _____ cents PER SQUARE YARD | SY | 1,134 | \$ _____ | \$ _____ |
| A1-6 | 0310 6001 | PRIME COAT (MULTI OPTION) for _____ dollars and _____ cents PER GALLON | GAL | 227 | \$ _____ | \$ _____ |
| A1-7 | 0502 6001 | BARRICADES, SIGNS AND TRAFFIC HANDLING for _____ dollars and _____ cents PER MONTH | MO | 1 | \$ _____ | \$ _____ |
| A1-8 | 0506 6038 | TEMP SEDMT CONT FENCE (INSTALL) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 523 | \$ _____ | \$ _____ |
| A1-9 | 0506 6039 | TEMP SEDMT CONT FENCE (REMOVE) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 523 | \$ _____ | \$ _____ |
| A1-10 | 0506 6041 | BIODEG EROSN CONT LOGS (INSTL)(12") for _____ dollars and _____ cents PER LINEAR FOOT | LF | 35 | \$ _____ | \$ _____ |

| Bid Item | TxDOT Spec | Description of Item with Unit Bid Price in Written Words | Unit | Approx Qty | Unit Amount | Total Price |
|----------|------------|---|------|------------|-------------|-------------|
| A1-11 | 0506 6043 | BIODEG EROSN CONT LOGS (REMOVE) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 35 | \$ _____ | \$ _____ |
| A1-12 | 0529 6001 | CONCRETE CURB for _____ dollars and _____ cents PER LINEAR FOOT | LF | 8 | \$ _____ | \$ _____ |
| A1-13 | 0529 6032 | CONCRETE GUTTER (MODIFIED) for _____ dollars and _____ cents PER LINEAR FOOT | LF | 380 | \$ _____ | \$ _____ |
| A1-14 | 1004 6001 | TREE PROTECTION for _____ dollars and _____ cents PER EACH | EA | 2 | \$ _____ | \$ _____ |
| A1-15 | 3076 6081 | D-GR HMA TY-D PG70-22 (EXEMPT)(2 IN) for _____ dollars and _____ cents PER SQUARE YARD | SY | 1,131 | \$ _____ | \$ _____ |

| | | | | | | |
|--|--|--|--|--|----------|----------|
| | | TOTAL ADD ALT 1 (BID ITEMS A1-1 TO A1-15) for _____ dollars and _____ cents | | | \$ _____ | \$ _____ |
|--|--|--|--|--|----------|----------|

| BID SUMMARY AND TOTALS | |
|---|-----------------|
| BASE BID SUBTOTAL | \$ _____ |
| ADD ALTERNATE #1 SUBTOTAL | \$ _____ |
| TOTAL AMOUNT BID (BASE BID + ADD ALT1) | \$ _____ |

**NON-COLUSION AFFIDAVIT
PRIME BIDDER**

STATE OF TEXAS }

COUNTY OF HAYS }

being first duly sworn, deposes and says

That he is _____
(a Partner or Officer of the firm of, etc.)

the party making the foregoing proposal or bid, that such proposal or bid is genuine and not collusive or sham; that said Bidder has not colluded, conspired, connived or agreed, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the bid price or affiant or of any other Bidder, or to secure any advantage against the City of Dripping Springs or any person interested in the proposed Contract; and that all statements in said proposal or bid are true.

Signature of

Bidder, if the Bidder is an individual
Partner, if the Bidder is a Partnership
Officer, if the Bidder is a Corporation

Subscribed and sworn before me this _____ day of _____, 2023.

Notary Public

My Commission expires:

INFORMATION FROM BIDDERS

THE FOLLOWING INFORMATION MUST BE COMPLETED AND SUBMITTED WITH THE BID PROPOSAL. Failure to provide the information will cause the Bid to be non-responsive and may cause its rejection.

Statement of Qualifications: Provide information for 3 similar projects completed by Bidder within last 5 years.

1. Name of Project: _____
Project Owner: _____
Owner Contact Person & Phone No.: _____
Value of Contract: _____
Date Completed: _____
Bidder's Project Manager: _____
Bidder's Project Superintendent: _____

2. Name of Project: _____
Project Owner: _____
Owner Contact Person & Phone No.: _____
Value of Contract: _____
Date Completed: _____
Bidder's Project Manager: _____
Bidder's Project Superintendent: _____

3. Name of Project: _____
Project Owner: _____
Owner Contact Person & Phone No.: _____
Value of Contract: _____
Date Completed: _____
Bidder's Project Manager: _____
Bidder's Project Superintendent: _____

Experience Data: Provide the name and attach experience records of the Project Manager and Superintendent you are proposing for this Project.

1. Name of Proposed Project Manager: _____
2. Name of Proposed Project Superintendent: _____

Subcontractors: Submit a list of proposed Subcontractors who will perform the following work as well as list the proposed subcontractors who will perform work having a value of more than ten (10) percent of the total contract amount.

1. Traffic Control _____
2. Pavement (Flexible Pavement Repair, Milling, HMAC) _____
3. Pavement Markings and Signs _____

Other Subcontractors Exceeding 10% of total contract amount:

4. _____
5. _____
6. _____

Financial Status: A confidential financial statement will be submitted by the apparent successful low Bidder only if the City deems it necessary.

Data on Equipment to be used on the Work: List the equipment you own that is available for the proposed work.

| Description, Size, Capacity, Etc. | Quantity | Condition | Years in Service | Present Location |
|-----------------------------------|----------|-----------|------------------|------------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

BID BOND
(EXAMPLE TEMPLATE)

KNOW ALL MEN BY THESE PRESENT, that we the undersigned _____ as Principal, and _____ as Surety, are hereby held and firmly bound unto the City of Dripping Springs, Texas as Owner in the penal sum of _____; for payments of which, well and truly to be made, we hereby jointly and severally bid ourselves, our heirs, executors, administrators, successors, and assigns. Signed this ____ day of _____, 2023.

The condition of the above obligation is such that whereas the Principal has submitted to the City of Dripping Springs, Texas a certain Bid, attached hereto and hereby made a part hereof to enter into a Contract in writing for the RANCH HOUSE ROAD PHASE 2 PROJECT.

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) I said Bid shall be accepted and the Principal shall execute and deliver a Contract I the Form of Contract attached hereto (properly complying in accordance with said Bid) and shall furnish a bond for his faithful performance of said Contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respect perform the Agreement created by the acceptance of said Bid,

Then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety, and its bonds shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth here.

Principal (Seal)

Surety (Seal)

By: _____
Signature

By: _____
Signature

Print Name

Print Name

CITY OF DRIPPING SPRINGS CONFLICT OF INTEREST STATEMENT

I hereby acknowledge that I am aware of the Local Government Code of the State of Texas, Section 176.006 regarding conflicts of interest and will abide by all provisions as required by Texas law.

Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Contractor a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Contractor understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Contractor with respect to the proper completion of the TEC Form 1295.

| |
|--|
| Printed name of person submitting form: |
| Name of Company: |
| Date: |
| Signature of person submitting form: |

NOTARIZED:

| |
|--|
| Sworn and subscribed before me, |
| by _____ |
| on _____ (date) |

DIVISION C
CONTRACT, BOND & INSURANCE FROMS &
REQUIREMENTS

CONSTRUCTION CONTRACT TEMPLATE

THIS CONSTRUCTION CONTRACT (hereinafter the “Contract”) made this the _____ day of _____, 2023 (“Effective Date”), by and between _____ (a Texas limited liability company), whose address is _____ (hereinafter called the “Contractor”), and the CITY OF DRIPPING SPRINGS (hereinafter called the “City”) acting herein by its Mayor, Bill Foulds, Jr. hereunto duly authorized.

WITNESSETH, that the Contractor and the City for the considerations stated herein mutually agree as follows:

ARTICLE 1. STATEMENT OF WORK

The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, tools, equipment and services, including utility and transportation services that are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable. Furthermore, Contractor shall perform and complete all work required for the construction of the Improvements embraced in the Project; namely, 2023 Parks Project and required supplemental work, all in strict accordance with the contract documents including all addenda thereto (hereinafter referred to as the “Work”). All Work shall be performed in a good and workmanlike manner according to industry standards. The parties agree that the Statement of Work and the addenda to this Contract is a description of Contractor’s obligations and responsibilities and is deemed to include preliminary considerations and prerequisites.

ARTICLE 2. CONTRACTOR’S DUTIES

2.1 Construction. Contractor shall construct all Improvements embraced in the **Project** as described in the bid documents.

2.2 Labor and Materials. The Contractor shall furnish all labor, materials, mechanical workmanship, transportation, equipment, and services necessary for the completion of the work described in this Contract and in accordance with the plan (if any) and other contract documents to conduct the construction required under this Contract in an efficient manner.

2.3 Completion of Work. Work, in accordance with the Contract dated February ____, 2023, **Project**, shall commence after the date the Notice to Proceed is received by the Contractor following the preconstruction meeting, and Contractor shall complete the Work within **sixty (60) consecutive calendar days** after receiving the Notice to Proceed. The City shall provide Contractor with written acceptance of the Work upon completion. Payment of monies due hereunder does not constitute acceptance of the Work.

2.4 Invoicing. Contractor shall prepare an invoice for work completed and submit the involved to the City for payment. The proposal for the work is set forth in the bid documents. Incomplete or inaccurate invoices shall be returned other Contractor for correction and re-submittal.

2.5 Insurance. Contractor shall assume all risk and liability for accidents and damages that may occur to persons or property during the performance of the work under this Contract. Contractor shall not be covered by the City's liability carrier. Contractor shall, at its sole expense, acquire and maintain during the full term of this Contract insurance coverage with insurers licensed to do business in the State of Texas and acceptable to the City. The Contractor shall comply with all insurance requirements contained in *Article 5 of General Conditions and Division C*, including maintaining worker's compensation and liability coverage in stated amounts and providing proof of such coverage. Contractor shall give the City thirty (30) days written notice of any material change or cancellation of coverage.

2.6 Change Orders. Change orders from the City or requested by the Contractor shall be controlled by *Articles 10, 11 and 12 of the General Conditions*. The City shall have the continuing right to inspect and, upon reasonable cause, reject any Work provided by Contractor under this Contract. Contractor will at Contractor's cost promptly re-perform any Work to the extent necessary to correct any rejected Work, to correct any breach or to make the Work conform to the provisions of this Contract and any applicable Statement of Work (collectively, "Corrective Work"). The City's failure to inspect or to discover defective Work will not relieve Contractor from any liability or responsibility. Payment of any funds by the City to Contractor will not constitute a waiver or acceptance of any defective Work.

2.7 Warranty and Maintenance Bond. The Contractor agrees to remedy all defects appearing in the work or developing in the materials furnished and the workmanship performed under this Contract during the warranty period of **two (2) years** after the date of final acceptance of the work by the City for the full amount of the work. Contractor further agrees to indemnify and hold the City harmless from any costs encountered in remedying such defects. Contractor shall agree to supply a **two (2) year** maintenance bond to the City at the time of acceptance of the work for the full amount of the work. Furthermore, Contractor shall:

- (a) Timely perform the Work with due diligence, in a good, workmanlike and safe manner consistent with that high degree of skill, competence and professional care of generally accepted industry standards and in compliance with City policies and the provisions of this Contract and any applicable Statement of Work. Contractor will perform the Work within the period of time set by the City in each Statement of Work.
- (b) Ensure that all employees of Contractor and Contractor Group maintain a current license while performing any Work for which a license is required under any applicable regional, state or federal law or regulatory agency.
- (c) Use only materials, goods, tools, machinery and equipment of sufficient quality for their purposes, free from defect and meeting all standards and specifications customary for the Work being performed as well as standards and specifications provided by City, if any.

2.8 Mandatory Disclosures. Texas law requires that vendors make certain disclosures. Prior to the effective date of this Contract, the Contractor has submitted to the City a copy of the Conflict-of-Interest Questionnaire form (CIQ Form) approved by the Texas Ethics Commission (Texas Local Government Code Chapter 176) and the Affidavit regarding Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). Contractor agrees by

approving this Contract that it is in compliance with the Prohibition on Contracts with Companies Boycotting Israel (Texas Government Code Chapter 2270). (Additional Disclosures may be required based on state and federal law and this will be included in the Contract.)

ARTICLE 3. THE CONTRACT PRICE

The City will pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in this Contract and Addenda, the sum of \$ _____ . Payments will be made pursuant to this Contract and its Addenda. Contractor shall document and submit to City all time, mileage, travel, equipment, rentals, supplies, materials and other charges incurred for which City has agreed to reimburse Contractor. Contractor shall maintain correct records in connection with the Work and all transactions related to this Contract (including without limitation, complete and accurate records of all of Contractor's charges and expenses and documentation of items that are chargeable to City under this Contract) and shall retain all records for two years following the calendar year in which the final invoice for the Work was sent to City. City shall have the right, at City's expense, upon reasonable advance notice at the offices of Contractor and during Contractor's normal business hours, to inspect, copy, and audit all records (except Contractor's trade secrets or proprietary information) of Contractor in connection with the Work performed by or on behalf of Contractor for City's account and all payments made to or by Contractor. If the audit reveals a discrepancy between the amount or value of materials or services billed to City and that which is evidenced by Contractor's books and records, City shall have the right to adjust its account with Contractor, which adjustment may necessitate a refund by Contractor of funds disbursed to Contractor.

ARTICLE 4. THE CONTRACT

The executed contract documents shall consist of the following components:

| | |
|------------------|------------------------------------|
| Exhibit A | General Conditions |
| Exhibit B | Plans |
| Exhibit C | Specifications |
| Exhibit D | Instructions and Notice to Bidders |
| Exhibit E | Performance and Payment Bond |
| Exhibit F | Certificate of Insurance |
| Exhibit G | Wage Rates |
| Exhibit H | Addenda |
| Exhibit I | Contractor's Signed Bid Form |
| Exhibit J | Conflict of Interest Questionnaire |

This Contract, together with other documents enumerated in this ARTICLE 4, which said other documents are as fully a part of this Contract as if hereto attached or herein repeated, forms the Contract between the parties hereto. If there is any inconsistency between the terms of this Contract and other documents listed herein Article 4, the terms of this Contract shall control. The City objects to and rejects any terms contained within Contractor's statements of work, purchase orders, work orders, invoices, bids, proposals, delivery tickets, or other document issued by Contractor that modify, alter, amend, or supplement the terms of this Contract, purport to affect the risk

allocation scheme in this Contract, or add additional requirements to this Contract or any Statement of Work. The Parties agree that no changes to the risk allocation scheme set forth in this Contract may be made unless an amendment to this Contract is executed by authorized representatives of both Parties that specifically identifies this Contract and the specific terms or provisions that are amended

ARTICLE 5. TERMINATION AND DELAYS

Terminations and delays are governed by *Articles 10, 12 and 15 of General Conditions*.

ARTICLE 6. MISCELLANEOUS

6. Non-Assignability. Neither the City nor the Contractor shall assign any interest in this Contract without the prior written consent of the other party outside of what is allowed in this Contract, or its the bid documents described above.

6.2 Amendment. This Contract and the bid documents described above embody the entire Contract between the parties and may not be modified unless in writing, executed by all parties.

6.3 Independent Contractor. Contractor is an independent contractor under this Contract. Services provided by Contractor pursuant to this Contract shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of the City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

6.4 Notice. Any notice and/or statement required or permitted by this Contract, shall be deemed to be given and delivered when deposited in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate Party at the following addresses, or such other address as amended by providing notice to the other party at the addresses below:

If to the City:

City of Dripping Springs
Attn: City Administrator
PO Box 384
Dripping Springs, TX 78620

If to the Contractor:

6.5 Force Majeure. No party to this Contract shall be deemed in violation if it is prevented from timely performing any of its obligations by reason of labor disputes, acts of God, acts of the public enemy, acts of superior governmental authority, or other circumstances for which the party is not responsible, or which is not in its control.

6.6 Law & Venue. This Contract shall be governed by the laws of the State of Texas. The venue for any disputes arising under this Contract shall be the district court of Hays County, Texas.

6.7 Severability. If the final judgment of a court of competent jurisdiction invalidates any part of this Contract, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Contract.

6.8 Entire Contract. This Contract and the bid documents described above in Article 4 herein constitutes the entire Contract of the Parties and supersedes any and all prior understandings, or oral or written Contracts, between the Parties on this subject matter.

6.09 Termination and Delays. Terminations and delays are governed by *Articles 10, 12 and 15 of Section D-1 of the General Conditions.*

6.10 Indemnification. Contractor hereby releases, and shall cause its insurers, its subcontractors, to release the City and its agents and assigns from any and all claims or causes of action which Contractor, its insurers, and/or its subcontractors might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance maintained and/or required to be maintained by Contractor and/or its subcontractors pursuant to this contract, even if such claims of causes of action arise from or are attributed to the sole or concurrent negligence of any City agent or from strict liability.

6.11 Liquidated Damages. Failure on the part of the Contractor to sustain the required maintenance or perform under this Contract may result in liquidated damages. The City may assess liquidated damages as listed in Section C-7 for incomplete work until all work is completed.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in four (4) original copies on the day and year first above written.

CITY OF DRIPPING SPRINGS:

Bill Foulds, Jr., Mayor

ATTEST:

Andrea Cunningham, City Secretary

CONTRACTOR:

Printed Name and Title

ATTEST:

Signature

Printed Name and Title

CORPORATE CERTIFICATIONS:

I, _____, certify that I am the Secretary / Treasurer of the corporation named as Contractor herein; that _____ who signed this Contract on behalf of the Contractor, was then _____ of said corporation; that said Contract was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

[CORPORATE SEAL]

Corporate Secretary

Printed Name

Date

PERFORMANCE BOND EXAMPLE TEMPLATE

(As required by Chapter 2253, Texas Government Code)

THE STATE OF {}
COUNTY OF {}

KNOW ALL MEN BY THESE PRESENTS: That we

(1) _____, a

(2) _____ of hereafter called Principal and

(3) _____

of _____, State of _____, hereinafter called the Surety, are held and firmly

bound unto (4) the City of Dripping Springs, Texas hereinafter called Owner, in the penal sum of

_____ (\$ _____) Dollars

in lawful money of the United States, to be paid in (5) HAYS 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 the these presents.

THE CONDITIONS OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with (6) the City of Dripping Springs the Owner, dated the ____ day of _____ **2023**, a copy of which is hereto attached and made a part hereof for the construction of :

(hereinafter called the "Work").

Date of Bond must not be prior to Date of Contract.

These notes refer to the numbers in body of Contract above:

- (1) Correct name of Contractor
- (2) A Corporation, or Partnership or an Individual, as case may be
- (3) Correct name of Surety
- (4) Correct name of Owner
- (5) County and State
- (6) Owner

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform the work in accordance with the Plans, Specifications and Contract Documents during the original term thereof, and any extensions thereof which may be granted by the Owner with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expenses which the Owner may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, venue shall lie in Hays County, State of Texas, and that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed there under or the Specifications accompanying the same, shall in any wise 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 in the work or to the Specifications.

IN WITNESS WHEREOF, this Instrument is executed in six counterparts, each one of which shall be deemed an original, this the _____ day of _____, **2023**.

ATTEST:

(Principal) Secretary

(SEAL)

Witness as to Principal

Address (State and Zip Code)

PRINCIPAL

By: _____

Address (State & Zip Code)

Telephone Number

ATTEST:

(Surety) Secretary

(SEAL)

Witness as to Surety

SURETY

By: _____

Address (State and Zip Code)

Telephone No. (Area Code)

PAYMENT BOND EXAMPLE TEMPLATE

(As required by Chapter 2253, Texas Government Code)

THE STATE OF {}
COUNTY OF {}

KNOW ALL MEN BY THESE PRESENTS: That we

(1) _____, a

(2) _____ of hereinafter called Principal and

(3) _____

of _____, State of _____, hereinafter called the Surety,
are held and firmly bound unto (4) the City of Dripping Springs, Texas hereinafter called Owner, and
unto all Persons, Firms, and Corporation who may furnish materials for, or perform labor upon the
building or improvements hereinafter referred to in the penal sum of

_____ (\$ _____) Dollars in
lawful money of the United States, to be paid in (5) HAYS 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 the these presents.

THE CONDITIONS OF THIS OBLIGATION is such that whereas, the Principal entered into a certain
contract with (6) the City of Dripping Springs The Owner, dated the ___ day of _____, 2023, a
copy of which is hereto attached and made a part hereof for the construction of

(hereinafter called the "Work").

Date of Bond must not be prior to Date of Contract.

These notes refer to the numbers in body of Contract above:

- (1) Correct name of Contractor
- (2) A Corporation, or Partnership or an Individual, as case may be
- (3) Correct name of Surety
- (4) Correct name of Owner
- (5) County and State
- (6) Owner

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform the work in accordance with
the Plans, Specifications and Contract Documents during the original term thereof, and any extensions
thereof which may be granted by the Owner with or without notice to the Surety, and if he shall satisfy all
claims and demands incurred under such Contract, then this obligation shall be null and void, otherwise it
shall remain in full force and effect.

This Bond is made and entered into solely for the prosecution of all claimants supplying labor and material in the prosecution of the work provided for in said Contract, and all such claimants shall have a direct right of action under the Bond as provided in Section 2253.073, Texas Government Code.

PROVIDED FURTHER, that if any legal action be filed upon this Bond, venue shall lie in Hays County, State of Texas, and that no change, extension of time, 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 any wise 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 in the work or to the Specifications.

PROVIDED FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in six counterparts, each one of which shall be deemed an original, this the _____ day of _____ 2023.

ATTEST:

(Principal) Secretary

PRINCIPAL

By: _____

(SEAL)

Address (State & Zip Code)

Witness as to Principal

Telephone Number

Address (State and Zip Code)

ATTEST:

(Surety) Secretary

SURETY

By: _____

(SEAL)

Address (State and Zip Code)

Witness as to Surety

Telephone No. (Area Code)

Address (State and Zip Code)

NOTE: If Contractor is Partnership, all Partners should execute Bond.

PERFORMANCE – PAYMENT BOND FORM
M-24, 25, Attach. Sa

(SEAL)

Individual Principal

Address (State and Zip Code)

Business – Address

Telephone Number (Area Code)

Telephone Number (Area Code)

ATTEST:

Corporate Principal

(State and Zip Code)

Business Address Name

Telephone Number (Area Code)

Address (State and Zip Code)

(Affix Corporate Seal)

ATTEST:

By: _____

Address (State and Zip Code)

Corporate

Surety

Business Address

(Affix Corporate Seal)

Telephone

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as Principal in the within Bond; that _____, who signed the said Bond on behalf of the Principal was then _____, of said Corporation; that I know his signature thereof is genuine; and that said Bond was duly signed, sealed, and attested for and on behalf of said Corporation by authority of its governing body.

Title

Date: _____

(Affix Corporate Seal)

Telephone No.: _____

The rate of premium on this Bond is _____ per thousand.

Total of premium charge \$ _____.

NOTE: The above must be filled in by Corporate Surety. Power of Attorney of person signing for Surety Company must be attached.

**SECTION C-4
CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE
CITY OF DRIPPING SPRINGS
MINIMUM INSURANCE PROVISIONS AND LIMITS
FOR CONSTRUCTION, REPAIR, INSTALLATION AND MAINTENANCE CONTRACTORS**

Contractor shall provide and continuously maintain the minimum insurance coverages set forth below during the term of its agreement with the City of Dripping Springs (City); and Contractor shall require its subcontractors to purchase the same types and amounts of insurance, at a minimum, as set forth below with respect to statutory workers' compensation and liability insurance.

1. Standard ISO commercial general liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include: products/completed operations (\$2,000,000 products/completed operations aggregate); XCU (explosion, collapse, underground) hazards; and contractual liability. Without limitation, the commercial general liability coverage must cover all operations required in the contract, as well as contractual liability for the indemnity obligations assumed by the Contractor in the contract. Coverage must be written on an occurrence form.
2. Workers' compensation insurance at statutory limits, including employer's liability coverage at minimum limits of \$1,000,000 each-occurrence, each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
3. Commercial automobile liability insurance at a minimum combined single limit of \$1,000,000 per-occurrence for bodily injury and property damage, including non-owned and hired car coverage and owned vehicles if any are owned.
4. Umbrella liability or following-form excess liability at minimum limits of \$ 1,000,000 each-occurrence/\$2,000,000 aggregate where applicable in any underlying coverage. Coverage must be at least as broad as the underlying commercial general liability, auto liability, and employer's liability.
5. Waiver of Rights - Owner and Contractor intend that all policies purchased will protect Owner, Contractor, Subcontractors, and E/A, and all other individuals or entities identified in the Insurance Rider to be listed as additional named 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. Upon receipt of payment for any loss or damage covered by an insurance policy required by the Insurance Rider or this Agreement, the 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 all other individuals or entities identified in the Insurance Rider to be listed as insured or additional named 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.

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

1. City of Dripping Springs shall be named as an additional named insured on a primary and non-contributory basis, regardless of the application of other insurance, with respect to all liability coverages, except for the professional liability and workers' compensation.
2. All liability policies shall contain no cross-liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of the City shall be contained in all policies.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that City will receive at least thirty (30) days' notice prior to cancellation or non-renewal of the insurance.
6. The additional insured coverage in the CGL policy in favor of the City must apply to the ongoing operations of Contractor for contract costs or up to \$1,000,000 and expanded to include products/completed operation for contract costs in excess of \$1,000,000.
7. Required limits may be satisfied by any combination of primary and umbrella/excess liability insurances.
8. Contractor may maintain reasonable and customary deductibles, subject to approval by the City.
9. Insurance must be purchased from insurers that are financially acceptable to the City with a minimum *A.M. Best* financial rating of A-VII.
10. Coverage for commercial general liability must be maintained for at least (2) years after the project is completed.
11. For projects in excess of \$10,000,000 in cost, a per-project aggregate limit must be included in the commercial general liability.

All insurance must be written on standard ISO or equivalent forms. Certificates of insurance shall be prepared and executed by the insurance company, or its authorized agent, shall be furnished to the City within ten (10) business days of being notified of the award of the contract, and shall contain provisions representing and warranting the following:

- Shall set forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- Shall specifically set forth the notice-of-cancellation or termination provisions to the City.

- Copies of all required endorsements must be attached to the certificate of insurance. The certificates of insurance must be updated and resubmitted to the City to show renewal coverages, as applicable, at least thirty (30) days prior to expiration of any one or more policies.

Upon request, Contractor shall furnish the City with certified copies of all insurance policies.

NOTICE OF AWARD

To: _____

Project: RANCH HOUSE ROAD PHASE 2 (#PARKS-2023-0001)

The City of Dripping Springs has considered the bids submitted for the above described project in response to its advertisement for bids dated April 3, 2023 and related information to Bidders.

You are hereby notified that your bid in the amount of \$ _____, has been favorably considered for the project by the City. Pursuant to the Instructions to Bidders you are asked to sign the proposed Contract and to return the same, along with the required Certificate of Insurance and Payment Bond and Performance Bond within ten (10) days of your receipt of this Notice, for the approval and signature of the authorized representative of the City.

For the purpose of effective date of the Performance and Payment Bond, and the required Certificate of Insurance, the date of _____ may be considered the date of the Contract, if the Documents are approved by the City.

If you fail to submit the proposed Contract and the Performance and Payment Bonds and the Certificate of Insurance within ten (10) days from your receipt of this Notice, your bid will be considered as withdrawn and your bid bond will be forfeited.

You are asked to acknowledge receipt of this Notice by signing in the appropriate place below.

Dated this ____ day of _____, 2023.

CITY OF DRIPPING SPRINGS.

City Engineer

ACKNOWLEDGEMENT:

Receipt of this Notice is hereby acknowledged.

Dated this ____ day of _____, 2023.

Authorized Signature

Title: _____

NOTICE TO PROCEED

Date: _____

To: _____

Project: RANCH HOUSE ROAD PHASE 2 (#PARKS-2023-0001)

In accordance with the construction contract dated _____,
you are hereby notified to commence work no later than _____.

Contract time is: **60 calendar days.**

Substantial Completion Date is: _____

CITY OF DRIPPING SPRINGS.

City Engineer

The above NOTICE TO PROCEED is hereby acknowledged by

on this the ____ day of _____ 2023.

Authorized Signature

Name:

Title: _____

CONTRACT TIME & LIQUIDATED DAMAGES

The Contract Performance for this project shall be **60 Calendar Days** as defined in the Specifications under General Conditions.

The time set forth in the proposal for the completion of the work is an essential element of the Contract. For each working day under the conditions described in the preceding Paragraph that any work shall remain uncompleted after the expiration of the calendar days specified in the Contract, together with any additional working days allowed, the amount per day given in the following schedule will be deducted from the money due or to become due the Contractor, not as a penalty but as liquidated damages.

| | FOR AMOUNT OF CONTRACT | |
|-----------------------|-----------------------------------|--|
| From More Than | To and Including | Amount of Liquidated Damages Per Working Days |
| \$0 | \$100,000 | \$200 |
| \$100,000 | \$500,000 | \$400 |
| \$500,000 | \$1,000,000 | \$550 |
| \$1,000,000 | \$2,000,000 | \$700 |
| \$2,000,000 | \$5,000,000 | \$850 |
| \$5,000,000 | \$10,000,000 | \$1,200 |
| \$10,000,000 | \$15,000,000 | \$1,500 |
| \$15,000,000 | \$20,000,000 | \$1,700 |
| \$p20,000,000 | Over \$20,000,000 | \$2,500 |

EQUAL OPPORTUNITY CLAUSE

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or natural origin. The Contractor will take Affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color or national origin. Such action shall include, but not 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or natural origin.

Equal Employment Opportunity is THE LAW

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under the following Federal authorities:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, prohibits job discrimination because of disability and requires affirmative action to employ and advance in employment qualified individuals with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

VIETNAM ERA, SPECIAL DISABLED, RECENTLY SEPARATED, AND OTHER PROTECTED VETERANS

38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, prohibits job discrimination and requires affirmative action to employ and advance in employment qualified Vietnam era veterans, qualified special disabled veterans, recently separated veterans, and other protected veterans.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 or call (202) 693-0101, or an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Private Employment, State and Local Governments, Educational Institutions

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under the following Federal laws:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.

DISABILITY

The Americans with Disabilities Act of 1990, as amended, protects qualified applicants and employees with disabilities from discrimination in hiring, promotion, discharge, pay, job training, fringe benefits, classification, referral, and other aspects of employment on the basis of disability. The law also requires that covered entities provide qualified applicants and employees with disabilities with reasonable accommodations that do not impose undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination on the basis of age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended (see above), the Equal Pay Act of 1963, as amended, prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of these Federal laws.

If you believe that you have been discriminated against under any of the above laws, you should contact immediately:

The U.S. Equal Employment Opportunity Commission (EEOC), 1801 L Street, N.W., Washington, D.C. 20507 or an EEOC field office by calling toll free (800) 669-4000. For individuals with hearing impairments, EEOC's toll free TDD number is (800) 669-6820.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX

In addition to the protection of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal assistance.

INDIVIDUALS WITH DISABILITIES

Sections 501, 504 and 505 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance in the federal government. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with reasonable accommodation, can perform the essential functions of a job.

If you believe you have been discriminated against in a program of any institution which receives Federal assistance, you should contact immediately the Federal agency providing such assistance.

WAGE DETERMINATION

Wage Rates. Pursuant to Section 2258.023(a), Texas Government Code, as amended, wage rates paid by the Contractor and any subcontractor on this Project shall be not less than the general prevailing rate of per diem wages for work of a similar character in this locality as specified in the schedule of general prevailing rates of per diem wages set forth by the Davis Bacon General Decision Number: TX20230007 01/06/2023 below:

"General Decision Number: TX20230007 01/06/2023

Superseded General Decision Number: TX20220007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

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)(2)-(60).

| | |
|---|---|
| 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 \$16.20 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 2023. |
| If the contract was awarded on or between January 1, 2015 and | . Executive Order 13658 generally applies to the |

| | | |
|------------------------------|-------------------------------|--|
| January 29, 2022, and the | contract. | |
| contract is not renewed or | . The contractor must pay all | |
| extended on or after January | covered workers at least | |
| 30, 2022: | \$12.15 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 2023. | |
| | | |

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 | 01/06/2023 |

SUTX2011-006 08/03/2011

| | Rates | Fringes |
|---|----------|---------|
| CEMENT MASON/CONCRETE FINISHER (Paving and Structures)..... | \$ 12.56 | ** |
| ELECTRICIAN..... | \$ 26.35 | |
| FORM BUILDER/FORM SETTER Paving & Curb..... | \$ 12.94 | ** |
| Structures..... | \$ 12.87 | ** |
| LABORER Asphalt Raker..... | \$ 12.12 | ** |
| Flagger..... | \$ 9.45 | ** |
| Laborer, Common..... | \$ 10.50 | ** |
| Laborer, Utility..... | \$ 12.27 | ** |
| Pipelayer..... | \$ 12.79 | ** |
| Work Zone Barricade Servicer..... | \$ 11.85 | ** |
| PAINTER (Structures)..... | \$ 18.34 | |
| POWER EQUIPMENT OPERATOR: Agricultural Tractor..... | \$ 12.69 | ** |

| | | |
|------------------------------|--------------|--------|
| Asphalt Distributor..... | \$ 15.55 | ** |
| Asphalt Paving Machine..... | \$ 14.36 | ** |
| Boom Truck..... | \$ 18.36 | |
| Broom or Sweeper..... | \$ 11.04 | ** |
| Concrete Pavement | | |
| Finishing Machine..... | \$ 15.48 | ** |
| Crane, Hydraulic 80 tons | | |
| or less..... | \$ 18.36 | |
| Crane, Lattice Boom 80 | | |
| tons or less..... | \$ 15.87 | ** |
| Crane, Lattice Boom over | | |
| 80 tons..... | \$ 19.38 | |
| Crawler Tractor..... | \$ 15.67 | ** |
| Directional Drilling | | |
| Locator..... | \$ 11.67 | ** |
| Directional Drilling | | |
| Operator..... | \$ 17.24 | |
| Excavator 50,000 lbs or | | |
| Less..... | \$ 12.88 | ** |
| Excavator over 50,000 lbs... | \$ 17.71 | |
| Foundation Drill, Truck | | |
| Mounted..... | \$ 16.93 | |
| Front End Loader, 3 CY or | | |
| Less..... | \$ 13.04 | ** |
| Front End Loader, Over 3 CY. | \$ 13.21 | ** |
| Loader/Backhoe..... | \$ 14.12 | ** |
| Mechanic..... | \$ 17.10 | |
| Milling Machine..... | \$ 14.18 | ** |
| Motor Grader, Fine Grade... | \$ 18.51 | |
| Motor Grader, Rough..... | \$ 14.63 | ** |
| Pavement Marking Machine... | \$ 19.17 | |
| Reclaimer/Pulverizer..... | \$ 12.88 | ** |
| Roller, Asphalt..... | \$ 12.78 | ** |
| Roller, Other..... | \$ 10.50 | ** |
| Scraper..... | \$ 12.27 | ** |
| Spreader Box..... | \$ 14.04 | ** |
| Trenching Machine, Heavy.... | \$ 18.48 | |
| Servicer..... | \$ 14.51 | ** |
| Steel Worker | | |
| Reinforcing..... | \$ 14.00 | ** |
| Structural..... | \$ 19.29 | |
| TRAFFIC SIGNALIZATION: | | |
| Traffic Signal Installation | | |
| Traffic Signal/Light Pole | | |
| Worker..... | \$ 16.00 | ** |
| TRUCK DRIVER | | |
| Lowboy-Float..... | \$ 15.66 | ** |
| Off Road Hauler..... | \$ 11.88 | ** |
| Single Axle..... | \$ 11.79 | ** |

| | | |
|--|----------|----|
| Single or Tandem Axle Dump Truck..... | \$ 11.68 | ** |
| Tandem Axle Tractor w/Semi Trailer..... | \$ 12.81 | ** |
| WELDER..... | \$ 15.97 | ** |

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

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) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate

(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of 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. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write 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 the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write 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 by 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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

The OWNER's design professional as outlined in Article 9 of the General Conditions:

Engineer/Architect (E/A):

Name: Chad Gilpin, P.E. – City Engineer
Company: City of Dripping Springs
Address: 511 Mercer St., Dripping Springs TX 78620
Phone: 512-220-8100
E-mail: cgilpin@cityofdrippingsprings.com

The designated representative of the OWNER as outlined in Article 8 of the General Conditions:

Owner's Representative:

Name: Craig Rice – Deputy Public Works Director
Company: City of Dripping Springs
Address: 511 Mercer St., Dripping Springs TX 78620
Phone: 512-858-4725
E-mail: crice@cityofdrippingsprings.com

DIVISION D
CONDITIONS OF THE CONTRACT

GENERAL CONDITIONS OF THE CONTRACT

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ARTICLE 1 – DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 Addendum** - Written instruments issued by the Contract Awarding Authority which clarify, correct or change the bidding requirements or the Contract Documents prior to the Due Date. "Addenda" is the plural form of Addendum.
- 1.2 Alternative Dispute Resolution** - The process by which a disputed Claim may be settled if the OWNER and the CONTRACTOR cannot reach an agreement between themselves, as an alternative to litigation.
- 1.3 Bid** - A complete, properly signed response to an Invitation for Bid that, if accepted, would bind the Bidder to perform the resultant Contract.
- 1.4 Bidder** - A person, firm, or entity that submits a Bid in response to a Solicitation. Any Bidder may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
- 1.5 Bid Documents** - The advertisement or Invitation for Bids, instructions to Bidders, the Bid form, the Contract Documents and Addenda.
- 1.6 Calendar Day** - Any day of the week; no days being excepted. Work on Saturdays, Sundays, and/or Legal Holidays shall be coordinated with OWNER.
- 1.7 Change Directive** - A written directive to CONTRACTOR, signed by OWNER, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive may be used in the absence of total agreement on the terms of a Change Order. A Change Directive does not change the Contract Amount or Contract Time, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.
- 1.8 Change Orders** - Written agreements entered into between CONTRACTOR and OWNER authorizing an addition, deletion, or revision to the Contract, issued on or after the Execution Date of the Agreement.
- 1.9 Claim** - A written demand seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract.
- 1.10 Contract** - The binding legal agreement between the OWNER and the CONTRACTOR. The Contract represents the entire and integrated agreement between OWNER and CONTRACTOR for performance of the Work, as evidenced by the Contract Documents.
- 1.11 Contract Amount** - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents.
- 1.12 Contract Awarding Authority** - A City department authorized to enter into Contracts on behalf of the City.
- 1.13 Contract Documents** - Project Manual, Drawings, Addenda and Change Orders.
- 1.14 Contract Time** - The number of days allowed for completion of the Work as defined by the Contract. When any period is referred to in days, it will be computed to exclude the first and include the last day of such period. A day of twenty-four hours measured from midnight to the next midnight will constitute a day.

- 1.15 CONTRACTOR** - The individual, firm, corporation, or other business entity with whom OWNER has entered into the Contract for performance of the Work.
- 1.16 Critical Path** - The longest series of tasks that runs consecutively from the beginning to the end of the project, as determined by duration and workflow sequence. This longest path sets the managerial standard for how quickly a project can be completed, given appropriate resources.
- 1.17 Drawings** - Those portions of the Contract Documents which are graphic representations of the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been approved by OWNER. Drawings may include plans, elevations, sections, details, schedules and diagrams. Shop Drawings are not Drawings as so defined.
- 1.18 Due Date** - The date and time specified for receipt of Bids.
- 1.19 Engineer/Architect (E/A)** - The OWNER's design professional identified as such in the Contract. The titles of "Architect/Engineer," "Architect" and "Engineer" used in the Contract Documents shall read the same as Engineer/Architect (E/A). Nothing contained in the Contract Documents shall create any contractual or agency relationship between E/A and CONTRACTOR.
- 1.20 Equal** - The terms "equal" or "approved equal" shall have the same meaning.
- 1.21 Execution Date** - Date of last signature of the parties to the Agreement.
- 1.22 Field Order** - A written order issued by Owner's Representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or the Contract Time.
- 1.23 Final Completion** - The point in time when OWNER determines that all Work has been completed and final payment to CONTRACTOR will be made in accordance with the Contract Documents.
- 1.24 Force Account** - a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5.
- 1.25 Inspector** - The authorized representative of any regulatory agency that has jurisdiction over any portion of the Work.
- 1.26 Invitation for Bid (IFB)** - a Solicitation requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper and/or the Internet.

1.27 Legal Holidays

1.27.1 The following are recognized by the OWNER:

| <u>Holiday</u> | <u>Date Observed</u> |
|---------------------------|-----------------------------|
| New Year's Day | January 1 |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

- 1.27.2** If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.
- 1.27.3** Christmas Eve is observed only if it falls on a Monday through Thursday. If Christmas Eve falls on a Friday, that day is observed as the Christmas Day holiday.
- 1.28 Milestones** - A significant event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.29 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 CONTRACTOR's obligations under the Contract Documents.
- 1.30 OWNER** - City of Dripping Springs, Texas, a municipal corporation, general law, Type A city and political subdivision organized and existing under the laws of the State of Texas, acting through the City Council's designee, officers, agents or employees to administer design and construction of the Project.
- 1.31 Owner's Representative** - The designated representative of the OWNER.
- 1.32 Partial Occupancy or Use** - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work, provided OWNER and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, utilities, corrective work, insurance and warranties.
- 1.33 Project** - The subject of the Work and its intended result.
- 1.34 Project Manual** - That portion of the Contract Documents which may include the following: introductory information; bidding requirements, Contract forms and General and Supplemental General Conditions; General Requirements; Specifications; Drawings; MBE/WBE or DBE Procurement Program Package; Project Safety Manual; and Addenda.
- 1.35 Resident Project Representative** - The authorized representative of E/A who may be assigned to the site or any part thereof.
- 1.36 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 as required by the Contract Documents.
- 1.37 Specifications** - Those portions of the Contract Documents consisting of written technical descriptions as applied to the Work, which set forth to CONTRACTOR, in detail, the requirements which must be met by all materials, equipment, construction systems, standards, workmanship, equipment and services in order to render a completed and useful project.
- 1.38 Solicitation** - Solicitation means, as applicable, an Invitation for Bid or a Request for Proposal.
- 1.39 Substantial Completion** - The stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Contract Documents so OWNER can occupy or utilize the Work for its intended use, as evidenced by a Certificate of Substantial Completion approved by OWNER.
- 1.40 Subcontractor** - An individual, firm, corporation, or other business entity having a direct contract with CONTRACTOR for the performance of a portion of the Work under the Contract.
- 1.41 Sub-Subcontractor** - A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work.

- 1.42 Superintendent** - The representative of CONTRACTOR authorized in writing to receive and fulfill instructions from the Owner's Representative, and who shall supervise and direct construction of the Work.
- 1.43 Supplemental General Conditions** - The part of the Contract Documents which amends or supplements the General Conditions. All General Conditions which are not so amended or supplemented remain in full force and effect.
- 1.44 Supplier** - An individual or entity 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.
- 1.45 Time Extension Request** - An approved request for time extension on a form acceptable to OWNER.
- 1.46 Work** - The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.
- 1.47 Working Day** - Any day of the week, not including Saturdays, Sundays, or Legal Holidays in which conditions under the CONTRACTOR's control will permit work for a continuous period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m. Upon agreement with Owner's Representative, work on Saturdays, Sundays and/or Legal Holidays may be allowed and will be considered a Working Day.
- 1.48 Working Hours**
- 1.48.1 Working Day Contract:** All Work shall be done between 7:00 a.m. and 5:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. If night Work is authorized and conditions under CONTRACTOR's control will permit Work for a continuous period of not less than seven (7) hours between 12:00 a.m. and 11:59 p.m. it will be considered a Working Day. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.48.2 Calendar Day Contract:** All Work shall be done between 7:00 a.m. and 6:00 p.m. unless authorized by Owner's Representative. However, emergency work may be done without prior permission as indicated in paragraph 6.11.5. Night Work may be revoked at any time by OWNER if CONTRACTOR fails to maintain adequate equipment and supervision for the prosecution and control of the night Work.
- 1.49 Written Notice** - Written communication between OWNER and CONTRACTOR. Written Notice shall be deemed to have been duly served if delivered in person to Owner's Representative or CONTRACTOR's duly authorized representative, or if delivered at or sent by registered or certified mail to the attention of Owner's Representative or CONTRACTOR's duly authorized representative at the last business address known to the party giving notice.

ARTICLE 2 - PRELIMINARY MATTERS

- 2.1 Delivery of Agreement, Bonds, Insurance, etc.:** Within ten (10) Calendar Days after written notification of award of Contract, CONTRACTOR shall deliver to OWNER signed Agreement, Bond(s), Insurance Certificate(s) and other documentation required for execution of Contract.

2.2 Copies of Documents: OWNER shall furnish to CONTRACTOR with digital copies of the Contract Documents unless otherwise specified. CONTRACTOR will be responsible for furnishing hardcopies for CONTRACTOR and subcontractor use.

2.3 Commencement of Contract Times; Notice to Proceed: The Contract Time(s) will begin to run on the day indicated in the Notice to Proceed. Notice to Proceed will be given at any time within sixty (60) calendar days after the Execution Date of the Agreement, unless extended by written agreement of the parties.

2.4 Before Starting Construction:

2.4.1 No Work shall be done at the site prior to the preconstruction conference without OWNER's approval. Before undertaking each part of the Work, CONTRACTOR shall carefully study the Contract Documents to check and verify pertinent figures shown thereon compare accurately to all applicable field measurements. CONTRACTOR shall promptly report in writing to Owner's Representative any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from Owner's Representative before proceeding with any Work affected thereby. CONTRACTOR shall be liable to OWNER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents of which CONTRACTOR knew or reasonably should have known.

2.4.2 It is mutually agreed between CONTRACTOR and OWNER that successful completion of the Work within the Contract completion date is of primary importance. Therefore, the CONTRACTOR hereby agrees to submit to the Owner's Representative for review and approval, or acceptance, as appropriate, all information requested within this section, including a Baseline Schedule, no later than three working days prior to the preconstruction conference. The Owner's Representative will schedule the preconstruction conference upon the timely submittal of the required documents, unless time is extended by written mutual agreement. CONTRACTOR will submit the following:

- .1** A proposed Baseline Schedule developed using Microsoft Project software, unless otherwise approved by Owner's Representative ("Baseline Schedule") to confirm that all Work will be completed within the Contract time. The Baseline Schedule must (i) indicate the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents, (ii) identify the Critical Path for completing the Work, (iii) identify when all Subcontractors will be utilized, and (iv) take into consideration any limitations on Working Hours, including baseline Rain Days on Calendar Day Contracts. This Baseline Schedule, a copy of which shall be made available at the job site(s), must contain sufficient detail to indicate that the CONTRACTOR has properly identified required Work elements and tasks, has provided for a sufficient and proper workforce and integration of Subcontractors, has provided sufficient resources and has considered the proper sequencing of the Work required to result in a successful Project that can be completed within the Contract time;
- .2** An organizational chart showing the principals, management personnel, Superintendent and project manager who will be involved with the Work, including each one's responsibilities for the Work;
- .3** A preliminary schedule of Shop Drawing and sample submittals;
- .4** A preliminary schedule of values for all of the Work, subdivided into component parts in sufficient detail to serve as the basis for progress payments during

construction. Such prices will be deemed to include an appropriate amount of overhead and profit applicable to each item of Work;

- .5 If applicable, an excavation safety system plan;
- .6 If applicable, a plan illustrating proposed locations of temporary facilities;
- .7 A letter designating the Texas Registered Professional Land Surveyor for layout of the Work, if the Work requires the services of a surveyor; and
- .8 Appropriate safety training certificates for workers that will initially be on site.

2.4.3 Neither the acceptance nor the approval of any of the submittals required in paragraph 2.4.2, above, will constitute the adoption, affirmation, or direction of the CONTRACTOR'S means and methods.

2.5 Preconstruction Conference: Prior to commencement of Work at the site, CONTRACTOR must attend a preconstruction conference with Owner's Representative and others, as set forth in Contract documents.

2.6 Initially Acceptable Schedules: Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain approval of Owner's Representative on the Baseline Schedule submitted in accordance with paragraph 2.4.2.1 before the first progress payment will be made to CONTRACTOR. The Baseline Schedule must provide for an orderly progression of the designated portion of the Work to completion within any specified Milestones and Contract Times. Acceptance of the schedule by Owner's Representative will neither impose on Owner's Representative responsibility or liability for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility for such Work. CONTRACTOR's schedule of Shop Drawings and sample submissions must provide an acceptable basis for reviewing and processing the required submittals.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 Intent:

3.1.1 The intent of the Contract Documents is to include all information necessary for the proper execution and timely completion of the Work by CONTRACTOR. The CONTRACTOR will execute the Work described in and reasonably inferable from the Contract Documents as necessary to produce the results indicated by the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In cases of disagreement, the following order of precedence shall generally govern (top item receiving priority of interpretation):

- Signed Agreement
- Addendum to the Contract Documents, including approved changes
- Supplemental General Conditions
- General Conditions
- Other Bidding Requirements and Contract Forms
- Special Provisions to the Standard Technical Specifications
- Special Specifications
- Standard Technical Specifications
- Drawings (figured dimensions shall govern over scaled dimensions)
- Project Safety Manual (if applicable),

with the understanding that a common sense approach will be utilized as necessary so that the Contract Documents produce the intended response.

3.1.2 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

3.2 Reporting and Resolving Discrepancies: 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 provisions of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual or code or instructions of any Supplier, CONTRACTOR shall report it to Owner's Representative in writing at once, and CONTRACTOR shall not proceed with the Work affected thereby until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.3.1 or 3.3.2. CONTRACTOR shall be liable to OWNER for failure to report any such conflict, error, ambiguity or discrepancy of which CONTRACTOR knew or reasonably should have known.

3.3 Amending and Supplementing Contract Documents:

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 Change Order.
- .2 Change Directive.
- .3 Time Extension Request.

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- .1 Field Order.
- .2 Review of a Shop Drawing or sample.
- .3 Written interpretation or clarification.

3.4 Reuse of Documents Prohibited: CONTRACTOR and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not 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 E/A or E/A's consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and E/A.

3.5 In the event of the breach by the OWNER or CONTRACTOR of any of its obligations under the Contract, so as to support a claim by the other party, the provisions of this Contract will be equitably construed to allow the resolution of such a claim and all of the other provisions of this Contract shall continue in full force and effect as to the rights, responsibilities, and remedies of the OWNER and CONTRACTOR.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE & PHYSICAL CONDITIONS

4.1 Availability of Lands: The OWNER will provide access to all land and interests in land required for the Work and will notify CONTRACTOR of any restrictions in such access.

CONTRACTOR may make a claim if OWNER fails to provide timely access to the Work. CONTRACTOR must obtain any additional temporary construction facilities, stockpiling or storage sites not otherwise provided.

4.2 Subsurface and Physical Conditions:

4.2.1 CONTRACTOR specifically represents that it has carefully examined the plans, the geotechnical report, if any, and the site of the proposed Work and is thoroughly familiar with all of the conditions surrounding construction of the Project, having had the opportunity to conduct any and all additional inquiry, tests and investigation that he/she deems necessary and proper. CONTRACTOR acknowledges the receipt of the geotechnical report, if any, and agrees that the report, while it is an accurate record of the geotechnical conditions at the boring locations, is not a guarantee of specific site conditions which may vary between boring locations.

4.2.2 CONTRACTOR must notify OWNER in writing as soon as reasonably possible, but no later than three (3) calendar days, if unforeseen conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (ii) unknown physical conditions of an unusual nature, that differ materially from those normally encountered in the type of work being performed under this Contract. CONTRACTOR may not disturb the conditions until OWNER conducts an investigation. Owner's Representative and E/A will promptly investigate such conditions with E/A. If it is determined that such conditions differ materially and cause an increase or decrease in the CONTRACTOR's cost of or time required for performance of any part of the Work, Owner's Representative will recommend an equitable adjustment in the Contract Amount or Contract Time, or both. If it is determined that such conditions are not materially different from those indicated in the Contract Documents, Owner's Representative will notify CONTRACTOR in writing of such findings and the Contract will not be adjusted. CONTRACTOR may dispute such a determination in accordance with Article 16.

4.2.3 Notwithstanding any other provision of this Contract, CONTRACTOR is solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Work area. "Public utility lines" means the utility distribution and supply system, and "utility customer service lines" means the utility lines connecting customers to the utility distribution and collection system. Generally, existing utility customer service line connections are not shown on the Drawings. CONTRACTOR shall notify "One Call" and exercise due care to locate, mark, uncover and otherwise protect all such lines in the construction zone and any of CONTRACTOR's work or storage areas. CONTRACTOR's responsibility for the location and protection of utilities is primary and nondelegable. **CONTRACTOR shall indemnify or reimburse such expenses or costs (including fines that may be levied against OWNER) that may result from unauthorized or accidental damage to all public lines and utility customer service lines in the work area.** OWNER reserves the right to repair any damage CONTRACTOR causes to such utilities at CONTRACTOR's expense. If a public line and/or customer service line is damaged by CONTRACTOR, CONTRACTOR shall give verbal notice within one (1) hour and written notice within twenty-four (24) hours to the Owner's Representative.

4.2.4 CONTRACTOR shall take reasonable precaution to avoid disturbing primitive records and antiquities of archaeological, paleontological or historical significance. No objects of this nature shall be disturbed without written permission of OWNER and

Texas Historical Commission. When such objects are uncovered unexpectedly, CONTRACTOR shall stop all Work in close proximity and notify Owner's Representative and Texas Historical Commission of their presence and shall not disturb them until written permission and permit to do so is granted. All primitive rights and antiquities uncovered on OWNER's property shall remain property of State of Texas, Texas Historical Commission conforming to Texas Natural Resources Code. If it is determined by OWNER, in consultation with Texas Historical Commission, that exploration or excavation of primitive records or antiquities on Project site is necessary to avoid loss, CONTRACTOR shall cooperate in salvage work attendant to preservation. If the Work stoppage or salvage work causes an increase in CONTRACTOR's cost of, or time required for, performance of the Work, the Contract Amount and/or Contract Time will be equitably adjusted.

4.3 Reference Points: All control lines and benchmarks suitable for use in layout will be furnished by CONTRACTOR, unless otherwise specified. Controls, bench marks and property boundary markers shall be carefully preserved by CONTRACTOR by use of flags, staffs or other visible devices and in case of destruction or removal by CONTRACTOR or its employees, such controls and bench marks shall be replaced by a Registered Professional Land Surveyor at CONTRACTOR's expense. City survey monuments damaged by CONTRACTOR will be reestablished by OWNER at CONTRACTOR's expense.

4.4 Hazardous Materials:

4.4.1 CONTRACTOR shall immediately notify Owner's Representative of any suspected hazardous materials encountered before or during performance of the Work and shall take all necessary precautions to avoid further disturbance of the materials.

4.4.2 CONTRACTOR shall be responsible for any hazardous materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.4.3 The CONTRACTOR shall not knowingly use, specify, request or approve for use any asbestos containing materials or lead-based paint without the OWNER'S written approval. When a specific product is specified, the CONTRACTOR shall endeavor to verify that the product does not include asbestos containing material.

4.4.4 Hazardous material definitions and procedures.

.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, CONTRACTOR is not responsible for any unexpected Hazardous Materials encountered at the site. Upon encountering any Hazardous Conditions, CONTRACTOR must stop Work immediately in the affected area and duly notify OWNER and, if required by applicable law or regulations, all government or quasi-government entities with jurisdiction over the Project or site.

.2 Upon receiving notice of the presence of suspected Hazardous Materials, OWNER shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include OWNER retaining qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that OWNER must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

.3 CONTRACTOR shall be obligated to resume Work at the affected area of the Project only after OWNER's Representative provides written certification that (i) the Hazardous Materials have been removed or rendered harmless and (ii) all

necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or site. The CONTRACTOR shall be responsible for continuing the Work in the unaffected portion of the Project and site.

- .4 CONTRACTOR will be entitled, in accordance with these General Conditions, to an adjustment in its Contract Amount and/or Contract Time(s) to the extent CONTRACTOR's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.
- .5 Notwithstanding the preceding provisions of this Section 4.1, OWNER is not responsible for Hazardous Materials introduced to the Site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable. **CONTRACTOR shall indemnify, defend and hold harmless OWNER and OWNER's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those hazardous materials introduced to the site by CONTRACTOR, Subcontractors or anyone for whose acts they may be liable.**

- 4.4.5 CONTRACTOR shall be responsible for use, storage and remediation of any hazardous materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers or anyone else for whom CONTRACTOR is responsible.

ARTICLE 5 - BONDS AND INSURANCE

5.1 Surety and Insurance Companies: All bonds and insurance required by the Contract Documents shall be obtained from solvent surety or insurance companies that are duly licensed by the State of Texas and authorized to issue bonds or insurance policies for the limits and coverages required by the Contract Documents. The bonds shall be in a form acceptable to OWNER and shall be issued by a surety which complies with the requirements of Texas Insurance Code, Title 12, Chapter 3503. The surety must obtain reinsurance for any portion of the risk that exceeds 10% of the surety's capital and surplus. For bonds exceeding \$100,000, the surety must also hold a certificate of authority from the U.S. Secretary of the Treasury or have obtained reinsurance from a reinsurer that is authorized as a reinsurer in Texas and holds a certificate of authority from the U.S. Secretary of the Treasury.

5.2 Workers' Compensation Insurance Coverage:

5.2.1 Definitions:

- .1 Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on the Project, for the duration of the Project.
- .2 Duration of the Project - includes the time from the beginning of the Work on the Project until the CONTRACTOR's/ person's Work on the Project has been completed and accepted by OWNER.
- .3 Persons providing services on the Project ("subcontractor" in Texas Labor Code, Section 406.096) - includes all persons or entities performing all or part of the

services the CONTRACTOR has undertaken to perform on the Project, regardless of whether that person contracted directly with the CONTRACTOR and regardless of whether that person has employees. This includes, without limitation, independent contractors, Subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- 5.2.2** CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the Project, for the duration of the Project.
- 5.2.3** CONTRACTOR must provide a certificate of coverage to OWNER prior to being awarded the Contract.
- 5.2.4** If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the Project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with OWNER showing that coverage has been extended.
- 5.2.5** CONTRACTOR shall obtain from each person providing services on the Project, and provide to OWNER:
- .1** A certificate of coverage, prior to that person beginning Work on the Project, so OWNER will have on file certificates of coverage showing coverage for all persons providing services on the Project; and
 - .2** No later than seven (7) days after receipt by CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project.
- 5.2.6** CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one (1) year thereafter.
- 5.2.7** CONTRACTOR shall notify OWNER in writing by certified mail or personal delivery, within ten (10) days after CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project.
- 5.2.8** CONTRACTOR shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- 5.2.9** CONTRACTOR shall contractually require each person with whom it contracts to provide services on a Project, to:
- .1** Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project;
 - .2** Provide to CONTRACTOR, prior to that person beginning Work on the Project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;

- .3 Provide CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .4 Obtain from each other person with whom it contracts, and provide to CONTRACTOR: a) a certificate of coverage, prior to the other person beginning Work on the Project; and b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
 - .5 Retain all required certificates of coverage on file for the duration of the Project and for one (1) year thereafter;
 - .6 Notify OWNER in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
 - .7 Contractually require each person with whom it contracts, to perform as required by paragraphs 5.2.9.1 - 5.2.9.7, with the certificates of coverage to be provided to the person for whom they are providing services.
- 5.2.10** By signing this Contract or providing or causing to be provided a certificate of coverage, CONTRACTOR is representing to OWNER that all employees of the CONTRACTOR who will provide services on the Project will be covered by workers' compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission's Division of Self- Insurance Regulation. Providing false or misleading information may subject CONTRACTOR to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- 5.2.11** CONTRACTOR's failure to comply with any of these provisions is a breach of Contract by CONTRACTOR which entitles OWNER to declare the Contract void if CONTRACTOR does not remedy the breach within ten (10) days after receipt of notice of breach from OWNER.
- 5.3 Other Bond and Insurance Requirements:** For additional insurance requirements, refer to Division C.
- 5.4 Bonds:**
- 5.4.1 General.**
- .1 Bonds, when required, shall be executed on forms furnished by or acceptable to OWNER. All bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
 - .2 If the surety on any bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of the preceding paragraph, CONTRACTOR shall within ten (10) days thereafter substitute another bond and surety, both of which must be acceptable to OWNER.
 - .3 When Performance Bonds and/or Payment Bonds are required, each shall be issued in an amount of one hundred percent (100%) of the Contract Amount as security for the faithful performance and/or payment of all CONTRACTOR's obligations under the Contract Documents. Performance Bonds and Payment

Bonds shall be issued by a solvent surety company authorized to do business in the State of Texas, and shall meet any other requirements established by law or by OWNER pursuant to applicable law. Any surety duly authorized to do business in Texas may write Performance and Payment Bonds on a project without reinsurance to the limit of ten percent (10%) of its capital and surplus. Such a surety must reinsure any obligations over ten percent (10%).

5.4.2 Performance Bond.

- .1** If the Contract Amount exceeds \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond.
- .2** If the Contract Amount exceeds \$25,000 but is less than or equal to \$100,000, CONTRACTOR shall furnish OWNER with a Performance Bond, unless the original Contract Time is 60 Calendar Days/40 Working Days or less, in which case CONTRACTOR can agree to the following terms and conditions for payment in lieu of providing a Performance Bond: no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER; CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the two (2) year warranty period.
- .3** If the Contract Amount is less than or equal to \$25,000, CONTRACTOR will not be required to furnish a Performance Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the following terms and conditions: CONTRACTOR shall be entitled to receive 95% of the Contract Amount following Final Completion, and the remaining 5% of the Contract Amount following the two (2) year warranty period.
- .4** If a Performance Bond is required to be furnished, it shall extend for the two (2) year warranty period.

5.4.3 Payment Bond.

- .1** If the Contract Amount exceeds \$50,000, CONTRACTOR shall furnish OWNER with a Payment Bond.
- .2** If the Contract Amount is less than or equal to \$50,000, CONTRACTOR will not be required to furnish a Payment Bond; provided that no moneys will be paid to CONTRACTOR until completion and acceptance of the Work by OWNER under the terms and conditions specified in paragraph 5.4.2.3.

5.4.4 Maintenance Bond.

- .1** Before final payment and acceptance, CONTRACTOR shall furnish the OWNER with a maintenance bond to assure the quality of the materials and workmanship, and maintenance of all required improvements including the OWNER'S costs for collecting the guarantee of funds and administering the correction and/or replacement of covered improvements.
- .2** The maintenance bond shall be satisfactory to the OWNER as to form, sufficiency, and manner of execution.
- .3** Said bond shall be in an amount equal to one hundred percent (100%) of the cost of improvements verified by the ENGINEER and shall run for a period of two (2) calendar years measured from the date of final acceptance.

- .4 In an instance where a maintenance bond has been posted and a defect or failure of any required improvements occurs within the period of coverage, the OWNER shall require that the improvements be repaired or replaced by the CONTRACTOR who issued the bond. If the improvements or repairs are not completed in what the OWNER deems to be a timely manner, the OWNER may declare said bond to be in default and require that improvements be repaired or replaced by the bonding company.
- .5 Whenever a defect or failure of any required improvement occurs within the period of coverage, OWNER may require that a new maintenance bond be posted for a period of two (2) full calendar years sufficient to cover the corrected defect or failure.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 Supervision and Superintendence:

- 6.1.1** 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 be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.1.2** CONTRACTOR shall have an English-speaking, competent Superintendent on the Work at all times that work is in progress. The Superintendent will be CONTRACTOR's representative on the Work and shall have the authority to act on the behalf of CONTRACTOR. All communications given to the Superintendent shall be as binding as if given to CONTRACTOR. Either CONTRACTOR or the Superintendent shall provide a cellular telephone number and an emergency and home telephone number at which one or the other may be reached if necessary when work is not in progress. The Superintendent must be an employee of the CONTRACTOR, unless such requirement is waived in writing by the Owner's Representative. If the CONTRACTOR proposes a management structure with a Project Manager supervising, directing, and managing construction of the work in addition to or in substitution of a Superintendent, the requirements of these Construction Documents with respect to the Superintendent shall likewise apply to any such Project Manager.
 - .1 CONTRACTOR shall present the resume of the proposed Superintendent to the Owner's Representative showing evidence of experience and successful superintendence and direction of work of a similar scale and complexity. If, in the opinion of the Owner's Representative, the proposed Superintendent does not indicate sufficient experience in line with the Work, he/she will not be allowed to be the designated Superintendent for the Work.
 - .2 The Superintendent shall not be replaced without Written Notice to Owner's Representative. If CONTRACTOR deems it necessary to replace the Superintendent, CONTRACTOR shall provide the necessary information for approval, as stated above, on the proposed new Superintendent.
 - .3 A qualified substitute Superintendent may be designated in the event that the designated Superintendent is temporarily away from the Work, but not to exceed a time limit acceptable to the Owner's Representative. CONTRACTOR

shall replace the Superintendent upon OWNER's request in the event the Superintendent is unable to perform to OWNER's satisfaction.

6.2 Labor, Materials and Equipment:

- 6.2.1** CONTRACTOR shall maintain a work force adequate to accomplish the Work within the Contract Time. CONTRACTOR agrees to employ only orderly and competent workers, skillful in performance of the type of Work required under this Contract. CONTRACTOR, Subcontractors, Sub-subcontractors, and their employees may not use or possess any alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on OWNER's property, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job. Subject to the applicable provisions of Texas law, CONTRACTOR, Subcontractors, Sub-subcontractors, and their employees may not use or possess any firearms or other weapons while on the job or on OWNER'S property. If OWNER or Owner's Representative notifies CONTRACTOR that any worker or representative of Contractor is incompetent, disorderly, abusive, or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms in contravention of the applicable provisions of Texas law, or has possessed or was under the influence of alcohol or drugs on the job, CONTRACTOR shall immediately remove such worker or representative, including an officer or owner of CONTRACTOR, from performing Contract Work, and may not employ such worker or representative again on Contract Work without OWNER's prior written consent. CONTRACTOR shall at all times maintain good discipline and order on or off the site in all matters pertaining to the Project.
- 6.2.2** Unless otherwise specified in the contract documents, CONTRACTOR shall provide and pay for all 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 furnishing, performance, testing, start-up and completion of the Work.
- 6.2.3** All materials and equipment shall be of good quality and new (including new products made of recycled materials, pursuant to Section 361.426 of the Texas Health & Safety Code), except as otherwise provided in the Contract Documents. If required by Owner's Representative, CONTRACTOR shall furnish satisfactory evidence (reports of required tests, manufacturer's certificates of compliance with material requirements, mill reports, etc.) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.
- 6.2.4** Substitutes and "Approved Equal" Items:
- .1** 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 and quality required. Unless the specification or description contains words reading that no like, equivalent or "approved equal" item or no substitution is permitted, other items of material or equipment of other Suppliers may be submitted by CONTRACTOR, at CONTRACTOR'S sole risk, including disruptions to the Critical Path of the Progress Schedule, to E/A through Owner's Representative under the following circumstances:

- .1.1** "Approved Equal": If in E/A'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 E/A as an "approved equal" item, in which case review of the proposed item may, in E/A's sole discretion, be accomplished without compliance with some or all of the requirements for evaluation of proposed substitute items. CONTRACTOR shall provide E/A with the documentation required for E/A to make its determination.
 - .1.2** Substitute Items: If in E/A's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "approved equal" item under subparagraph 6.2.4.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information to allow E/A to determine that the item of material or equipment proposed is essentially equivalent to that named and a substitute therefore.
 - .2** Substitute Construction Methods and Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may, at CONTRACTOR'S sole risk, including disruptions to the Critical Path of the Progress Schedule, with prior approval of E/A furnish or utilize a substitute means, method, technique, sequence, or procedure of construction. CONTRACTOR shall submit sufficient information to Owner's Representative to allow E/A, in E/A's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by E/A will be same as that provided for substitute items.
 - .3** E/A's Evaluation: E/A will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to subparagraphs 6.2.4.1.1 and 6.2.4.1.2. E/A will be the sole judge of acceptability. No "approved equal" or substitute shall be ordered, installed, or utilized until E/A's review is complete, which will be evidenced by either a Change Order or completion of the Shop Drawing review procedure. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety bond with respect to any "approved equal" or substitute or for any other delay or disruption to the Critical Path of the Project Schedule attributable to any such substitution. OWNER shall not be responsible for any delay due to review time for any "approved equal" or substitute.
 - .4** CONTRACTOR's Expense: All data and documentation to be provided by CONTRACTOR in support of any proposed "approved equal" or substitute item will be at CONTRACTOR's expense.
 - .5** The approval of the E/A will not relieve the CONTRACTOR from primary responsibility and liability for the suitability and performance of any proposed substitute item, method or procedure and will not relieve CONTRACTOR from its primary responsibility and liability for curing defective Work and performing warranty work, which the CONTRACTOR shall cure and perform, regardless of any claim the CONTRACTOR may choose to advance against the E/A or manufacturer.
- 6.2.5** CONTRACTOR agrees to assign to OWNER any rights it may have to bring antitrust suits against its Suppliers for overcharges on materials incorporated in the Project growing out of illegal price fixing agreements. CONTRACTOR further agrees to cooperate with OWNER should OWNER wish to prosecute suits against Suppliers for illegal price fixing.

6.3 Progress Schedule: Unless otherwise provided in the contract documents, CONTRACTOR shall adhere to the Baseline Schedule established in accordance with paragraph 2.6 as it may be adjusted from time to time as provided below:

6.3.1 CONTRACTOR shall submit to Owner's Representative for review and approval any proposed adjustments in the Progress Schedule that will not change the Contract Times or Milestones on a monthly basis. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. CONTRACTOR's Progress Schedule must show how the CONTRACTOR will consistently advance the progress of the Work in accordance with the Critical Path of the Work and the Contract Time or Milestones. Such adjustments will conform generally to the Progress Schedule then in effect and additionally will comply with any provisions of the contract documents applicable thereto.

6.3.2 Proposed adjustments in the Progress Schedule that will change the Contract Times or Milestones shall be submitted in accordance with the requirements of Article 12. Any such proposed adjustments must be substantiated with documentation of any changes to the underlying logic of the Progress Schedule. Such adjustments may only be made by a Change Order or Time Extension Request in accordance with Article 12.

6.4 Concerning Subcontractors, Suppliers and Others:

6.4.1 Assignment: CONTRACTOR agrees to retain direct control of and give direct attention to the fulfillment of this Contract. CONTRACTOR agrees not to, by Power of Attorney, or otherwise, assign said Contract without the prior written consent of OWNER. In addition, without OWNER'S written consent, the CONTRACTOR will not subcontract the performance of the entire Work or the supervision and direction of the Work.

6.4.2 Award of Subcontracts for Portions of the Work: CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom OWNER may have reasonable objection. OWNER will communicate such objections by Written Notice. If OWNER requires a change without good cause of any Subcontractor, person or organization previously accepted by OWNER, the Contract Amount shall be increased or decreased by the difference in the cost occasioned by any such change, and appropriate Change Order shall be issued. CONTRACTOR shall not substitute any Subcontractor, person or organization that has been accepted by OWNER, unless the substitute has been accepted in writing by OWNER. No acceptance by OWNER of any Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER to reject defective Work.

6.4.3 CONTRACTOR shall enter into written agreements with all Subcontractors and Suppliers which specifically binds the Subcontractors or Suppliers to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and E/A. The OWNER reserves the right to specify that certain requirements shall be adhered to by all Subcontractors and Sub-subcontractors as indicated in other portions of the Contract Documents and these requirements shall be made a part of the agreement between CONTRACTOR and Subcontractor or Supplier. Subject to and in accordance with the above requirements, the CONTRACTOR must provide and will be deemed for all purposes to have provided in its contracts with major Subcontractors or Suppliers on the Project (those contracts of more than \$10,000) the following specific provision: alternative dispute resolution (paragraphs 16.2 and 16.3), which shall be mandatory in the event of a subcontractor or supplier claim and a prerequisite for the submission of any derivative claim. The CONTRACTOR's standard subcontract form is subject to the OWNER's review and approval. The

OWNER may request and the CONTRACTOR will provide within five (5) working days a copy of any subcontract requested by the OWNER.

- 6.4.4** CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or E/A to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by laws and regulations.
- 6.4.5** CONTRACTOR shall be solely responsible for efficiently scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR in order to avoid any delays or inefficiencies in the prosecution of the Work. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with Owner's Representative through CONTRACTOR.
- 6.4.6** The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing or delineating the Work to be performed by any specific trade.
- 6.4.7** CONTRACTOR shall pay each Subcontractor and Supplier their appropriate share of payments made to CONTRACTOR not later than ten (10) Calendar Days of CONTRACTOR's receipt of payment from OWNER.
- 6.4.8** To the extent allowed by Texas law, the OWNER shall be deemed to be a third party beneficiary to each subcontract and may, if OWNER elects, following a termination of the CONTRACTOR, require that the Subcontractor(s) perform all or a portion of unperformed duties and obligations under its subcontract(s) for the benefit of the OWNER, rather than the CONTRACTOR; however, if the OWNER requires any such performance by a Subcontractor for the OWNER's direct benefit, then the OWNER shall be bound and obligated to pay such Subcontractor the reasonable value for all Work performed by such Subcontractor to the date of the termination of the CONTRACTOR, less previous payments, and for all Work performed thereafter. In the event that the OWNER elects to invoke its right under this section, OWNER will provide notice of such election to the CONTRACTOR and the affected Subcontractor(s).

6.5 Patent Fees and Royalties:

- 6.5.1** CONTRACTOR shall be responsible at all times for compliance with applicable patents or copyrights encompassing, in whole or in part, any design, device, material, or process utilized, directly or indirectly, in the performance of the Work or the formulation or presentation of its Bid.
- 6.5.2** CONTRACTOR shall pay all royalties and license fees and shall provide, prior to commencement of Work hereunder and at all times during the performance of same, for lawful use of any design, device, material or process covered by letters, patent or copyright by suitable legal agreement with the patentee, copyright holder, or their duly authorized representative whether or not a particular design, device, material, or process is specified by OWNER.

6.5.3 CONTRACTOR shall defend all suits or claims for infringement of any patent or copyright and shall save OWNER harmless from any loss or liability, direct or indirect, arising with respect to CONTRACTOR's process in the formulation of its Bid or the performance of the Work or otherwise arising in connection therewith. OWNER reserves the right to provide its own defense to any suit or claim of infringement of any patent or copyright in which event CONTRACTOR shall indemnify and save harmless OWNER from all costs and expenses of such defense as well as satisfaction of all judgments entered against OWNER.

6.5.4 OWNER shall have the right to stop the Work and/or terminate this Agreement at any time in the event CONTRACTOR fails to disclose to OWNER that CONTRACTOR's work methodology includes the use of any infringing design, device, material or process.

6.6 Permits, Fees: Unless otherwise provided in the Supplemental General Conditions, CONTRACTOR shall obtain and pay for all construction permits, licenses and fees required for prosecution of the Work.

6.7 Laws and Regulations:

6.7.1 CONTRACTOR shall give all notices and comply with all laws and regulations applicable to furnishing and performing the Work, including arranging for and obtaining any required inspections, tests, approvals or certifications from any public body having jurisdiction over the Work or any part thereof. Except where otherwise expressly required by applicable laws and regulations, neither OWNER nor E/A shall be responsible for monitoring CONTRACTOR's compliance with any laws and regulations.

6.7.2 Maintaining clean water, air and earth or improving thereon shall be regarded as of prime importance. CONTRACTOR shall plan and execute its operations in compliance with all applicable Federal, State and local laws and regulations concerning control and abatement of water pollution and prevention and control of air pollution.

6.7.3 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 arising therefrom; 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 does not relieve CONTRACTOR of CONTRACTOR's obligations under Article 3.

6.7.4 This Work is subject to the Texas Pollution Discharge Elimination System (TPDES) permitting requirements for the installation and maintenance of temporary and permanent erosion and sediment controls and storm water pollution prevention measures throughout the construction period.

As applicable based TCEQ requirements related to project size and area of disturbance CONTRACTOR shall be responsible for:

- .1** Prepare Storm Water Pollution Prevention Plan (SWPPP).

- .2 CONTRACTOR shall file the Notice of Intent to the Texas Commission on Environmental Quality (TCEQ). CONTRACTOR shall pay the TPDES storm water application fee.
- .3 Posting of TCEQs "Construction Site Notice" near the main entrance of the work.
- .4 Inspection and Maintenance of all erosion/sedimentation controls.
- .5 Update the SWPPP as necessary to comply with TPDES permitting requirements, which includes noting changes in erosion / sedimentation controls and other best management practices that are part of the SWPPP and which may be necessary due to the results of inspection reports.
- .6 .Upon completion of the Work, provide TPDES records to OWNER."

6.8 Taxes:

- 6.8.1** CONTRACTOR shall pay only those sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the laws and regulations of the State of Texas in the performance of this public works contract.
- 6.8.2** OWNER is an exempt organization as defined by Chapter 11 of the Property Tax Code of Texas and is thereby exempt from payment of Sales Tax under Chapter 151, Limited Use Sales, Excise and Use Tax, Texas Tax Code, and Article 1066 (C), Local Sales and Use Tax Act, Revised Civil Statutes of Texas.

6.9 Use of Premises:

- 6.9.1** CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and regulations, right-of-way, permits and easements, and shall not unreasonably encumber the premises 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. Should any claim be made by any such owner or occupant because of or in connection with 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. **CONTRACTOR shall indemnify, defend and hold harmless OWNER, E/A, E/A'S Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including court costs and reasonable attorney's fees) arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, E/A or any other party indemnified hereunder to the extent caused by or based upon performance of the work or failure to perform the Work.**
- 6.9.2** During the progress of the Work and on a daily basis, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials.

CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall, at a minimum, restore to original condition all property not designated for alteration by the Contract Documents. If the CONTRACTOR fails to clean up at the completion of the Work, OWNER may do so and the cost thereof will be charged against the CONTRACTOR.

6.9.3 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.

6.10 Record Documents: CONTRACTOR shall maintain in a safe place at the site, or other location acceptable to OWNER, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.5) in good order and annotated to show all changes made during construction. These record documents together with all final samples and all final Shop Drawings will be available to OWNER and E/A for reference during performance of the Work. Upon Substantial Completion of the Work, these record documents, samples and Shop Drawings shall be promptly delivered to Owner's Representative.

6.11 Safety and Protection:

6.11.1 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Upon request, and prior to installation of measures, CONTRACTOR shall submit a site security plan for approval by OWNER. By reviewing the plan or making recommendations or comments, OWNER will not assume liability nor will CONTRACTOR be relieved of liability for damage, injury or loss. 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 Work 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, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

6.11.2 CONTRACTOR shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them 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 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. All damage, injury or loss to any property referred to in paragraph 6.11.1.2 and 6.11.1.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, Subcontractor, Supplier or any person or organization directly or indirectly employed by any of them to perform or furnish 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 Drawings or Specifications or to the acts or omissions of OWNER, or E/A, or E/A's consultant 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 faults or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties

and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and Owner's Representative has issued a notice to OWNER and CONTRACTOR in accordance with Article 14 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). Without limitation, CONTRACTOR shall comply with the following specific provisions:

It shall be the duty and responsibility of CONTRACTOR and all of its subcontractors to be familiar with and comply with 29 USC Section 651, et seq., the Occupational Safety and Health Act of 1970, as amended ("OSHA") and to enforce and comply with all provisions of this Act.

The CONTRACTOR and all of its subcontractors shall comply with all applicable requirements of Subpart P of Part 1926 of 29 C.F.R, OSHA Safety and Health Standards, Texas Health and Safety Code Section 756.023, as amended, and shall submit a unit price for the particular excavation safety systems to be utilized by the Contractor for all excavations which exceed a depth of five feet (5').

Before commencing any excavation which will exceed a depth of five feet (5'), the CONTRACTOR shall provide the Owner with detailed plans and specifications regarding the safety systems to be utilized. Said plans and specifications shall include a certification from a Texas licensed professional engineer indicating full compliance with the OSHA provisions cited above.

- 6.11.3** Safety Representative: CONTRACTOR shall designate in writing a qualified and experienced safety representative (the "Safety Representative") at the site whose duties and responsibilities shall include safety training; identifying and mitigating hazardous conditions and unsafe work practices; and developing, maintaining and supervising the implementation of safe work practices and safety programs as deemed necessary and appropriate for the Project. The term "Safety Representative" includes any designated Safety Supervisor, Superintendent or Safety Manager. The Safety Representative shall exercise due diligence in the execution of all Project related safety duties. The Safety Representative shall report directly to a company executive, not an on site project manager. Upon request of OWNER, CONTRACTOR shall provide certifications or other acceptable documentation of the Safety Representative's qualifications.
- 6.11.4** Hazard Communication Programs: 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 and regulations.
- 6.11.5** Emergencies:
- .1** In emergencies affecting the safety or protection of persons or the Work at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or E/A, is obligated to act reasonably to prevent threatened damage, injury or loss and to mitigate damage or loss to the Work. CONTRACTOR shall give Owner's Representative telephone notification as soon as reasonably practical and a prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Owner's Representative determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Directive or Change Order will be issued to document the consequences of such action; otherwise OWNER will not be responsible for CONTRACTOR's emergency action.

- .2 Authorized agents of CONTRACTOR shall respond immediately to call-out at any time of any day or night when circumstances warrant the presence on Project site of CONTRACTOR or his agent to protect the Work or adjacent property from damage, restriction or limitation or to take such action or measures pertaining to the Work as may be necessary to provide for the safety of the public. Should CONTRACTOR and/or their agent fail to respond and take action to alleviate such an emergency situation, OWNER may direct other forces to take action as necessary to remedy the emergency condition, and OWNER will deduct any cost of such remedial action from the funds due CONTRACTOR under this Contract.
- .3 In the event there is an accident involving injury to any individual or damage to any property on or near the Work, CONTRACTOR shall provide to Owner's Representative verbal notification within one (1) hour and written notification within twenty-four (24) hours of the event and shall be responsible for recording the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining medical reports, police accident reports and other documentation that describes the event. Copies of such documentation shall be provided to Owner's Representative, for OWNER's and E/A's records, within forty-eight (48) hours of the event. Contractor shall cooperate with OWNER on any OWNER investigation of any such incident.

6.12 Continuing the Work: 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 OWNER and CONTRACTOR may otherwise agree in writing.

6.13 CONTRACTOR's General Warranty and Guarantee:

6.13.1 CONTRACTOR warrants and guarantees to OWNER that all Work will conform to the plans and specifications, be performed in a good and workmanlike manner in accordance with the Contract Documents and will not be defective. This warranty will survive the termination or expiration of the Contract. 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 or Suppliers; or
- .2 normal wear and tear under normal usage.

6.13.2 CONTRACTOR's obligation to perform and complete the Work in a good and workmanlike manner 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 Owner's Representative and/or E/A;
- .2 recommendation of any progress or final payment by Owner's Representative;
- .3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- .4 use or occupancy of the Work or any part thereof by OWNER;
- .5 any acceptance by OWNER or any failure to do so;
- .6 any review of a Shop Drawing or sample submittal;
- .7 any inspection, test or approval by others; or

.8 any correction of defective Work by OWNER.

6.14 INDEMNIFICATION:

6.14.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER, E/A, E/A'S Consultants and Subconsultants and their respective officers, directors, partners, employees, agents and other Consultants and any of them (the "INDEMNIFIED PARTIES") 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 resulting from the performance of the Work, provided that any such claim, cost, loss or damage:

- .1 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, and**
- .2 Is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the INDEMNIFIED PARTIES hereunder or whether liability is imposed upon such INDEMNIFIED PARTY by laws and regulations regardless of the negligence of any such person or entity.**

In the event that indemnification of the INDEMNIFIED PARTIES is prohibited by law, CONTRACTOR shall nonetheless be solely responsible for any liability arising out of or resulting from the performance of the Work, subject to the limitations set forth above, and shall indemnify and hold harmless the remaining INDEMNIFIED PARTIES, who may be legally indemnified, from such liability of the CONTRACTOR and the associated costs described above.

6.14.2 The indemnification obligation under paragraph 6.14.1 shall not be limited in any way by any limitation on the amount or type of damages, or compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

6.14.3 The obligations of CONTRACTOR under paragraph 6.14.1 shall not extend to the liability of OWNER, E/A, E/A's consultants, and their officers, directors, partners,

employees or agents caused primarily by negligent preparation of maps, drawings, surveys, designs or specifications upon which is placed the applicable state-authorized design professional seal of OWNER's, E/A's or E/A's consultant's officers, directors, partners, employees or agents.

6.14.4 In the event CONTRACTOR fails to follow OWNER's directives concerning use of the site, scheduling or course of construction, or engages in other conduct which proximately causes damage to property based on inverse condemnation or otherwise, then and in that event, CONTRACTOR shall indemnify OWNER against all costs resulting from such claims.

6.14.5 In the event CONTRACTOR unreasonably delays progress of the work being done by others on the site so as to cause loss for which OWNER becomes liable, then CONTRACTOR shall indemnify OWNER from and reimburse OWNER for such loss.

6.15 Survival of Obligations: 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 and termination or completion of the Agreement.

6.16 Losses from Natural Causes: Unless otherwise specified, all loss or damage to CONTRACTOR arising out of the nature of the Work to be done or from action of the elements, floods or from unforeseeable circumstances in prosecution of the Work or from unusual obstructions or difficulties which may be encountered in prosecution of the Work, shall be sustained and borne by CONTRACTOR at its own cost and expense.

6.17 Notice of Claim: Should CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of OWNER or of any of OWNER's employees or agents or others for whose acts OWNER is liable, a Claim must be made to the other party within ninety (90) calendar days of the event giving rise to such injury or damage. The provisions of this paragraph 6.17 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

6.18 Liquidated Damages: CONTRACTOR or its Surety shall be liable for liquidated damages for the failure of the CONTRACTOR to timely complete the Work or any portion thereof within the Contract Time.

ARTICLE 7 - OTHER WORK

7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other contracts therefore, or have other work performed by utility owners. CONTRACTOR and OWNER agree to and shall use best efforts to cooperate and coordinate the Work with others performing work and other work related to the Project in order to avoid conflicts and delays in the Work. If CONTRACTOR believes that delay or additional cost is involved because of such action by OWNER, CONTRACTOR may make a Claim as provided in Article 11 or 12.

7.2 CONTRACTOR shall afford other contractors who are in a contract with OWNER and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and 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 Owner's Representative and the other contractors whose work will be affected. CONTRACTOR shall promptly remedy damage wrongfully caused by CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.

- 7.3** 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 Owner's Representative 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 report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.
- 7.4** OWNER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of CONTRACTOR, who shall cooperate with them. CONTRACTOR shall participate with other separate contractors and Owner's Representative in reviewing their construction Progress Schedules when directed to do so. On the basis of such review, CONTRACTOR shall make any revisions to the construction Progress Schedule deemed necessary after a joint review and mutual agreement. The agreed upon construction Progress Schedules shall then constitute the Progress Schedules to be used by CONTRACTOR, separate contractors and OWNER until subsequently revised.
- 7.5** Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

- 8.1** Prior to the start of construction, OWNER will designate a person or entity to act as Owner's Representative during construction. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through Owner's Representative.
- 8.2** OWNER 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. OWNER is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to furnishing or performing the Work. OWNER is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of OWNER to discover, or object to or condemn any defective Work or material shall not release CONTRACTOR from the obligation to properly and fully perform the Contract.
- 8.3** OWNER is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work. CONTRACTOR acknowledges and agrees that OWNER'S direction to perform Work in accordance with the approved Progress Schedule is not a demand for acceleration or a dictation of CONTRACTOR'S means or methods.
- 8.4** Information or services under the OWNER's control shall be furnished by the OWNER with reasonable promptness to avoid delay in orderly progress of the Work. The OWNER shall have a reasonable amount of time to investigate site conditions, review submittals, analyze requests for changes, and to make other decisions in the orderly administration of the Contract. CONTRACTOR must notify the OWNER in writing, if the time for the investigation,

review, analysis of any submittals, required for changes or otherwise required for OWNER'S decision, impacts in any way the Critical Path of the approved Progress Schedule.

- 8.5** The foregoing are in addition to other duties and responsibilities of the OWNER enumerated herein and especially those in respect to Article 4 (Availability of Lands; Subsurface and Physical Conditions; Reference Points), Article 7 (Other Work) and Article 14 (Payments to CONTRACTOR and Completion).
- 8.6 Notice of Claim:** Should OWNER suffer injury or damage to person or property because of any error, omission or act of CONTRACTOR or of any of CONTRACTOR's employees or agents or others for whose acts CONTRACTOR is liable, a Claim will be made to the other party within thirty (30) calendar days of receipt of actual or constructive notice of the event giving rise to such injury or damage. The provisions of this paragraph 8.6 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or statute of repose.

ARTICLE 9 - ENGINEER/ARCHITECT'S STATUS DURING CONSTRUCTION

9.1 E/A's Authority and Responsibilities:

- 9.1.1** The duties and responsibilities and the limitations of authority of E/A during construction, as set forth in the Contract Documents, may be assigned or assumed by the OWNER, but shall not be extended without written consent of OWNER and/or E/A. The assignment of any authority, duties or responsibilities to E/A under the Contract Documents, or under any agreement between OWNER and E/A, or any undertaking, exercise or performance thereof by E/A, is intended to be for the sole and exclusive benefit of OWNER and not for the benefit of CONTRACTOR, Subcontractor, Supplier, or any other person or organization, or for any surety or employee or agent of any of them.
- 9.1.2** E/A 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. E/A is not responsible for any failure of CONTRACTOR to comply with laws and regulations applicable to the furnishing or performing the Work. E/A is not responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents. Failure or omission of E/A to discover, or object to or condemn any defective Work or material shall not release CONTRACTOR from the obligation to properly and fully perform the Contract.
- 9.1.3** E/A is not responsible for the acts or omissions of CONTRACTOR, or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.1.4** If OWNER and E/A agree, E/A will review the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by Article 14, but only 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.
- 9.1.5** The limitations upon authority and responsibility set forth in this paragraph 9.1 shall also apply to E/A's Consultants, Resident Project Representative and assistants.

- 9.2 E/A assisting Owner's Representative:** E/A will assist the Owner's Representative designated under paragraph 8.1 during the construction period. The duties and responsibilities and the limitations of authority of E/A in assisting the Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and E/A. E/A shall not have the authority to bind the Owner as that authority lies with the Owner's representative, but E/A may communicate on behalf of Owner in all Project matters.
- 9.3 Visits to Site:** If OWNER and E/A agree, E/A will make visits to the site at intervals appropriate to the various stages of construction as E/A 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, E/A will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. E/A will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. E/A'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 on-site observations, E/A will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. E/A's visits and on-site observations are subject to all the limitations on E/A's authority and responsibility set forth in paragraph 9.1 and 9.2.
- 9.4 Resident Project Representative:** If OWNER and E/A agree, E/A will furnish a Resident Project Representative to assist E/A in providing more continuous observation of the Work. The responsibilities and authority and limitations of any such Resident Project Representative and assistants will be as provided in paragraph 9.1, 9.2 and Division C. OWNER may designate another representative or agent to represent OWNER at the site who is not E/A, E/A's consultant, agent or employee.
- 9.5 Clarifications and Interpretations:** E/A may determine that written clarifications or interpretations of the requirements of the Contract Documents (in the form of drawings or otherwise) are necessary. Such written clarifications or interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents, will be issued with reasonable promptness by Owner's Representative and will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Amount or the Contract Times, OWNER or CONTRACTOR may make a Claim therefore as provided in Article 11 or 12.
- 9.6 Rejecting Defective Work:** E/A will recommend that OWNER disapprove or reject Work which E/A believes to be defective, or believes will not produce a completed Project that conforms to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- 9.7 Shop Drawings:** Refer to Contract documents for E/A's authority concerning Shop Drawings.

ARTICLE 10 - CHANGES IN THE WORK

10.1 Changes:

- 10.1.1** 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. Such changes in the Work will be authorized by Change Order, Change Directive or Field Order. In the event that the OWNER and the CONTRACTOR are unable to negotiate the terms of a Change Order for the performance of additional Work, the

OWNER may, at its election, perform such additional Work with its own forces or with another contractor and such work will be considered "Other Work" in accordance with Article 7.

- 10.1.2** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CONTRACTOR shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or Field Order. CONTRACTOR's proposals for changes in the Contract Amount and/or Contract Time shall be submitted within ten (10) Calendar Days of request by Owner's Representative, including impacts to the approved Progress Schedule, unless Owner's Representative grants an extension. OWNER will review each proposal and respond to CONTRACTOR within ten (10) Calendar Days. After review by OWNER, CONTRACTOR shall provide any supporting data requested by Owner's Representative within seven (7) Calendar Days, unless Owner's Representative grants an extension. OWNER will determine within seven (7) Calendar Days whether to pursue the change in Work.
- 10.1.3** CONTRACTOR shall not be entitled to an increase in the Contract Amount or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.3.1 and 3.3.2, except in the case of an emergency as provided in paragraph 6.11.5 or in the case of uncovering Work as provided in paragraph 13.4.
- 10.1.4** Except in the case of an emergency as provided in paragraph 6.11.5, a Change Order or Change Directive is required before CONTRACTOR commences any activities associated with a change in the Work which, in CONTRACTOR's opinion, will result in a change in the Contract Amount and/or Contract Times.
- 10.1.5** 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 Amount 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, and the amount of each applicable Bond will be adjusted accordingly.

10.2 Change Orders:

- 10.2.1** OWNER and CONTRACTOR shall execute appropriate written Change Orders covering:
- .1 a change in the Work;
 - .2 the amount of the adjustment in the Contract Amount, if any; and
 - .3 the extent of the adjustment in the Contract Time, if any.
- 10.2.2** An executed Change Order shall represent the complete, equitable, and final amount of adjustment in the Contract Amount and/or Contract Time owed to CONTRACTOR or OWNER as a result of the occurrence or event causing the change in the Work encompassed by the Change Order.

10.3 Change Directives:

- 10.3.1** Without invalidating the Contract, OWNER may, by written Change Directive, using the Force Account method, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Amount and Contract Time being adjusted as necessary. "Force Account" means a basis of payment for the direct performance of Work with payment based on the actual cost of the labor, equipment and materials furnished and consideration for overhead and profit as set forth in Section 11.5, below. A Change Directive shall be

used in the absence of complete and prompt agreement on the terms of a Change Order. Where practicable, any items of Work that may be agreed upon, prior to the performance of Work under this Section, will be included in a separate Change Order. For example, the cost of the installation of additional asphalt may be agreed upon based on the unit prices in the Bid.

- 10.3.2** If the Change Directive provides for an adjustment to the Contract Amount, the adjustment shall be based on the method provided in paragraph 11.5.
- 10.3.3** A Change Directive shall be effective immediately and shall be recorded later by preparation and execution of an appropriate Change Order.
- 10.3.4** Upon receipt of a Change Directive, CONTRACTOR shall promptly proceed with the change in the Work involved, provided, prior to the commencement of any Work under this section, the CONTRACTOR must submit its proposed Work plan, anticipated schedule, and a list of its work force and equipment proposed to be used in the Work for OWNER'S approval. Upon such approval, CONTRACTOR must promptly commence and make continuous progress in the Work. The OWNER reserves the right to withhold payment for low production or lack of progress.

10.4 Field Order:

- 10.4.1** Owner's Representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Amount 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 shall be accomplished by written Field Order and shall be binding on OWNER and on CONTRACTOR who shall perform the Work involved promptly.
- 10.4.2** If CONTRACTOR believes that a Field Order would require an adjustment in the Contract Amount and/or Contract Times, CONTRACTOR shall make a prompt written request to Owner's Representative for a Change Order. Any request by CONTRACTOR for an adjustment in Contract Amount and/or Contract Times must be made in writing prior to beginning the work covered by the Field Order.

10.5 No Damages for Delay: CONTRACTOR EXPRESSLY WAIVES ANY RIGHT TO AN ADJUSTMENT IN CONTRACT PRICE FOR ANY EVENT OF DELAY. CONTRACTOR'S SOLE REMEDY FOR ANY DELAY SHALL BE LIMITED TO AN ADJUSTMENT IN CONTRACT TIME.

ARTICLE 11 - CHANGE OF CONTRACT AMOUNT

- 11.1** The Contract Amount is stated in the Agreement and, including authorized adjustments, is the total amount payable by OWNER to CONTRACTOR for performance of the Work under the Contract Documents.
- 11.2** The original Contract Amount may not be increased by more than twenty-five percent (25%) and it may not be decreased more than twenty-five percent (25%) without the consent of the CONTRACTOR to such decrease, except in the event of a termination for convenience under paragraph 15.2 or the failure of the City Council to appropriate sufficient funding for the Project, in which events it is agreed that the consent of the CONTRACTOR will not be required.
- 11.3** The Contract Amount shall only be changed by a Change Order. Any claim for an adjustment in the Contract Amount shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days) after the start of the occurrence or event giving rise to the Claim and stating the general nature of

the Claim. Notice of the amount of the Claim with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed covers all known amounts to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Amount shall be determined as set out in Article 16.

11.4 Determination of Value of Work:

11.4.1 The value of any Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:

- .1** by application of unit prices contained in the Contract Documents to the quantities of the items involved.
- .2** by a mutually agreed lump sum properly itemized and supported by sufficient substantiating data, including documentation by subcontractors performing the work, to permit evaluation.
- .3** by cost of Work plus CONTRACTOR's fee for all overhead costs and profit (determined as provided in paragraph 11.5).
- .4** No cost will be included in the change order for time spent preparing the change order, nor will costs be included for an estimate of time to negotiate the change order costs for machinery, tools, or equipment as described in subparagraph 11.5.3

11.4.2 Before using the method described in paragraph 11.4.1.3, OWNER and CONTRACTOR agree to negotiate a Change Order using the methods identified in paragraphs 11.4.1.1 and 11.4.1.2, as appropriate, to determine the adjustment in the Contract Amount.

11.5 **Cost of Work:** If neither of the methods defined in paragraphs 11.4.1.1 nor 11.4.1.2 can be agreed upon before a change in the Work is commenced which will result in an adjustment in the Contract Amount, then the change in the Work will be performed by Change Directive, using the Force Account method, and payment will be made as follows:

11.5.1 For all personnel, CONTRACTOR will receive actual field cost wage rates for each hour that said personnel are actually engaged in such Work, as substantiated by its certified payroll, to which will be added an amount equal to twenty-five percent (25%) of the sum thereof as compensation for CONTRACTOR's and any effected Subcontractor's total overhead and profit. No separate charge will be made by CONTRACTOR or its Subcontractor(s) for organization or overhead expenses. In no case will the rate of wage be less than the minimum shown in the Contract for a particular category. CONTRACTOR will also receive an amount equal to 55% of the wages paid personnel, excluding the 25% compensation provided above, for CONTRACTOR's and any effected Subcontractor's cost of premiums on public liability insurance, workers' compensation insurance, social security and unemployment insurance. The actual cost of CONTRACTOR's bond(s) on the extra Work will be paid based on invoices from surety. No charge for superintendence will be made unless considered necessary and ordered by OWNER.

11.5.2 CONTRACTOR will receive the actual cost, including freight charges, of the materials used and installed on such Work, to which costs will be added a sum equal to twenty-five percent (25%) thereof as compensation for CONTRACTOR's and any effected Subcontractor's total overhead and profit. In case material invoices indicate a discount may be taken, the actual cost will be the invoice price minus the discount.

- 11.5.3** For machinery, trucks, power tools, or other similar equipment (the "equipment") agreed to be necessary by OWNER and CONTRACTOR, OWNER will allow CONTRACTOR the applicable daily, weekly or monthly rate as given in the latest edition of the "Rental Rate Blue Book" as published by Equipment Watch (1-800-669-3282) for each hour that said equipment is in use on such work, which rate includes the cost of fuel, lubricants and repairs. The established equipment rates will be paid for each hour that the equipment is utilized in the Work. In the event that the equipment is used intermittently during the Work, full payment for an eight-hour day will be made if the equipment is not idle more than four (4) hours of the day. If the equipment is idle more than four (4) hours in a day, then payment will be made only for the actual hours worked. No additional compensation will be allowed on the equipment for CONTRACTOR's or any affected Subcontractor's overhead and profit. OWNER may accept an actual rental invoice in lieu of the method of calculation set forth in paragraph 11.5.3 for equipment rented exclusively for Force Account Work or for equipment not included in the Rental Rate Blue Book.
- 11.5.4** The compensation, as herein provided for, shall be received by CONTRACTOR and any affected Subcontractor as payment in full for work done by Change Directive and will include use of small tools, and total overhead expense and profit. CONTRACTOR and Owner's Representative shall compare records of work done by Change Directive at the end of each day. Copies of these records will be made upon forms provided for this purpose by OWNER and signed by both Owner's Representative and CONTRACTOR, with one copy being retained by OWNER and one by CONTRACTOR. Refusal by CONTRACTOR to sign these records within two (2) working days of presentation does not invalidate the accuracy of the record.

11.6 Unit Price Work:

- 11.6.1** Where the Contract Documents provide that all or part of the Work is to be unit price Work, initially the Contract Amount will be deemed to include for all unit price work an amount equal to the sum of the established unit price for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Bid. 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 Amount. Determinations of the actual quantities and classifications of unit price work performed by CONTRACTOR will be made by Owner's Representative. Owner's Representative will review with CONTRACTOR the preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).
- 11.6.2** When "plan quantity" is indicated for a Bid item, CONTRACTOR shall be paid amount specified in the Contract Documents without any measurements.
- 11.6.3** 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.
- 11.6.4** A Major Item is any individual Bid item in the Bid that has a total cost equal to or greater than five percent (5%) of the original Contract Amount or \$50,000, whichever is greater, computed on the basis of Bid quantities and Contract unit prices.
- 11.6.5** OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Amount in accordance with Article 11 if:
- .1** the actual quantity of any Major Item should become as much as twenty percent (20%) more than or twenty percent (20%) less than that in the Bid; or

- .2 CONTRACTOR presents documentation contesting accuracy of "plan quantity" and Owner's Representative verifies quantity and determines original value is in error by five percent (5%) or more;

Provided, however, in the event a Major Item is reduced by twenty percent (20%) or more of the amount in the Bid, no additional Article 11 profit or overhead will be added, if, due to other additions in the Work, the net value of the Contract Amount is not reduced.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

12.1 Working Day and Calendar Day Contracts:

- 12.1.1** The Contract Times (or Milestones) may only be changed by Change Order or Time Extension Request duly executed by both CONTRACTOR and Owner's Representative. Any claim for an adjustment of the Contract Times (or Milestones) shall be made by Written Notice delivered by the party making the Claim to the other party promptly (but in no event later than thirty (30) calendar days after the start of the occurrence or event giving rise to the delay) and stating the general nature of the delay. Notice of the extent of the delay with supporting data shall be delivered within thirty (30) calendar days after Written Notice of Claim is delivered by claimant, and shall represent that the adjustment claimed is the entire adjustment to which claimant is entitled as a result of said occurrence or event. If OWNER and CONTRACTOR cannot otherwise agree, all Claims for adjustment in the Contract Times (or Milestones) shall be determined as set out in Article 16. No Claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.
- 12.1.2** When CONTRACTOR is at fault and OWNER stops the Work, so that corrections in the Work can be made by CONTRACTOR, no extension in time will be allowed.
- 12.1.3** When CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. If performance by the CONTRACTOR or OWNER is interrupted by any occurrence not occasioned by its own conduct, whether such occurrence be an act of god or the result of war, riot, civil commotion, sovereign conduct, or the conduct of a third party, then such performance will be excused for a period of time necessary to remedy its effects, provided, however, in such an event, a conference will be held within three (3) business days to establish a proposed new Progress Schedule for the Project.
- 12.1.4** OWNER will consider time extension requests and may grant CONTRACTOR an extension of time because of:
 - .1 Changes ordered in the work which justify additional time.
 - .2 Failure of materials or products being at the Project site due to delays in transportation or failures of Suppliers, which are not the result of CONTRACTOR's, Subcontractor's or Supplier's negligence. The request for an extension of time shall be supported by a citation of acts demonstrating that the delays are beyond CONTRACTOR's control, including, but not limited to, CONTRACTOR's efforts to overcome such delays documented as follows:

- a) Copy of purchase order for delayed item(s) indicating date ordered by CONTRACTOR/ Subcontractor and date purchase order received by Supplier.
 - b) If item(s) require Shop Drawings or other submittal information in accordance with the Contract Documents, provide record of date submittal(s) forwarded to Owner's Representative, date submittal(s) returned to CONTRACTOR, and date submittal(s) forwarded to Supplier.
 - c) Copy of document(s) from Supplier, on Supplier's letterhead, indicating date(s) item(s) would be ready for shipment and/or actual shipment date(s).
 - d) Copies of all correspondence between CONTRACTOR / Subcontractor and Supplier indicating CONTRACTOR / Subcontractor's efforts to expedite item(s).
 - e) If item(s) are being purchased by a Subcontractor, provide correspondence, meeting notes, etc., that reflect CONTRACTOR's efforts with the Subcontractor to expedite delivery of the item(s).
- .3 When acts of OWNER, E/A, utility owners or other contractors employed by OWNER delay progress of work through no fault of CONTRACTOR. The CONTRACTOR will only be entitled to an extension of time for delays that affect the Critical Path of the Work and that are not caused by the CONTRACTOR.
- .4 When CONTRACTOR is delayed by strikes, lockouts, fires, losses from natural causes, or other unavoidable cause or causes beyond CONTRACTOR's control.

12.2 Calendar Day Contracts:

- 12.2.1** Under a Calendar Day Contract, CONTRACTOR may be granted an extension of time because of unusual inclement weather, including but not limited to unusual rainfall events, which are beyond the normal rainfall recorded and expected for Dripping Springs, Texas. However, the CONTRACTOR will not be granted an extension of time for "normal rainfall", as described below.
- 12.2.2** "Unusual Inclement Weather" is defined as a rain event or other weather related event which occurs at the site and is of sufficient magnitude to prevent CONTRACTOR from performing units of Work critical to maintaining the Progress Schedule.
- 12.2.3** Baseline Rain Day Determination. "Normal rainfall" compiled by the State climatologist, based on U.S. Weather Bureau Records for Dripping Springs, Texas, is considered a part of the Calendar Day Contract, and is not a justification for an extension of time. Listed below are the number of days in each month for which no compensatory days for rainfall events ("Rain Days") in such months may be claimed:

| | | | |
|----------|--------|-----------|--------|
| January | 5 days | July | 4 days |
| February | 4 days | August | 4 days |
| March | 5 days | September | 5 days |
| April | 4 days | October | 5 days |
| May | 5 days | November | 4 days |
| June | 6 days | December | 4 days |

Rain Days in addition to the baseline Rain Day determination described above will be measured with the Owner's Representative's approval at the nearest operational public weather data collection facility to the site, including but not limited to the OWNER's early warning flood gauge system.

- 12.2.4** CONTRACTOR may receive credit in any month for Unusual Inclement Weather, and specifically for any Rain Days in that month which exceed the number of Rain Days allocated to that month, if a Claim is made in accordance with paragraph 12.1.1 and the weather event meets the definition for "Unusual Inclement Weather", and as applicable, "Rain Day" and such claimed day is a day on which Work critical to maintaining the Progress Schedule is scheduled to be performed and is otherwise capable of being performed.

ARTICLE 13 - TESTS & INSPECTIONS; DEFECTIVE WORK

- 13.1 Notice of Defects:** Prompt notice of all defective Work of which OWNER or E/A has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in Article 13. CONTRACTOR must give OWNER and E/A prompt notice of any defective Work of which CONTRACTOR has actual knowledge.
- 13.2 Access to Work:** OWNER, E/A, E/A's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies having jurisdiction will have access to the Work at reasonable times for observing, 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.
- 13.3 Tests and Inspections:**
- 13.3.1** CONTRACTOR shall give 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.
- 13.3.2** OWNER shall employ and pay for 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 paragraph 13.3.3 below;
 - .2** that costs incurred with tests or inspections conducted pursuant to paragraph 13.4.3 below shall be paid as provided in paragraph 13.4.3;
 - .3** for reinspecting or retesting defective Work, including any associated costs incurred by the testing laboratory for cancelled tests or standby time; and
 - .4** as otherwise specifically provided in the Contract Documents. All testing laboratories shall meet the requirements of ASTM E-329.
- 13.3.3** 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 Owner's Representative the required certificates of inspection or approval.

13.3.4 CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and E/A's review of materials or equipment to be incorporated in the Work, or of materials, mix designs or equipment submitted for review prior to CONTRACTOR's purchase thereof for incorporation in the Work.

13.4 Uncovering Work:

13.4.1 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of Owner's Representative, or if any Work is covered contrary to the written request of Owner's Representative, it must, if requested by Owner's Representative, be uncovered and recovered at CONTRACTOR's expense.

13.4.2 If Owner's Representative considers it necessary or advisable that covered Work be observed, inspected or tested, CONTRACTOR shall uncover, expose or otherwise make available for observation, inspection or testing that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from 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).

13.5 OWNER May Stop the Work:

13.5.1 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers, suitable materials, and/or equipment; or fails to furnish or perform the Work in such a way that the Work in progress or 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 or any surety or other party.

13.5.2 If CONTRACTOR fails to correct defective Work or submit a satisfactory plan to take corrective action, with procedure and time schedule, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until cause for such order has been eliminated, or take any other action permitted by this Contract. A notice to stop the Work, based on defects, shall not stop calendar or working days charged to the Project.

13.6 Correction or Removal of Defective Work: If required by OWNER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Owner's Representative, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall correct or remove and replace defective Work, or submit a plan of action detailing how the deficiency will be corrected, within the time frame identified in the notice of defective Work. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.7 Warranty period:

13.7.1 If within two year after the date of Substantial Completion or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents (e.g. paragraph 14.11.2), any Work, including work performed after the Substantial Completion date, is found to be defective,

CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions:

- (i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and
- (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting there from.

If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR. The warranty period will be deemed to be renewed and recommenced in connection with the completed items of Work requiring correction.

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

13.7.3 If correction of defective Work will affect the function or use of the facility CONTRACTOR shall not proceed with correction of defective Work without prior coordination and approval of OWNER.

13.7.4 The obligations of the CONTRACTOR to perform warranty work will survive the acceptance of the Work and any termination of the Contract.

13.8 Acceptance of Defective Work: If, instead of requiring correction or removal and replacement of defective Work, OWNER decides to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and compensating OWNER for the diminished value of the defective Work. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER after a calculation by OWNER of the diminution in value of the defective Work.

13.9 OWNER May Correct Defective Work: If CONTRACTOR fails within a reasonable time after Written Notice of OWNER to correct defective Work, or to remove and replace rejected Work, 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 (7) calendar days' Written Notice to CONTRACTOR, correct and remedy any such deficiency. If, in the opinion of the Owner's Representative, significant progress has not been made during this seven (7) calendar day period to correct the deficiency, the OWNER may exercise any actions necessary to remedy the deficiency. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and 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, 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, its agents and employees, OWNER's other contractors, E/A and E/A's consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies 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. 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. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones), or claims of damage because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 Application for Progress Payment:

- 14.1.1** No more often than once a month, CONTRACTOR shall submit to Owner's Representative for review an Application for Payment, in a form acceptable to OWNER, 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.
- 14.1.2** Such applications shall not include requests for payment on account of changes in the Work which have been properly authorized by Change Directives but not yet included in Change Orders.
- 14.1.3** Such applications shall not include requests for payment of amounts the CONTRACTOR does not intend to pay to a Subcontractor or Supplier because of a dispute or other reason.
- 14.1.4** If payment is requested on the basis of materials or 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 be accompanied by such bills of sale, data and other procedures satisfactory to OWNER substantiating OWNER's title to such materials or equipment or otherwise protecting OWNER's interest. Payment on account of such materials or equipment will not include any amount for CONTRACTOR's overhead or profit or relieve CONTRACTOR of its obligation to protect and install such materials or equipment in accordance with the requirements of the Contract and to restore damaged or defective Work. If materials or equipment are stored at another location, at the direction of the OWNER they shall be stored in a bonded and insured facility, accessible to E/A and OWNER, and shall be clearly marked as property of OWNER. Title to materials delivered to the site of the Work or a staging area will pass to OWNER upon payment by OWNER without the necessity for further documentation. Risk of loss will not pass to OWNER until acceptance.
- 14.1.5** Where the original Contract Amount is less than \$400,000, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less ten percent (10%) of amount thereof, which ten percent (10%) will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. Where the original Contract Amount is \$400,000 or more, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less five percent (5%) of amount thereof, which five percent (5%) will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of CONTRACTOR, OWNER may pay a portion of the retained amount to CONTRACTOR. CONTRACTOR, at OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, CONTRACTOR shall receive

payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2.

14.1.6 Applications for Payment shall include the following documentation:

- .1 updated Progress Schedule;
- .2 monthly subcontractor report;
- .3 any other documentation required under the Supplemental General Conditions.

14.2 CONTRACTOR's Warranty of Title: 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 free and clear of all Liens no later than the time of payment to CONTRACTOR.

14.3 Review of Applications for Progress Payment:

14.3.1 Owner's Representative will, within ten (10) calendar days after receipt of each Application for Payment, either indicate a recommendation for payment and forward the Application for processing by OWNER, or return the Application to CONTRACTOR indicating Owner's Representative's reasons for refusing to recommend payment. In the latter case, CONTRACTOR shall make the necessary corrections and resubmit the Application.

14.3.2 Owner's Representative's recommendation of any payment requested in an Application for Payment will constitute a representation by Owner's Representative, based upon Owner's Representative's on-site observations of the executed Work and on Owner's Representative's review of the Application for Payment and the accompanying data and schedules, that to the best of Owner's Representative's knowledge, information and belief:

- .1 the Work has progressed to the point indicated; and
- .2 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, and to any other qualifications stated in the recommendation).

14.3.3 By recommending any such payment, Owner's Representative will not thereby be deemed to have represented that:

- .1 exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work;
- .2 examination has been made to ascertain how or for what purpose CONTRACTOR has used money previously paid on account of the Contract Amount;
- .3 CONTRACTOR's construction means, methods, techniques, sequences or procedures have been reviewed; or
- .4 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.

14.4 Decisions to Withhold Payment:

14.4.1 OWNER may withhold or nullify the whole or part of any payment to such extent as may be necessary on account of:

- .1 defective Work not remedied;
 - .2 third party Claims filed or reasonable evidence indicating probable filing of such Claims;
 - .3 failure of CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment;
 - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Amount;
 - .5 damage to OWNER or another contractor;
 - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - .7 failure of CONTRACTOR to submit a schedule of values in accordance with the Contract Documents;
 - .8 failure of CONTRACTOR to submit a submittal schedule in accordance with the Contract Documents;
 - .9 failure of CONTRACTOR to submit and update a construction Progress Schedule in accordance with the Contract Documents;
 - .10 failure of CONTRACTOR to maintain a record of changes on drawings and documents;
 - .11 failure of CONTRACTOR to maintain weekly payroll reports and, as applicable, provide copies of reports in a timely manner upon request of OWNER;
 - .12 failure of CONTRACTOR to submit monthly subcontractor reports;
 - .13 CONTRACTOR's neglect or unsatisfactory prosecution of the Work, including failure to clean up;
 - .14 failure of CONTRACTOR to comply with any provision of the Contract Documents.
- 14.4.2** When the above reasons for withholding payment are removed, CONTRACTOR shall resubmit a statement for the value of Work performed. Payment will be made within thirty (30) calendar days of receipt of approved Application for Payment.
- 14.5 Payment Becomes Due:** Thirty days after presentation of the Application for Payment to Owner with E/A's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- 14.6 Arrears:** No money shall be paid by OWNER upon any claim, debt, demand or account whatsoever, to any person, firm or corporation who is in arrears to City for taxes; and City shall be entitled to counterclaim and automatically offset against any such debt, claim, demand or account in the amount of taxes so in arrears and no assignment or transfer of such debt, claim, demand or account after said taxes are due, shall affect the right of OWNER to so offset said taxes, and associated penalties and interest if applicable, against the same.
- 14.7 Substantial Completion:**
- 14.7.1** When the CONTRACTOR considers that the Work, or a portion thereof which the OWNER agrees to accept separately, is substantially complete, the CONTRACTOR shall notify Owner's Representative in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as Incomplete) and request a determination as to whether the Work or designated portion thereof is

substantially complete. If Owner's Representative does not consider the Work substantially complete, Owner's Representative will notify CONTRACTOR giving reasons therefore. After performing any required Work, CONTRACTOR shall then submit another request for Owner's Representative to determine Substantial Completion. If Owner's Representative considers the Work substantially complete, Owner's Representative will prepare and deliver a certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before final payment, shall establish the time within which CONTRACTOR shall finish the punch list, and shall establish responsibilities of the OWNER and CONTRACTOR for security, maintenance, heat, utilities, damage to the Work, warranty and insurance. Failure to include an item on the punch list does not alter the responsibility of CONTRACTOR to complete all Work in accordance with the Contract Documents. If a Certificate of Occupancy is required by public authorities having jurisdiction over the Work, said certificate shall be issued before the Work or any portion thereof is considered substantially complete. The certificate of Substantial Completion shall be signed by OWNER and CONTRACTOR to evidence acceptance of the responsibilities assigned to them in such certificate.

14.7.2 If some or all of the Work has been determined not to be at a point of Substantial Completion, Contractor shall reimburse Owner for any costs and expenses incurred by Owner for re-inspection or re-testing, such costs to be set off against subsequent payments or memorialized in a Change Order.

14.7.3 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER will allow CONTRACTOR reasonable access to complete or correct items on the punch list and complete warranty work.

14.8 Partial Utilization: Use by OWNER, at OWNER's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER 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, may be accomplished prior to Substantial Completion of all the Work in accordance with the following:

14.8.1 OWNER at any time may request CONTRACTOR to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR shall certify to Owner's Representative that such part of the Work is substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. CONTRACTOR at any time may notify Owner's Representative that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Owner's Representative to issue a notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted. The provisions of paragraphs 14.7.1 and 14.7.2 will apply with respect to the notice specifying what portion of the Work is partially completed for the purpose of payment and what Work remains to be done on the portion being accepted.

14.8.2 Such partial utilization is authorized by public authorities having jurisdiction over the Work.

14.9 Final Inspection: Upon Written Notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Owner's Representative will make a final inspection with

CONTRACTOR and provide Written Notice 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.

14.10 Final Application for Payment: CONTRACTOR may make application for final payment following the procedure for progress payments after CONTRACTOR has completed all such corrections to the satisfaction of Owner's Representative and delivered the following documents:

14.10.1 Affidavit by CONTRACTOR certifying the payment of all debts and claims;

14.10.2 Three (3) complete operating and maintenance manuals, each containing maintenance and operating instructions, schedules, guarantees, and other documentation required by the Contract Documents;

14.10.3 Record documents (as provided in paragraph 6.10);

14.10.4 Consent of surety, if any, to final payment. If surety is not provided, complete and legally effective releases or waivers (satisfactory to OWNER) of all claims arising out of or filed in connection with the Work;

14.10.5 Certificate evidencing that required insurance will remain in force after final payment and through the warranty period;

14.10.6 Any other documentation called for in the Contract Documents.

14.11 Final Payment and Acceptance:

14.11.1 If, on the basis of observation of the Work during construction, final inspection, and review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Owner's Representative is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled and there are no outstanding claims, Owner's Representative will recommend the final Application for Payment and thereby notify the OWNER, who will pay to CONTRACTOR the balance due CONTRACTOR under the terms of the Contract. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation, CONTRACTOR may execute a revegetation letter with fiscal posted (letter of credit) to ensure completion of this item. This Work must be accomplished within one hundred twenty (120) Calendar Days of the date of Final Completion of the Work. When the permanent erosion control has been established, OWNER will initiate an inspection for final acceptance of the erosion controls. If the revegetation is not completed within the one hundred twenty (120) Calendar Days, OWNER, at its option, may complete the Work using the posted fiscal.

14.11.2 If the Contract measures Contract Time to Final Completion, rather than Substantial Completion, Owner's Representative will issue a letter of final acceptance to CONTRACTOR which establishes the Final Completion date and initiates the two-year warranty period. If the sole remaining unfinished item to complete the Work is the reestablishment of vegetation and CONTRACTOR has executed a revegetation letter with fiscal posted (letter of credit) to ensure completion of this item, the Owner's Representative will issue a letter of conditional acceptance to CONTRACTOR which established the Final Completion date and initiates the two-year warranty period.

14.11.3 Final payment is considered to have taken place when CONTRACTOR or any of its representatives negotiates OWNER's final payment check, whether labeled final or not, for cash or deposits check in any financial institution for its monetary return.

14.11.4 The OWNER will withhold funds sufficient to cover the amount of any unresolved contract claims from final payment for six months under the following limited conditions:

- .1** CONTRACTOR must provide written notice to the claimant (via certified mail or hand delivery) that (i) OWNER will hold funds in the amount of the disputed claim for six (6) months from the date of the receipt of the notice and (ii) CONTRACTOR and the claimant have certain alternative dispute resolution rights; and
- .2** CONTRACTOR must provide OWNER with a copy of the receipted notice.

Provided the claimant has received notice under this section, OWNER will release the withheld funds, if the CONTRACTOR provides a bond in substantial compliance with the provisions of Section 52.231 of the Texas Property Code; when the OWNER receives a settlement or release of the claim with accompanying instructions regarding payment; upon resolution of the claim in litigation, if suit is filed within such six (6) month period and the OWNER receives written notice of such filing; or when such six (6) month period has passed, if no such bond, settlement, release, or notice of filing of suit have been received. The above provisions notwithstanding, if efforts to timely resolve a disputed claim are not being made to OWNER'S reasonable satisfaction, OWNER may, in its complete discretion, file an interpleader action and deposit the withheld funds in the registry of a court of competent jurisdiction. In addition, CONTRACTOR must include a provision in each of its subcontracts that the prevailing party in any litigation arising thereunder will be entitled to recover its costs of court and reasonable attorney's fees.

14.12 Waiver of Claims: The making and acceptance of final payment will constitute:

- 14.12.1** a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 OWNER May Suspend Work Without Cause: At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) calendar days by Written Notice to CONTRACTOR which will fix the date on which the Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Amount or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved Claim therefore as provided in Articles 11 and 12.

15.2 OWNER May Terminate Without Cause: Upon seven (7) calendar days' Written Notice to CONTRACTOR, OWNER may, without cause and without prejudice to any right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

- 15.2.1** for 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;
- 15.2.2** for 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; and

- 15.2.3** other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

15.3 OWNER May Terminate With Cause:

15.3.1 Upon the occurrence of any one or more of the following events:

- .1** if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents;
- .2** if CONTRACTOR disregards laws or regulations of any public body having jurisdiction;
- .3** if CONTRACTOR disregards the authority of Owner's Representative;
- .4** if CONTRACTOR makes fraudulent statements;
- .5** if CONTRACTOR fails to maintain a work force adequate to accomplish the Work within the Contract Time;
- .6** if CONTRACTOR fails to make adequate progress and endangers successful completion of the Contract; or
- .7** if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety, if any) seven (7) calendar days Written Notice terminate the services of CONTRACTOR. OWNER, at its option, may proceed with negotiation with surety for completion of the Work. Alternatively, OWNER may under these circumstances exclude CONTRACTOR from the site and take possession of the Work (without liability to CONTRACTOR for trespass or conversion), 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 finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Amount exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses and damage exceed such unpaid balance, CONTRACTOR or surety shall pay the difference to OWNER.

- 15.3.2** Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR and surety then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability. In the event OWNER terminates Contract with cause, OWNER may reject any and all future Bids submitted by CONTRACTOR.

- 15.4 CONTRACTOR May Stop Work or Terminate:** If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) calendar days by OWNER or under an order of court or other public authority, or (except during disputes) Owner's Representative fails to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER fails for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, then CONTRACTOR may, upon seven (7) calendar days' Written Notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the

same terms as provided in paragraph 15.2. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if (except during disputes) Owner's Representative has failed to forward for processing any mutually acceptable Application for Payment within thirty (30) calendar days after it is submitted, or (except during disputes) OWNER has failed for sixty (60) calendar days after it is submitted to pay CONTRACTOR any sum finally determined by OWNER to be due, CONTRACTOR may upon seven (7) calendar days' Written Notice to OWNER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.4 are not intended to preclude CONTRACTOR from making a Claim under Articles 11 and 12 for an increase in Contract Amount or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

- 15.5 Discretionary Notice to Cure:** In its complete discretion, OWNER may, but is not required to, provide a Notice to Cure to CONTRACTOR and its surety to cure an event of default described above and/or an anticipatory breach of contract and, if required by OWNER, to attend a meeting with OWNER, regarding the Notice to Cure, the event of default, and/or the anticipatory breach of contract. The Notice to Cure will set forth the time limit in which the cure is to be completed or commenced and diligently prosecuted. Upon receipt of any Notice to Cure, CONTRACTOR shall prepare a report describing its program and measures to affect the cure of the event of default and/or anticipatory breach of contract within the time required by the Notice to Cure. The CONTRACTOR'S report must be delivered to OWNER at least three (3) days prior to any requested meeting with the OWNER and surety.
- 15.6 Bankruptcy:** If CONTRACTOR declares bankruptcy or is adjudged bankrupt or makes an assignment for the benefit of creditors or if a receiver is appointed for the benefit of creditors or if a receiver is appointed by reason of CONTRACTOR'S insolvency, CONTRACTOR may be unable to perform this Contract in accordance with the Contract requirements. In such an event, OWNER may demand CONTRACTOR or its successor in interest provide OWNER with adequate assurance of CONTRACTOR'S future performance in accordance with the terms and conditions of the Contract. If CONTRACTOR fails to provide adequate assurance of future performance to OWNER'S reasonable satisfaction within ten (10) days of such a request, OWNER may terminate the CONTRACTOR'S services for cause or without cause, as set forth above. If CONTRACTOR fails to provide timely adequate assurance of its performance and actual performance, OWNER may prosecute the Work with its own forces or with other contractors on a time and material or other appropriate basis and the cost of which will be charged against the Contract balance.
- 15.7 Duty to Mitigate:** In the event of any termination or suspension under this Contract, the CONTRACTOR agrees to and shall take all reasonable actions to mitigate its damages and any and all claims which may be asserted against the OWNER.
- 15.8 Responsibility during Demobilization:** While demobilizing, the CONTRACTOR will take all necessary and reasonable actions to preserve and protect the Work, the site and other property of the OWNER or others at the site.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 Filing of Claims:

- 16.1.1** Claims arising from the circumstances identified in paragraphs 3.2, 4.1, 4.2.2, 4.2.4, 6.4.2, 6.11.5.2, 6.17, 7.5, 8.6, 9.5, 10.4.2, 13.4.3, 13.8, 13.9, 15.1, 15.2, 15.3, or 15.4, or other occurrences or events, shall be made by Written Notice delivered by the party making the Claim to the other party within thirty (30) calendar days after the start of the occurrence or event giving rise to the Claim and stating the general

nature of the Claim. Notice of the amount of the Claim with supporting data shall be delivered in writing within thirty (30) calendar days after Written Notice of Claim is delivered by claimant and shall represent that the adjustment claimed covers all known amounts and/or extensions of time to which claimant is entitled.

- 16.1.2** Within thirty (30) calendar days of receipt of notice of the amount of the Claim with supporting data, Owner's Representative and CONTRACTOR shall meet to discuss the Claim, after which an offer of settlement or notification of no settlement offer will be made to claimant. If claimant is not satisfied with the proposal presented, claimant shall have thirty (30) calendar days in which to: (i) submit additional supporting data requested by the other party; (ii) modify the initial Claim; or (iii) request Alternative Dispute Resolution.

16.2 Alternative Dispute Resolution:

- 16.2.1** If a dispute exists concerning a Claim, the parties agree to use the following procedure prior to pursuing any other available remedies. OWNER reserves the right to include the E/A as a party.

- 16.2.2** Negotiating with Previously Uninvolved Personnel: Either party may make a written request for a meeting to be held between representatives of each party within fourteen (14) Calendar Days of the request or such later period that the parties may agree to. Each party shall endeavor to include, at a minimum, one (1) previously uninvolved senior level decision maker (an owner, officer, or employee of each organization) empowered to negotiate on behalf of their organization. If a previously uninvolved senior level decision maker is unavailable due to the size of the CONTRACTOR'S organization or any other reason, the CONTRACTOR shall nonetheless provide an appropriate senior level decision maker for the meeting. The purpose of this and any subsequent meetings will be good faith negotiations of the matters constituting the dispute. Negotiations shall be concluded within thirty (30) Calendar Days of the first meeting, unless mutually agreed otherwise. This step may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2.3 Mediation:

- .1** If the procedure described in 16.2.2 proves unsuccessful or is waived pursuant to its terms, the parties shall initiate the mediation process. OWNER and CONTRACTOR agree to select within thirty (30) calendar days a mediator trained in mediation skills, to assist with resolution of the dispute. OWNER and CONTRACTOR agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in this agreement prevents the parties from relying on the skills of a person who also is trained in the subject matter of the dispute and/or a contract interpretation expert. Should the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the parties agree to submit such claims to the jurisdiction of the State District Court of Hays County, Texas, which is the exclusive venue for final dispute resolution.
- .2** Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them. The parties hereby agree that mediation, at a minimum, shall provide for (i) conducting an on-site investigation, if appropriate, by the mediator for fact gathering purposes, (ii) a meeting of all parties for the exchange of points of view and (iii) separate meetings between the mediator and each party to the dispute for the formulation of resolution

alternatives. The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session, unless mutually agreed otherwise.

16.3 Resolution of Disputes between Contractor and Subcontractor or Supplier: If a dispute exists concerning a claim between a CONTRACTOR and a Subcontractor or Supplier, the CONTRACTOR agrees to participate with such Subcontractor and/or Supplier in a process substantially paralleling the steps set out in paragraphs 16.1 and 16.2 above, including the delivery of written notices, submission of supporting data, negotiation with previously uninvolved personnel, and, if such alternative dispute resolution process is unsuccessful, mediation between the parties to the claim. If the CONTRACTOR and Subcontractor or Supplier agreement provides an alternative dispute resolution process, which provides substantially equivalent rights to those set forth herein, it may be followed, unless the CONTRACTOR and affected Subcontractor or Supplier agree to follow the process outlined above. The OWNER is not a party to the alternative dispute resolution process between the CONTRACTOR and Subcontractor or Supplier and will not pay any costs incurred in the process. Each party will be responsible for its own expenses incurred in the process, which will include an equal share of the mediation expenses, unless otherwise determined by the mediator. NOTICE: THE PROCESS SET FORTH HEREIN IS NOT A SUBSTITUTE FOR THE STATUTORY PAYMENT BOND CLAIM PROCESS.

16.4 RESERVED

ARTICLE 17 – MISCELLANEOUS

17.1 Venue: In the event of any suit at law or in equity involving the Contract, venue shall be exclusively in Hays County, Texas and the laws of the State of Texas shall apply to the interpretation and enforcement of the Contract.

17.2 Extent of Agreement: This Contract represents the entire and integrated agreement between the OWNER and CONTRACTOR with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

17.3 Cumulative Remedies: The rights and remedies available to the parties 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 guarantees or by other provisions of the Contract Documents, and 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. Specifically, the OWNER is not required to only assess liquidated damages, and OWNER may elect to pursue its actual damages resulting from the failure of the CONTRACTOR to complete the Work in accordance with the requirements of the Contract Documents.

17.4 Severability: If any word, phrase, clause, sentence or provision of the Contract, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, invalid or unenforceable, that finding shall only effect such word, phrase, clause, sentence or provision, and such finding shall not effect the remaining portions of this Contract; this being the intent of the parties in entering into the Contract; and all provisions of the Contract are declared to be severable for this purpose.

17.5 Independent Contractor: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. CONTRACTOR is an independent contractor and CONTRACTOR's services shall be those of an independent

contractor. CONTRACTOR agrees and understands that the Contract does not grant any rights or privileges established for employees of OWNER.

17.6 Prohibition of Gratuities: OWNER may, by Written Notice to CONTRACTOR, terminate the Contract without liability if it is determined by OWNER that gratuities were offered or given by CONTRACTOR or any agent or representative of CONTRACTOR to any officer or employee of OWNER with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such Contract. In the event the Contract is terminated by OWNER pursuant to this provision, OWNER shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by CONTRACTOR in providing such gratuities.

17.7 Prohibition Against Personal Interest in Contracts: No officer, employee, independent consultant, or elected official of OWNER who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any violation of this provision, with the knowledge, expressed or implied, of CONTRACTOR shall render the Contract voidable by OWNER.

17.8 OWNER'S Right to Audit:

17.8.1 Records means all records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier of CONTRACTOR, whether paper, electronic, or other media, which are in any way related to performance of or compliance with this Contract, including, without limitation:

- .1 accounting records;
- .2 written policies and procedures;
- .3 subcontract files (including proposals of successful and unsuccessful Bidders, Bid recaps, etc.);
- .4 original estimates and estimating work sheets;
- .5 correspondence;
- .6 Change Order files (including documentation covering negotiated settlements);
- .7 back charge logs and supporting documentation;
- .8 general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends;
- .9 lump sum agreements between CONTRACTOR and any Subcontractor or Supplier;
- .10 records necessary to evaluate: Contract compliance, Change Order pricing, and any Claim submitted by CONTRACTOR or any of its payees; and
- .11 any other CONTRACTOR record that may substantiate any charge related to this Contract.

17.8.2 CONTRACTOR shall allow OWNER'S agent or its authorized representative to inspect, audit, and/or reproduce, or all three, all Records generated by or on behalf of CONTRACTOR and each Subcontractor and Supplier, upon OWNER'S written request. Further, CONTRACTOR shall allow OWNER'S agent or authorized representative to interview any of CONTRACTOR'S employees, all Subcontractors and all Suppliers, and all their respective employees.

- 17.8.3** CONTRACTOR shall retain all its Records, and require all its Subcontractors and Suppliers to retain their respective Records, during this Contract and for three (3) years after final payment, until all audit and litigation matters that OWNER has brought to the attention of CONTRACTOR are resolved, or as otherwise required by law, whichever is longer. OWNER'S right to inspect, audit, or reproduce Records, or interview employees of CONTRACTOR or its respective Subcontractors or Suppliers exists during this Contract, and for three (3) years after final payment, until all audit and litigation matters that OWNER has brought to CONTRACTOR'S attention are resolved, or as otherwise required by law, whichever is longer, and at no cost to OWNER, either from CONTRACTOR or any of its Subcontractors or Suppliers that may furnish Records or make employees available for interviewing.
- 17.8.4** CONTRACTOR must provide sufficient and accessible facilities during its normal business hours for OWNER to inspect, audit, or reproduce Records, or all three, and to interview any person about the Records.
- 17.8.5** CONTRACTOR shall insert these requirements in each written contract between CONTRACTOR and any Subcontractor or Supplier and require each Subcontractor and Supplier to comply with these provisions.
- 17.9 Survival:** The terms and conditions of this Contract, which contemplate a period of time beyond completion or termination will survive such completion or termination and not be merged therein or otherwise terminated.
- 17.10 No Waiver:** The waiver of any provision of this Contract will not be deemed to be a waiver of any other provision of this Contract. No waiver of any provision of this Contract will be deemed to constitute a continuing waiver unless expressly provided in writing, nor will a waiver of any default be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Contract, whether the default is known or not, shall not constitute a waiver or estoppel of the right to do so.
- 17.11 Conditions Precedent to Right to Sue.** Notwithstanding anything herein to the contrary, the CONTRACTOR will have at least 90 days to give notice of a claim for damages as a condition precedent to the right to sue on the Contract, subject to the contractual claim and alternative dispute resolution processes set forth herein.
- 17.12 Waiver of Trial by Jury.** OWNER and CONTRACTOR agree that they have knowingly waived the right to trial by jury and have instead agreed that, in the event of any litigation arising out of or connected to this Contract, to proceed with a trial before the court, unless both parties subsequently agree otherwise in writing.

End of Document

DIVISION E

TECHNICAL SPECIFICATIONS

All Standard Specifications for this Project are according to the Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges 2014 Edition.

Where additional specification information and notes are provided on the schedule of quantities plan sheet that conflicts with the TxDOT specification the additional specification information and notes provided on the schedule of quantities plan sheet shall supersede.

In addition, the following TxDOT Special Specification shall be utilized for this project:

- SS 3076 Dense Graded Hot Mix Asphalt
- SS 5057 Precast Concrete Wheel Stops

Special Specification 3076

Dense-Graded Hot-Mix Asphalt



1. DESCRIPTION

Construct a hot-mix asphalt (HMA) pavement layer composed of a compacted, dense-graded mixture of aggregate and asphalt binder mixed hot in a mixing plant. Payment adjustments will apply to HMA placed under this specification unless the HMA is deemed exempt in accordance with Section 3076.4.9.4., "Exempt Production."

2. MATERIALS

Furnish uncontaminated materials of uniform quality that meet the requirements of the plans and specifications.

Notify the Engineer of all material sources and before changing any material source or formulation. The Engineer will verify that the specification requirements are met when the Contractor makes a source or formulation change, and may require a new laboratory mixture design, trial batch, or both. The Engineer may sample and test project materials at any time during the project to verify specification compliance in accordance with Item 6, "Control of Materials."

- 2.1. **Aggregate.** Furnish aggregates from sources that conform to the requirements shown in Table 1 and as specified in this Section. Aggregate requirements in this Section, including those shown in Table 1, may be modified or eliminated when shown on the plans. Additional aggregate requirements may be specified when shown on the plans. Provide aggregate stockpiles that meet the definitions in this Section for coarse, intermediate, or fine aggregate. Aggregate from reclaimed asphalt pavement (RAP) is not required to meet Table 1 requirements unless otherwise shown on the plans. Supply aggregates that meet the definitions in [Tex-100-E](#) for crushed gravel or crushed stone. The Engineer will designate the plant or the quarry as the sampling location. Provide samples from materials produced for the project. The Engineer will establish the Surface Aggregate Classification (SAC) and perform Los Angeles abrasion, magnesium sulfate soundness, and Micro-Deval tests. Perform all other aggregate quality tests listed in Table 1. Document all test results on the mixture design report. The Engineer may perform tests on independent or split samples to verify Contractor test results. Stockpile aggregates for each source and type separately. Determine aggregate gradations for mixture design and production testing based on the washed sieve analysis given in [Tex-200-F](#), Part II.

- 2.1.1. **Coarse Aggregate.** Coarse aggregate stockpiles must have no more than 20% material passing the No. 8 sieve. Aggregates from sources listed in the Department's *Bituminous Rated Source Quality Catalog* (BRSQC) are preapproved for use. Use only the rated values for hot-mix listed in the BRSQC. Rated values for surface treatment (ST) do not apply to coarse aggregate sources used in hot-mix asphalt.

For sources not listed on the Department's BRSQC:

- build an individual stockpile for each material;
- request the Department test the stockpile for specification compliance; and
- once approved, do not add material to the stockpile unless otherwise approved.

Provide aggregate from non-listed sources only when tested by the Engineer and approved before use. Allow 30 calendar days for the Engineer to sample, test, and report results for non-listed sources.

Provide coarse aggregate with at least the minimum SAC shown on the plans. SAC requirements only apply to aggregates used on the surface of travel lanes. SAC requirements apply to aggregates used on surfaces other than travel lanes when shown on the plans. The SAC for sources on the Department's *Aggregate Quality Monitoring Program (AQMP)* ([Tex-499-A](#)) is listed in the BRSQC.

- 2.1.1.1. **Blending Class A and Class B Aggregates.** Class B aggregate meeting all other requirements in Table 1 may be blended with a Class A aggregate to meet requirements for Class A materials, unless otherwise shown on the plans. Ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source when blending Class A and B aggregates to meet a Class A requirement unless otherwise shown on the plans. Blend by volume if the bulk specific gravities of the Class A and B aggregates differ by more than 0.300. Coarse aggregate from RAP and Recycled Asphalt Shingles (RAS) will be considered as Class B aggregate for blending purposes.

The Engineer may perform tests at any time during production, when the Contractor blends Class A and B aggregates to meet a Class A requirement, to ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source. The Engineer will use the Department's mix design template, when electing to verify conformance, to calculate the percent of Class A aggregate retained on the No. 4 sieve by inputting the bin percentages shown from readouts in the control room at the time of production and stockpile gradations measured at the time of production. The Engineer may determine the gradations based on either washed or dry sieve analysis from samples obtained from individual aggregate cold feed bins or aggregate stockpiles. The Engineer may perform spot checks using the gradations supplied by the Contractor on the mixture design report as an input for the template; however, a failing spot check will require confirmation with a stockpile gradation determined by the Engineer.

- 2.1.1.2. **Micro-Deval Abrasion.** The Engineer will perform a minimum of one Micro-Deval abrasion test in accordance with [Tex-461-A](#) for each coarse aggregate source used in the mixture design that has a Rated Source Soundness Magnesium (RSSM) loss value greater than 15 as listed in the BRSQC. The Engineer will perform testing before the start of production and may perform additional testing at any time during production. The Engineer may obtain the coarse aggregate samples from each coarse aggregate source or may require the Contractor to obtain the samples. The Engineer may waive all Micro-Deval testing based on a satisfactory test history of the same aggregate source.

The Engineer will estimate the magnesium sulfate soundness loss for each coarse aggregate source, when tested, using the following formula:

$$Mg_{est.} = (RSSM)(MD_{act.}/RSMD)$$

where:

$Mg_{est.}$ = magnesium sulfate soundness loss

$MD_{act.}$ = actual Micro-Deval percent loss

$RSMD$ = Rated Source Micro-Deval

When the estimated magnesium sulfate soundness loss is greater than the maximum magnesium sulfate soundness loss specified, the coarse aggregate source will not be allowed for use unless otherwise approved. The Engineer will consult the Soils and Aggregates Section of the Materials and Tests Division, and additional testing may be required before granting approval.

- 2.1.2. **Intermediate Aggregate.** Aggregates not meeting the definition of coarse or fine aggregate will be defined as intermediate aggregate. Supply intermediate aggregates, when used that are free from organic impurities. The Engineer may test the intermediate aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. Supply intermediate aggregate from coarse aggregate sources, when used that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve, and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

2.1.3.

Fine Aggregate. Fine aggregates consist of manufactured sands, screenings, and field sands. Fine aggregate stockpiles must meet the gradation requirements in Table 2. Supply fine aggregates that are free from organic impurities. The Engineer may test the fine aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. Unless otherwise shown on the plans, up to 10% of the total aggregate may be field sand or other uncrushed fine aggregate. Use fine aggregate, with the exception of field sand, from coarse aggregate sources that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

Table 1
Aggregate Quality Requirements

| Property | Test Method | Requirement |
|---|-------------------------------------|-----------------------|
| Coarse Aggregate | | |
| SAC | Tex-499-A (AQMP) | As shown on the plans |
| Deleterious material, %, Max | Tex-217-F , Part I | 1.5 |
| Decantation, %, Max | Tex-217-F , Part II | 1.5 |
| Micro-Deval abrasion, % | Tex-461-A | Note 1 |
| Los Angeles abrasion, %, Max | Tex-410-A | 40 |
| Magnesium sulfate soundness, 5 cycles, %, Max | Tex-411-A | 30 |
| Crushed face count, ² %, Min | Tex-460-A , Part I | 85 |
| Flat and elongated particles @ 5:1, %, Max | Tex-280-F | 10 |
| Fine Aggregate | | |
| Linear shrinkage, %, Max | Tex-107-E | 3 |
| Sand equivalent, %, Min | Tex-203-F | 45 |

- Used to estimate the magnesium sulfate soundness loss in accordance with Section 3076.2.1.1.2., "Micro-Deval Abrasion."
- Only applies to crushed gravel.

Table 2
Gradation Requirements for Fine Aggregate

| Sieve Size | % Passing by Weight or Volume |
|------------|-------------------------------|
| 3/8" | 100 |
| #8 | 70–100 |
| #200 | 0–30 |

2.2.

Mineral Filler. Mineral filler consists of finely divided mineral matter such as agricultural lime, crusher fines, hydrated lime, or fly ash. Mineral filler is allowed unless otherwise shown on the plans. Use no more than 2% hydrated lime or fly ash unless otherwise shown on the plans. Use no more than 1% hydrated lime if a substitute binder is used unless otherwise shown on the plans or allowed. Test all mineral fillers except hydrated lime and fly ash in accordance with [Tex-107-E](#) to ensure specification compliance. The plans may require or disallow specific mineral fillers. Provide mineral filler, when used, that:

- is sufficiently dry, free-flowing, and free from clumps and foreign matter as determined by the Engineer;
- does not exceed 3% linear shrinkage when tested in accordance with [Tex-107-E](#); and
- meets the gradation requirements in Table 3, unless otherwise shown on the plans.

Table 3
Gradation Requirements for Mineral Filler

| Sieve Size | % Passing by Weight or Volume |
|------------|-------------------------------|
| #8 | 100 |
| #200 | 55–100 |

2.3.

Baghouse Fines. Fines collected by the baghouse or other dust-collecting equipment may be reintroduced into the mixing drum.

2.4.

Asphalt Binder. Furnish the type and grade of performance-graded (PG) asphalt specified on the plans.

- 2.5. **Tack Coat.** Furnish CSS-1H, SS-1H, or a PG binder with a minimum high-temperature grade of PG 58 for tack coat binder in accordance with Item 300, "Asphalts, Oils, and Emulsions." Specialized tack coat materials listed on the Department's MPL are allowed or required when shown on the plans. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use.
- 2.6. **Additives.** Use the type and rate of additive specified when shown on the plans. Additives that facilitate mixing, compaction, or improve the quality of the mixture are allowed when approved. Provide the Engineer with documentation such as the bill of lading showing the quantity of additives used in the project unless otherwise directed.
- 2.6.1. **Lime and Liquid Antistripping Agent.** When lime or a liquid antistripping agent is used, add in accordance with Item 301, "Asphalt Antistripping Agents." Do not add lime directly into the mixing drum of any plant where lime is removed through the exhaust stream unless the plant has a baghouse or dust collection system that reintroduces the lime into the drum.
- 2.6.2. **Warm Mix Asphalt (WMA).** Warm Mix Asphalt (WMA) is defined as HMA that is produced within a target temperature discharge range of 215°F and 275°F using approved WMA additives or processes from the Department's MPL.
- WMA is allowed for use on all projects and is required when shown on the plans. When WMA is required, the maximum placement or target discharge temperature for WMA will be set at a value below 275°F.
- Department-approved WMA additives or processes may be used to facilitate mixing and compaction of HMA produced at target discharge temperatures above 275°F; however, such mixtures will not be defined as WMA.
- 2.6.3. **Compaction Aid.** Compaction Aid is defined as a chemical warm mix additive that is used to produce an asphalt mixture at a discharge temperature greater than 275°F.
- Compaction Aid is allowed for use on all projects and is required when shown on the plans.
- 2.7. **Recycled Materials.** Use of RAP and RAS is permitted unless otherwise shown on the plans. Use of RAS is restricted to only intermediate and base mixes unless otherwise shown on the plans. Do not exceed the maximum allowable percentages of RAP and RAS shown in Table 4. The allowable percentages shown in Table 4 may be decreased or increased when shown on the plans. Determine the asphalt binder content and gradation of the RAP and RAS stockpiles for mixture design purposes in accordance with [Tex-236-F](#), Part I. The Engineer may verify the asphalt binder content of the stockpiles at any time during production. Perform other tests on RAP and RAS when shown on the plans. Asphalt binder from RAP and RAS is designated as recycled asphalt binder. Calculate and ensure that the ratio of the recycled asphalt binder to total binder does not exceed the percentages shown in Table 5 during mixture design and HMA production when RAP or RAS is used. Use a separate cold feed bin for each stockpile of RAP and RAS during HMA production.
- Surface, intermediate, and base mixes referenced in Tables 4 and 5 are defined as follows:
- **Surface.** The final HMA lift placed at the top of the pavement structure or placed directly below mixtures produced in accordance with Items 316, 342, 347, or 348;
 - **Intermediate.** Mixtures placed below an HMA surface mix and less than or equal to 8.0 in. from the riding surface; and
 - **Base.** Mixtures placed greater than 8.0 in. from the riding surface. Unless otherwise shown on the plans, mixtures used for bond breaker are defined as base mixtures.
- 2.7.1. **RAP.** RAP is salvaged, milled, pulverized, broken, or crushed asphalt pavement. Fractionated RAP is defined as a stockpile that contains RAP material with a minimum of 95.0% passing the 3/8-in. or 1/2-in. sieve, before burning in the ignition oven, unless otherwise approved. The Engineer may allow the Contractor to use an alternate to the 3/8-in. or 1/2-in. screen to fractionate the RAP.

Use of Contractor-owned RAP including HMA plant waste is permitted unless otherwise shown on the plans. Department-owned RAP stockpiles are available for the Contractor's use when the stockpile locations are shown on the plans. If Department-owned RAP is available for the Contractor's use, the Contractor may use Contractor-owned fractionated RAP and replace it with an equal quantity of Department-owned RAP. Department-owned RAP generated through required work on the Contract is available for the Contractor's use when shown on the plans. Perform any necessary tests to ensure Contractor- or Department-owned RAP is appropriate for use. The Department will not perform any tests or assume any liability for the quality of the Department-owned RAP unless otherwise shown on the plans. The Contractor will retain ownership of RAP generated on the project when shown on the plans.

Do not use Department- or Contractor-owned RAP contaminated with dirt or other objectionable materials. Do not use Department- or Contractor-owned RAP if the decantation value exceeds 5% and the plasticity index is greater than 8. Test the stockpiled RAP for decantation in accordance with [Tex-406-A](#), Part I. Determine the plasticity index in accordance with [Tex-106-E](#) if the decantation value exceeds 5%. The decantation and plasticity index requirements do not apply to RAP samples with asphalt removed by extraction or ignition.

Do not intermingle Contractor-owned RAP stockpiles with Department-owned RAP stockpiles. Remove unused Contractor-owned RAP material from the project site upon completion of the project. Return unused Department-owned RAP to the designated stockpile location.

Table 4
Maximum Allowable Amounts of RAP¹

| Maximum Allowable Fractionated RAP (%) | | |
|--|--------------|------|
| Surface | Intermediate | Base |
| 15.0 | 25.0 | 30.0 |

1. Must also meet the recycled binder to total binder ratio shown in Table 5.

2.7.2.

RAS. Use of post-manufactured RAS or post-consumer RAS (tear-offs) is not permitted in surface mixtures unless otherwise shown on the plans. RAS may be used in intermediate and base mixtures unless otherwise shown on the plans. Up to 3% RAS may be used separately or as a replacement for fractionated RAP in accordance with Table 4 and Table 5. RAS is defined as processed asphalt shingle material from manufacturing of asphalt roofing shingles or from re-roofing residential structures. Post-manufactured RAS is processed manufacturer's shingle scrap by-product. Post-consumer RAS is processed shingle scrap removed from residential structures. Comply with all regulatory requirements stipulated for RAS by the TCEQ. RAS may be used separately or in conjunction with RAP.

Process the RAS by ambient grinding or granulating such that 100% of the particles pass the 3/8 in. sieve when tested in accordance with [Tex-200-F](#), Part I. Perform a sieve analysis on processed RAS material before extraction (or ignition) of the asphalt binder.

Add sand meeting the requirements of Table 1 and Table 2 or fine RAP to RAS stockpiles if needed to keep the processed material workable. Any stockpile that contains RAS will be considered a RAS stockpile and be limited to no more than 3.0% of the HMA mixture in accordance with Table 4.

Certify compliance of the RAS with [DMS-11000](#), "Evaluating and Using Nonhazardous Recyclable Materials Guidelines." Treat RAS as an established nonhazardous recyclable material if it has not come into contact with any hazardous materials. Use RAS from shingle sources on the Department's MPL. Remove substantially all materials before use that are not part of the shingle, such as wood, paper, metal, plastic, and felt paper. Determine the deleterious content of RAS material for mixture design purposes in accordance with [Tex-217-F](#), Part III. Do not use RAS if deleterious materials are more than 0.5% of the stockpiled RAS unless otherwise approved. Submit a sample for approval before submitting the mixture design. The Department will perform the testing for deleterious material of RAS to determine specification compliance.

2.8.

Substitute Binders. Unless otherwise shown on the plans, the Contractor may use a substitute PG binder listed in Table 5 instead of the PG binder originally specified, if using recycled materials, and if the substitute PG binder and mixture made with the substitute PG binder meet the following:

- the substitute binder meets the specification requirements for the substitute binder grade in accordance with Section 300.2.10., "Performance-Graded Binders;" and
- the mixture has less than 10.0 mm of rutting on the Hamburg Wheel test ([Tex-242-F](#)) after the number of passes required for the originally specified binder. Use of substitute PG binders may only be allowed at the discretion of the Engineer if the Hamburg Wheel test results are between 10.0 mm and 12.5 mm.

Table 5
Allowable Substitute PG Binders and Maximum Recycled Binder Ratios

| Originally Specified PG Binder | Allowable Substitute PG Binder for Surface Mixes | Allowable Substitute PG Binder for Intermediate and Base Mixes | Maximum Ratio of Recycled Binder ¹ to Total Binder (%) | | |
|--------------------------------|--|--|---|--------------|------|
| | | | Surface | Intermediate | Base |
| 76-22 ^{4,5} | 70-22 | 70-22 | 10.0 | 20.0 | 25.0 |
| 70-22 ^{2,5} | N/A | 64-22 | 10.0 | 20.0 | 25.0 |
| 64-22 ^{2,3} | N/A | N/A | 10.0 | 20.0 | 25.0 |
| 76-28 ^{4,5} | 70-28 | 70-28 | 10.0 | 20.0 | 25.0 |
| 70-28 ^{2,5} | N/A | 64-28 | 10.0 | 20.0 | 25.0 |
| 64-28 ^{2,3} | N/A | N/A | 10.0 | 20.0 | 25.0 |

1. Combined recycled binder from RAP and RAS. RAS is not permitted in surface mixtures unless otherwise shown on the plans.
2. Binder substitution is not allowed for surface mixtures.
3. Binder substitution is not allowed for intermediate and base mixtures.
4. Use no more than 10.0% recycled binder in surface mixtures when using this originally specified PG binder.
5. Use no more than 20.0% recycled binder when using this originally specified PG binder for intermediate mixtures. Use no more than 25.0% recycled binder when using this originally specified PG binder for base mixtures.

3.

EQUIPMENT

Provide required or necessary equipment in accordance with Item 320, "Equipment for Asphalt Concrete Pavement."

4.

CONSTRUCTION

Produce, haul, place, and compact the specified paving mixture. In addition to tests required by the specification, Contractors may perform other QC tests as deemed necessary. At any time during the project, the Engineer may perform production and placement tests as deemed necessary in accordance with Item 5, "Control of the Work." Schedule and participate in a mandatory pre-paving meeting with the Engineer on or before the first day of paving unless otherwise shown on the plans.

4.1.

Certification. Personnel certified by the Department-approved hot-mix asphalt certification program must conduct all mixture designs, sampling, and testing in accordance with Table 6. Supply the Engineer with a list of certified personnel and copies of their current certificates before beginning production and when personnel changes are made. Provide a mixture design developed and signed by a Level 2 certified specialist. Provide Level 1A certified specialists at the plant during production operations. Provide Level 1B certified specialists to conduct placement tests. Provide AGG101 certified specialists for aggregate testing.

Table 6
Test Methods, Test Responsibility, and Minimum Certification Levels

| Test Description | Test Method | Contractor | Engineer | Level ¹ |
|---|---|------------|----------|--------------------|
| 1. Aggregate and Recycled Material Testing | | | | |
| Sampling | Tex-221-F | ✓ | ✓ | 1A/AGG101 |
| Dry sieve | Tex-200-F , Part I | ✓ | ✓ | 1A/AGG101 |
| Washed sieve | Tex-200-F , Part II | ✓ | ✓ | 1A/AGG101 |
| Deleterious material | Tex-217-F , Parts I & III | ✓ | ✓ | AGG101 |
| Decantation | Tex-217-F , Part II | ✓ | ✓ | AGG101 |
| Los Angeles abrasion | Tex-410-A | | ✓ | TxDOT |
| Magnesium sulfate soundness | Tex-411-A | | ✓ | TxDOT |
| Micro-Deval abrasion | Tex-461-A | | ✓ | AGG101 |
| Crushed face count | Tex-460-A | ✓ | ✓ | AGG101 |
| Flat and elongated particles | Tex-280-F | ✓ | ✓ | AGG101 |
| Linear shrinkage | Tex-107-E | ✓ | ✓ | AGG101 |
| Sand equivalent | Tex-203-F | ✓ | ✓ | AGG101 |
| Organic impurities | Tex-408-A | ✓ | ✓ | AGG101 |
| 2. Asphalt Binder & Tack Coat Sampling | | | | |
| Asphalt binder sampling | Tex-500-C , Part II | ✓ | ✓ | 1A/1B |
| Tack coat sampling | Tex-500-C , Part III | ✓ | ✓ | 1A/1B |
| 3. Mix Design & Verification | | | | |
| Design and JMF changes | Tex-204-F | ✓ | ✓ | 2 |
| Mixing | Tex-205-F | ✓ | ✓ | 2 |
| Molding (TGC) | Tex-206-F | ✓ | ✓ | 1A |
| Molding (SGC) | Tex-241-F | ✓ | ✓ | 1A |
| Laboratory-molded density | Tex-207-F , Parts I & VI | ✓ | ✓ | 1A |
| Rice gravity | Tex-227-F , Part II | ✓ | ✓ | 1A |
| Ignition oven correction factors ² | Tex-236-F , Part II | ✓ | ✓ | 2 |
| Indirect tensile strength | Tex-226-F | ✓ | ✓ | 1A |
| Hamburg Wheel test | Tex-242-F | ✓ | ✓ | 1A |
| Boil test | Tex-530-C | ✓ | ✓ | 1A |
| 4. Production Testing | | | | |
| Selecting production random numbers | Tex-225-F , Part I | | ✓ | 1A |
| Mixture sampling | Tex-222-F | ✓ | ✓ | 1A/1B |
| Molding (TGC) | Tex-206-F | ✓ | ✓ | 1A |
| Molding (SGC) | Tex-241-F | ✓ | ✓ | 1A |
| Laboratory-molded density | Tex-207-F , Parts I & VI | ✓ | ✓ | 1A |
| Rice gravity | Tex-227-F , Part II | ✓ | ✓ | 1A |
| Gradation & asphalt binder content ² | Tex-236-F , Part I | ✓ | ✓ | 1A |
| Control charts | Tex-233-F | ✓ | ✓ | 1A |
| Moisture content | Tex-212-F , Part II | ✓ | ✓ | 1A/AGG101 |
| Hamburg Wheel test | Tex-242-F | ✓ | ✓ | 1A |
| Micro-Deval abrasion | Tex-461-A | | ✓ | AGG101 |
| Boil test | Tex-530-C | ✓ | ✓ | 1A |
| Abson recovery | Tex-211-F | | ✓ | TxDOT |
| 5. Placement Testing | | | | |
| Selecting placement random numbers | Tex-225-F , Part II | | ✓ | 1B |
| Trimming roadway cores | Tex-251-F , Parts I & II | ✓ | ✓ | 1A/1B |
| In-place air voids | Tex-207-F , Parts I & VI | ✓ | ✓ | 1A |
| In-place density (nuclear method) | Tex-207-F , Part III | ✓ | | 1B |
| Establish rolling pattern | Tex-207-F , Part IV | ✓ | | 1B |
| Control charts | Tex-233-F | ✓ | ✓ | 1A |
| Ride quality measurement | Tex-1001-S | ✓ | ✓ | Note 3 |
| Segregation (density profile) | Tex-207-F , Part V | ✓ | ✓ | 1B |
| Longitudinal joint density | Tex-207-F , Part VII | ✓ | ✓ | 1B |
| Thermal profile | Tex-244-F | ✓ | ✓ | 1B |
| Shear Bond Strength Test | Tex-249-F | | ✓ | TxDOT |

1. Level 1A, 1B, AGG101, and 2 are certification levels provided by the Hot Mix Asphalt Center certification program.

2. Refer to Section 3076.4.9.2.3., "Production Testing," for exceptions to using an ignition oven.

3. Profiler and operator are required to be certified at the Texas A&M Transportation Institute facility when Surface Test Type B is specified.

4.2.

Reporting and Responsibilities. Use Department-provided templates to record and calculate all test data, including mixture design, production and placement QC/QA, control charts, thermal profiles, segregation density profiles, and longitudinal joint density. Obtain the current version of the templates at <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/site-manager.html> or from the Engineer. The Engineer and the Contractor will provide any available test results to the other party when requested. The maximum allowable time for the Contractor and Engineer to exchange test data is as given in Table 7 unless otherwise approved. The Engineer and the Contractor will immediately report to the other party any test result that requires suspension of production or placement, a payment adjustment less than 1.000, or that fails to meet the specification requirements. Record and electronically submit all test results and pertinent information on Department-provided templates.

Subsequent sublots placed after test results are available to the Contractor, which require suspension of operations, may be considered unauthorized work. Unauthorized work will be accepted or rejected at the discretion of the Engineer in accordance with Article 5.3., "Conformity with Plans, Specifications, and Special Provisions."

Table 7
Reporting Schedule

| Description | Reported By | Reported To | To Be Reported Within |
|---|-------------|-------------|--|
| Production Quality Control | | | |
| Gradation ¹ | Contractor | Engineer | 1 working day of completion of the subplot |
| Asphalt binder content ¹ | | | |
| Laboratory-molded density ² | | | |
| Moisture content ³ | | | |
| Boil test ³ | | | |
| Production Quality Assurance | | | |
| Gradation ³ | Engineer | Contractor | 1 working day of completion of the subplot |
| Asphalt binder content ³ | | | |
| Laboratory-molded density ¹ | | | |
| Hamburg Wheel test ⁴ | | | |
| Boil test ³ | | | |
| Binder tests ⁴ | | | |
| Placement Quality Control | | | |
| In-place air voids ² | Contractor | Engineer | 1 working day of completion of the lot |
| Segregation ¹ | | | |
| Longitudinal joint density ¹ | | | |
| Thermal profile ¹ | | | |
| Placement Quality Assurance | | | |
| In-place air voids ¹ | Engineer | Contractor | 1 working day after receiving the trimmed cores ⁵ |
| Segregation ³ | | | 1 working day of completion of the lot |
| Longitudinal joint density ³ | | | |
| Thermal profile ³ | | | |
| Aging ratio ⁴ | | | |
| Payment adjustment summary | Engineer | Contractor | 2 working days of performing all required tests and receiving Contractor test data |

1. These tests are required on every subplot.
2. Optional test. When performed on split samples, report the results as soon as they become available.
3. To be performed at the frequency specified in Table 16 or as shown on the plans.
4. To be reported as soon as the results become available.
5. 2 days are allowed if cores cannot be dried to constant weight within 1 day.

The Engineer will use the Department-provided template to calculate all payment adjustment factors for the lot. Sublot samples may be discarded after the Engineer and Contractor sign off on the payment adjustment summary documentation for the lot.

Use the procedures described in [Tex-233-F](#) to plot the results of all quality control (QC) and quality assurance (QA) testing. Update the control charts as soon as test results for each subplot become available. Make the control charts readily accessible at the field laboratory. The Engineer may suspend production for failure to update control charts.

- 4.3. **Quality Control Plan (QCP).** Develop and follow the QCP in detail. Obtain approval for changes to the QCP made during the project. The Engineer may suspend operations if the Contractor fails to comply with the QCP.

Submit a written QCP before the mandatory pre-paving meeting. Receive approval of the QCP before beginning production. Include the following items in the QCP:

- 4.3.1. **Project Personnel.** For project personnel, include:

- a list of individuals responsible for QC with authority to take corrective action;
- current contact information for each individual listed; and
- current copies of certification documents for individuals performing specified QC functions.

- 4.3.2. **Material Delivery and Storage.** For material delivery and storage, include:

- the sequence of material processing, delivery, and minimum quantities to assure continuous plant operations;
- aggregate stockpiling procedures to avoid contamination and segregation;
- frequency, type, and timing of aggregate stockpile testing to assure conformance of material requirements before mixture production; and
- procedure for monitoring the quality and variability of asphalt binder.

- 4.3.3. **Production.** For production, include:

- loader operation procedures to avoid contamination in cold bins;
- procedures for calibrating and controlling cold feeds;
- procedures to eliminate debris or oversized material;
- procedures for adding and verifying rates of each applicable mixture component (e.g., aggregate, asphalt binder, RAP, RAS, lime, liquid antistripping, WMA);
- procedures for reporting job control test results; and
- procedures to avoid segregation and drain-down in the silo.

- 4.3.4. **Loading and Transporting.** For loading and transporting, include:

- type and application method for release agents; and
- truck loading procedures to avoid segregation.

- 4.3.5. **Placement and Compaction.** For placement and compaction, include:

- proposed agenda for mandatory pre-paving meeting, including date and location;
- proposed paving plan (e.g., paving widths, joint offsets, and lift thicknesses);
- type and application method for release agents in the paver and on rollers, shovels, lutes, and other utensils;
- procedures for the transfer of mixture into the paver, while avoiding segregation and preventing material spillage;
- process to balance production, delivery, paving, and compaction to achieve continuous placement operations and good ride quality;
- paver operations (e.g., operation of wings, height of mixture in auger chamber) to avoid physical and thermal segregation and other surface irregularities; and
- procedures to construct quality longitudinal and transverse joints.

4.4. Mixture Design.

4.4.1. **Design Requirements.** The Contractor will design the mixture using a Superpave Gyrotory Compactor (SGC). A Texas Gyrotory Compactor (TGC) may be used when shown on the plans. Use the dense-graded design procedure provided in [Tex-204-F](#). Design the mixture to meet the requirements listed in Tables 1, 2, 3, 4, 5, 8, 9, and 10.

4.4.1.1. **Design Number of Gyration (Ndesign) When The SGC Is Used.** Design the mixture at 50 gyrations (Ndesign). Use a target laboratory-molded density of 96.0% to design the mixture; however, adjustments can be made to the Ndesign value as noted in Table 9. The Ndesign level may be reduced to at least 35 gyrations at the Contractor's discretion.

Use an approved laboratory from the Department's MPL to perform the Hamburg Wheel test, and provide results with the mixture design, or provide the laboratory mixture and request that the Department perform the Hamburg Wheel test. The Engineer will be allowed 10 working days to provide the Contractor with Hamburg Wheel test results on the laboratory mixture design.

The Engineer will provide the mixture design when shown on the plans. The Contractor may submit a new mixture design at any time during the project. The Engineer will verify and approve all mixture designs (JMF1) before the Contractor can begin production.

Provide the Engineer with a mixture design report using the Department-provided template. Include the following items in the report:

- the combined aggregate gradation, source, specific gravity, and percent of each material used;
- asphalt binder content and aggregate gradation of RAP and RAS stockpiles;
- the target laboratory-molded density (or Ndesign level when using the SGC);
- results of all applicable tests;
- the mixing and molding temperatures;
- the signature of the Level 2 person or persons that performed the design;
- the date the mixture design was performed; and
- a unique identification number for the mixture design.

Table 8
Master Gradation Limits (% Passing by Weight or Volume) and VMA Requirements

| Sieve Size | B Fine Base | C Coarse Surface | D Fine Surface | F Fine Mixture |
|---|--------------------|------------------------|----------------------|----------------------|
| 2" | – | – | – | – |
| 1-1/2" | 100.0 ¹ | – | – | – |
| 1" | 98.0–100.0 | 100.0 ¹ | – | – |
| 3/4" | 84.0–98.0 | 95.0–100.0 | 100.0 ¹ | – |
| 1/2" | – | – | 98.0–100.0 | 100.0 ¹ |
| 3/8" | 60.0–80.0 | 70.0–85.0 | 85.0–100.0 | 98.0–100.0 |
| #4 | 40.0–60.0 | 43.0–63.0 | 50.0–70.0 | 70.0–90.0 |
| #8 | 29.0–43.0 | 32.0–44.0 | 35.0–46.0 | 38.0–48.0 |
| #30 | 13.0–28.0 | 14.0–28.0 | 15.0–29.0 | 12.0–27.0 |
| #50 | 6.0–20.0 | 7.0–21.0 | 7.0–20.0 | 6.0–19.0 |
| #200 | 2.0–7.0 | 2.0–7.0 | 2.0–7.0 | 2.0–7.0 |
| Design VMA, % Minimum | | | | |
| – | 13.0 | 14.0 | 15.0 | 16.0 |
| Production (Plant-Produced) VMA, % Minimum | | | | |
| – | 12.5 | 13.5 | 14.5 | 15.5 |

1. Defined as maximum sieve size. No tolerance allowed.

Table 9
Laboratory Mixture Design Properties

| Mixture Property | Test Method | Requirement |
|--|---------------------------|---------------------|
| Target laboratory-molded density, % (SGC) | Tex-207-F | 96.0 |
| Design gyrations (N _{design} for SGC) | Tex-241-F | 50 ¹ |
| Indirect tensile strength (dry), psi | Tex-226-F | 85–200 ² |
| Boil test ³ | Tex-530-C | – |

- Adjust within a range of 35–100 gyrations when shown on the plans or specification or when mutually agreed between the Engineer and Contractor.
- The Engineer may allow the IDT strength to exceed 200 psi if the corresponding Hamburg Wheel rut depth is greater than 3.0 mm and less than 12.5 mm.
- Used to establish baseline for comparison to production results. May be waived when approved.

Table 10
Hamburg Wheel Test Requirements

| High-Temperature Binder Grade | Test Method | Minimum # of Passes @ 12.5 mm ¹ Rut Depth, Tested @ 50°C |
|-------------------------------|---------------------------|---|
| PG 64 or lower | Tex-242-F | 10,000 ² |
| PG 70 | | 15,000 ³ |
| PG 76 or higher | | 20,000 |

- When the rut depth at the required minimum number of passes is less than 3 mm, the Engineer may require the Contractor to increase the target laboratory-molded density (TGC) by 0.5% to no more than 97.5% or lower the N_{design} level (SGC) to at least 35 gyrations.
- May be decreased to at least 5,000 passes when shown on the plans.
- May be decreased to at least 10,000 passes when shown on the plans.

- 4.4.1.2. **Target Laboratory-Molded Density When The TGC Is Used.** Design the mixture at a 96.5% target laboratory-molded density. Increase the target laboratory-molded density to 97.0% or 97.5% at the Contractor's discretion or when shown on the plans or specification.
- 4.4.2. **Job-Mix Formula Approval.** The job-mix formula (JMF) is the combined aggregate gradation, target laboratory-molded density (or N_{design} level), and target asphalt percentage used to establish target values for hot-mix production. JMF1 is the original laboratory mixture design used to produce the trial batch. When WMA is used, JMF1 may be designed and submitted to the Engineer without including the WMA additive. When WMA is used, document the additive or process used and recommended rate on the JMF1 submittal. The Engineer and the Contractor will verify JMF1 based on plant-produced mixture from the trial batch unless otherwise approved. The Engineer may accept an existing mixture design previously used on a Department project and may waive the trial batch to verify JMF1. The Department may require the Contractor to reimburse the Department for verification tests if more than 2 trial batches per design are required.
- 4.4.2.1. **Contractor's Responsibilities.**
- 4.4.2.1.1. **Providing Gyrotory Compactor.** Use a SGC calibrated in accordance with [Tex-241-F](#) to design the mixture in accordance with [Tex-204-F](#), Part IV, for molding production samples. Locate the SGC, if used, at the Engineer's field laboratory and make the SGC available to the Engineer for use in molding production samples. Furnish a TGC calibrated in accordance with [Tex-914-K](#) when shown on the plans to design the mixture in accordance with [Tex-204-F](#), Part I, for molding production samples.
- 4.4.2.1.2. **Gyrotory Compactor Correlation Factors.** Use [Tex-206-F](#), Part II, to perform a gyrotory compactor correlation when the Engineer uses a different gyrotory compactor. Apply the correlation factor to all subsequent production test results.
- 4.4.2.1.3. **Submitting JMF1.** Furnish a mix design report (JMF1) with representative samples of all component materials and request approval to produce the trial batch. Provide approximately 10,000 g of the design mixture if opting to have the Department perform the Hamburg Wheel test on the laboratory mixture, and request that the Department perform the test.

- 4.4.2.1.4. **Supplying Aggregates.** Provide approximately 40 lb. of each aggregate stockpile unless otherwise directed.
- 4.4.2.1.5. **Supplying Asphalt.** Provide at least 1 gal. of the asphalt material and enough quantities of any additives proposed for use.
- 4.4.2.1.6. **Ignition Oven Correction Factors.** Determine the aggregate and asphalt correction factors from the ignition oven in accordance with [Tex-236-F](#), Part II. Provide correction factors that are not more than 12 months old. Provide the Engineer with split samples of the mixtures before the trial batch production, including all additives (except water), and blank samples used to determine the correction factors for the ignition oven used for QA testing during production. Correction factors established from a previously approved mixture design may be used for the current mixture design if the mixture design and ignition oven are the same as previously used, unless otherwise directed.
- 4.4.2.1.7. **Boil Test.** Perform the test and retain the tested sample from [Tex-530-C](#) until completion of the project or as directed. Use this sample for comparison purposes during production. The Engineer may waive the requirement for the boil test.
- 4.4.2.1.8. **Trial Batch Production.** Provide a plant-produced trial batch upon receiving conditional approval of JMF1 and authorization to produce a trial batch, including the WMA additive or process if applicable, for verification testing of JMF1 and development of JMF2. Produce a trial batch mixture that meets the requirements in Table 4, Table 5, and Table 11. The Engineer may accept test results from recent production of the same mixture instead of a new trial batch.
- 4.4.2.1.9. **Trial Batch Production Equipment.** Use only equipment and materials proposed for use on the project to produce the trial batch.
- 4.4.2.1.10. **Trial Batch Quantity.** Produce enough quantity of the trial batch to ensure that the mixture meets the specification requirements.
- 4.4.2.1.11. **Number of Trial Batches.** Produce trial batches as necessary to obtain a mixture that meets the specification requirements.
- 4.4.2.1.12. **Trial Batch Sampling.** Obtain a representative sample of the trial batch and split it into 3 equal portions in accordance with [Tex-222-F](#). Label these portions as "Contractor," "Engineer," and "Referee." Deliver samples to the appropriate laboratory as directed.
- 4.4.2.1.13. **Trial Batch Testing.** Test the trial batch to ensure the mixture produced using the proposed JMF1 meets the mixture requirements in Table 11. Ensure the trial batch mixture is also in compliance with the Hamburg Wheel requirement in Table 10. Use a Department-approved laboratory to perform the Hamburg Wheel test on the trial batch mixture or request that the Department perform the Hamburg Wheel test. The Engineer will be allowed 10 working days to provide the Contractor with Hamburg Wheel test results on the trial batch. Provide the Engineer with a copy of the trial batch test results.
- 4.4.2.1.14. **Development of JMF2.** Evaluate the trial batch test results after the Engineer grants full approval of JMF1 based on results from the trial batch, determine the optimum mixture proportions, and submit as JMF2. Adjust the asphalt binder content or gradation to achieve the specified target laboratory-molded density. The asphalt binder content established for JMF2 is not required to be within any tolerance of the optimum asphalt binder content established for JMF1; however, mixture produced using JMF2 must meet the voids in mineral aggregates (VMA) requirements for production shown in Table 8. If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 production to confirm the indirect tensile strength does not exceed 200 psi. Verify that JMF2 meets the mixture requirements in Table 5.
- 4.4.2.1.15. **Mixture Production.** Use JMF2 to produce Lot 1 as described in Section 3076.4.9.3.1.1., "Lot 1 Placement," after receiving approval for JMF2 and a passing result from the Department's or a Department-approved

laboratory's Hamburg Wheel test on the trial batch. If desired, proceed to Lot 1 production, once JMF2 is approved, at the Contractor's risk without receiving the results from the Department's Hamburg Wheel test on the trial batch.

Notify the Engineer if electing to proceed without Hamburg Wheel test results from the trial batch. Note that the Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test to be removed and replaced at the Contractor's expense.

4.4.2.1.16. **Development of JMF3.** Evaluate the test results from Lot 1, determine the optimum mixture proportions, and submit as JMF3 for use in Lot 2.

4.4.2.1.17. **JMF Adjustments.** If JMF adjustments are necessary to achieve the specified requirements, make the adjustments before beginning a new lot. The adjusted JMF must:

- be provided to the Engineer in writing before the start of a new lot;
- be numbered in sequence to the previous JMF;
- meet the mixture requirements in Table 4 and Table 5;
- meet the master gradation limits shown in Table 8; and
- be within the operational tolerances of JMF2 listed in Table 11.

4.4.2.1.18. **Requesting Referee Testing.** Use referee testing, if needed, in accordance with Section 3076.4.9.1., "Referee Testing," to resolve testing differences with the Engineer.

Table 11
Operational Tolerances

| Description | Test Method | Allowable Difference Between Trial Batch and JMF1 Target | Allowable Difference from Current JMF Target | Allowable Difference between Contractor and Engineer ¹ |
|---|--|--|--|---|
| Individual % retained for #8 sieve and larger | Tex-200-F or Tex-236-F | Must be Within Master Grading Limits in Table 8 | ±5.0 ^{2,3} | ±5.0 |
| Individual % retained for sieves smaller than #8 and larger than #200 | | | ±3.0 ^{2,3} | ±3.0 |
| % passing the #200 sieve | | | ±2.0 ^{2,3} | ±1.6 |
| Asphalt binder content, % | Tex-236-F | ±0.5 | ±0.3 ³ | ±0.3 |
| Laboratory-molded density, % | Tex-207-F | ±1.0 | ±1.0 | ±1.0 |
| In-place air voids, % | | N/A | N/A | ±1.0 |
| Laboratory-molded bulk specific gravity | | N/A | N/A | ±0.020 |
| VMA, %, min | Tex-204-F | Note ⁴ | Note ⁴ | N/A |
| Theoretical maximum specific (Rice) gravity | Tex-227-F | N/A | N/A | ±0.020 |

1. Contractor may request referee testing only when values exceed these tolerances.
2. When within these tolerances, mixture production gradations may fall outside the master grading limits; however, the % passing the #200 will be considered out of tolerance when outside the master grading limits.
3. Only applies to mixture produced for Lot 1 and higher.
4. Test and verify that Table 8 requirements are met.

4.4.2.2. **Engineer's Responsibilities.**

4.4.2.2.1. **Gyratory Compactor.** For SGC mixtures designed in accordance with [Tex-204-F](#), Part IV, the Engineer will use a Department SGC, calibrated in accordance with [Tex-241-F](#), to mold samples for laboratory mixture design verification. For molding trial batch and production specimens, the Engineer will use the Contractor-provided SGC at the field laboratory or provide and use a Department SGC at an alternate location. The Engineer will make the Contractor-provided SGC in the Department field laboratory available to the Contractor for molding verification samples.

For TGC mixtures designed in accordance with [Tex-204-F](#), Part I, the Engineer will use a Department TGC, calibrated in accordance with [Tex-914-K](#), to mold samples for trial batch and production testing. The Engineer will make the Department TGC and the Department field laboratory available to the Contractor for molding verification samples, if requested by the Contractor.

4.4.2.2.2. **Conditional Approval of JMF1 and Authorizing Trial Batch.** The Engineer will review and verify conformance of the following information within 2 working days of receipt:

- the Contractor's mix design report (JMF1);
- the Contractor-provided Hamburg Wheel test results;
- all required materials including aggregates, asphalt, additives, and recycled materials; and
- the mixture specifications.

The Engineer will grant the Contractor conditional approval of JMF1 if the information provided on the paper copy of JMF1 indicates that the Contractor's mixture design meets the specifications. When the Contractor does not provide Hamburg Wheel test results with laboratory mixture design, 10 working days are allowed for conditional approval of JMF1. The Engineer will base full approval of JMF1 on the test results on mixture from the trial batch.

Unless waived, the Engineer will determine the Micro-Deval abrasion loss in accordance with Section 3076.2.1.1.2., "Micro-Deval Abrasion." If the Engineer's test results are pending after two working days, conditional approval of JMF1 will still be granted within two working days of receiving JMF1. When the Engineer's test results become available, they will be used for specification compliance.

After conditionally approving JMF1, including either Contractor- or Department-supplied Hamburg Wheel test results, the Contractor is authorized to produce a trial batch.

4.4.2.2.3. **Hamburg Wheel Testing of JMF1.** If the Contractor requests the option to have the Department perform the Hamburg Wheel test on the laboratory mixture, the Engineer will mold samples in accordance with [Tex-242-F](#) to verify compliance with the Hamburg Wheel test requirement in Table 10.

4.4.2.2.4. **Ignition Oven Correction Factors.** The Engineer will use the split samples provided by the Contractor to determine the aggregate and asphalt correction factors for the ignition oven used for QA testing during production in accordance with [Tex-236-F](#), Part II. Provide correction factors that are not more than 12 months old.

4.4.2.2.5. **Testing the Trial Batch.** Within 1 full working day, the Engineer will sample and test the trial batch to ensure that the mixture meets the requirements in Table 11. If the Contractor requests the option to have the Department perform the Hamburg Wheel test on the trial batch mixture, the Engineer will mold samples in accordance with [Tex-242-F](#) to verify compliance with the Hamburg Wheel test requirement in Table 10.

The Engineer will have the option to perform the following tests on the trial batch:

- [Tex-226-F](#), to verify that the indirect tensile strength meets the requirement shown in Table 9; and
- [Tex-530-C](#), to retain and use for comparison purposes during production.

4.4.2.2.6. **Full Approval of JMF1.** The Engineer will grant full approval of JMF1 and authorize the Contractor to proceed with developing JMF2 if the Engineer's results for the trial batch meet the requirements in Table 11. The Engineer will notify the Contractor that an additional trial batch is required if the trial batch does not meet these requirements.

4.4.2.2.7. **Approval of JMF2.** The Engineer will approve JMF2 within one working day if the mixture meets the requirements in Table 5 and the gradation meets the master grading limits shown in Table 8. The asphalt binder content established for JMF2 is not required to be within any tolerance of the optimum asphalt binder content established for JMF1; however, mixture produced using JMF2 must meet the VMA requirements shown in Table 8. If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 production to confirm the indirect tensile strength does not exceed 200 psi.

4.4.2.2.8. **Approval of Lot 1 Production.** The Engineer will authorize the Contractor to proceed with Lot 1 production (using JMF2) as soon as a passing result is achieved from the Department's or a Department-approved laboratory's Hamburg Wheel test on the trial batch. The Contractor may proceed at its own risk with Lot 1 production without the results from the Hamburg Wheel test on the trial batch.

If the Department's or Department-approved laboratory's sample from the trial batch fails the Hamburg Wheel test, the Engineer will suspend production until further Hamburg Wheel tests meet the specified values. The Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test be removed and replaced at the Contractor's expense.

4.4.2.2.9. **Approval of JMF3 and Subsequent JMF Changes.** JMF3 and subsequent JMF changes are approved if they meet the mixture requirements shown in Table 4, Table 5, and the master grading limits shown in Table 8, and are within the operational tolerances of JMF2 shown in Table 11.

4.5. **Production Operations.** Perform a new trial batch when the plant or plant location is changed. Take corrective action and receive approval to proceed after any production suspension for noncompliance to the specification. Submit a new mix design and perform a new trial batch when the asphalt binder content of:

- any RAP stockpile used in the mix is more than 0.5% higher than the value shown on the mixture design report; or
- RAS stockpile used in the mix is more than 2.0% higher than the value shown on the mixture design report.

4.5.1. **Storage and Heating of Materials.** Do not heat the asphalt binder above the temperatures specified in Item 300, "Asphalts, Oils, and Emulsions," or outside the manufacturer's recommended values. Provide the Engineer with daily records of asphalt binder and hot-mix asphalt discharge temperatures (in legible and discernible increments) in accordance with Item 320, "Equipment for Asphalt Concrete Pavement," unless otherwise directed. Do not store mixture for a period long enough to affect the quality of the mixture, nor in any case longer than 12 hr. unless otherwise approved.

4.5.2. **Mixing and Discharge of Materials.** Notify the Engineer of the target discharge temperature and produce the mixture within 25°F of the target. Monitor the temperature of the material in the truck before shipping to ensure that it does not exceed the maximum production temperatures listed in Table 12 (or 275°F for WMA). The Department will not pay for or allow placement of any mixture produced above the maximum production temperatures listed in Table 12.

Table 12
Maximum Production Temperature

| High-Temperature Binder Grade ¹ | Maximum Production Temperature |
|--|--------------------------------|
| PG 64 | 325°F |
| PG 70 | 335°F |
| PG 76 | 345°F |

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.

Produce WMA within the target discharge temperature range of 215°F and 275°F when WMA is required. Take corrective action any time the discharge temperature of the WMA exceeds the target discharge range. The Engineer may suspend production operations if the Contractor's corrective action is not successful at controlling the production temperature within the target discharge range. Note that when WMA is produced, it may be necessary to adjust burners to ensure complete combustion such that no burner fuel residue remains in the mixture.

Control the mixing time and temperature so that substantially all moisture is removed from the mixture before discharging from the plant. Determine the moisture content, if requested, by oven-drying in accordance with

[Tex-212-F](#), Part II, and verify that the mixture contains no more than 0.2% of moisture by weight. Obtain the sample immediately after discharging the mixture into the truck, and perform the test promptly.

- 4.6. **Hauling Operations.** Clean all truck beds before use to ensure that mixture is not contaminated. Use a release agent shown on the Department's MPL to coat the inside bed of the truck when necessary.

Use equipment for hauling as defined in Section 3076.4.7.3.3., "Hauling Equipment." Use other hauling equipment only when allowed.

- 4.7. **Placement Operations.** Collect haul tickets from each load of mixture delivered to the project and provide the Department's copy to the Engineer approximately every hour, or as directed. Use a hand-held thermal camera or infrared thermometer, when a thermal imaging system is not used, to measure and record the internal temperature of the mixture as discharged from the truck or Material Transfer Device (MTD) before or as the mix enters the paver and an approximate station number or GPS coordinates on each ticket. Calculate the daily yield and cumulative yield for the specified lift and provide to the Engineer at the end of paving operations for each day unless otherwise directed. The Engineer may suspend production if the Contractor fails to produce and provide haul tickets and yield calculations by the end of paving operations for each day.

Prepare the surface by removing raised pavement markers and objectionable material such as moisture, dirt, sand, leaves, and other loose impediments from the surface before placing mixture. Remove vegetation from pavement edges. Place the mixture to meet the typical section requirements and produce a smooth, finished surface with a uniform appearance and texture. Offset longitudinal joints of successive courses of hot-mix by at least 6 in. Place mixture so that longitudinal joints on the surface course coincide with lane lines and are not placed in the wheel path, or as directed. Ensure that all finished surfaces will drain properly. Place the mixture at the rate or thickness shown on the plans. The Engineer will use the guidelines in Table 13 to determine the compacted lift thickness of each layer when multiple lifts are required. The thickness determined is based on the rate of 110 lb./sq. yd. for each inch of pavement unless otherwise shown on the plans.

Table 13
Compacted Lift Thickness and Required Core Height

| Mixture Type | Compacted Lift Thickness Guidelines | | Minimum Untrimmed Core Height (in.) Eligible for Testing |
|--------------|-------------------------------------|---------------|--|
| | Minimum (in.) | Maximum (in.) | |
| B | 2.50 | 5.00 | 1.75 |
| C | 2.00 | 4.00 | 1.50 |
| D | 1.50 | 3.00 | 1.25 |
| F | 1.25 | 2.50 | 1.25 |

- 4.7.1. **Weather Conditions.**

- 4.7.1.1. **When Using a Thermal Imaging System.** Place mixture when the roadway surface is dry and the roadway surface temperature is at or above the temperatures listed in Table 14A. The Engineer may restrict the Contractor from paving surface mixtures if the ambient temperature is likely to drop below 32°F within 12 hr. of paving. Place mixtures only when weather conditions and moisture conditions of the roadway surface are suitable as determined by the Engineer. Provide output data from the thermal imaging system to demonstrate to the Engineer that no recurring severe thermal segregation exists in accordance with Section 3076.4.7.3.1.2., "Thermal Imaging System."

Table 14A
Minimum Pavement Surface Temperatures

| High-Temperature Binder Grade ¹ | Minimum Pavement Surface Temperatures (°F) | |
|--|--|--|
| | Subsurface Layers or Night Paving Operations | Surface Layers Placed in Daylight Operations |
| PG 64 | 35 | 40 |
| PG 70 | 45 ² | 50 ² |
| PG 76 | 45 ² | 50 ² |

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Contractors may pave at temperatures 10°F lower than these values when a chemical WMA additive is used as a compaction aid in the mixture or when using WMA.

4.7.1.2.

When Not Using a Thermal Imaging System. When using a thermal camera instead of the thermal imaging system, place mixture when the roadway surface temperature is at or above the temperatures listed in Table 14B unless otherwise approved or as shown on the plans. Measure the roadway surface temperature with a hand-held thermal camera or infrared thermometer. The Engineer may allow mixture placement to begin before the roadway surface reaches the required temperature if conditions are such that the roadway surface will reach the required temperature within 2 hr. of beginning placement operations. Place mixtures only when weather conditions and moisture conditions of the roadway surface are suitable as determined by the Engineer. The Engineer may restrict the Contractor from paving if the ambient temperature is likely to drop below 32°F within 12 hr. of paving.

Table 14B
Minimum Pavement Surface Temperatures

| High-Temperature Binder Grade ¹ | Minimum Pavement Surface Temperatures (°F) | |
|--|--|--|
| | Subsurface Layers or Night Paving Operations | Surface Layers Placed in Daylight Operations |
| PG 64 | 45 | 50 |
| PG 70 | 55 ² | 60 ² |
| PG 76 | 60 ² | 60 ² |

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Contractors may pave at temperatures 10°F lower than these values when a chemical WMA additive is used as a compaction aid in the mixture, when using WMA, or utilizing a paving process with equipment that eliminates thermal segregation. In such cases, for each sublot and in the presence of the Engineer, use a hand-held thermal camera operated in accordance with [Tex-244-F](#) to demonstrate to the satisfaction of the Engineer that the uncompacted mat has no more than 10°F of thermal segregation.

4.7.2.

Tack Coat.

4.7.2.1.

Application. Clean the surface before placing the tack coat. The Engineer will set the rate between 0.04 and 0.10 gal. of residual asphalt per square yard of surface area. Apply a uniform tack coat at the specified rate unless otherwise directed. Apply the tack coat in a uniform manner to avoid streaks and other irregular patterns. Apply the tack coat to all surfaces that will come in contact with the subsequent HMA placement, unless otherwise directed. Allow adequate time for emulsion to break completely before placing any material. Prevent splattering of tack coat when placed adjacent to curb, gutter, and structures. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use.

4.7.2.2.

Sampling. The Engineer will obtain at least one sample of the tack coat binder per project in accordance with [Tex-500-C](#), Part III, and test it to verify compliance with Item 300, "Asphalts, Oils, and Emulsions." The Engineer will notify the Contractor when the sampling will occur and will witness the collection of the sample from the asphalt distributor immediately before use.

For emulsions, the Engineer may test as often as necessary to ensure the residual of the emulsion is greater than or equal to the specification requirement in Item 300, "Asphalts, Oils, and Emulsions."

- 4.7.3. **Lay-Down Operations.** Use the placement temperatures in Table 15 to establish the minimum placement temperature of the mixture delivered to the paver.

Table 15
Minimum Mixture Placement Temperature

| High-Temperature Binder Grade ¹ | Minimum Placement Temperature (Before Entering Paver) ^{2,3} |
|--|--|
| PG 64 | 260°F |
| PG 70 | 270°F |
| PG 76 | 280°F |

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Minimum placement temperatures may be reduced 10°F if using a chemical WMA additive as a compaction aid.
3. When using WMA, the minimum placement temperature is 215°F.

- 4.7.3.1. **Thermal Profile.** Use a hand-held thermal camera or a thermal imaging system to obtain a continuous thermal profile in accordance with [Tex-244-F](#). Thermal profiles are not applicable in areas described in Section 3076.4.9.3.1.4., “Miscellaneous Areas.”
- 4.7.3.1.1. **Thermal Segregation.**
- 4.7.3.1.1.1. **Moderate.** Any areas that have a temperature differential greater than 25°F, but not exceeding 50°F, are deemed as moderate thermal segregation.
- 4.7.3.1.1.2. **Severe.** Any areas that have a temperature differential greater than 50°F are deemed as severe thermal segregation.
- 4.7.3.1.2. **Thermal Imaging System.** Review the output results when a thermal imaging system is used, and provide the automated report described in [Tex-244-F](#) to the Engineer daily unless otherwise directed. Modify the paving process as necessary to eliminate any recurring (moderate or severe) thermal segregation identified by the thermal imaging system. The Engineer may suspend paving operations if the Contractor cannot successfully modify the paving process to eliminate recurring severe thermal segregation. Density profiles are not required and not applicable when using a thermal imaging system. Provide the Engineer with electronic copies of all daily data files that can be used with the thermal imaging system software to generate temperature profile plots daily or upon completion of the project or as requested by the Engineer.
- 4.7.3.1.3. **Thermal Camera.** When using a thermal camera instead of the thermal imaging system, take immediate corrective action to eliminate recurring moderate thermal segregation when a hand-held thermal camera is used. Evaluate areas with moderate thermal segregation by performing density profiles in accordance with Section 3076.4.9.3.3.2., “Segregation (Density Profile).” Provide the Engineer with the thermal profile of every subplot within one working day of the completion of each lot. When requested by the Engineer, provide the thermal images generated using the thermal camera. Report the results of each thermal profile in accordance with Section 3076.4.2., “Reporting and Responsibilities.” The Engineer will use a hand-held thermal camera to obtain a thermal profile at least once per project. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that contains severe thermal segregation. Suspend operations and take immediate corrective action to eliminate severe thermal segregation unless otherwise directed. Resume operations when the Engineer determines that subsequent production will meet the requirements of this Section. Evaluate areas with severe thermal segregation by performing density profiles in accordance with Section 3076.4.9.3.3.2., “Segregation (Density Profile).” Remove and replace the material in any areas that have both severe thermal segregation and a failing result for Segregation (Density Profile) unless otherwise directed. The subplot in question may receive a production and placement payment adjustment greater than 1.000, if applicable, when the defective material is successfully removed and replaced.
- 4.7.3.2. **Windrow Operations.** Operate windrow pickup equipment so that when hot-mix is placed in windrows, substantially all the mixture deposited on the roadbed is picked up and loaded into the paver.

4.7.3.3. **Hauling Equipment.** Use belly dumps, live bottom, or end dump trucks to haul and transfer mixture; however, with exception of paving miscellaneous areas, end dump trucks are only allowed when used in conjunction with an MTD with remixing capability or when a thermal imaging system is used unless otherwise allowed.

4.7.3.4. **Screed Heaters.** Turn off screed heaters to prevent overheating of the mat if the paver stops for more than 5 min. The Engineer may evaluate the suspect area in accordance with Section 3076.4.9.3.3.4., "Recovered Asphalt Dynamic Shear Rheometer (DSR)," if the screed heater remains on for more than 5 min. while the paver is stopped.

4.8. **Compaction.** Compact the pavement uniformly to contain between 3.8% and 8.5% in-place air voids. Take immediate corrective action to bring the operation within 3.8% and 8.5% when the in-place air voids exceed the range of these tolerances. The Engineer will allow paving to resume when the proposed corrective action is likely to yield between 3.8% and 8.5% in-place air voids.

Obtain cores in areas placed under Exempt Production, as directed, at locations determined by the Engineer. The Engineer may test these cores and suspend operations or require removal and replacement if the in-place air voids are less than 2.7% or more than 9.9%. Areas defined in Section 3076.4.9.3.1.4., "Miscellaneous Areas," are not subject to in-place air void determination.

Furnish the type, size, and number of rollers required for compaction as approved. Use additional rollers as required to remove any roller marks. Use only water or an approved release agent on rollers, tamps, and other compaction equipment unless otherwise directed.

Use the control strip method shown in [Tex-207-F](#), Part IV, on the first day of production to establish the rolling pattern that will produce the desired in-place air voids unless otherwise directed.

Use tamps to thoroughly compact the edges of the pavement along curbs, headers, and similar structures and in locations that will not allow thorough compaction with rollers. The Engineer may require rolling with a trench roller on widened areas, in trenches, and in other limited areas.

Complete all compaction operations before the pavement temperature drops below 160°F unless otherwise allowed. The Engineer may allow compaction with a light finish roller operated in static mode for pavement temperatures below 160°F.

Allow the compacted pavement to cool to 160°F or lower before opening to traffic unless otherwise directed. Sprinkle the finished mat with water or limewater, when directed, to expedite opening the roadway to traffic.

4.9. **Acceptance Plan.** Payment adjustments for the material will be in accordance with Article 3076.6., "Payment."

Sample and test the hot-mix on a lot and subplot basis. Suspend production until test results or other information indicates to the satisfaction of the Engineer that the next material produced or placed will result in payment factors of at least 1.000, if the production payment factor given in Section 3076.6.1., "Production Payment Adjustment Factors," for two consecutive lots or the placement pay factor given in Section 3076.6.2., "Placement Payment Adjustment Factors," for two consecutive lots is below 1.000.

4.9.1. **Referee Testing.** The Materials and Tests Division is the referee laboratory. The Contractor may request referee testing if a "remove and replace" condition is determined based on the Engineer's test results, or if the differences between Contractor and Engineer test results exceed the maximum allowable difference shown in Table 11 and the differences cannot be resolved. The Contractor may also request referee testing if the Engineer's test results require suspension of production and the Contractor's test results are within specification limits. Make the request within five working days after receiving test results and cores from the Engineer. Referee tests will be performed only on the subplot in question and only for the particular tests in question. Allow 10 working days from the time the referee laboratory receives the samples for test results to

be reported. The Department may require the Contractor to reimburse the Department for referee tests if more than three referee tests per project are required and the Engineer's test results are closer to the referee test results than the Contractor's test results.

The Materials and Tests Division will determine the laboratory-molded density based on the molded specific gravity and the maximum theoretical specific gravity of the referee sample. The in-place air voids will be determined based on the bulk specific gravity of the cores, as determined by the referee laboratory and the Engineer's average maximum theoretical specific gravity for the lot. With the exception of "remove and replace" conditions, referee test results are final and will establish payment adjustment factors for the subplot in question. The Contractor may decline referee testing and accept the Engineer's test results when the placement payment adjustment factor for any subplot results in a "remove and replace" condition. Placement sublots subject to be removed and replaced will be further evaluated in accordance with Section 3076.6.2.2., "Placement Sublots Subject to Removal and Replacement."

4.9.2. **Production Acceptance.**

4.9.2.1. **Production Lot.** A production lot consists of four equal sublots. The default quantity for Lot 1 is 1,000 tons; however, when requested by the Contractor, the Engineer may increase the quantity for Lot 1 to no more than 4,000 tons. The Engineer will select subsequent lot sizes based on the anticipated daily production such that approximately three to four sublots are produced each day. The lot size will be between 1,000 tons and 4,000 tons. The Engineer may change the lot size before the Contractor begins any lot.

If the optimum asphalt binder content for JMF2 is more than 0.5% lower than the optimum asphalt binder content for JMF1, the Engineer may perform or require the Contractor to perform [Tex-226-F](#) on Lot 1 to confirm the indirect tensile strength does not exceed 200 psi. Take corrective action to bring the mixture within specification compliance if the indirect tensile strength exceeds 200 psi unless otherwise directed.

4.9.2.1.1. **Incomplete Production Lots.** If a lot is begun but cannot be completed, such as on the last day of production or in other circumstances deemed appropriate, the Engineer may close the lot. Adjust the payment for the incomplete lot in accordance with Section 3076.6.1., "Production Payment Adjustment Factors." Close all lots within five working days unless otherwise allowed.

4.9.2.2. **Production Sampling.**

4.9.2.2.1. **Mixture Sampling.** Obtain hot-mix samples from trucks at the plant in accordance with [Tex-222-F](#). The sampler will split each sample into three equal portions in accordance with [Tex-200-F](#) and label these portions as "Contractor," "Engineer," and "Referee." The Engineer will perform or witness the sample splitting and take immediate possession of the samples labeled "Engineer" and "Referee." The Engineer will maintain the custody of the samples labeled "Engineer" and "Referee" until the Department's testing is completed.

4.9.2.2.1.1. **Random Sample.** At the beginning of the project, the Engineer will select random numbers for all production sublots. Determine sample locations in accordance with [Tex-225-F](#). Take one sample for each subplot at the randomly selected location. The Engineer will perform or witness the sampling of production sublots.

4.9.2.2.1.2. **Blind Sample.** For one subplot per lot, the Engineer will obtain and test a "blind" sample instead of the random sample collected by the Contractor. Test either the "blind" or the random sample; however, referee testing (if applicable) will be based on a comparison of results from the "blind" sample. The location of the Engineer's "blind" sample will not be disclosed to the Contractor. The Engineer's "blind" sample may be randomly selected in accordance with [Tex-225-F](#) for any subplot or selected at the discretion of the Engineer. The Engineer will use the Contractor's split sample for sublots not sampled by the Engineer.

4.9.2.2.2. **Informational Shear Bond Strength Testing.** Select one random subplot from Lot 2 or higher for shear bond strength testing. Obtain full depth cores in accordance with [Tex-249-F](#). Label the cores with the Control Section Job (CSJ), producer of the tack coat, mix type, shot rate, lot, and subplot number and provide to the

Engineer. The Engineer will ship the cores to the Materials and Tests Division or district laboratory for shear bond strength testing. Results from these tests will not be used for specification compliance.

- 4.9.2.2.3. **Asphalt Binder Sampling.** Obtain a 1-qt. sample of the asphalt binder witnessed by the Engineer for each lot of mixture produced. The Contractor will notify the Engineer when the sampling will occur. Obtain the sample at approximately the same time the mixture random sample is obtained. Sample from a port located immediately upstream from the mixing drum or pug mill and upstream from the introduction of any additives in accordance with [Tex-500-C](#), Part II. Label the can with the corresponding lot and subplot numbers, producer, producer facility location, grade, district, date sampled, and project information including highway and CSJ. The Engineer will retain these samples for one year. The Engineer may also obtain independent samples. If obtaining an independent asphalt binder sample and upon request of the Contractor, the Engineer will split a sample of the asphalt binder with the Contractor.

At least once per project, the Engineer will collect split samples of each binder grade and source used. The Engineer will submit one split sample to MTD to verify compliance with Item 300, "Asphalts, Oils, and Emulsions" and will retain the other split sample for one year.

- 4.9.2.3. **Production Testing.** The Contractor and Engineer must perform production tests in accordance with Table 16. The Contractor has the option to verify the Engineer's test results on split samples provided by the Engineer. Determine compliance with operational tolerances listed in Table 11 for all sublots.

Take immediate corrective action if the Engineer's laboratory-molded density on any subplot is less than 95.0% or greater than 97.0% to bring the mixture within these tolerances. The Engineer may suspend operations if the Contractor's corrective actions do not produce acceptable results. The Engineer will allow production to resume when the proposed corrective action is likely to yield acceptable results.

The Engineer may allow alternate methods for determining the asphalt binder content and aggregate gradation if the aggregate mineralogy is such that [Tex-236-F](#), Part I does not yield reliable results. Provide evidence that results from [Tex-236-F](#), Part I are not reliable before requesting permission to use an alternate method unless otherwise directed. Use the applicable test procedure as directed if an alternate test method is allowed.

Table 16
Production and Placement Testing Frequency

| Description | Test Method | Minimum Contractor Testing Frequency | Minimum Engineer Testing Frequency |
|---|--|--------------------------------------|------------------------------------|
| Individual % retained for #8 sieve and larger | Tex-200-F or Tex-236-F | 1 per subplot | 1 per 12 sublots ¹ |
| Individual % retained for sieves smaller than #8 and larger than #200 | | | |
| % passing the #200 sieve | | | |
| Laboratory-molded density | Tex-207-F | N/A | 1 per subplot ¹ |
| Laboratory-molded bulk specific gravity | | | |
| In-place air voids | | | |
| VMA | Tex-204-F | 1 per subplot | 1 per project |
| Segregation (density profile) ² | Tex-207-F , Part V | | |
| Longitudinal joint density | Tex-207-F , Part VII | When directed | 1 per project |
| Moisture content | Tex-212-F , Part II | | |
| Theoretical maximum specific (Rice) gravity | Tex-227-F | N/A | 1 per subplot ¹ |
| Asphalt binder content | Tex-236-F | 1 per subplot | 1 per lot ¹ |
| Hamburg Wheel test | Tex-242-F | N/A | 1 per project |
| Recycled Asphalt Shingles (RAS) ³ | Tex-217-F , Part III | N/A | |
| Thermal profile ² | Tex-244-F | 1 per subplot | |
| Asphalt binder sampling and testing | Tex-500-C , Part II | 1 per lot (sample only) ⁴ | |
| Tack coat sampling and testing | Tex-500-C , Part III | N/A | |
| Boil test ⁵ | Tex-530-C | 1 per lot | |
| Shear Bond Strength Test ⁶ | Tex-249-F | 1 per project (sample only) | |

1. For production defined in Section 3076.4.9.4., "Exempt Production," the Engineer will test one per day if 100 tons or more are produced. For Exempt Production, no testing is required when less than 100 tons are produced.
2. Not required when a thermal imaging system is used.
3. Testing performed by the Materials and Tests Division or designated laboratory.
4. Obtain witnessed by the Engineer. The Engineer will retain these samples for one year.
5. The Engineer may reduce or waive the sampling and testing requirements based on a satisfactory test history.
6. Testing performed by the Materials and Tests Division or District for informational purposes only.

4.9.2.4. **Operational Tolerances.** Control the production process within the operational tolerances listed in Table 11. When production is suspended, the Engineer will allow production to resume when test results or other information indicates the next mixture produced will be within the operational tolerances.

4.9.2.4.1. **Gradation.** Suspend operation and take corrective action if any aggregate is retained on the maximum sieve size shown in Table 8. A subplot is defined as out of tolerance if either the Engineer's or the Contractor's test results are out of operational tolerance. Suspend production when test results for gradation exceed the operational tolerances in Table 11 for three consecutive sublots on the same sieve or four consecutive sublots on any sieve unless otherwise directed. The consecutive sublots may be from more than one lot.

4.9.2.4.2. **Asphalt Binder Content.** A subplot is defined as out of operational tolerance if either the Engineer's or the Contractor's test results exceed the values listed in Table 11. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that is out of operational tolerance for asphalt binder content. Suspend production and shipment of the mixture if the Engineer's or the Contractor's asphalt binder content deviates from the current JMF by more than 0.5% for any subplot.

4.9.2.4.3. **Voids in Mineral Aggregates (VMA).** The Engineer will determine the VMA for every subplot. For sublots when the Engineer does not determine asphalt binder content, the Engineer will use the asphalt binder content results from QC testing performed by the Contractor to determine VMA.

Take immediate corrective action if the VMA value for any subplot is less than the minimum VMA requirement for production listed in Table 8. Suspend production and shipment of the mixture if the Engineer's VMA results on two consecutive sublots are below the minimum VMA requirement for production listed in Table 8. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that does not

meet the minimum VMA requirement for production listed in Table 8 based on the Engineer's VMA determination.

Suspend production and shipment of the mixture if the Engineer's VMA result is more than 0.5% below the minimum VMA requirement for production listed in Table 8. In addition to suspending production, the Engineer may require removal and replacement or may allow the subplot to be left in place without payment.

- 4.9.2.4.4. **Hamburg Wheel Test.** The Engineer may perform a Hamburg Wheel test at any time during production, including when the boil test indicates a change in quality from the materials submitted for JMF1. In addition to testing production samples, the Engineer may obtain cores and perform Hamburg Wheel tests on any areas of the roadway where rutting is observed. Suspend production until further Hamburg Wheel tests meet the specified values when the production or core samples fail the Hamburg Wheel test criteria in Table 10. Core samples, if taken, will be obtained from the center of the finished mat or other areas excluding the vehicle wheel paths. The Engineer may require up to the entire subplot of any mixture failing the Hamburg Wheel test to be removed and replaced at the Contractor's expense.

If the Department's or Department approved laboratory's Hamburg Wheel test results in a "remove and replace" condition, the Contractor may request that the Department confirm the results by re-testing the failing material. The Materials and Tests Division will perform the Hamburg Wheel tests and determine the final disposition of the material in question based on the Department's test results.

- 4.9.2.5. **Individual Loads of Hot-Mix.** The Engineer can reject individual truckloads of hot-mix. When a load of hot-mix is rejected for reasons other than temperature, contamination, or excessive uncoated particles, the Contractor may request that the rejected load be tested. Make this request within 4 hr. of rejection. The Engineer will sample and test the mixture. If test results are within the operational tolerances shown in Table 11, payment will be made for the load. If test results are not within operational tolerances, no payment will be made for the load.

4.9.3. **Placement Acceptance.**

- 4.9.3.1. **Placement Lot.** A placement lot consists of four placement sublots. A placement subplot consists of the area placed during a production subplot.

- 4.9.3.1.1. **Lot 1 Placement.** Placement payment adjustments greater than 1.000 for Lot 1 will be in accordance with Section 3076.6.2., "Placement Payment Adjustment Factors"; however, no placement adjustment less than 1.000 will be assessed for any subplot placed in Lot 1 when the in-place air voids are greater than or equal to 2.7% and less than or equal to 9.9%. Remove and replace any subplot with in-place air voids less than 2.7% or greater than 9.9%.

- 4.9.3.1.2. **Incomplete Placement Lots.** An incomplete placement lot consists of the area placed as described in Section 3076.4.9.2.1.1., "Incomplete Production Lots," excluding areas defined in Section 3076.4.9.3.1.4., "Miscellaneous Areas." Placement sampling is required if the random sample plan for production resulted in a sample being obtained from an incomplete production subplot.

- 4.9.3.1.3. **Shoulders, Ramps, Etc.** Shoulders, ramps, intersections, acceleration lanes, deceleration lanes, and turn lanes are subject to in-place air void determination and payment adjustments unless designated on the plans as not eligible for in-place air void determination. Intersections may be considered miscellaneous areas when determined by the Engineer.

- 4.9.3.1.4. **Miscellaneous Areas.** Miscellaneous areas include areas that typically involve significant handwork or discontinuous paving operations, such as temporary detours, driveways, mailbox turnouts, crossovers, gores, spot level-up areas, and other similar areas. Temporary detours are subject to in-place air void determination when shown on the plans. Miscellaneous areas also include level-ups and thin overlays when the layer thickness specified on the plans is less than the minimum untrimmed core height eligible for testing shown in Table 13. The specified layer thickness is based on the rate of 110 lb./sq. yd. for each inch of

pavement unless another rate is shown on the plans. When “level up” is listed as part of the item bid description code, a payment adjustment factor of 1.000 will be assigned for all placement sublots as described in Article 3076.6, “Payment.” Miscellaneous areas are not eligible for random placement sampling locations. Compact miscellaneous areas in accordance with Section 3076.4.8., “Compaction.” Miscellaneous areas are not subject to in-place air void determination, thermal profiles testing, segregation (density profiles), or longitudinal joint density evaluations.

4.9.3.2.

Placement Sampling. The Engineer will select random numbers for all placement sublots at the beginning of the project. The Engineer will provide the Contractor with the placement random numbers immediately after the subplot is completed. Mark the roadway location at the completion of each subplot and record the station number. Determine one random sample location for each placement subplot in accordance with [Tex-225-F](#). Adjust the random sample location by no more than necessary to achieve a 2-ft. clearance if the location is within 2 ft. of a joint or pavement edge.

Shoulders, ramps, intersections, acceleration lanes, deceleration lanes, and turn lanes are always eligible for selection as a random sample location; however, if a random sample location falls on one of these areas and the area is designated on the plans as not subject to in-place air void determination, cores will not be taken for the subplot and a 1.000 pay factor will be assigned to that subplot.

Provide the equipment and means to obtain and trim roadway cores on site. On-site is defined as in close proximity to where the cores are taken. Obtain the cores within one working day of the time the placement subplot is completed unless otherwise approved. Obtain two 6-in. diameter cores side-by-side from within 1 ft. of the random location provided for the placement subplot. For Type D and Type F mixtures, 4-in. diameter cores are allowed. Mark the cores for identification, measure and record the untrimmed core height, and provide the information to the Engineer. The Engineer will witness the coring operation and measurement of the core thickness. Visually inspect each core and verify that the current paving layer is bonded to the underlying layer. Take corrective action if an adequate bond does not exist between the current and underlying layer to ensure that an adequate bond will be achieved during subsequent placement operations.

Trim the cores immediately after obtaining the cores from the roadway in accordance with [Tex-251-F](#) if the core heights meet the minimum untrimmed value listed in Table 13. Trim the cores on site in the presence of the Engineer. Use a permanent marker or paint pen to record the lot and subplot numbers on each core as well as the designation as Core A or B. The Engineer may require additional information to be marked on the core and may choose to sign or initial the core. The Engineer will take custody of the cores immediately after witnessing the trimming of the cores and will retain custody of the cores until the Department’s testing is completed. Before turning the trimmed cores over to the Engineer, the Contractor may wrap the trimmed cores or secure them in a manner that will reduce the risk of possible damage occurring during transport by the Engineer. After testing, the Engineer will return the cores to the Contractor.

The Engineer may have the cores transported back to the Department’s laboratory at the HMA plant via the Contractor’s haul truck or other designated vehicle. In such cases where the cores will be out of the Engineer’s possession during transport, the Engineer will use Department-provided security bags and the Roadway Core Custody protocol located at <http://www.txdot.gov/business/specifications.htm> to provide a secure means and process that protects the integrity of the cores during transport.

Decide whether to include the pair of cores in the air void determination for that subplot if the core height before trimming is less than the minimum untrimmed value shown in Table 13. Trim the cores as described above before delivering to the Engineer if electing to have the cores included in the air void determination. Deliver untrimmed cores to the Engineer and inform the Engineer of the decision to not have the cores included in air void determination if electing to not have the cores included in air void determination. The placement pay factor for the subplot will be 1.000 if cores will not be included in air void determination.

Instead of the Contractor trimming the cores on site immediately after coring, the Engineer and the Contractor may mutually agree to have the trimming operations performed at an alternate location such as a field laboratory or other similar location. In such cases, the Engineer will take possession of the cores

immediately after they are obtained from the roadway and will retain custody of the cores until testing is completed. Either the Department or Contractor representative may perform trimming of the cores. The Engineer will witness all trimming operations in cases where the Contractor representative performs the trimming operation.

Dry the core holes and tack the sides and bottom immediately after obtaining the cores. Fill the hole with the same type of mixture and properly compact the mixture. Repair core holes with other methods when approved.

4.9.3.3. **Placement Testing.** Perform placement tests in accordance with Table 16. After the Engineer returns the cores, the Contractor may test the cores to verify the Engineer's test results for in-place air voids. The allowable differences between the Contractor's and Engineer's test results are listed in Table 11.

4.9.3.3.1. **In-Place Air Voids.** The Engineer will measure in-place air voids in accordance with [Tex-207-F](#) and [Tex-227-F](#). Before drying to a constant weight, cores may be pre-dried using a CoreDry or similar vacuum device to remove excess moisture. The Engineer will average the values obtained for all sublots in the production lot to determine the theoretical maximum specific gravity. The Engineer will use the average air void content for in-place air voids.

The Engineer will use the vacuum method to seal the core if required by [Tex-207-F](#). The Engineer will use the test results from the unsealed core to determine the placement payment adjustment factor if the sealed core yields a higher specific gravity than the unsealed core. After determining the in-place air void content, the Engineer will return the cores and provide test results to the Contractor.

4.9.3.3.2. **Segregation (Density Profile).** Test for segregation using density profiles in accordance with [Tex-207-F](#), Part V when using a thermal camera instead of the thermal imaging system. Density profiles are not required and are not applicable when using a thermal imaging system. Density profiles are not applicable in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas."

Perform a minimum of one density profile per subplot. Perform additional density profiles when any of the following conditions occur, unless otherwise approved:

- the paver stops due to lack of material being delivered to the paving operations and the temperature of the uncompacted mat before the initial break down rolling is less than the temperatures shown in Table 17;
- areas that are identified by either the Contractor or the Engineer with thermal segregation,;
- any visibly segregated areas that exist.

Table 17
Minimum Uncompacted Mat Temperature Requiring a Segregation Profile

| High-Temperature Binder Grade ¹ | Minimum Temperature of the Uncompacted Mat Allowed Before Initial Break Down Rolling ^{2,3,4} |
|--|---|
| PG 64 | <250°F |
| PG 70 | <260°F |
| PG 76 | <270°F |

1. The high-temperature binder grade refers to the high-temperature grade of the virgin asphalt binder used to produce the mixture.
2. Segregation profiles are required in areas with moderate and severe thermal segregation as described in Section 3076.4.7.3.1.3.
3. Minimum uncompacted mat temperature requiring a segregation profile may be reduced 10°F if using a chemical WMA additive as a compaction aid.
4. When using WMA, the minimum uncompacted mat temperature requiring a segregation profile is 215°F.

Provide the Engineer with the density profile of every subplot in the lot within one working day of the completion of each lot. Report the results of each density profile in accordance with Section 3076.4.2., "Reporting and Responsibilities."

The density profile is considered failing if it exceeds the tolerances in Table 18. No production or placement payment adjustments greater than 1.000 will be paid for any subplot that contains a failing density profile. When a hand-held thermal camera is used instead of a thermal imaging system, the Engineer will measure the density profile at least once per project. The Engineer's density profile results will be used when available. The Engineer may require the Contractor to remove and replace the area in question if the area fails the density profile and has surface irregularities as defined in Section 3076.4.9.3.3.5., "Irregularities." The subplot in question may receive a production and placement payment adjustment greater than 1.000, if applicable, when the defective material is successfully removed and replaced.

Investigate density profile failures and take corrective actions during production and placement to eliminate the segregation. Suspend production if 2 consecutive density profiles fail unless otherwise approved. Resume production after the Engineer approves changes to production or placement methods.

Table 18
Segregation (Density Profile) Acceptance Criteria

| Mixture Type | Maximum Allowable Density Range (Highest to Lowest) | Maximum Allowable Density Range (Average to Lowest) |
|-------------------------|---|---|
| Type B | 8.0 pcf | 5.0 pcf |
| Type C, Type D & Type F | 6.0 pcf | 3.0 pcf |

4.9.3.3.3. Longitudinal Joint Density.

4.9.3.3.3.1. **Informational Tests.** Perform joint density evaluations while establishing the rolling pattern and verify that the joint density is no more than 3.0 pcf below the density taken at or near the center of the mat. Adjust the rolling pattern, if needed, to achieve the desired joint density. Perform additional joint density evaluations, at least once per subplot, unless otherwise directed.

4.9.3.3.3.2. **Record Tests.** Perform a joint density evaluation for each subplot at each pavement edge that is or will become a longitudinal joint. Joint density evaluations are not applicable in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas." Determine the joint density in accordance with [Tex-207-F](#), Part VII. Record the joint density information and submit results on Department forms to the Engineer. The evaluation is considered failing if the joint density is more than 3.0 pcf below the density taken at the core random sample location and the correlated joint density is less than 90.0%. The Engineer will make independent joint density verification at least once per project and may make independent joint density verifications at the random sample locations. The Engineer's joint density test results will be used when available.

Provide the Engineer with the joint density of every subplot in the lot within one working day of the completion of each lot. Report the results of each joint density in accordance with Section 3076.4.2., "Reporting and Responsibilities."

Investigate joint density failures and take corrective actions during production and placement to improve the joint density. Suspend production if the evaluations on two consecutive sublots fail unless otherwise approved. Resume production after the Engineer approves changes to production or placement methods.

4.9.3.3.4. **Recovered Asphalt Dynamic Shear Rheometer (DSR).** The Engineer may take production samples or cores from suspect areas of the project to determine recovered asphalt properties. Asphalt binders with an aging ratio greater than 3.5 do not meet the requirements for recovered asphalt properties and may be deemed defective when tested and evaluated by the Materials and Tests Division. The aging ratio is the DSR value of the extracted binder divided by the DSR value of the original unaged binder. Obtain DSR values in accordance with AASHTO T 315 at the specified high temperature performance grade of the asphalt. The Engineer may require removal and replacement of the defective material at the Contractor's expense. The asphalt binder will be recovered for testing from production samples or cores in accordance with [Tex-211-F](#).

4.9.3.3.5. **Irregularities.** Identify and correct irregularities including segregation, rutting, raveling, flushing, fat spots, mat slippage, irregular color, irregular texture, roller marks, tears, gouges, streaks, uncoated aggregate particles, or broken aggregate particles. The Engineer may also identify irregularities, and in such cases, the Engineer will promptly notify the Contractor. If the Engineer determines that the irregularity will adversely affect pavement performance, the Engineer may require the Contractor to remove and replace (at the Contractor's expense) areas of the pavement that contain irregularities. The Engineer may also require the Contractor to remove and replace (at the Contractor's expense) areas where the mixture does not bond to the existing pavement.

If irregularities are detected, the Engineer may require the Contractor to immediately suspend operations or may allow the Contractor to continue operations for no more than one day while the Contractor is taking appropriate corrective action.

4.9.4. **Exempt Production.** The Engineer may deem the mixture as exempt production for the following conditions:

- anticipated daily production is less than 500 tons;
- total production for the project is less than 5,000 tons;
- when mutually agreed between the Engineer and the Contractor; or
- when shown on the plans.

For exempt production, the Contractor is relieved of all production and placement sampling and testing requirements, except for coring operations when required by the Engineer. The production and placement pay factors are 1.000 if the specification requirements listed below are met, all other specification requirements are met, and the Engineer performs acceptance tests for production and placement listed in Table 16 when 100 tons or more per day are produced.

- produce, haul, place, and compact the mixture in compliance with the specification and as directed;
- control mixture production to yield a laboratory-molded density that is within $\pm 1.0\%$ of the target laboratory-molded density as tested by the Engineer;
- compact the mixture in accordance with Section 3076.4.8., "Compaction;" and
- when a thermal imaging system is not used, the Engineer may perform segregation (density profiles) and thermal profiles in accordance with the specification.

4.9.5. **Ride Quality.** Measure ride quality in accordance with Item 585, "Ride Quality for Pavement Surfaces," unless otherwise shown on the plans.

5. MEASUREMENT

- 5.1. **Dense Graded Hot-Mix Asphalt.** Hot mix will be measured by the ton of composite hot-mix, which includes asphalt, aggregate, and additives. Measure the weight on scales in accordance with Item 520, "Weighing and Measuring Equipment."
- 5.2. **Tack Coat.** Tack coat will be measured at the applied temperature by strapping the tank before and after road application and determining the net volume in gallons from the calibrated distributor. The Engineer will witness all strapping operations for volume determination. All tack, including emulsions, will be measured by the gallon applied.

The Engineer may allow the use of a metering device to determine asphalt volume used and application rate if the device is accurate within 1.5% of the strapped volume.

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under Section 3076.5.1, "Measurement," will be paid for at the unit bid price for "Dense Graded Hot-Mix Asphalt" of the mixture type, SAC, and binder specified. These prices are full compensation for surface preparation, materials, placement, equipment, labor, tools, and incidentals.

The work performed and materials furnished in accordance with this Item and measured as provided under Article 3076.5.2, "Measurement," will be paid for at the unit bid price for "Tack Coat" of the tack coat provided. These prices are full compensation for materials, placement, equipment, labor, tools, and incidentals. Payment adjustments will be applied as determined in this Item; however, a payment adjustment factor of 1.000 will be assigned for all placement sublots for "level ups" only when "level up" is listed as part of the item bid description code. A payment adjustment factor of 1.000 will be assigned to all production and placement sublots when "exempt" is listed as part of the item bid description code, and all testing requirements are met.

Payment for each subplot, including applicable payment adjustments greater than 1.000, will only be paid for sublots when the Contractor supplies the Engineer with the required documentation for production and placement QC/QA, thermal profiles, segregation density profiles, and longitudinal joint densities in accordance with Section 3076.4.2., "Reporting and Responsibilities." When a thermal imaging system is used, documentation is not required for thermal profiles or segregation density profiles on individual sublots; however, the thermal imaging system automated reports described in [Tex-244-F](#) are required.

Trial batches will not be paid for unless they are included in pavement work approved by the Department.

Payment adjustment for ride quality will be determined in accordance with Item 585, "Ride Quality for Pavement Surfaces."

- 6.1. **Production Payment Adjustment Factors.** The production payment adjustment factor is based on the laboratory-molded density using the Engineer's test results. The bulk specific gravities of the samples from each subplot will be divided by the Engineer's maximum theoretical specific gravity for the subplot. The individual sample densities for the subplot will be averaged to determine the production payment adjustment factor in accordance with Table 19 for each subplot, using the deviation from the target laboratory-molded density defined in Table 9. The production payment adjustment factor for completed lots will be the average of the payment adjustment factors for the four sublots sampled within that lot.

Table 19
Production Payment Adjustment Factors for Laboratory-Molded Density¹

| Absolute Deviation from Target Laboratory-Molded Density | Production Payment Adjustment Factor (Target Laboratory-Molded Density) |
|---|--|
| 0.0 | 1.050 |
| 0.1 | 1.050 |
| 0.2 | 1.050 |
| 0.3 | 1.044 |
| 0.4 | 1.038 |
| 0.5 | 1.031 |
| 0.6 | 1.025 |
| 0.7 | 1.019 |
| 0.8 | 1.013 |
| 0.9 | 1.006 |
| 1.0 | 1.000 |
| 1.1 | 0.965 |
| 1.2 | 0.930 |
| 1.3 | 0.895 |
| 1.4 | 0.860 |
| 1.5 | 0.825 |
| 1.6 | 0.790 |
| 1.7 | 0.755 |
| 1.8 | 0.720 |
| > 1.8 | Remove and replace |

1. If the Engineer's laboratory-molded density on any subplot is less than 95.0% or greater than 98.0%, take immediate corrective action to bring the mixture within these tolerances. The Engineer may suspend operations if the Contractor's corrective actions do not produce acceptable results. The Engineer will allow production to resume when the proposed corrective action is likely to yield acceptable results.

6.1.1. **Payment for Incomplete Production Lots.** Production payment adjustments for incomplete lots, described under Section 3076.4.9.2.1.1., "Incomplete Production Lots," will be calculated using the average production payment factors from all sublots sampled.

A production payment factor of 1.000 will be assigned to any lot when the random sampling plan did not result in collection of any samples within the first subplot.

6.1.2. **Production Sublots Subject to Removal and Replacement.** If after referee testing, the laboratory-molded density for any subplot results in a "remove and replace" condition as listed in Table 19, the Engineer may require removal and replacement or may allow the subplot to be left in place without payment. The Engineer may also accept the subplot in accordance with Section 3076.5.3.1., "Acceptance of Defective or Unauthorized Work." Replacement material meeting the requirements of this Item will be paid for in accordance with this Section.

6.2. **Placement Payment Adjustment Factors.** The placement payment adjustment factor is based on in-place air voids using the Engineer's test results. The bulk specific gravities of the cores from each subplot will be divided by the Engineer's average maximum theoretical specific gravity for the lot. The individual core densities for the subplot will be averaged to determine the placement payment adjustment factor in accordance with Table 20 for each subplot that requires in-place air void measurement. A placement payment adjustment factor of 1.000 will be assigned to the entire subplot when the random sample location falls in an area designated on the plans as not subject to in-place air void determination. A placement payment adjustment factor of 1.000 will be assigned to quantities placed in areas described in Section 3076.4.9.3.1.4., "Miscellaneous Areas." The placement payment adjustment factor for completed lots will be the average of the placement payment adjustment factors for up to four sublots within that lot.

Table 20
Placement Payment Adjustment Factors for In-Place Air Voids

| In-Place Air Voids | Placement Pay Adjustment Factor | In-Place Air Voids | Placement Pay Adjustment Factor |
|---------------------------|--|---------------------------|--|
| < 2.7 | Remove and Replace | 6.4 | 1.042 |
| 2.7 | 0.710 | 6.5 | 1.040 |
| 2.8 | 0.740 | 6.6 | 1.038 |
| 2.9 | 0.770 | 6.7 | 1.036 |
| 3.0 | 0.800 | 6.8 | 1.034 |
| 3.1 | 0.830 | 6.9 | 1.032 |
| 3.2 | 0.860 | 7.0 | 1.030 |
| 3.3 | 0.890 | 7.1 | 1.028 |
| 3.4 | 0.920 | 7.2 | 1.026 |
| 3.5 | 0.950 | 7.3 | 1.024 |
| 3.6 | 0.980 | 7.4 | 1.022 |
| 3.7 | 0.998 | 7.5 | 1.020 |
| 3.8 | 1.002 | 7.6 | 1.018 |
| 3.9 | 1.006 | 7.7 | 1.016 |
| 4.0 | 1.010 | 7.8 | 1.014 |
| 4.1 | 1.014 | 7.9 | 1.012 |
| 4.2 | 1.018 | 8.0 | 1.010 |
| 4.3 | 1.022 | 8.1 | 1.008 |
| 4.4 | 1.026 | 8.2 | 1.006 |
| 4.5 | 1.030 | 8.3 | 1.004 |
| 4.6 | 1.034 | 8.4 | 1.002 |
| 4.7 | 1.038 | 8.5 | 1.000 |
| 4.8 | 1.042 | 8.6 | 0.998 |
| 4.9 | 1.046 | 8.7 | 0.996 |
| 5.0 | 1.050 | 8.8 | 0.994 |
| 5.1 | 1.050 | 8.9 | 0.992 |
| 5.2 | 1.050 | 9.0 | 0.990 |
| 5.3 | 1.050 | 9.1 | 0.960 |
| 5.4 | 1.050 | 9.2 | 0.930 |
| 5.5 | 1.050 | 9.3 | 0.900 |
| 5.6 | 1.050 | 9.4 | 0.870 |
| 5.7 | 1.050 | 9.5 | 0.840 |
| 5.8 | 1.050 | 9.6 | 0.810 |
| 5.9 | 1.050 | 9.7 | 0.780 |
| 6.0 | 1.050 | 9.8 | 0.750 |
| 6.1 | 1.048 | 9.9 | 0.720 |
| 6.2 | 1.046 | > 9.9 | Remove and Replace |
| 6.3 | 1.044 | | |

6.2.1.

Payment for Incomplete Placement Lots. Payment adjustments for incomplete placement lots described under Section 3076.4.9.3.1.2., "Incomplete Placement Lots," will be calculated using the average of the placement payment factors from all sublots sampled and sublots where the random location falls in an area designated on the plans as not eligible for in-place air void determination.

If the random sampling plan results in production samples, but not in placement samples, the random core location and placement adjustment factor for the subplot will be determined by applying the placement random number to the length of the subplot placed.

If the random sampling plan results in placement samples, but not in production samples, no placement adjustment factor will apply for that subplot placed.

A placement payment adjustment factor of 1.000 will be assigned to any lot when the random sampling plan did not result in collection of any production samples.

- 6.2.2. **Placement Sublots Subject to Removal and Replacement.** If after referee testing, the placement payment adjustment factor for any subplot results in a “remove and replace” condition as listed in Table 20, the Engineer will choose the location of two cores to be taken within 3 ft. of the original failing core location. The Contractor will obtain the cores in the presence of the Engineer. The Engineer will take immediate possession of the untrimmed cores and submit the untrimmed cores to the Materials and Tests Division, where they will be trimmed if necessary and tested for bulk specific gravity within 10 working days of receipt.

The bulk specific gravity of the cores from each subplot will be divided by the Engineer’s average maximum theoretical specific gravity for the lot. The individual core densities for the subplot will be averaged to determine the new payment adjustment factor of the subplot in question. If the new payment adjustment factor is 0.700 or greater, the new payment adjustment factor will apply to that subplot. If the new payment adjustment factor is less than 0.700, no payment will be made for the subplot. Remove and replace the failing subplot, or the Engineer may allow the subplot to be left in place without payment. The Engineer may also accept the subplot in accordance with Section 3076.5.3.1., “Acceptance of Defective or Unauthorized Work.” Replacement material meeting the requirements of this Item will be paid for in accordance with this Section.

- 6.3. **Total Adjusted Pay Calculation.** Total adjusted pay (TAP) will be based on the applicable payment adjustment factors for production and placement for each lot.

$$TAP = (A+B)/2$$

where:

A = Bid price × production lot quantity × average payment adjustment factor for the production lot

B = Bid price × placement lot quantity × average payment adjustment factor for the placement lot + (bid price × quantity placed in miscellaneous areas × 1.000)

Production lot quantity = Quantity actually placed - quantity left in place without payment

Placement lot quantity = Quantity actually placed - quantity left in place without payment - quantity placed in miscellaneous areas

Special Specification 5057

Precast Concrete Wheel Stops



1. DESCRIPTION

Furnish, install, move, and remove precast concrete wheel stops as shown on the plans, as provided for in the specifications for this project, or as directed.

2. MATERIALS

Provide new materials, if necessary, that comply with the requirements of this specification, and pertinent requirements of the following items:

Provide concrete wheel stops a minimum of 6 ft. long unless otherwise shown on the plans or as approved.

- 2.1. Provide hydraulic concrete conforming to Item 421, "Hydraulic Cement Concrete" with a minimum concrete strength equal to Class A concrete.
- 2.2. Provide reinforcing steel for concrete wheel stops conforming to Item 440, "Reinforcement for Concrete" with a minimum reinforcing of two No. 4 or three No. 3 bars placed longitudinally.
- 2.3. Submit commercially available wheel stop designs for approval.

3. CONSTRUCTION

Remove existing precast concrete wheel stops without damaging them. Salvage and reinstall precast concrete wheel stops in accordance with the plan details or as directed. If an existing precast concrete wheel stop is damaged beyond repair before completing the installation, furnish a new precast concrete wheel stop and install in accordance with the plan details or as directed. Existing precast concrete wheel stops that have been removed and are damaged or not salvageable as determined by the Engineer, will become the property of the Contractor. Existing precast concrete wheel stops that are to be removed and not reset that are salvageable as determined by the Engineer, will remain the property of Brazos Bend state park and will be delivered to them as directed. The anchoring method and anchor rod type are as shown on the submitted plan or by approval.

4. MEASUREMENT

This item will be measured as each unit, complete in place, as shown on the plans.

5. PAYMENT

The work performed and material furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Concrete Wheel Stops" of the work category (Furnish and Install, Move, or Remove) of wheel stops specified. This price is full compensation for furnishing and installing, moving, and removing wheel stops, preparing, hauling, handling, any temporary storage, installing materials and equipment, installing foundations as per the manufacturer's specifications or requirement, and for tools, labor, equipment, and incidentals.