CONTRACT DOCUMENTS AND SPECIFICATIONS
FOR
CONSTRUCTION OF

MERCER STREET PASEO
PHASE 2

Prepared For:

DRIPPING SPRINGS
Texas

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

Prepared by:

GILPIN
ENGINEERING

9701 Brodie Lane
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AUGUST 2026

STATE OF TEXAS
DANIEL J CRYAN
127112
LICENSED
PROFESSIONAL ENGINEER

8/21/2026

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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 (2024 Edition), the Hays County Specifications for Roadway Design, Paving and drainage Improvements (2019 Edition), and the City of Austin Standard Specifications Manual (Supplement 6-2024).

DIVISION A
BID INFORMATION & REQUIREMENTS

INSTRUCTIONS TO BIDDERS

1. NONRESPONSIVE BIDS: BIDS, AT A MINIMUM, WILL BE CONSIDERED NONRESPONSIVE IF FAILURE TO:
   - *Sign Bid*
   - List *Unit Bid Price* for each item
   - List *Total Amount of Bid*

2. 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.

3. 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.

4. 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.

5. 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.

6. 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:

Construction Contract	Rating
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.

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

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

DIVISION B
BID PROPOSAL

Project: **MERCER STREET PASEO – PHASE 2**

THIS BID IS SUBMITTED TO:
City of Dripping Springs
City Hall Intake
511 W. Mercer Street
Dripping Springs, Texas 78620

FROM:_____
Contractor

1. The undersigned RESPONDENT 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. RESPONDENT 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 **forty five (45) calendar days** thereafter. RESPONDENT 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. RESPONDENT accepts all of the terms and conditions of the Advertisement, Notice to Respondents and Instructions to Respondents, 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.

4. RESPONDENT will sign and submit the Agreement with the Performance Bond, Payment Bond, and other documents required by the Bid Requirements within 10 calendar days after the date of OWNER's Notice of Award. RESPONDENT will furnish the Maintenance Bond at the time required by the Contract Documents.

5. In submitting Bid, RESPONDENT represents, as more fully set forth in the Agreement, that:

   A. RESPONDENT has examined copies of all the Bid 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. RESPONDENT has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, public-use conditions, access constraints, utility conditions, visible surface conditions, drainage, grades, and all local conditions

and Laws and Regulations that may affect cost, progress, performance, or furnishing of the Work.

C. RESPONDENT has obtained and carefully studied, or assumes responsibility for obtaining and carefully studying, all observations, examinations, investigations, explorations, tests, and studies that RESPONDENT considers necessary for performance of the Work at the Contract Price and within the Contract Time, and RESPONDENT has included in its Bid all work reasonably inferable from the Contract Documents and all incidental and subsidiary work necessary for proper completion of the Project.

D. RESPONDENT has reviewed and checked all information and data shown or indicated in the Contract Documents with respect to existing underground and aboveground facilities, access limitations, tie-ins, and visible site conditions, and has accounted for such matters in the Bid to the extent reasonably discoverable before bid.

E. RESPONDENT has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents and accepts responsibility for conditions reasonably apparent from the site and Contract Documents.

F. RESPONDENT has given ENGINEER written notice of all patent conflicts, errors, ambiguities, or discrepancies that RESPONDENT has discovered in the Contract Documents before submitting the Bid, and RESPONDENT waives any post-award claim based on a patent ambiguity, conflict, or discrepancy not timely raised before bid.

G. 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; RESPONDENT has not directly or indirectly induced or solicited any other RESPONDENT to submit a false or sham Bid; RESPONDENT has not solicited or induced any person, firm, or corporation to refrain from proposing; and RESPONDENT has not sought by collusion to obtain for itself any advantage over any other RESPONDENT or over OWNER.

H. RESPONDENT acknowledges that Work identified in the Contract Documents as having no separate pay item, being subsidiary to another item, or being incidental to the Work is included in the applicable Bid prices and will not entitle RESPONDENT to additional compensation.

6. The following documents (signed and completed) are attached to and made a condition of this Bid:

A. Non-Collusion Affidavit
B. Conflict of Interest Statement

Information From Respondents

7. RESPONDENT acknowledges that additional post-award and closeout documents, including required bonds and insurance documents, shall be furnished at the times specified in the Contract Documents.

RESPECTFULLY SUBMITTED on _____, 2026.

By:_____ Respondent, if the Respondent is an individual Partner, if the Respondent is a Partnership Officer, if the Respondent is a Corporation
(Authorized Signature)

_____
(Typed or Printed Name and Title)

Respondent:_____
(Name of Company)

Business Address: _____

_____

_____

Telephone No: _____

IF Respondent is a Corporation:

ATTEST

_____
(Signature of Witness) (Corporate Seal)

_____
(State of Incorporation)

IF Respondent 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.

BID SUMMARY AND TOTALS

Work Area	Description	Proposal Cost
1	General Conditions (Mobilization, Barricades & Signs, Erosion Controls)	$_____
2	Site clearing & Earthwork	$_____
3	Site Flatwork (Concrete sidewalks, DG path, finished grading)	$_____
4	Site Utility Work (Water & Wastewater service)	$_____
5	Site Electrical Work, Light Fixtures & Foundations	$_____
	(1+2+3+4+5) TOTAL AMOUNT BID:	$_____

(PROVIDE DETAILED PROPOSAL TABULATION ON THE FOLLOWING PAGES)

RESPONDENT will complete the Work for the following prices:

WORK AREA 1:

Item	Spec Item	Description of Item with Unit Proposal Price in Written Words	Unit	Approx Qty	Unit Amount	Total Price
1	TXDOT ITEM 500	MOBILIZATION for_____dollars and_____cents PER LUMP SUM	LS	1	$_____	$_____
2	TXDOT ITEM 502	BARRICADES, SIGNS AND TRAFFIC HANDLING for_____dollars and_____cents PER MONTH	MO	2	$_____	$_____
3	TXDOT ITEM 506	EROSION CONTROL LOG (INSTALL) for_____dollars and_____cents PER LINEAR FOOT	LF	150	$_____	$_____
4	TXDOT ITEM 506	EROSION CONTROL LOG (REMOVE) for_____dollars and_____cents PER LINEAR FOOT	LF	150	$_____	$_____
(1)		**WORK AREA 1 SUBTOTAL (BID ITEMS 1 - 4)** for_____dollars and_____cents			$_____	$_____

Item	Spec Item	Description of Item with Unit Proposal Price in Written Words	Unit	Approx Qty	Unit Amount	Total Price
5	TXDOT ITEM 100	PREPARING ROW (SITE CLEARING) for_____dollars and_____cents PER LUMP SUM	LS	1	$_____	$_____
6	HAYS COUNTY ITEM 1.04	EXCAVATION for_____dollars and_____cents PER CUBIC YARD	CY	5	$_____	$_____
7	HAYS COUNTY ITEM 1.04	EXCAVATION (HAUL OFF) for_____dollars and_____cents PER CUBIC YARD	CY	15	$_____	$_____
8	HAYS COUNTY ITEM 1.03	EMBANKMENT (ON-SITE FILL) for_____dollars and_____cents PER CUBIC YARD	CY	5	$_____	$_____
9	HAYS COUNTY ITEM 1.04	SUBGRADE PREPARATION for_____dollars and_____cents PER SQUARE YARD	SY	126	$_____	$_____
(2)		**WORK AREA 2 SUBTOTAL (BID ITEMS 5 - 9)** for_____dollars and_____cents			$_____	$_____

Item	Spec Item	Description of Item with Unit Proposal Price in Written Words	Unit	Approx Qty	Unit Amount	Total Price
10	TXDOT ITEM 531	CONC SIDEWALKS (5" WITH 1'X1' THICKENED EDGES) for_____dollars and_____cents PER SQUARE YARD	SY	115	$_____	$_____
11	PLAN DETAIL	6" FLUSH CURB, NO GUTTER for_____dollars and_____cents PER LINEAR FOOT	LF	20	$_____	$_____
12	PLAN DETAIL	COMPACTED DECOMPOSED GRANITE PATH (4") for_____dollars and_____cents PER SQUARE YARD	SY	11	$_____	$_____
13	PLAN DETAIL	TRAIL STEEL EDGING (BORDER OF DG PATH) for_____dollars and_____cents PER LINEAR FOOT	LF	20	$_____	$_____
14	PLAN DETAIL	LIMESTONE PAVER STEP STONES (SET WITHIN DG PATH) for_____dollars and_____cents PER EACH	EA	6	$_____	$_____
15	PLAN DETAIL	SLOTTED TRENCH DRAIN for_____dollars and_____cents PER LINEAR FOOT	LF	20	$_____	$_____
(3)		**WORK AREA 3 SUBTOTAL (BID ITEMS 10 - 15)** for_____dollars and_____cents			$_____	$_____

Item	Spec Item	Description of Item with Unit Proposal Price in Written Words	Unit	Approx Qty	Unit Amount	Total Price
16	PLAN DETAIL	UTILITY SLEEVE (SCH 40 PVC) (2 INCH) for_____dollars and_____cents PER LINEAR FOOT	LF	92	$_____	$_____
17	PLAN DETAIL	GUTTER DOWNSPOUT EXTENSION (SCH 40 PVC) (4 INCH) for_____dollars and_____cents PER LINEAR FOOT	LF	17	$_____	$_____
18	CITY OF AUSTIN 510-AR	PIPE, 6-IN DIA, SCH 80 PVC (ALL DEPTHS) for_____dollars and_____cents PER LINEAR FOOT	LF	52	$_____	$_____
19	CITY OF AUSTIN 510-AR	2-WAY WW CLEANOUT for_____dollars and_____cents PER EACH	EA	1	$_____	$_____
20	PLAN DETAIL	UTILITY SLEEVE (SCH 40 PVC) (3/4 INCH) for_____dollars and_____cents PER LINEAR FOOT	LF	40	$_____	$_____
(4)		**WORK AREA 4 SUBTOTAL (BID ITEMS 16 - 20)** for_____dollars and_____cents			$_____	$_____

Item	Spec Item	Description of Item with Unit Proposal Price in Written Words	Unit	Approx Qty	Unit Amount	Total Price
21	PLAN DETAIL	DRILL SHAFT (RDWY ILLUMINATION POLE) for_____dollars and_____cents PER LINEAR FOOT	LF	32	$_____	$_____
22	PLAN DETAIL	LIGHT FIXTURE (TYPE A) for_____dollars and_____cents PER LINEAR FOOT	EA	4	$_____	$_____
23	PLAN DETAIL	2" SCHED 40 PVC CONDUIT for_____dollars and_____cents PER LINEAR FOOT	LF	200	$_____	$_____
24	PLAN DETAIL	#10 AL INSULATED WIRE for_____dollars and_____cents PER LINEAR FOOT	LF	400	$_____	$_____
25	PLAN DETAIL	#6 AL BARE WIRE for_____dollars and_____cents PER LINEAR FOOT	LF	200	$_____	$_____
26	PLAN DETAIL	GROUND BOX (TYPE A)(12" x 23" x 11") for_____dollars and_____cents PER EACH	EA	2	$_____	$_____
(5)		**WORK AREA 5 SUBTOTAL (BID ITEMS 21 - 26)** for_____dollars and_____cents			$_____	$_____

DIVISION C
CONTRACT, INSURANCE FROMS & REQUIREMENTS

CONSTRUCTION CONTRACT TEMPLATE

THIS CONSTRUCTION CONTRACT (hereinafter the "Contract") made this the _____ day of _____, 2026 ("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 City Administrator, Michelle Fischer, 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, utilities, transportation, temporary facilities, fencing, public protection measures, cleanup, restoration, and all other services and incidentals necessary or customarily required for proper completion of the Work in strict accordance with the Contract Documents, whether or not expressly identified as a separate pay item. Furthermore, Contractor shall perform and complete all work required for the construction of the Improvements embraced in the Project; namely, **MERCER STREET PASEO – PHASE 2** 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 proposal 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 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 **forty five (45) consecutive calendar days** after receiving the Notice to Proceed. Final acceptance of the Work shall occur only upon the City's written final acceptance after completion of all Work, punch-list items, closeout requirements, and delivery of all documents required by the Contract Documents. Payment of monies due hereunder does not constitute acceptance of the Work or waiver of defective or incomplete Work.

2.4 Applications for Payment. Contractor shall submit applications for payment in the form required by the Contract Documents, together with all supporting documentation required by the

Contract Documents, including updated schedule information, subcontractor reporting, lien-waiver documentation, payroll documentation if applicable, and any other backup reasonably required by the City. Incomplete or inaccurate payment applications may be returned to Contractor for correction and re-submittal, and the City may withhold payment as permitted by the Contract Documents.

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 cause its policies to require at least thirty (30) days' prior written notice to the City of cancellation, non-renewal, or material reduction in coverage, except ten (10) days' notice for cancellation due to non-payment where permitted by law.

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. If any Change Order, amendment, or supplemental agreement increases the Contract Price, Contractor shall, upon City request, furnish any rider, endorsement, or replacement bond necessary to maintain bond coverage in the full amount required by the Contract Documents.

2.7 Warranty and Maintenance Bond. The Contractor agrees to remedy all defects appearing in the Work or developing in the materials furnished or 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, or such longer period as may be required elsewhere in the Contract Documents or by law. Contractor further agrees to indemnify and hold the City harmless from all costs encountered in remedying such defects. As a condition precedent to final payment and final acceptance, Contractor shall furnish to the City a two (2) year maintenance bond, in form and substance satisfactory to the City, for the full amount required by the Contract Documents. If Contractor fails to timely commence or complete corrective work after notice, the City may perform or cause others to perform such corrective work and recover all resulting costs from Contractor and/or the maintenance bond surety. Contractor further agrees to indemnify and hold the City harmless from any costs encountered in remedying such defects.
Contractor shall furnish to the City, before final payment and final acceptance, a two (2) year maintenance bond in form and substance satisfactory to the City and in the full amount required by the Contract Documents. 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 Contractor shall file a Form 1295 Certificate of Interested Parties (Form 1295) approved by the Texas Ethics Commission (Texas Government Code Section 2252.908). The Contractor also confirms it is in compliance with all Texas requirements related to government contracts including: (1) no boycott of lsrael; (2) not listed as a foreign terrorist organization by the Texas Comptroller of Public Accounts; (3) Contractor does not have a policy or practice of discriminating against firearm entities or firearm trade associations; (4) Contractor does not boycott energy companies; and Contractor is compliant with all other Texas laws including any additional disclosure requirements.

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	Project Manual
Exhibit B	Plans
Exhibit C	Addenda
Exhibit D	Instructions to Bidders
Exhibit E	Certificate of Insurance
Exhibit H	Contractor's Signed Bid Form

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. References in the Contract Documents to "required bonds" include the Performance Bond, Payment Bond, and Maintenance Bond, each due at the time specified in the Contract Documents. In the event of a conflict, inconsistency, discrepancy, or ambiguity in the Contract Documents, the following order of precedence shall govern: (1) Addenda; (2) this Contract; (3) Supplemental Conditions; (4) General Conditions; (5) Technical Specifications; (6) Plans and Drawings; (7) Details; and (8) schedules, quantity sheets, and general notes. The more specific requirement shall govern over the more general requirement to the extent not inconsistent with the foregoing order of precedence. Contractor shall promptly notify the City and Owner's Representative in writing of any conflict or ambiguity before performing affected Work. The City objects to and rejects any terms contained within Contractor's statements of work, purchase orders, work orders, invoices, 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. All performance, payment, and maintenance bonds required by this Contract shall be on forms included in the Contract Documents or otherwise expressly approved in writing by the City Attorney.

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 in the proposal documents described above.

6.2 Amendment. This Contract and the proposal 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 join 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:	**If to the Contractor:**
City of Dripping Springs	_____
Attn: City Administrator	_____
PO Box 384	_____
Dripping Springs, TX 78620	_____

6.5 Force Majeure. A party shall be excused from timely performance only to the extent its performance is actually delayed by an event beyond its reasonable control and without its fault or negligence; provided, however, that Contractor's relief for delay shall be limited to the relief expressly permitted by the General Conditions and no event of force majeure shall entitle Contractor to compensation except to the extent expressly provided by the Contract Documents.

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 proposal 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. [*See Section C-8 and the General Conditions.*]

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:

_____

Michelle Fischer, City Administrator

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

SECTION C-2
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, together with its officials, officers, employees, agents, and representatives, shall be included as additional insureds on a primary and non-contributory basis, regardless of the application of other insurance, with respect to commercial general liability and automobile liability coverage, for both ongoing operations and completed operations, except to the extent prohibited with respect to workers' compensation or professional liability coverage.

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 provide the City prompt written notice of any material reduction in coverage.

5. All insurance policies shall be endorsed to provide the City at least thirty (30) days' prior written notice of cancellation, non-renewal, or material reduction in coverage, except ten (10) days' prior written notice for cancellation due to non-payment if allowed by law.

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, including products/completed operations coverage and additional insured completed operations coverage in favor of the City, must be maintained for at least two (2) years after final acceptance of the Project or for any longer period required elsewhere in the Contract Documents.

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.

- Certificates of insurance alone are not sufficient to satisfy the additional insured, waiver of subrogation, primary and non-contributory, or notice requirements where endorsement language is required by the Contract Documents. 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.

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 _____, **2026**, 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 _____ **2026**.

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)

_____ _____

Witness Address (State and Zip Code) Surety NAIC No.

_____ _____

Texas Agent for Service Texas Agent Address

_____ _____

Texas Agent Phone/Email Power of Attorney Attached: Yes / No

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

NOTE: Bond must be submitted on this form or on a form approved in writing by the City Attorney. Power of Attorney for the attorney-in-fact must be attached.

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.

MAINTENANCE BOND
EXAMPLE TEMPLATE

THE STATE OF {}
COUNTY OF {}

KNOW ALL MEN BY THESE PRESENTS:

THAT _____ ("Contractor") as principal, and _____ ("Surety") as surety are held and firmly bound unto City of Dripping Springs, Texas ("City") as obligee in the full and just sum of [Dollar Amount In Words] [$Dollar Amount], which sum shall be no less than one hundred percent (100%) of the final construction cost, and for which sum, Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, by these presents.

WHEREAS, the said Contractor has by written agreement dated [insert date here] entered into a contract with City/Obligee to construct certain Improvements as described therein ("Contract") and as further described for reference as: **MERCER STREET PASEO – PHASE 2**.

NOW THEREFORE, if the Contractor shall indemnify and hold harmless the City against loss or damage occasioned directly by the failure of said materials or workmanship, then this obligation to be void, otherwise to remain in full force and effect. It is understood, however, that this bond shall not include loss or damage by failure or workmanship or materials due to hurricane, cyclone, tornado, earthquake, volcanic eruption or any similar disturbance of nature, nor military, naval or usurped power, insurrection, riot or civil commotion, nor any act of God.

NOW, THEREFORE, the Contractor in said Contract and herein, binds itself to use first class materials and workmanship and of such kind and quality that for a period of two (2) years from the completion and final acceptance of the Improvements by the City, the said Improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of two (2) years following the date of the final acceptance of the work by the City, the Contractor binds itself to repair or reconstruct the said improvements in whole or in part at any time within said period and that it will, upon receiving notice, repair or reconstruct said improvements from the date of such notice as the City shall determine to be necessary. If said Contractor does not repair or reconstruct the improvements within the time period designated then the City shall be entitled to have said repairs made and charge said Contractor and/or Surety the cost of same under the terms of this Maintenance Bond.

NOW, THEREFORE, the condition of this obligation is such that the Surety guarantees: that the Improvements be free of defective workmanship and materials during the maintenance period set forth herein; that Contractor shall keep and perform its said work and keep the same in repair for the said maintenance period of two (2) years, as provided; and, that Contractor holds harmless and indemnifies said City from any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation, then these presents shall be null and void and have no further effect, but if default shall be made by said work or materials or Contractor, then these presents shall remain in full force and effect, and the said City shall have and recover from the said Contractor and Surety, jointly and severally, their heirs, administrators, executors, successors and assigns, all damages, costs and expenses. And in this regard, Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the City.

NOW, THEREFORE, whenever Contractor shall be declared by City to be in default under the Contract, the Surety shall, upon request of City and within ten (10) calendar days from receipt of City's notice of Contractor's default, may promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, and
2. Shall hold the City harmless from any claims, judgments, or liens arising from the Surety's failure to either remedy the default or to complete the Contract in accordance with its terms and conditions in a timely manner.

NOW, THEREFORE, Surety acknowledges that its obligations under this Bond and as detailed herein and in the Contract Documents are not conditioned on a termination of the Contractor by the City. Surety further acknowledges and agrees that Surety shall obtain the City's approval and consent with respect to the contractor(s) that Surety may retain to replace defaulted Contractor or otherwise honor the obligations under this Bond.

NOW, THEREFORE, this Bond covers all contractual obligations of Contractor under the Contract, including, without limitation, the indemnity, warranty and guaranty obligations. The Surety stipulates and agrees that no change, extension of time, alteration, omission, addition or other modification to the terms of any of the Contract will affect its obligations on this bond, and it hereby waives notice of any such changes, extensions of time, alterations, omissions, additions, or other modifications, to the Contract or to related subcontracts, purchase orders or other obligations, and any notices provided in such regard shall not create as to any party a duty related thereto. The penal limit of this bond shall automatically be increased by the amount of any change order, supplemental agreement or amendment which increases the price of the Contract.

NOW, THEREFORE, Surety acknowledges and represents that it is duly authorized to do business in the State of Texas, that it is authorized and admitted to write surety bonds in the State of Texas, and that its obligations under this Bond are intended to be in all respects in full and complete compliance with every law, charter, rule or regulation that this Bond may be subject to. If the Surety's obligation under this Bond is in an amount in excess of ten percent (10%) of Surety's capital and surplus, Surety shall immediately upon the effective date of this Bond furnish written certification to City that the Surety has reinsured the portion of risk that exceeds ten percent (10%) of the Surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusteed to do business in the State of Texas. In addition to the foregoing, If this Bond is in an amount in excess of $100,000, the Surety also warrants and represents that it holds a certificate from the United States Secretary of the Treasury to qualify as a surety on obligations permitted or required under federal law or that it has obtained reinsurance for any liability in excess of $100,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas 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 such event, the Surety shall also furnish to the City immediately upon the effective date of this Bond a list of companies which includes the Surety or reinsurer holding such certificates of authority as acceptable sureties and reinsurers on federal bonds published in the Federal Register by the United States Department of the Treasury.

Signed and sealed this day of _____, _____ .

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 (Signature)

_____
Telephone No. (Area Code)

_____
Witness Address (State and Zip Code)

_____
Surety NAIC No.

_____
Texas Agent for Service

_____
Texas Agent Address

_____
Texas Agent Phone/Email

_____
Power of Attorney Attached: Yes / No

NOTE: Maintenance bond must be on this form or another form approved in writing by the City Attorney. Power of Attorney for the attorney-in-fact must be attached.

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.

NOTICE OF AWARD

To: _____
_____
_____

Project: MERCER STREET PASEO – PHASE 2

The City of Dripping Springs has considered the proposals submitted for the above described project in response to its request for informal bids dated August 21st, 2026 and related information to Respondents.

You are hereby notified that your proposal in the amount of $_____, has been favorably considered for the project by the City. Pursuant to the Instructions to Respondents 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, the required Performance Bond and Payment Bond, and the Certificate of Insurance within ten (10) days from your receipt of this Notice, your proposal will be considered as withdrawn and your proposal bond will be forfeited. Any required Maintenance Bond shall be furnished at the time specified in the Contract Documents as a condition to final payment and final acceptance.

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

Dated this ____day of _____, 2026.

CITY OF DRIPPING SPRINGS.

_____
City Engineer

ACKNOWLEDGEMENT:

Receipt of this Notice is hereby acknowledged.

Dated this _____day of _____, 2026.

_____
Authorized Signature

Title:_____

NOTICE TO PROCEED

Date: _____

To: _____

_____

_____

Project: MERCER STREET PASEO – PHASE 2

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 _____2026.

_____
Authorized Signature

_____
Name:

Title:_____

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 separarted 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: TX20260007 05/18/2026 below:

"General Decision Number: TX20260007 05/18/2026

State: Texas

Construction Types: Heavy

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

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

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

SUTX2011-006 08/03/2011

	Rates	Fringes
WELDER	$ 15.97	0.00
TRUCK DRIVER: TANDEM AXLE TRACTOR W/SEMI TRAILER	$ 12.81	0.00
TRUCK DRIVER: SINGLE OR TANDEM AXLE DUMP TRUCK	$ 11.68	0.00
TRUCK DRIVER (SINGLE AXLE)	$ 11.79	0.00
TRUCK DRIVER (OFF ROAD HAULER)	$ 11.88	0.00
TRUCK DRIVER (LOWBOY-FLOAT)	$ 15.66	0.00

TRAFFIC SIGNALIZATION: TRAFFIC SIGNAL
INSTALLATION, (TRAFFIC SIGNAL/LIGHT POLE WORKER)...$ 16.00
0.00
STEEL WORKER (STRUCTURAL).....$ 19.29
0.00
STEEL WORKER (REINFORCING).....$ 14.00
0.00
SERVICER.....$ 14.51
0.00
POWER EQUIPMENT OPERATOR: SCRAPER.....$ 12.27
0.00
POWER EQUIPMENT OPERATOR: MOTOR GRADER, ROUGH.....$ 14.63
0.00
POWER EQUIPMENT OPERATOR: MOTOR GRADER, FINE GRADE..$ 18.51
0.00
POWER EQUIPMENT OPERATOR: MECHANIC.....$ 17.10
0.00
POWER EQUIPMENT OPERATOR: FRONT END LOADER, 3 CY OR
LESS.....$ 13.04
0.00
POWER EQUIPMENT OPERATOR: FOUNDATION DRILL, TRUCK
MOUNTED.....$ 16.93
0.00
POWER EQUIPMENT OPERATOR: CRAWLER TRACTOR.....$ 15.67
0.00
POWER EQUIPMENT OPERATOR: BROOM OR SWEEPER.....$ 11.04
0.00
POWER EQUIPMENT OPERATOR: BOOM TRUCK.....$ 18.36
0.00
POWER EQUIPMENT OPERATOR: ASPHALT DISTRIBUTOR.....$ 15.55
0.00
POWER EQUIPMENT OPERATOR: (TRENCHING MACHINE,
HEAVY).....$ 18.48
0.00
POWER EQUIPMENT OPERATOR: (SPREADER BOX).....$ 14.04
0.00
POWER EQUIPMENT OPERATOR: (ROLLER, OTHER).....$ 10.50
0.00
POWER EQUIPMENT OPERATOR: (ROLLER, ASPHALT).....$ 12.78
0.00
POWER EQUIPMENT OPERATOR: (RECLAIMER/PULVERIZER)....$ 12.88
0.00
POWER EQUIPMENT OPERATOR: (PAVEMENT MARKING
MACHINE).....$ 19.17
0.00
POWER EQUIPMENT OPERATOR: (MILLING MACHINE).....$ 14.18
0.00
POWER EQUIPMENT OPERATOR: (LOADER/BACKHOE).....$ 14.12
0.00
POWER EQUIPMENT OPERATOR: (FRONT END LOADER, OVER 3
CY).....$ 13.21
0.00
POWER EQUIPMENT OPERATOR: (EXCAVATOR OVER 50,000

LBS).....$ 17.71
0.00
POWER EQUIPMENT OPERATOR: (EXCAVATOR 50,000 LBS OR
LESS).....$ 12.88
0.00
POWER EQUIPMENT OPERATOR: (DIRECTIONAL DRILLING
OPERATOR).....$ 17.24
0.00
POWER EQUIPMENT OPERATOR: (DIRECTIONAL DRILLING
LOCATOR).....$ 11.67
0.00
POWER EQUIPMENT OPERATOR: (CRANE, LATTICE BOOM OVER
80 TONS).....$ 19.38
0.00
POWER EQUIPMENT OPERATOR: (CRANE, LATTICE BOOM 80
TONS OR LESS).....$ 15.87
0.00
POWER EQUIPMENT OPERATOR: (CRANE, HYDRAULIC 80 TONS
OR LESS).....$ 18.36
0.00
POWER EQUIPMENT OPERATOR: (CONCRETE PAVEMENT
FINISHING MACHINE).....$ 15.48
0.00
POWER EQUIPMENT OPERATOR: (ASPHALT PAVING MACHINE)..$ 14.36
0.00
POWER EQUIPMENT OPERATOR: (AGRICULTURAL TRACTOR)....$ 12.69
0.00
PAINTER (STRUCTURES).....$ 18.34
0.00
LABORER: PIPELAYER.....$ 12.79
0.00
LABORER: ASPHALT RAKER.....$ 12.12
0.00
LABORER (WORK ZONE BARRICADE SERVICER).....$ 11.85
0.00
LABORER (LABORER, UTILITY).....$ 12.27
0.00
LABORER (LABORER, COMMON).....$ 10.50
0.00
LABORER (FLAGGER).....$ 9.45
0.00
FORM BUILDER/FORM SETTER (STRUCTURES).....$ 12.87
0.00
FORM BUILDER/FORM SETTER (PAVING & CURB).....$ 12.94
0.00
ELECTRICIAN.....$ 26.35
0.00
CEMENT MASON/CONCRETE FINISHER (PAVING AND
STRUCTURES).....$ 12.56
0.00

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

Note: Executive Order 13658 generally applies to contracts subject
to the Davis-Bacon Act that were awarded on or between January 1,
2015 and January 29, 2022, and that have not been renewed or
extended on or after January 30, 2022. Executive Order 13658 does
not apply to contracts subject only to the Davis-Bacon Related Acts
regardless of when they were awarded. If a contract is subject to
Executive Order 13658, the contractor must pay all covered workers
at least $13.65 per hour (or the applicable wage rate listed on this
wage determination, if it is higher) for all hours spent performing on
the contract from May 11, 2026, through December 31, 2026. The
applicable Executive Order minimum wage rate will be adjusted
annually.
Additional information on contractor requirements and worker
protections under Executive Order 13658 is available at
www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (iii)).

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

Union Rate Identifiers

A four-letter identifier beginning with characters other than SU , UAVG , SA , or SC denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The SU identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date

for the classifications and rates under that identifier.

SU wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The SA identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the SA identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

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

a) a survey underlying a wage determination
b) an existing published wage determination
c) an initial WHD letter setting forth a position on a wage determination matter
d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage

and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

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: Michelle Fischer – City Administrator
Company: City of Dripping Springs
Address: 511 Mercer St., Dripping Springs TX 78620
Phone: 512-858-4725
E-mail: MFischer@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:

Holiday	Date Observed
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%).

.4 Each bond shall identify the Principal exactly as named in the Agreement, shall describe the Work exactly as stated in the Agreement or other Contract Documents, shall be dated no earlier than the date of the Agreement, and shall be accompanied by the surety's power of attorney and such other supporting information as OWNER may reasonably require, including evidence of authority to do business in Texas and Treasury-list or reinsurance compliance if applicable.

.5 References in the Contract Documents to "required bonds" include the Performance Bond, Payment Bond, and Maintenance Bond, each to be furnished at the time specified in the Contract Documents.

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 final acceptance, CONTRACTOR shall furnish the OWNER with a maintenance bond, in form and substance satisfactory to OWNER,

to assure the quality of the materials and workmanship and maintenance of all required improvements, including OWNER'S costs of enforcing the bond 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. No substitution or "approved equal" request shall be made after bid except with the prior written approval of OWNER. OWNER and E/A may reject any proposed substitution in their sole reasonable discretion. Contractor shall bear all costs and risks associated with any requested substitution, including review time, redesign, coordination, delay, incompatibility, lifecycle impacts, and rework. If a substitution request is allowed, it shall be submitted 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 Contact 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) current record copy of all Drawings, Specifications, Addenda, Change Orders, Change Directives, Field Orders, written interpretations, and clarifications in good order and annotated on a current basis to show all changes made during construction, including field adjustments, concealed conditions encountered, utility relocations, deviations from plan alignment or grade, and all other changes relevant to final record drawings. Failure to maintain current record documents shall constitute grounds for withholding payment. 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 CONRACTOR 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 OR ANY OTHER MONETARY RELIEF FOR ANY EVENT OF DELAY, DISRUPTION, INTERFERENCE, HINDRANCE, RESEQUENCING, SUSPENSION, OR INEFFICIENCY, INCLUDING DELAYS RELATED TO UTILITIES, OTHER CONTRACTORS, REVIEW TIMES, ACCESS RESTRICTIONS, PUBLIC-USE CONSTRAINTS, WEATHER, PROCUREMENT, OR COORDINATION, EXCEPT TO THE EXTENT SUCH WAIVER IS PROHIBITED BY APPLICABLE LAW. CONTRACTOR'S SOLE REMEDY FOR ANY SUCH EVENT SHALL BE LIMITED TO AN ADJUSTMENT IN CONTRACT TIME TO THE EXTENT EXPRESSLY PROVIDED BY THE CONTRACT DOCUMENTS.

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. In addition to the foregoing, CONTRACTOR shall provide written notice to OWNER and Owner's Representative within three (3) calendar days after CONTRACTOR first becomes aware, or reasonably should become aware, of any act, omission, condition, directive, delay, disruption, or event that may give rise to a claim for additional compensation, time, or other relief. Failure to provide such prompt notice shall waive the claim to the extent OWNER is prejudiced. 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 updated submittal and procurement status;

.3 monthly subcontractor report;

.4 conditional lien waivers for the current payment period and unconditional lien waivers for the previous payment period;

.5 certified payroll documentation if required by law or the Contract Documents;

.6 any other documentation required under the Supplemental General Conditions or reasonably requested by OWNER.

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 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 (2024 Edition) and the Hays County Specifications for Roadway Design, Paving and drainage Improvements (2019 Edition).

Where Hays County Specifications for Roadway Design, Paving, and Drainage Improvements are in conflict with TxDOT Specifications, Hays County Specifications shall supersede. Where additional project-specific requirements are provided in the Contract Documents, they shall be interpreted in accordance with the order-of-precedence provisions of the Agreement and Supplemental Conditions. Contractor shall promptly request clarification of any apparent conflict before performing affected Work.