



City of Seagoville

Meeting Agenda

City Council

City Hall
702 N. Hwy 175
Seagoville, Texas 75159

Monday, July 1, 2024

6:30 PM

Council Chambers

LACKEY STEPPER SEBASTIAN
MAYOR

RICK HOWARD
PLACE 1

ALLEN GRIMES
PLACE 4

PATRICK STALLINGS
CITY MANAGER

JOSE HERNANDEZ
PLACE 2

JON EPPS
PLACE 5- MAYOR PRO TEM

HAROLD MAGILL
PLACE 3

Notice is hereby given that the City Council of the City of Seagoville, Texas will meet in a Regular Called Meeting at 6:30 p.m. for Work Session, and Regular Session will begin at 7:00 p.m., to be held at City Hall, 702 N. Hwy 175 Seagoville, Texas 75159.

As authorized by Section 551.071 of the Texas Government Code, this meeting may be convened into closed Executive Session for the purpose of seeking confidential legal advice from the City Attorney on any agenda item listed herein.

The City of Seagoville reserves the right to reconvene, recess or realign any session or order of business at any time prior to adjournment. The purpose of the meeting is to consider the following items:

WORK SESSION – 6:30 PM

- 1. Call to Order**
- 2. Receive an update on parking improvements for Bearden Park.**
- 3. Receive an update on the CDBG street projects.**
- 4. Receive an update on the Lakes of Rolling Meadows Planned Development District.**
- 5. Discuss Regular Session agenda items.**
- 6. Adjourn**

REGULAR SESSION – 7:00 PM

- 7. Call to Order**
- 8. Invocation**
- 9. Pledge of Allegiance**
- 10. Mayor's Report**
- 11. Citizen's Comments**

This portion of the meeting is to allow each speaker up to six (6) minutes to address the council on items not posted on the current agenda. City Council may not discuss these items but may respond with factual data or policy information or place the item on a future agenda. Anyone wishing to speak should submit a Speaker Request Form to the City Secretary.

Consent Agenda

- 12. Consider approving the City Council meeting minutes: June 17, 2024.**
- 13. Consider a Resolution approving an agreement with Garver, LLC as set forth in Work Order No. 18 for professional engineering services for Hall Road from US 175 Frontage Road to Judy Lane in an amount not to exceed two hundred eighteen thousand eight hundred seventy-seven dollars and zero cents (\$218,877.00); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed.**

Regular Agenda

- 14. Conduct board applicant interviews and consider appointment for Place 3 on the Library Advisory Board.**
- 15. Discuss and consider a Resolution authorizing the City Manager to engage C&M Concrete for concrete work at C. O. Bruce Central Park in an amount not to exceed two hundred sixty-seven thousand seven hundred seventy-seven dollars and forty cents (\$267,777.40).**
- 16. Discuss and consider a Resolution authorizing the City Manager to engage Anderson Asphalt & Concrete Paving to provide asphalt road repair work on East Simonds Road in an amount not to exceed six hundred sixty-nine thousand nine hundred fifty-eight dollars and no cents (\$669,958.00).**
- 17. Discuss and consider a Resolution authorizing the City Manager to engage Anderson Asphalt & Concrete Paving to provide asphalt road repair work on McWhorter Road in an amount not to exceed one hundred twelve thousand five dollars and zero cents (\$112,005.00).**
- 18. Discuss and consider approving a Resolution ratifying emergency repairs of two (2) partially collapsed manholes; and authorizing the City Manager to make payment to RT&E rural water in an amount not to exceed fifty-four thousand nine hundred forty-seven dollars and zero cents (\$54,947.00); and execute any and all necessary documents.**
- 19. Discuss and consider an Ordinance amending Article 21.02 Technical and Construction Codes and Standards, and Article 19.10 Stormwater Protection, Section 19.10.009 Specific Prohibitions and Requirements.**
- 20. Discuss and consider a Resolution approving the purchase of electrical upgrades to the City Hall power generator in the amount of forty-one thousand six hundred forty-four dollars and zero cents (\$41,644.00); authorizing the City Manager to execute appropriate agreements and provide for payment on the city's behalf.**
- 21. Discuss and consider a Resolution ratifying approval of a contract with Good Earth Services of Texas for mowing services around the Simonds Market Center Tract.**

22. Items of community interest and councilmember reports.

Pursuant to Section 551.0415 of the Texas Government Code, the City Council or City Administration may report information on the following items: 1) expression of thanks, congratulations, or condolences, 2) information about holiday schedules, 3) recognition of individuals, 4) reminders about upcoming City events, 5) information about community events,

EXECUTIVE SESSION

The City Council will convene into closed Executive Session pursuant to:

23. Texas Govt. Code Section 551.074 to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: Presiding Municipal Court Judge

24. Texas Govt. Code Section 551.071 Consult with Attorney, to seek legal advice related to: The North Texas Municipal Water District

REGULAR SESSION

25. Take necessary action as a result of Executive Session.

26. Discuss future agenda items

27. Adjourn

CERTIFICATE

I certify that the above Notice of Meeting was posted on the bulletin board at the City Hall of the City of Seagoville, Texas on this 27th day of June 2024, by 5 p.m.

Casey Fillmore-Myers, Deputy City Secretary

The City of Seagoville does not discriminate based on disability in the admission or access to, or treatment or employment in, its programs or activities. If you have a request for services that will make this program accessible to you, please contact the City of Seagoville at least 72 hours in advance at (972) 287-6819 or email citysecretary@seagoville.us . (TDD access 1-800-RELAY-TX)

UPCOMING DATES:

- o Monday, July 15, 2024, Regular City Council Meeting
- o Monday, August 5, 2024, Regular City Council Meeting



TO: Mayor and City Council
FROM: Kirk McDaniel, Director of Economic Development
DATE: July 1, 2024
ITEM: 2
DESCRIPTION: Receive an update on parking improvements for Bearden Park.

INTRODUCTION

The purpose of this item is to receive an update for the Bearden Park parking lot improvements.

BACKGROUND

The City of Seagoville previously contracted with Garver LLC, for professional engineering services for Bearden Park parking lot improvement. On June 17, 2024, Pine Tar Sports presented to the City Council with a request for a public private partnership for improvements to Bearden Park. City Council direction was to gather additional data to assess the feasibility of the project. City Staff is currently coordinating with Pine Tar Sports to gather that data and conduct an analysis.

FINANCIAL IMPACT

FY2024 budget.

RECOMMENDATION

Staff recommends not moving forward with the agreement with Garver, LLC at this time.

ATTACHMENTS

1. Resolution
2. Garver work order #16

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING AN AGREEMENT WITH GARVER, LLC. AS SET FORTH IN WORK ORDER NO. "16" FOR PROFESSIONAL ENGINEERING SERVICES FOR BEARDEN PARK PARKING LOT IMPROVEMENTS; ATTACHED THERETO IN AN AMOUNT NOT TO EXCEED ONE HUNDRED TEN THOUSAND ONE HUNDRED SIXTY ONE DOLLARS AND SEVENTY FIVE CENTS (\$110,161.75); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Garver, LLC, ("Engineer") provides professional engineering services for Bearden Park parking lot improvements; and

WHEREAS, the City Council hereby finds that it is in the best interest of the City to approve the agreement for Professional Engineering Services for Bearden Park parking lot improvements as set forth in work order no. 16 attached thereto, in an amount not to exceed one hundred ten thousand one hundred sixty one dollars and seventy five cents (\$110,161.75); and authorizes the City Manager to execute the same;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:

SECTION 1. The City Council approves the agreement for Professional Engineering Services for Bearden Park parking lot improvements engineering services as set forth in work order no. 16 attached thereto, in an amount not to one hundred ten thousand one hundred sixty one dollars and seventy five cents (\$110,161.75); and hereby authorizes the City Manager to execute said Agreement.

SECTION 2. That any prior Resolutions of the City Council of the City of Seagoville, Texas, in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 3. That if any article, paragraph, subdivision, clause or provision of this Resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such

judgement or holding shall not affect the validity of this Resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Seagoville, Texas, and it is accordingly resolved.

DULY PASSED by the City Council of the City of Seagoville, Texas, on the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney



WORK ORDER NO. 16
City of Seagoville
Bearden Park Parking Lot Improvements
Project No. W05-2301570

This WORK ORDER ("Work Order") is made by and between the **City of Seagoville** (hereinafter referred to as "**Owner**") and **Garver, LLC**, (hereinafter referred to as "**Garver**") in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on March 24, 2021 (the "Agreement").

Under this Work Order, the Owner intends to make the following improvements for **Bearden Park Parking Lot Improvements**

The OWNER intends to utilize GARVER on a lump sum basis for the survey, geotechnical investigation, hydraulic analysis, design, and bidding services, for the replacement of the existing flex-base parking lot at Bearden Park with concrete (or asphalt). This work will confirm the existing drainage channel on the southeast border of the park and subsequent storm sewer along Fawn Meadow Drive won't be adversely affected by these improvements.

Garver will provide professional services related to these improvements as described herein. Terms not defined herein shall have the meaning assigned to them in the Agreement.

SECTION 1 - SCOPE OF SERVICES

A. Garver shall provide the following Services:



Basic Services

1. General Items and Design Management

- 1.1. Kick-off Meeting – Attendance at kickoff meeting with Owner staff to discuss project expectations and designate project schedule.
- 1.2. Research and Data Collection – Research existing construction records and record drawings, existing easement information, and other information available for the project area. Owner will provide all available existing record drawings, available GIS utilities for the area and available City of Seagoville Easements.
- 1.3. Final Design Review Meeting – Conduct one 1-hour workshop with the Owner to present and review the final design deliverable, discuss review comments, and confirm final design criteria/requirements.
- 1.4. Site Visit – Perform one (1) site visit with Owner's staff to confirm location and site conditions for the planned improvements. Site visit will be conducted in concurrence with the Kick-off Meeting.
- 1.5. Team Management and Document Control – Manage all efforts of the project team, individual team members, and sub-consultants and maintain appropriate records and documentation of project decisions, modifications, activities, communication, correspondence, and schedules.

2. Hydrologic and Hydraulic Evaluation

- 2.1. Bearden Park drains generally to the southeast to a ditch along the southeast boundary of the park, running behind the houses along the west side of Thomas Trail. This ditch, designated herein as Bearden Park Ditch, also receives runoff from the residential neighborhood just southwest of Bearden Park (Julie/Trent/Baylee Streets). Bearden Park Ditch runs northeast to a storm sewer inlet at the northwest end of Fawn Meadow Drive, and this storm sewer system runs southeast along Fawn Meadow Drive to an outfall on the northeast side of Fawn Meadow Drive between Mary Jane Lane and Jean Drive. Some of the runoff from Bearden Park drains into an undeveloped area between Fawn Meadow Drive and East Farmers Road.
- 2.2. Garver will delineate the existing drainage area for Bearden Park Ditch and will compute existing conditions peak flow in the ditch using the Rational Method for selected storm events.
- 2.3. Garver will modify existing conditions Rational Method hydrologic calculations to reflect proposed improvements to the Bearden Park parking lot to compute proposed conditions peak flow in the Bearden Park Ditch for selected storm events.
- 2.4. Garver will perform basic hydraulic analyses of the existing Bearden Park Ditch to evaluate capacity of the channel for existing and proposed conditions peak flows. The hydraulic analysis will not include the downstream storm sewer system at Fawn Meadow Drive.
- 2.5. Garver will evaluate and recommend one (1) alternative for channel improvements to Bearden Park Ditch to increase capacity.



- 2.6. Garver will evaluate and recommend one (1) alternative for on-site detention at Bearden Park to mitigate increased peak flows for proposed conditions and/or to reduce peak flows into Bearden Park Ditch.

3. Preliminary Design (60%)

- 3.1. 60% Plans – GARVER will prepare preliminary design plans (60%). These plans will include the proposed parking lot improvements, lighting recommendations, and property ownership. The following is the estimated sheet list:

1. Cover Sheet (Assume 1 sheet)
2. Location/Key map (Assume 1 sheet)
3. General notes, legend, abbreviations (Assume 2 sheets)
4. Project control sheet (Assume 1 sheet)
5. Existing grading and drainage, existing drainage calculations (Assume 1 sheet)
6. Proposed grading and drainage plan, proposed drainage calculations (Assume 1 sheet)
7. Proposed paving plan (Assume 1 sheet)
8. SWPPP narrative and erosion control notes & details (Assume 2 sheets)
9. Civil detail sheets (Assume 2 sheets)

Total anticipated sheets = 12

- 3.2. 60% Specifications – GARVER will include all special technical specifications necessary for the project, if any, that are not explicitly identified in the latest edition of North Central Texas Council of Governments (NCTCOG) Public Works Construction Standards.
- 3.3. 60% OPCC – Prepare an estimate of construction quantities and develop an AACE Class II opinion of probable construction cost (OPCC).

Deliverables

The following will be submitted to the Owner:

- Two (2 half-size (11"x17")) copies and a digital copy in PDF format of the Preliminary Design (60%) plans
- One (8.5"x11") copies and a digital copy in PDF format of the Preliminary Design (60%) specifications, if special specifications necessary
- AACE Class II OPCC

4. Final Design

- 4.1. Final Design Plans – GARVER will prepare final design plans (100%). This will include all necessary details and notes for the construction of the proposed parking lot, and addressing of all Owner provided comments.
- 4.2. Final Design Specifications – GARVER will include all special technical specifications necessary for the project, if any, that are not explicitly identified in the latest edition of North Central Texas Council of Governments (NCTCOG) Public Works Construction Standards.
- 4.3. Final Engineer's OPCC – Prepare an estimate of construction quantities and develop an AACE Class 1 opinion of probable construction cost (OPCC).



Deliverables

The following will be submitted to the Owner:

- Two (2 half-size (11"x17") copies and a digital copy in PDF format of the Final Design (100%) plans
- One (8.5"x11") copies and a digital copy in PDF format of the Final Design (100%) specifications (ready for bid)
- AACE Class 1 OPCC

5. Bidding Services

The bidding period for bidders is anticipated to extend for a 60-day duration. The City will post advertisement for bids and coordinate publishing. During the bidding phase of the project, GARVER will:

- 5.1. Assist the City with completing Bid Forms, Bid Item Descriptions, and assembling the contract documents as requested. It is anticipated that the Owner will provide the standard contract language and associated front end documents.
- 5.2. Support the Contract Documents by answering technical questions presented by prospective bidders.
- 5.3. Attend pre-bid meeting. GARVER will prepare the meeting agenda and conduct meeting.
- 5.4. Attend the bid opening, prepare bid tabulation, evaluate bids, and recommend award.

6. Construction Services

During the construction phase of work, GARVER will accomplish the following, as needed, for one construction contract:

- 6.1. Preparation of 5 sets of conformed plans for construction (3- half size 11" x 17" and 2 – full size 22" x 34") with modifications to include all addenda issued during bidding. The Garver shall also supply the Owner with one digital copy of the conforming plans and specifications (with addendums as necessary) in .pdf, Microsoft Word (.docx) and AutoCAD (.dwg) format.
- 6.2. Attend one (1) preconstruction meeting. Owner will prepare the meeting agenda and prepare and distribute the meeting minutes. Assume meetings held in-person at the Owner's office.



- 6.3. Evaluate and respond up to three (3) construction material submittals and shop drawings. Each submittal and shop drawing review includes the original submittal and shop drawing review and an assumption of one (1) resubmittal review. Additional submittal and shop drawing reviews will be considered Extra Work. Corrections or comments made by GARVER on the shop drawings during this review will not relieve the Contractor from compliance with requirements of the Contract Documents. The check will only be for review of general conformance with the design concept of the project and general compliance with the information given in the contract documents. The Contractor will be responsible for confirming and correlating all quantities and dimensions, selecting fabrication processes and techniques of construction, coordinating his work with that of all other trades, and performing his work in a safe and satisfactory manner. GARVER's review shall not constitute approval of safety precautions or constitute approval of construction means, methods, techniques, sequences, procedures, or assembly of various components. When certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, either directly or implied for a complete and workable system, GARVER shall be entitled to rely upon such submittal or implied certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
- 6.4. Issue up to two (2) instructions to the Contractor on behalf of the Owner and issue necessary clarifications (respond to RFIs) regarding the construction contract documents. If GARVER is requested to respond to additional RFIs, it will be considered Extra Work.
- 6.5. Provide documentation and assist the Owner in processing of up to one (1) change order, including applications for extension of construction time. Evaluate the cost and scheduling proposed by the contractor and support the Owner in negotiation with the Contractor.
- 6.6. Participate in final project walkthrough, prepare punch list, review final project closing documents, and review and sign final pay request.
- 6.7. Preparation of record drawings based on information provided by the contractor and Owner inspector as follows:
 - 6.7.1. Prepare and furnish record drawings based on Contractor as-built redlines. Submit digital file in PDF and AutoCAD formats, of the record drawings to the City.



Additional Services

1. Surveys

- 1.1. Establish control points using Global Positioning System (GPS) methodology. Horizontal values will be based on the Texas State Plane Coordinate System, North American Datum of 1983, North Central Zone (4202) and scaled to surface coordinates. The vertical values will be based on the North American Vertical Datum of 1988 (NAVD 88) using Geoid (12B).
- 1.2. Research current property owners and obtain copies of subdivision plats, ownership deeds, and easements within the project area.
- 1.3. Locate existing property corners and right-of-way corners to establish property lines and street rights- of-way.
- 1.4. Topographic survey of the design area, from the northside right-of-way of May Road, up to the south side of the existing drainage channel. This survey will include pavement edges, curb and gutter, buildings, driveways, culverts, fences and gates, signs, mailboxes, trees 6-inches and greater, tops and toes of slopes, spot elevations, surface locations of utilities and flowline elevations of sanitary and storm sewer manholes where accessible, and other surface features within the right-of-way.
- 1.5. Provide a digital design survey drawing in Civil3D format showing visible surface features located, an ASCII point file, and a copy of field notes and field sketches.
- 1.6. Provide up to one (1) day of additional field work to survey the locations of items as identified by GARVER.



2. Geotechnical Investigation

2.1. Field Exploration

- 2.1.1. Field locate borings by handheld GPS unit. Elevations will be interpolated from civil drawings or referenced from published topographic maps.
- 2.1.2. Mobilize a truck mounted drilling rig to the site.
- 2.1.3. Perform 2 borings at a depth of 10-ft below existing grade.
- 2.1.4. Obtain representative soil samples by means of the split-barrel and Shelby tube sampling procedures in accordance with ASTM Specifications D-1586 and D-1587, respectively.
- 2.1.5. Measure the depth of groundwater at each boring at the time of drilling.

2.2. Laboratory Testing

- 2.2.1. Laboratory testing of representative soil samples will be performed to determine physical and engineering properties of the soil. The laboratory testing will include the following: Moisture Content, Atterberg limits, and Passing No. 200 sieve.

2.3. Engineering Report

- 2.3.1. Upon completion of the field exploration, lab testing, and engineering analyses, a written engineering report will be prepared and include:
 - A review of published soils mapping and/or geologic information.
 - Observations from the site reconnaissance and personnel on the drill rig, including current site conditions, surface drainage features, and surface topographic conditions, and/or available satellite imagery.
 - A description of the field exploration and lab tests performed.
 - Final logs of the soil borings in accordance with industry standard practices for geotechnical engineering. A Boring Location Plan will be included.
 - The results of the lab tests will be plotted on the final exploration logs and/or included on separate test report pages.
 - Discussion of the subsurface materials encountered along with groundwater conditions observed.
 - Recommendations for preparation of pavement subgrade and concrete pavement section.
 - Discussion of earthwork construction considerations for compaction, reuse of soils, groundwater, expansive soils, drainage, or other considerations.

In addition to those obligations set forth in the Agreement, Owner shall:

- 1. Give thorough consideration to all documents and other information presented by Garver and informing Garver of all decisions within a reasonable time so as not to delay the Services.
- 2. Make provision for the Personnel of Garver to enter public and private lands as required for Garver to perform necessary preliminary surveys and other investigations required under the applicable Work Order.



3. Obtain the necessary lands, easements, and right-of-way for the construction of the work. All costs associated with securing the necessary land interests, including property acquisition and/or easement document preparation, surveys, appraisals, and abstract work, shall be borne by the Owner outside of this Agreement, except as otherwise described in the Services under Section 1.1.

Extra Work

Owner and ENGINEER agree that the following services are beyond the Scope of Services described in the tasks above. However, Garver can provide these services, if needed, upon the Owner's written request. Any additional amounts paid to the Garver as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

The following services are not included as part of the basic services and will be performed at the request of the Owner and with additional compensation as agreed upon by the Owner and Garver:

- A. Submitting permits for TxDOT
- B. Coordination with franchise utility entities such as Oncor, AT&T, Atmos, etc.
- C. Preparing detailed traffic control plans
- D. Environmental Information Document
- E. Public outreach
- F. Emergency response planning
- G. Sound attenuation
- H. Funding assistance
- I. Warranty assistance services
- J. Utility location services
- K. Environmental handling and documentation, including wetlands identification or mitigation plans or other work related to environmentally or historically (culturally) significant items
- L. Stormwater permitting
- M. Redesign or substantial engineering or surveying. Any change order negotiation or coordination by Garver resulting in substantial additional design work, will be considered Extra Work.

SECTION 2 – PAYMENT

The table below presents a summary of the fee amounts and fee types for this Work Order.

WORK DESCRIPTION – BASIC SERVICES	FEE AMOUNT	FEE TYPE
General Items & Design Management	\$3,800.00	LUMP SUM
Hydrologic and Hydraulic Evaluation	\$31,935.00	LUMP SUM
Preliminary Design (60%)	\$27,356.00	LUMP SUM
Final Design (100%)	\$18,354.00	LUMP SUM
Bidding Services	\$3,060.00	LUMP SUM
Construction Phase Services	\$4,123.00	LUMP SUM
TOTAL BASIC SERVICES	\$88,628.00	LUMP SUM

WORK DESCRIPTION – ADDITIONAL SERVICES	FEE AMOUNT	FEE TYPE
Survey Services	\$17,508.75	LUMP SUM
Geotechnical Investigation	\$4,025.00	LUMP SUM
TOTAL FEE	\$110,161.75	LUMP SUM



The lump sum amount to be paid under this Work Order is **\$110,161.75**. For informational purposes, a breakdown of Garver's estimated costs is included herein with approximate current hourly rates for each employee classification.

SECTION 3 – APPENDICES

3.1 The following Appendices are attached to and made a part of this Work Order:

3.1.1 Appendix A – Bearden Park Parking Lot Improvements Exhibit

3.1.2 Appendix B – Fee Spreadsheet / Unit Rates

This Work Order may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The effective date of this Work Order shall be the last date written below.

CITY OF SEAGOVILLE

GARVER, LLC

By: _____
Signature

By: _____
Signature

Name: _____
Printed Name

Name: Lance Klement
Printed Name

Title: _____

Title: North Texas Water Business Team Leader

Date: _____

Date: _____



APPENDIX A





Exhibit B
City of Seagoville
Bearden Park Parking Lot Improvements
Garver Hourly Rate Schedule: July 2023 - June 2024

Classification	Rates
Engineers / Architects	
E-1	\$ 148.00
E-2	\$ 154.00
E-3	\$ 197.00
E-4	\$ 221.00
E-5	\$ 247.00
Designers	
D-1	\$ 118.00
D-2	\$ 135.00
Technicians	
T-1	\$ 95.00
T-2	\$ 115.00
Management / Administration	
AM-1	\$ 75.00
AM-2	\$ 96.00

Agreement for Professional Services
Bearden Park Parking Lot Improvements

Garver Project No. 2301570



TO: Mayor and City Council
FROM: Chris Ryan, Director of Public Works
DATE: July 1, 2024
ITEM: 3
DESCRIPTION: Receive an update on the CDBG street projects.

INTRODUCTION

Provide an update on the CDBG street projects.



TO: Mayor and City Council
FROM: Bill Medina, Director of Community Development
DATE: July 1, 2024
ITEM: 4
DESCRIPTION: Receive an update on the Lakes of Rolling Meadows Planned Development.

INTRODUCTION

Provide an update regarding the Lakes of Rolling Meadows Planned Development.

ATTACHMENTS

1. Request Letter from Lakes of Rolling Meadows

2728 N. Harwood Street
Suite 500
Dallas, TX 75201

214.745.5400 OFFICE
214.745.5390 FAX
winstead.com

Jesse Copeland
direct dial: 214-745-5168
jcopeland@winstead.com

June 27, 2024

Via Email:

Bill Medina
702 US-175 Frontage Road
Seagoville, TX 75159
(469) 319-5028
bmedina@seagoville.us

Re: Request for removal from 7/1/2024 City Council and for consideration at the 7/15/2024
City Council meeting for case number 2024-015PDA

Dear Mr. Medina:

On behalf of the applicant, the purpose of this letter is to request the removal of case number 2024-015PDA from the City Council's July 1, 2024 meeting agenda and to respectfully request to be considered at the City Council's July 15, 2024 meeting.

Please confirm your receipt of this letter and do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

Jesse Copeland



TO: Mayor and City Council

FROM: Sara Egan, City Secretary

DATE: July 1, 2024

ITEM: 12

DESCRIPTION: Consider approving the City Council meeting minutes: June 17, 2024.

RECOMMENDATION

Recommend approval of the meeting minutes.

ATTACHMENTS

1. June 17, 2024 Minutes



City of Seagoville

Meeting Minutes

City Council

City Hall
702 N. Hwy 175
Seagoville, Texas 75159

Monday, June 17, 2024

6:30 PM

Council Chambers

Present: Mayor Lackey Sebastian, Mayor Pro Tem Jon Epps, Councilmember Jose Hernandez, Councilmember Rick Howard, Councilmember Harold Magill and Councilmember Allen Grimes

Also present were City Manager Patrick Stallings, City Attorney David Berman, and City Secretary Sara Egan.

The City Council of the City of Seagoville met in a Regular Called Meeting on Monday, June 17, 2024, at 6:30 p.m. in the City Council Chambers at City Hall, 702 N. Hwy 175, Seagoville, Texas.

WORK SESSION – 6:30 PM

1. Call to Order

Mayor Sebastian called the Work Session to order at 6:30 p.m.

2. Receive a presentation and discuss possible use of Bearden Park.

Mr. Tim Truman representing Pine Tar LLC provided a presentation to City Council on a proposal for a 30-year lease agreement with a 10 year renewal option.

City Council expressed interest and additional details for a possible agreement to establish a public-private partnership.

3. Receive an update regarding storm debris management.

Fire Marshal Zane Anderson opened the presentation with emergency response and service call information related to the aftermath of the May 28, 2024 storms.

Director of Public Works Chris Ryan continued with the immediate road clearance of debris.

Director of Health Mamata Bhandari concluded with a synopsis of the debris pick up and drop off throughout the City of Seagoville.

4. Discuss and receive feedback on an ordinance amending Stormwater Protection and Specific prohibitions and requirements.

Director of Community Development Bill Medina briefed City Council on the drafted ordinance and answered questions.

Councilmember Magill requested a list of contractors to be made available for possible services and inquired about the City's oversight related to waterway cleanup.

Mr. Medina confirmed a list of registered contractors is available and the City would only need to be involved if the scope of work included grading and or amending the existing topography.

5. Discuss and receive feedback on the Quarterly Newsletter and City Managers Weekly Update.

Executive Assistant Casey Fillmore briefed City Council on the current practice regarding communication to the community and presented a recommendation to no longer publish the Quarterly Newsletter. City Council expressed agreement with the proposal.

6. Discuss Regular Session agenda items.

There were no questions on the Regular Session agenda items.

7. Adjourn

Mayor Sebastian adjourned the Work Session at 7:13 p.m

REGULAR SESSION – 7:00 PM**8. Call to Order**

Mayor Sebastian called the Regular Session to order at 7:21 p.m.

9. Invocation

Councilmember Magill led the invocation.

10. Pledge of Allegiance

City Council led the pledge of allegiance.

11. Present the Waste Management Professionals Day Proclamation.

Mayor Sebastian presented the Proclamation to Frontier's founder John Gustafson and staff.

12. Mayor's Report

- City Facilities will be closed in observance of Juneteenth this Wednesday, June 19th.
- Keep an eye out for the scrap tire collection event at no cost Seagoville residents.
- Stay in touch with the library events and reading programs for the summer. There are many family friendly things to do and be a part of.
- The annual Fireworks in the Park is scheduled to take place Friday, June 28th at Bruce Central Park at no cost to visitors.

13. Citizen's Comments

1) Olga Mora, Seagoville, TX, spoke regarding potholes and to consider repairs.

City Manager Pat Stallings responded with reassurance the area would be assessed for repairs.

Consent Agenda

Councilmember Hernandez made a motion to approve Consent Agenda items 14, seconded by Councilmember Magill. The motion passed by a unanimous vote (5/0).

14. Consider approving the City Council meeting minutes: June 3, 2024.**Public Hearing****15. Conduct a public hearing and consider an Ordinance amending the comprehensive Zoning Ordinance to amend various subsections of Section 25.02.717 of Division 32 Regulations Applicable to All Districts of Article 25.02 Zoning Ordinance of Chapter 25 Zoning to revise regulations relating to portable outside storage containers; providing a penalty of fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.**

Mayor Sebastian opened the public hearing at 7:29 p.m.

Mr. Medina provided a summary of the proposed Ordinance to extend the use of storage containers with existing regulations and adequate screening.

Mayor Sebastian invited members of the public to speak. No one spoke in favor or against.

Mayor Sebastian closed the public hearing at 7:32 p.m.

Councilmember Hernandez made a motion to approve item 15 with the amendment to Section H as provided by the City Attorney seconded by Councilmember Grimes. The motion passed by a unanimous vote (5/0).

Ordinance No. 2024-13

16. Conduct a public hearing and consider an Ordinance amending the comprehensive Zoning Ordinance, plan and zoning map as previously amended, by amending the Planned Development zoning of a tract of land consisting of 238.79+/- acres generally located at 1001 Alto Road, 1755 Malloy Bridge Road, and 1520 Alto Road, in the City of Seagoville, Dallas County, Texas, providing for the development of the property for single-family residential purposes; adopting development regulations and a concept plan; providing a penalty of fine not to exceed two thousand dollars (\$2,000.00) for each offense.

Mayor Sebastian opened the public hearing at 7:34 p.m.

Mr. Medina provided a summary of the proposed Ordinance to amend the existing Planned Development to reflect the changes of Lakes of Rolling Meadows as it is being presented to pursue a possible PID/TIRZ project.

City Manager Pat Stallings recommended to have the elevations be updated to the most recent submittal illustrated.

Mayor Sebastian invited members of the public to speak and Ms. Taylor Elliot, representing the applicant of the project, requested the Ordinance to be tabled.

City Attorney David Berman advised to complete the public hearing as noticed and table the Ordinance to the next City Council meeting.

There being no further discussion Mayor Sebastian closed the public hearing at 7:50 p.m.

Councilmember Hernandez made a motion to table the Ordinance to the next City Council meeting seconded by Councilmember Howard. The motion passed by a unanimous vote (5/0).

Regular Agenda

17. Discuss and consider adopting the realigned place numbering for all boards and commissions.

City Secretary Sara Egan briefed City Council on this item. There were no questions.

Councilmember Hernandez made a motion to approve item 17 seconded by Councilmember Grimes. The motion passed by a unanimous vote (5/0).

18. Conduct board applicant interviews and consider appointments to the City's Boards and Commissions for terms to start on July 1, 2024.

Ms. Egan presented to City Council the results of the recruitment for applicants to be appointed.

Councilmember Hernandez made a motion to appoint the following applicants for the Animal Shelter Advisory Committee and to appoint Mary Schimmel to Place 4, Board of Adjustments, Keep Seagoville Beautiful Commission, and Library Advisory Board seconded by Councilmember Grimes. The motion passed by a unanimous vote (5/0).

Councilmember Hernandez made a motion to reappoint applicants to Place 2, 4, and 6 to the Planning and Zoning Commission seconded by Councilmember Grimes. The motion failed (2/3):

Ayes: Councilmember Hernandez and Councilmember Grimes

Nays: Councilmember Howard, Councilmember Magill, and Mayor Pro Tem Epps

Mayor Pro Tem Epps made a motion to reappoint applicants to Place 2 and 6 and appoint Cindy Burkett to Place 4 seconded by Councilmember Magill. The motion passed (3/2):

Ayes: Councilmember Howard, Councilmember Magill, and Mayor Pro Tem Epps

Nays: Councilmember Hernandez and Councilmember Grimes

Councilmember Hernandez made a motion to reappoint applicants to Place 2, 4, and 6 to the Seagoville Economic Development Corporation seconded by Councilmember Grimes. The motion failed (2/3):

Ayes: Councilmember Hernandez and Councilmember Grimes

Nays: Councilmember Howard, Councilmember Magill, and Mayor Pro Tem Epps

Mayor Pro Tem Epps made a motion to reappoint applicants to Place 4 and 6 and appoint Carl Henley to Place 2 seconded by Councilmember Howard. The motion passed (3/2):

Ayes: Councilmember Howard, Councilmember Magill, and Mayor Pro Tem Epps

Nays: Councilmember Hernandez and Councilmember Grimes

20. Discuss and consider a Resolution declaring certain city property surplus and authorizing disposition by the City Manager, in accordance with the process established by the Code of Ordinances.

Purchasing Agent Steven Daggs briefed City Council on this item. Pro Tem Epps made a motion to approve item 20 seconded by Councilmember Magill. The motion passed by a unanimous vote (5/0).

19. Discuss and consider a Resolution calling for a Public Hearing on the creation of the Rolling Meadows Public Improvement District and authorizing the mailing and publication of notice of the public hearing.

Director of Community Development Kirk McDaniel briefed City Council on this item. Councilmember Magill made a motion to approve item 19 seconded by Councilmember Grimes. The motion passed by a unanimous vote (5/0).

21. Items of community interest and councilmember reports.

Councilmember Hernandez stated he is currently serving as the NTC 911 representative for the surrounding area and reported on the next generation system.

Mayor Sebastian recessed the Regular Session at 8:07 p.m.

EXECUTIVE SESSION

The City Council will convene into closed Executive Session pursuant to:

22. Texas Govt. Code Section 551.074 to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee to wit: Presiding Municipal Court Judge

23. Texas Govt. Code Section 551.071 Consult with Attorney, to seek legal advice related to:

A. The Nuisance and abatement process for 109 and 111 West Farmers Road.

B. The North Texas Municipal Water District.

Mayor Sebastian adjourned the Executive Session at 8:48 p.m.

REGULAR SESSION

Mayor Sebastian reconvened the Regular Session at 8:49 p.m.

24. Take necessary action as a result of Executive Session.

Councilmember Hernandez made a motion to extend the Presiding Municipal Court Judge contract to the next City Council meeting, July 1, 2024, seconded by Councilmember Magill. The motion passed by a unanimous vote.

25. Discuss future agenda items.

There were no future agenda items.

26. Adjourn

There being no further business before the City Council, the meeting was adjourned at 8:50 p.m.

APPROVED:

ATTEST:

Lackey Stepper Sebastian, Mayor

Sara Egan, City Secretary



TO: Mayor and City Council

FROM: Chris Ryan, Director of Public Works

DATE: July 1, 2024

ITEM: 13

DESCRIPTION: Consider a Resolution approving an agreement with Garver, LLC as set forth in Work Order No. 18 for professional engineering services for Hall Road from US 175 Frontage Road to Judy Lane in an amount not to exceed two hundred eighteen thousand eight hundred seventy-seven dollars and zero cents (\$218,877.00); authorizing the City Manager to execute an agreement or any documents necessary for the work to be performed.

INTRODUCTION

The purpose of this item is for engineering services for Hall Road from US 175 Frontage Road to Judy Lane.

BACKGROUND

The City of Seagoville has contracted with Garver LLC, for professional engineering services for Hall Road from US 175 Frontage Road to Judy Lane. City staff has deemed that the reconstruction of Hall Road from US 175 Frontage Road to Judy Lane is beyond staff's capability's and will need to be completely engineered before reconstruction can take place.

FINANCIAL IMPACT

\$218,877.00- FY2024 budget.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

1. Resolution
2. Garver work order #18

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING AN AGREEMENT WITH GARVER, LLC. AS SET FORTH IN WORK ORDER NO. "18" FOR PROFESSIONAL ENGINEERING SERVICES FOR HALL ROAD FROM US 175 FRONTAGE ROAD TO JUDY LANE; ATTACHED THERETO IN AN AMOUNT NOT TO EXCEED TWO HUNDRED EIGHTEEN THOUSAND EIGHT HUNDRED STY SEVEN DOLLARS AND ZERO CENTS (\$218,877.00); AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Garver, LLC, ("Engineer") provides professional engineering services for Hall Road from US 175 Frontage Road to Judy Lane engineering services; and

WHEREAS, the City Council hereby finds that it is in the best interest of the City to approve the agreement for Professional Engineering Services for Hall Road from US 175 Frontage Road to Judy Lane engineering services as set forth in work order no. 18 attached thereto, in an amount not to exceed two hundred eighteen thousand eight hundred seventy seven dollars and zero cents (\$218,877.00); and authorizes the City Manager to execute the same;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:

SECTION 1. The City Council approves the agreement for Professional Engineering Hall Road from US 175 Frontage Road to Judy Lane engineering services as set forth in work order no. 18 attached thereto, in an amount not to exceed two hundred eighteen thousand eight hundred seventy seven dollars and zero cents (\$218,877.00); and hereby authorizes the City Manager to execute said Agreement.

SECTION 2. That any prior Resolutions of the City Council of the City of Seagoville, Texas, in conflict with the provisions contained in this Resolution are hereby repealed and revoked.

SECTION 3. That if any article, paragraph, subdivision, clause or provision of this Resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such

judgement or holding shall not affect the validity of this Resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

SECTION 4. That this resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Seagoville, Texas, and it is accordingly resolved.

DULY PASSED by the City Council of the City of Seagoville, Texas, on the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney



WORK ORDER NO. 18
City of Seagoville
Roadway Design for Hall Road- US 175 Frontage Road to Judy Lane
Project No. 2401117

This WORK ORDER ("Work Order") is made by and between the **City of Seagoville** (hereinafter referred to as "**Owner**") and **Garver, LLC**, (hereinafter referred to as "**Garver**") in accordance with the provisions of the MASTER AGREEMENT FOR PROFESSIONAL SERVICES executed on June __, 2024 (the "Agreement").

Under this Work Order, the Owner intends to make the following improvements for **Hall Road from US 175 Frontage Road to Judy Lane**:

The Owner intends to utilize Garver on a roadway design, lump sum basis for designing a new parabolic concrete roadway with separate concrete curb/gutter along with replacement of existing crossing drainage culverts/pipe (no drainage analysis included with this scope/fee).

Garver will provide professional services related to these improvements as described herein. Terms not defined herein shall have the meaning assigned to them in the Agreement.

SECTION 1 - SCOPE OF SERVICES

Task 1.0 Roadway Design and Construction Plan Development

Garver shall prepare construction plans, details, front end documents, and Opinion of Probable Cost (OPCC) for the following:

The design of Hall Road from US 175 Frontage Road (starting along the northeast edge of the frontage road pavement) to Judy Lane intersection (Approximately 1,350 linear feet; 40-42 feet back of curb to back of curb):

The scope of services will include street reconstruction. The existing drainage will NOT be analyzed or verified. No water or sewer line replacements nor sidewalk are included in Work Order #18. Garver will refer to the North Central Texas Council of Government (NCTCOG) specifications (latest editions) and the TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges for this project.

Garver will perform the following tasks during these reviews:

BASIC SERVICES (Lump Sum)

1. PELIMINARY DESIGN PHASE (90%)
 - a. Plot existing topographic features including pavement & utilities on (11" x 17") plan and profile sheets (1"=40' horizontal and 1"=10' vertical).
 - b. Provide Cover sheet
 - c. Provide Horizontal and Vertical control per the City's guidelines.
 - d. Provide General Note sheet
 - e. Provide Typical Roadway Sections.
 - f. Provide Removal sheet



- g. Show approximate lot line information based on Dallas County Tax records. All of the exact lot corners will not be field verified or located by the surveyor.
- h. Prepare Roadway Plan and Profile drawings for Hall Road showing existing ground at the ROW and proposed top of curbs.
- i. Prepare Storm Sewer Plan sheets (profile sheet if needed for clarity)
- j. Prepare Erosion Control Plan (The Stormwater Pollution Prevention Plan, NOI & NOT will be prepared by the City.)
- k. Submit one set of preliminary construction plans (11" x 17") at 90% for City staff review and comments.
- l. Roadway cross sections on 50-foot intervals and center of all drives.
- m. Provide City standard details.
- n. Prepare opinion of probable construction cost.
- o. Prepare and submit invoices with reports indicating work progress and any design issues that may arise.
- p. Maintain contact with the City personnel during the project design.
- q. Construction phasing plans (roll plot after submitting 90% plans for review. Conduct a TEAM review of the roll plot with the City.) Not full traffic control sheet, full TCP will be submitted by the contractor for approval by the City.

2. FINAL DESIGN PHASE

- a. Incorporate City's 90% review comments into Pre-final design.
- b. Provide Signing and Pavement Markings sheets
- c. Develop TCP sheets after approval of roll plot TCP.
- d. Develop final quantities and prepare summary sheets.
- e. Prepare and provide OPCC per Pre-final design revisions.
- f. Provide front end documents and review the description of each bid item, and prepare any new items, for inclusion into the Special Specifications.
- g. Submit one set of Pre-final construction plans (11" x 17"), specifications, quantities and opinion of costs to City staff for final review.
- h. Incorporate City review comments of Pre-final design into final signed and sealed plans.
- i. Prepare and provide final OPCC.
- j. Submit final signed and sealed plans (11" x 17") and specifications to the City.

3. BIDDING PHASE

- a. Provide paper set of plans (11" x 17") and specifications to the City. Garver will be responsible for making and distributing all necessary PDF copies of bid documents for bidding purposes through www.civcastusa.com.
- b. Attend pre-bid conference meeting.
- c. Provide answers to questions that may arise in pre-bid meeting for City prepared Addendums, if needed.
- d. Provide Bid Tab after bids have been received.

4. CONSTRUCTION PHASE

- a. Attend the Pre-construction meeting at the City offices. City to provide the agenda outline and conduct the meeting.
- b. Provide responses to requests for information (RFI) or clarification to the City or contractor. This is limited to up to six (6) submittals (max of two reviews per submittal).
- c. Provide As-Builts in the form of one (1) PDF file to the City from marked up plans provided by the City and Contractor.



SPECIAL SERVICES:

1. Survey for Design (Lump Sum): Garver proposes to provide survey services for the design of the project.
 - a. Hall Road – From US 175 Frontage Road (northeast corner) to Judy Lane (including approximately 50 feet (from centerline) of the intersections).
 - b. Survey control shall be calibrated to City GPS monuments. Grid to Surface Adjustment Factor (SAF) to be provided.
 - c. Survey control will be calibrated to City of Seagoville monuments, if they exist; otherwise they will be set to VRS Network, NAVD88. Provide benchmark information with the submittal.
 - d. Provide Texas811 coordination to obtain field markings of all franchise utilities. Once marked, utilities shall be digitized in topographic survey file on layers that can be easily identified.
 - e. Cross sections surveyed minimum every 50 LF with points defining back of curb, gutter, and crown at a minimum.
 - f. Driveways shall be surveyed 15 feet beyond the back of curb. Tie all transverse joints.
 - g. Street survey shall extend 15 feet beyond back of curb.
 - h. Horizontal and Vertical location at ground level shall be provided for all visible utilities, including but not limited to: fire hydrants, valves, meters, manholes, pedestals, vaults, power poles, and light poles.
 - i. Provide rim and flowline/invert elevation and size information of all wastewater. Provide direction of pipes in manholes.
 - j. Provide rim elevations and top nut measure downs for all valves.
2. Additional Survey
 - a. This item will only be utilized upon written approval by the City to obtain any additional unforeseen survey that may be needed to complete the design or right of way.
3. Geotechnical Services
 - a. Field locates for up to 8 borings (500 foot spacing) approximately 15 feet deep (20 feet at the culvert at Heard Park southwest of Shady Lane).
 - b. Field Exploration and Laboratory Testing of representative soil samples for 10 borings: Moisture Content, Atterberg Limits, Passing No. 200 sieve, Swell Test, Soluble Sulfate, Lime/pH series, Standard Proctor Test., California Bearing Ratio (CBR).
 - c. Signed and sealed Traffic control plan and two days of traffic control for borings.
 - d. Provide design recommendations for preparation of pavement subgrades and suggested asphalt and concrete pavement sections as per City of Seagoville guidelines, or other applicable standards based on the traffic data. **Data such as growth rate and/or ESALs and roadway classification for the design of pavement sections shall be provided the City of Seagoville.**
4. Signed and Sealed geotechnical report.
5. **ADDITIONAL SERVICES:** If requested by the City, Garver will provide the following services on an hourly basis:
 - a. Coordination with or additional plans for TxDOT review/submittal
 - b. Sidewalk design and ADA ramp design
 - c. TDLR review or submission



- d. Subsurface Utility Engineering
- e. Right-of-way or easement parcel descriptions and exhibits.
- f. Resetting disturbed control points for construction
- g. Locating utilities not marked by TEXAS811
- h. Opening City manholes or water vaults that are bolted shut
- i. Providing survey control or ROW monuments other than iron rods
- j. Detailed construction staking.
- k. Storm sewer TV work
- l. Signal design or pull box/ wiring relocation
- m. Landscaping/Irrigation design.
- n. Full time construction observation.
- o. Drainage Area Map and or Calculations.
- p. Storm sewer design and/or analysis except as noted above.
- q. Internal inspection of sanitary sewer lines.
- r. Trench excavation safety plan.
- s. Review of Contractor's monthly and final payment requests and preparation of monthly pay estimates.
- t. Prepare Change Orders or Addendums (unless to correct error on plans)
- u. Utility Locate Service
- v. Structural design
- w. HEC II & Hydraulic Studies
- x. Public Meetings
- y. Deed Research
- z. Environmental investigation
- aa. Title searches, boundary surveys, or property surveys
- bb. Services in connection with condemnation hearings
- cc. On-Site safety
- dd. SWP3 - Review fees, NOI, NOT, & BMP's inspection during construction

CITY'S RESPONSIBILITY:

The CITY will provide information regarding objectives and requirements for the project. CITY to furnish copies of existing plans, plats and property ownership information in concerned areas at no cost to the CONSULTANT.

The CITY will designate a single representative to act in its behalf, with respect to the Project, who shall examine documents submitted by the Garver and, to the extent allowed by law, shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the CONSULTANT'S services. The CITY shall be responsible for the construction administration, materials testing, inspection services required for the project.

- A. All of the City's plat, easement and construction plan files will be made available for use. City will provide copies at no cost. If easement information is not available within the City, the City will obtain that information from Dallas County.
- B. Access to all City manholes and clean-outs, access to all City right-of-way and easements. If manhole lids are bolted down the Garver's survey sub-consultant will contact the City's Utility Operation Department and schedule a time when they can meet with the Surveyor and remove the manhole lid.
- C. If public meetings are necessary the City will take the steps required to notify the residents.
- D. Design manuals.



E. Current standard construction details.

SECTION 2 – PAYMENT

For the work described under SECTION 1 – SCOPE OF SERVICES, the Owner will pay GARVER on an Lump Sum basis. The Owner will pay GARVER during the performance of these services plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total amount paid to GARVER under this agreement is not to exceed **\$218,877.00**.

The Owner represents that funding sources are in place with the available funds necessary to pay GARVER.

The table below presents a summary of the anticipated fee amounts and fee types per each Task for this Work Order.

WORK DESCRIPTION	FEE AMOUNT	FEE TYPE
Preliminary Design (90%)	\$64,198.00	Lump Sum
Pre-Final Design	\$36,370.00	Lump Sum
Final Design	\$18,410.00	Lump Sum
Bidding Services	\$12,672.00	Lump Sum
Construction Phase Services	\$16,241.00	Lump Sum
Survey (Topo)	\$29,522.00	Lump Sum
Additional Survey (As approved)	\$6,600.00	Hourly Not to Exceed
Geotechnical Report	\$32,644.00	Lump Sum
Reimbursables	\$2,220.00	NTE

The Owner will pay Garver for Service rendered for each Task listed above plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel. The total amount paid to Garver under this Work Order is not to exceed **\$218,877.00**.

Expenses other than salary costs that are directly attributable to performance of our Services will be billed as follows:

1. Direct cost for travel, long distance and wireless communications, outside reproduction and presentation material preparation, and mail/courier expenses.
2. Charges similar to commercial rates for reports, plan sheets, presentation materials, etc.



The Owner will pay GARVER, for time spent on the project, at the Lump Sum cost listed above.

The Owner will pay GARVER on a monthly basis, based upon statements submitted by GARVER to the Owner for the scope of services described in this agreement. Payments not received within 60 days of invoice date will be subject to a one percent monthly simple interest charge.

Additional Services (Extra Work). For work not described or included in Section 1 – Scope of Services but requested by the Owner in writing, the Owner will pay GARVER, based upon a written scope and fee for each new task as approved by the Owner, plus reimbursable expenses including but not limited to printing, courier service, reproduction, and travel.

SECTION 3 – SCHEDULE

Typical review schedule will be adhered as follows, unless otherwise agreed upon with the Notice to Proceed:

1. Topographic Survey – 40 working days.
2. Geotechnical - 70 working days
3. Preliminary Plans (90%) – 120 working days.
4. Pre-Final plans (100%) – 30 working days
5. Final Plans (signed and sealed) – 20 working days

*City Review time with add additional time to the overall schedule and is not included in the working days listed above.

This Work Order may be executed in two (2) or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



The effective date of this Work Order shall be the last date written below.

CITY OF SEAGOVILLE

GARVER, LLC

By: _____
Signature

By: _____
Signature

Name: _____
Printed Name

Name: Wendy D. Travis
Printed Name

Title: _____
Date: _____

Title: Vice President
Date: _____

Attest: _____

Attest: _____

HALL ROAD - US 175 to Judy Lane RECONSTRUCTION (Pre-Design OPCC)

5/23/2024

ITEM	DESCRIPTION	UNIT	BID QTY	UNIT COST	TOTAL COST
GENERAL					
1	Mobilization (5%)	LS	1	\$ 122,690.00	\$ 122,690.00
2	Barricades & Traffic Control (5%)	LS	1	\$ 116,850.00	\$ 116,850.00
3	Implementation of Storm Water Pollution Prevention Plan (2%)	LS	1	\$ 45,830.00	\$ 45,830.00
4	Unclassified Excavation (Includes Asphalt Milling & Removal & Delivery to City)	CY	3,024	\$ 50.00	\$ 151,200.00
SUBTOTAL				\$	436,570.00
REMOVAL					
5	Rem. & Disp. of Street Paving (incl. Curb)	SY	8,673	\$ 30.00	\$ 260,190.00
6	Rem. & Disp. of Concrete Driveway (incl. Curb)	SY	819	\$ 50.00	\$ 40,950.00
7	Rem. & Disp. of Gravel Driveway	SY	158	\$ 40.00	\$ 6,320.00
8	Rem. & Disp. of Concrete Sidewalk	SY	84	\$ 40.00	\$ 3,360.00
9	Rem. & Disp. of Exist Storm Drain Structure.	EA	3	\$ 500.00	\$ 1,500.00
10	Rem. & Disp. of Exist Storm Drain Pipe (Regardless of Size)	LF	158	\$ 30.00	\$ 4,740.00
SUBTOTAL				\$	317,060.00
PAVING					
11	6" Reinf. Conc. Paving 4000 psi (incl. 6" Monolithic Conc. Curb)	SY	8,673	\$ 120.00	\$ 1,040,760.00
12	4" Reinf. Conc. Driveway Paving 3000 PSI	SY	977	\$ 120.00	\$ 117,240.00
13	6" Lime Treated Stabilized Subgrade (Hydrated Slurry)(Under Concrete)	SY	9,051	\$ 50.00	\$ 452,550.00
14	Hydrated Lime (6%) (27 lb/sy)	TON	123	\$ 400.00	\$ 49,200.00
15	4" Reinf. Conc. Sidewalk Paving 3000 PSI	SY	84	\$ 220.00	\$ 18,480.00
16	Barrier Free Ramp (Regardless of Type)	EA	3	\$ 3,000.00	\$ 9,000.00
17	24" RCP (Class III)	LF	189	\$ 200.00	\$ 37,800.00
18	24" Concrete Headwall (CH-FW-0)	EA	3	\$ 3,500.00	\$ 10,500.00
19	5' NCTCOG Inlet	EA	2	\$ 6,500.00	\$ 13,000.00
20	Pavement Markings (Regardless of Type)	LF	3,570	\$ 5.00	\$ 17,850.00
21	Remove and Replace Existing Signs (incl. New Post and Assembly)	EA	15	\$ 750.00	\$ 11,250.00
22	Pavement Markings (Arrow)	EA	4	\$ 600.00	\$ 2,400.00
23	Pavement Markings (Word)	EA	4	\$ 700.00	\$ 2,800.00
24	24" Stop Bar	LF	30	\$ 50.00	\$ 1,500.00
25	12" Ped strip	LF	120	\$ 9.00	\$ 1,080.00
SUBTOTAL				\$	1,785,410.00
EROSION CONTROL					
26	Block Sodding (incl. 4" Top Soil)	SY	3,738	\$ 10.00	\$ 37,380.00
SUBTOTAL				\$	37,380.00

Subtotal	\$ 2,576,420.00

Contingency (25%)	\$ 644,110.00

Base Bid Total	\$ 3,220,530.00

Escalation for 1 Yr delay (7%)	\$ 3,445,967.10
Escalation for 2 Yr delay (7%)	\$ 3,687,184.80
Escalation for 3 Yr delay (7%)	\$ 3,945,287.73



TO: Mayor and City Council

FROM: Sara Egan, City Secretary

DATE: July 1, 2024

ITEM: 14

DESCRIPTION: Conduct board applicant interviews and an appointment for Place 3 on the Library Advisory Board.

INTRODUCTION

Conduct necessary interviews and select for Place 3 on the Library Advisory Board.

BACKGROUND

Mr. Ontario resigned from the Library Advisory Board on June 17, 2024, causing a vacancy for Place 3 on the Board.

RECOMMENDATION

All applicants are eligible for an appointment. The City Secretary recommends an appointment for Place 3.

ATTACHMENTS

1. Applicants

2024 Appointment Slate List

[illegible]



TO: Mayor and City Council

FROM: Chris Ryan, Director of Public Works

DATE: July 1, 2024

ITEM: 15

DESCRIPTION: Discuss and consider a Resolution authorizing the City Manager to engage C&M Concrete for concrete work at C. O. Bruce Central Park in an amount not to exceed two hundred sixty-seven thousand seven hundred seventy-seven dollars and forty cents (\$267,777.40).

INTRODUCTION

The purpose of this item is to engage C&M concrete for concrete work at C. O. Bruce Central Park.

BACKGROUND

On April 21, 2014, City Council approved a Resolution to enter into a Master Interlocal Purchasing Agreement between the City of Seagoville and the City of Lancaster. The City of Lancaster acted as a purchasing agent for the purchase of various goods and services through the competitive bidding process. The City of Lancaster and C&M Concrete have previously entered into an agreement for C&M Concrete to provide repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement. The City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for concrete work at C. O. Bruce Central Park. C&M Concrete has submitted a quote for the work in the amount of \$267,777.40 as reflected on the estimate submitted by C&M Concrete under the Cooperative Purchase Agreement.

FINANCIAL IMPACT

\$267,777.40- FY2024 street budget.

RECOMMENDATION

Public Works recommends approval.

ATTACHMENTS

1. Resolution
2. Master Interlocal Purchasing Agreement between the City of Seagoville and the City of Lancaster
3. C& M concrete estimate

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS
RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING THE CITY MANAGER TO ENGAGE C&M CONCRETE FOR CONCRETE WORK AT C.O. BRUCE CENTRAL PARK ; IN AN AMOUNT NOT TO TWO HUNDRED SIXTY SEVEN THOUSAND SEVEN HUNDRED SEVENTY SEVEN DOLLARS AND FORTY CENTS (\$267,777.40) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Seagoville and the City of Lancaster entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on April 21, 2014, under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code, under which the City of Lancaster acted as purchasing agent for the purchase of various goods and services through the competitive bidding process, attached hereto and incorporated herein as Exhibit "A", and

WHEREAS, the City of Seagoville desires to enter into an agreement with C&M Concrete under the Cooperative Purchase Agreement for concrete work at C. O. Bruce Central Park as reflected on estimate submitted by C&M Concrete under the Cooperative Purchase Agreement, copies of which are attached hereto as Exhibits "B" in the total amount of \$267,777.40; and

WHEREAS, funding is available in the FY 2024 Street Maintenance Program budget; and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the estimates and has determined it to be in the best interest of the City to authorize the City Manager to execute any documents necessary to authorize C&M Concrete to provide concrete work at C. O. Bruce Central Park in the total amount of \$267,777.40.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City Manager is hereby authorized to engage C&M Concrete to provide concrete work at C. O. Bruce Central Park in an amount not to exceed Two hundred Sixty Seven Thousand Seven Hundred Seventy Seven Dollars and Forty Cents (\$267,777.40) as set forth in

Exhibits “B”, the City Manager is authorized to execute any agreement or documents necessary for the work to be performed.

SECTION 2. This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

DULY ORDERED by the City Council of the City of Seagoville, Texas, this the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF SEAGOVILLE
AND CITY OF LANCASTER**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Seagoville and City of Lancaster desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs and services;

WHEREAS, The City of Seagoville and City of Lancaster represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise and agree as to each of the other as follows:

1. The City of Seagoville and City of Lancaster are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
2. The City of Seagoville and City of Lancaster agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Seagoville nor City of Lancaster warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

- a dispute arise between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.
3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
 4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals and contracts subject to this Agreement on its own behalf.
 5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
 6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
 7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
 8. **Termination.** This Agreement may be terminated at any time by the City of Seagoville or City of Lancaster, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
 9. **Hold Harmless.** To the extent allowed by law, the City of Seagoville and City of Lancaster agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
 10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
 11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with

successful send confirmation, or by certified mail to the last business address as listed herein.

City of Seagoville: City of Seagoville
Attn: City Secretary
702 N. Highway 175
Seagoville, Texas 75159
Phone (972) 287-6819
dcrabtree@seagoville.us

City of Lancaster: City of Lancaster
PO Box 940
Lancaster, TX 75146
972-218-1329
purchasing@lancaster-tx.com

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supercedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Dallas County, Texas, United States of America for City of Lancaster and shall be Dallas County, Texas, United States of America for the City of Seagoville.
16. **Authority to Enter Contract.** Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party

thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

BY: _____

Larry Graves, City Manager

DATE: _____

4-21-14

ATTEST: _____

Dara Crabtree, City Secretary

APPROVED AS TO FORM: _____

Robert Hager, City Attorney

CITY OF LANCASTER

BY: _____

Opal Mauldin Robertson, City Manager

DATE: _____

10/9/14

ATTEST: _____

Sorangel O. Arenas, City Secretary

City of Lancaster, Texas Standard Fixed Price Construction Agreement

This Agreement is made by and between the City of Lancaster, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and **C&M Concrete**, (hereinafter referred to as the "Contractor") for **Concrete Repairs (2018-10)**, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agree as follows:

ARTICLE I: CONTRACT & CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Bid Response, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):
NONE

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance, maintenance, and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its

generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II: THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

2018-10 – Concrete Repairs–Annual Contract

A purchase order will be issue for each work order issued. All work shall be completed within the agreed upon time for each work order.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III: CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 10 days of receipt of a purchase order. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the

presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement.

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of \$120.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 In the event that the Contractor achieves certification of substantial completion prior to the scheduled completion date, the Owner shall pay to the Contractor the sum of \$0.00 per day for each calendar day that substantial completion is certified in advance of the scheduled completion date.

3.1.4 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.5 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV: CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, at the unit prices attached hereto as Exhibit A: Contractor Response.

ARTICLE V: PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the unit Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Owner and upon Certificates for Payment subsequently issued to the Owner, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Owner in such form and manner, and with such supporting data and content, as the Owner may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by

the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Owner will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Owner shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Owner's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Owner less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Owner a list of items to be completed or corrected. When the Owner on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner

and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed and will issue a final Certificate for Payment certifying that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract

5.6.1.1 If the Contractor fails to achieve final completion in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Owner its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI: THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage

will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII: THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Owner.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF OWNER, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE OWNER'S NEGLIGENCE, WHETHER SUCH

NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Lancaster has adopted US Department of Labor's Davis Bacon Wage Determinations as the Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of \$10.00 of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Owner during the progress of the Work.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Owner to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Lancaster and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES & OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice to the Owner and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII: CONTRACT ADMINISTRATION

8.1 FIELD ORDERS

8.1.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.2 MEDIATION

8.2.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Owner and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Owner's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.2.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Owner in accomplishing the timely completion of the Project.

ARTICLE IX: SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims,

demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X: CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes

related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI: UNCOVERING & CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Owner's request or to any provisions of this Contract, it shall, if required by the Owner, be uncovered for the Owner's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Owner, be uncovered for the Owner's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the

Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII: CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials,

equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated

portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Owner's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII: INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Lancaster until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>

<u>Worker's Compensation</u> as set forth in the Worker's Compensation Act.	

<u>Commercial General Liability</u>	

\$1,000,000 Each Accident/Occurrence. The policy shall have no coverage removed by exclusions.	

Limit of Insurance per Project or Owner's and Contractor's Protective Liability Insurance for the Project.	

<u>Automobile Liability</u>	

\$500,000 Combined single limit per occurrence.	

13.2 INSTALLATION FLOATER

This insurance shall protect the Contractor and the Owner from all insurable risks of physical loss or damage to materials and equipment not otherwise covered under builder's risk insurance, while in warehouse or storage areas, during installation, during testing, and after the work is completed. Installation floater insurance shall be of the "all risks" type, with coverage's designed for the circumstances which may occur in the particular work included in this contract. The coverage shall be for an amount not less than the insurable value of the work at completion, less the value of the materials and equipment insured under builder's risk insurance. The value shall include the aggregate value of the Owner furnished equipment and materials to be erected or installed by the Contractor not otherwise insured under builder's risk insurance.

13.3 Builders Risk

This insurance shall be written in completed value form

and shall protect the Contractor and the Owner against risks of damage to buildings, structures, and materials and equipment not otherwise covered under installation floater insurance, from the perils of fire and lightning, the perils included in the standard extended coverage endorsement, and the perils of vandalism and malicious mischief. The amount of such insurance shall not be less than the insurable value of the work at completion less the value of the materials and equipment insured under installation floater insurance.

Equipment installed under this contract shall be insured under installation floater insurance when the aggregate value of the equipment exceeds \$10,000.00.

If the work does not include the construction of building structures, builder's risk insurance may be omitted providing the installation floater insurance fully covers all work.

Builder's risk insurance shall provide for losses to be payable to the Contractor and the Owner as their interests may appear and shall contain a waiver of subrogation rights against the insured parties.

13.4 ADDITIONAL INSURED / PROJECT INFORMATION

The Owner shall be named as an additional insured on the Commercial General Liability (Public), Policies furnished by the Contractor.

The project name and bid/contract number shall be listed on the certificate.

13.5 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the Purchasing Agent, City of Lancaster, PO Box 940, Lancaster, Texas, 75146.

13.6 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor.

13.7 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City of Lancaster on a Standard Certificate of Insurance Form. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Lancaster, the contractor shall furnish the City proof of identical continued coverage no later than thirty (30) days prior to the expiration date shown on the Certificate of Insurance.

13.8 PRIMARY COVERAGE

The coverage's provided herein shall be primary and noncontributory with any other insurance maintained by

the City of Lancaster, Texas, for its benefit, including self insurance.

13.9 WORKER'S COMPENSATION INSURANCE COVERAGE

13.9.1 The Contractor shall:

1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;

2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;

4) obtain from each person providing services on a project, and provide to the governmental entity:

(A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;

7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

Required Workers' Compensation Coverage

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

(8) contractually require each person with whom it contracts to provide services on a project, to:

(A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;

(B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;

(C) include in all contracts to provide services on the project the language in subsection (e) (3) of this rule;

(D) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(E) obtain from each other person with whom it contracts, and provide to the Contractor:

(i) a certificate of coverage, prior to the other person beginning work on the project; and

(ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(G) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(H) contractually require each other person with whom it contracts, to perform as required by

sub-paragraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV: MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Dallas County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds

furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

14.6 AMENDMENTS

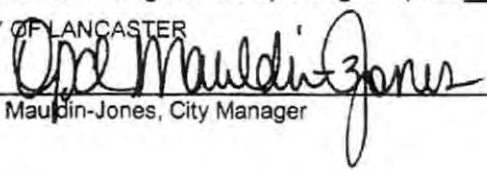
14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

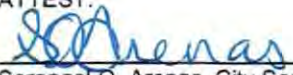
14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Owner at the address set forth herein or set forth in a written designation of change of address delivered to all parties.

EXECUTED in single or multiple originals, this 21 day of June, 2018.

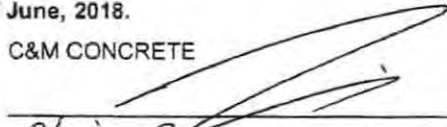
CITY OF LANCASTER


Opal Mauldin-Jones, City Manager

ATTEST:


Sorangel O. Arenas, City Secretary

C&M CONCRETE


Chris Bowen OWNER
Type/Print Name and Title

PO BOX 381910
Duncanville, TX 75138

City of Lancaster, Texas (Purchasing) Supplier Response

Bid Information		Contact Information		Ship to Information
Bid Creator	Alton Dixon Purchasing Agent	Address	PO Box 940	Address
Email	adixon@lancaster-tx.com		Lancaster, TX 75146	
Phone	1 (972) 218-1329 x	Contact	Alton Dixon Purchasing Agent	Contact
Fax	1 (972) 218-3621 x		Purchasing	Department
Bid Number	2018-10 Addendum 1	Department		Building
Title	Concrete Repairs	Building		
Bid Type	ITB			Floor/Room
Issue Date	4/9/2018 06:40 PM (CT)	Floor/Room		Telephone
Close Date	5/8/2018 03:00:00 PM (CT)	Telephone	(972) 218-1329 x	Fax
		Fax	(972) 218-3621 x	Email
		Email	adixon@lancaster-tx.com	

Supplier Information

Company C&M CONCRETE
 Address P.O BOX 381910

 DUNCANVILLE, TX 75138
 Contact CHRIS BOWEN
 Department
 Building
 Floor/Room
 Telephone (972) 965-4781
 Fax (972) 709-9173
 Email bowenchris1@aol.com
 Submitted 5/8/2018 08:26:27 AM (CT)
 Total \$969.00

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature Chris Bowen

Email Chris@concretepaving.net

Supplier Notes

Bid Notes

Miscellaneous repair work to streets and sidewalks.

Bid Activities

Date	Name	Description
3/26/2018 08:00:00 AM (CT)	Week 1	Week 1 Advertisement - Focus News
4/2/2018 08:00:00 AM (CT)	Week 2	Week 2 Advertisement - Focus News

Bid Messages

Bid Attributes

Please review the following and respond where necessary

#	Name	Note	Response
1	Addendum 2: Bonding	The projects included in this contract will generally not exceed \$50,000. Because the projects do not exceed the bond threshold identified in the statute, the bonding requirement has been removed. However, should one of the individual projects exceed \$50,000; bonds will be required in the amount of that project. The Due date and time have been extended by one week.	I Agree
2	Addendum 1	I have read and understand Addendum 1.	ACK
3	One Year - 4 Renewals	Length of this contract shall be for one (1) full year with the option to renew the contract for four additional one-year periods. Both parties must be in agreement.	Agree
4	Annual Contract	This agreement will contain a fixed pricing structure for the term of the agreement. Quantities shown are estimates and NOT a commitment to buy any specific quantity. Orders will be placed on a non-exclusive, "as needed", basis. Orders placed by the City of Lancaster will be done with a purchase order.	Agreed
5	Price Increases	Prices are firm for the first year. Any price increase after year one, must be justified and documentation submitted. Price increases may not exceed the current Consumer Price Index (U) for the D/FW Region.	Agree
6	Response Term	Responses shall be valid for ninety (90) calendar days after the opening date and shall constitute an irrevocable offer to the City of Lancaster for the 90 calendar day period. The 90 calendar day period may be extended by mutual agreement of the parties.	Agree
7	Terminology	Throughout this document, the terms Contractor, Bidder, Proposer, and/or Vendor may be used interchangeably. Reference to any of these terms throughout this document should be construed by the reader as meaning any bidder for the products/services being requested (e.g., Bidder, Proposer); or the bidder who has been awarded a bid/RFQ or contract (e.g., Contractor, Vendor).	Agree
8	Payment Bond	A payment bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood
9	Performance Bond	A performance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood

10	Maintenance Bond	A maintenance bond for any individual project exceeding \$50,000 in the amount of 100% of the individual project amount will be required from the awarded vendor. A sample document is attached and must be used by issuing bonding agent.	Understood
11	Contractor Registration	The awarded vendor will be required to register with the City as a contractor. The current fee is \$100. Application is available at www.lancaster-tx.com or at Building Inspection. 700 E. Main Street Lancaster, TX 75146 Hours of operation M-Th 7:00 AM - 5:30 PM.	Understood
12	Company Ownership	Is your company currently for sale or involved in any transaction to expand or to become acquired by another business entity? If yes, please explain the impact both in organizational and directional terms.	NO
13	Difficulties	What difficulties do you anticipate in serving the City? How do you plan to manage these and what assistance will you require from the City? Describe your firm's past performance on other contracts for the City (e.g. cost control, cost savings, schedule control).	I do not anticipate any difficulties in being awarded this contract. I have spent my entire career working under City Contracts. I fully understand City procedures, budgets, and expectations. In my almost twenty year career as the Owner and Operator of C&M Concrete, I have been awarded multiple City Contracts. - The City of DeSoto Awarded 7 times 1997 - current day - The City of Lancaster Awarded multiple times over the past 10+ years Under these two contracts, I have opted in to agree to the Inter Local City Agreement, and have worked for 7 other cities in the past twenty years. In addition to holding these Annual Concrete Contracts, I have bid and been awarded separate contracts for multiple projects under the City of Lancaster, such as the Lancaster Regional Airport Improvements, and the Storm Water Improvements. In all of these successful years working as a partner with the Cities, I have had no difficulties in performance, no unresolved issues, and have never requested my Annual Concrete Contract prices to increase during the duration of the contracts.
14	Electronic Payment	If you would like your payment sent electronically (EFT), please provide your accounts receivable contact information. Please provide name and email.	Chris Bowen chris@concretepaving.net

15	Financial Default	Is your company currently in default on any loan agreement or financing agreement with any bank, financial institution or other entity? If yes, specify date(s), details, circumstances, and prospects for resolution.	No
16	Litigation with City of Lancaster	Is your firm involved in any litigation (past or pending) with the city of Lancaster? If yes, please provide details.	No
17	NEPOTISM STATEMENT	The Bidder or Proposer or any officer, if the Bidder or Proposer is other than an individual, shall state whether Bidder or Proposer has a relationship, either by blood or marriage, with any official or employee of the City of Lancaster:	Not Related
18	Non-Performance	Identify if your firm has had any contracts terminated due to non-performance over the past five (5) years.	No
19	Open Records Act	All responses will be maintained confidential until award is finalized. At that time, all proposals are subject to the Open Records Act.	Agreed
20	PROPERTY TAXES	Please indicate whether you or your company, owe delinquent property taxes to the City whether an assumed name, partnership, corporation, or any other legal form.	Do Not
21	Website Address	Enter product website information	N/A
22	Cooperative Agreement	Should other Government Entities decide to participate in this contract, would you, the Vendor, agree that all terms, conditions, specifications, and pricing would apply? If you, the Vendor checked yes, the following will apply: Government entities utilizing Inter-Governmental Contracts with the City of Lancaster will be eligible, but not obligated, to purchase materials/services under this contract(s) awarded as a result of this bid. All purchases by Governmental Entities other than the City of Lancaster will be billed directly to that Governmental Entity and paid by that Governmental Entity. The City of Lancaster will not be responsible for another Governmental Entity's debts. Each Governmental Entity will order their own material/service as needed.	Yes
23	T&C Acknowledgement	I have read and agree to the terms and conditions of this bid.	Agreed
24	Bid Acknowledgement	Bidder affirms that they have read and understand all requirements of this proposal. Additionally, the bidder affirms that they are duly authorized to execute this contract and that this company has not prepared this proposal in collusion with any other proposer, and that the contents of this proposal as to prices, terms or conditions of said proposal have not been communicated by the bidder nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this type of business prior to the official opening of this proposal.	Agreed
25	Insurance	Vendor shall provide insurance as listed in the insurance requirements attached.	Understood
26	County	What county is your principal place of business located?	Dallas

27	Immigration	Employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the US) and aliens authorized to work in the US. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.	(No Response Required)
28	Contractor Responsibility	Keep project area in a safe and clean environment at all times during the contract period. Ensure all work is executed in accordance with OSHA (Occupational Safety and Health Administration) Requirements. Contractor must ensure that all Federal, State, and Local regulation are met.	(No Response Required)
29	Damage	Contractors are responsible for repairs caused by their negligence for any damage to public right of way and/or private property. Repairs must be completed prior to final acceptance of job for payment.	(No Response Required)
30	Workmanship	All work and workmanship must be of good quality and adhere to all applicable laws and regulations. Contractor must possess all necessary licenses.	(No Response Required)
31	Questions	All questions shall be addressed to Alton Dixon, Purchasing Agent via email at purchasing@lancaster-tx.com.	Agree
32	Laws and ordinances	The Contractor shall at all times observe and comply with all Federal, State, and local laws, ordinances and regulations which in any manner affect the Contract or the work.	Understood
33	Work Hours	Working hours are not to begin prior to 7:00 AM or extend past 5:00 PM without prior written approval.	Understood
34	Payment Terms	The City of Lancaster's payment terms are Net 30.	Agreed
35	Road & Lane Closures	Road or lane closures must be approved in writing at least 48 hours prior to closing by the City Engineer.	Agreed
36	Change Orders	No oral statement of any person shall modify or otherwise change, or affect the terms, conditions, or specifications stated in the resulting contract. All change orders to the contract will be made in writing by the city of Lancaster.	Agreed
37	Late Submission	Bids/RFQs are not accepted after the closing date and time. The City of Lancaster is not responsible computer, mail or carrier issues/problems. The server time located in the top right corner of this software is the official clock. It is the responsibility of the user to ensure you have chosen the correct time zone for your company.	Understood
38	MODIFICATION OF A SUBMITTED BID / PROPOSALS	A proposer may modify a response electronically by logging into the e-procurement system and retracting their bid. Changes can be made up to the closing date and time. It is the vendor's responsibility to save any changes and re-submit their response.	Understood

39	AWARD OF CONTRACT	The contractor shall not commence work under these terms and conditions of the contract until all applicable Certificates of Insurance, Performance and Payment Bonds and have been approved by the City of Lancaster and he/she has received notice to proceed in writing and an executed copy of the contract from the City of Lancaster.	Agreed
40	Deviation	DEVIATIONS: In the event, you the Proposer, intends to deviate from the general terms, conditions, special conditions or specifications contrary to those listed in the "Terms and Conditions" and other information attached hereto, all such deviations must be detailed and uploaded in the RESPONSE ATTACHMENTS section of the e-pro system with the description DEVIATION. NO DEVIATIONS: In the absence of any deviation, Proposer assures the City of Proposer's compliance with the Terms, Conditions, Specifications, and information contained in this RFP.	None
41	Award	Response to specifications, location of vendor, history/relationship, price and vendor's ability to perform the work are the primary factors in determining the lowest responsible bid.	(No Response Required)
42	Contractor Independence	Contractor will operate as an independent contractor and not an agent, representative, partner, or employee of the City of Lancaster, and shall control his operations at the work site, and be solely responsible for the acts or omissions of his employee(s). All wages, taxes, and worker's compensation of all contract employees shall be paid by the contractor.	(No Response Required)
43	MWBE 1	Is your company M/WBE or HUB certified?	yes
44	MWBE 2	If yes, what is your certification number?	NO
45	MWBE 3	If yes, what agency completed the certification?	
46	MWBE 4	If yes, what is the expiration date of your certification?	
47	BID PROTESTS	All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Agent within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as protests relating to alleged improprieties or ambiguities in the specifications. The limitation does not include protests relating to staff recommendations as to award of a bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary PRIOR to Council Award.	Agreed
48	Reciprocal Information 1	The City of Lancaster, as a governmental agency of the State of Texas, may not award a contract for general construction, improvements, services or public works projects or purchases of supplies, materials, or equipment to a non-resident bidder unless the non-resident's bid is lower than the lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract in the state in which the non-resident's principal place of business is located (Article 601g v.t.c.s.). Bidder shall answer all the following questions by encircling the	Texas

appropriate response or completing the blank provided.
**Where is your principal place of business?

49 Reciprocal Information 2

For Businesses not located in Texas, does your state favor N/A
resident bidders (bidders in your state) by some dollar
increment or percentage?

50 Reciprocal Information 3

If Yes, What is the dollar increment or percentage? N/A

51 Notification

How did you here about this bid opportunity? e-pro

52 Plan Room - Other

If yes for a plan room or other, please list which plan room
or other means of notification.

Line Items

#	Qty	UOM	Description	Response
1	1	SF	Unit Price for repairs less than 500 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.50
			Item Notes:	
			Supplier Notes:	
2	1	SF	Unit Price for repairs 501 - 4,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.25
			Item Notes:	
			Supplier Notes:	
3	1	SF	Unit Price for repairs 4,001 - 10,000 SF. New 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$5.00
			Item Notes:	
			Supplier Notes:	
4	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.95
			Item Notes:	
			Supplier Notes:	
5	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.55
			Item Notes:	
			Supplier Notes:	
6	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove and Replace 4" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.50
			Item Notes:	
			Supplier Notes:	

7	1	SF	Unit Price for repairs less than 500 SF. Remove and Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$8.00

Item Notes:

Supplier Notes:

8	1	SF	Unit Price for repairs 501 - 4,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.25

Item Notes:

Supplier Notes:

9	1	SF	Unit Price for repairs 4,001 - 10,000 SF. Remove & Replace 6" reinforced 3,000 PSI concrete sidewalk with limestone aggregate, no Fly Ash, complete in place.	\$7.00

Item Notes:

Supplier Notes:

10	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$85.00

Item Notes:

Supplier Notes:

11	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove & Replace 6" reinforced 3,600 PSI concrete alley with limestone aggregate, no Fly Ash, complete in place.	\$82.00

Item Notes:

Supplier Notes:

12	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00

Item Notes:

Supplier Notes:

13	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
14	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$86.00
Item Notes:				
Supplier Notes:				
15	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 6" reinforced 3,600 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
16	1	SY	Unit Price for repairs less than 100 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$85.00
Item Notes:				
Supplier Notes:				
17	1	SY	Unit Price for repairs 101 - 400 SY. Remove and Replace 6" reinforced 4,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$84.00
Item Notes:				
Supplier Notes:				
18	1	SY	Unit Price for repairs less than 500 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$22.00
Item Notes:				
Supplier Notes:				

19	1	SY	Unit Price for repairs 501 - 1,000 SY. Remove and Replace 6" reinforced 3,000 PSI concrete curb with 12" Gutter with limestone aggregate, no Fly Ash, complete in place.	\$20.00

Item Notes:

Supplier Notes:

20	1	SY	Unit Price for repairs less than 50 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$96.00

Item Notes:

Supplier Notes:

21	1	SY	Unit Price for repairs 51 - 150 SY. Remove and Replace 8" reinforced 3,000 PSI concrete street paving with limestone aggregate, no Fly Ash, complete in place.	\$94.00

Item Notes:

Supplier Notes:

Response Total:	\$969.00



C&M Concrete Contracting

362 Linkview Dr
Duncanville, TX 75137

Estimate

Date	Estimate #
5/2/2024	DE-4863

Name / Address
Reness Plunkett City of Seagoville - Reness Plunkett 702 US-175 Frontage Road Seagoville, Texas 75159

Ship To
Bruce Park

P.O. No.	Project

Description	Qty	Rate	Total
250' x 24' x 8" = 666.66 SQY drive	666.66	210.00	139,998.60
60' x 64' x 6" = 426.66 SQY Parking (8 Spots)	426.66	180.00	76,798.80
24' x 60' x 8" Approach = 160.00 SQY	160	210.00	33,600.00
Double barrel 16" RCP = 50LF	50	250.00	12,500.00
80' x 5' x 4" sidewalk	400	12.20	4,880.00
Total			\$267,777.40

Phone #
9729654781

E-mail
chris@concretepaving.net



Untitled Map

Park concrete

Legend

- FCI Seagoville
- Polygon Measure

Bruce Central Park





TO: Mayor and City Council

FROM: Chris Ryan, Director of Public Works

DATE: July 1, 2024

ITEM: 16

DESCRIPTION: Discuss and consider a Resolution authorizing the City Manager to engage Anderson Asphalt & Concrete Paving to provide asphalt road repair work on East Simonds Road in an amount not to exceed six hundred sixty-nine thousand nine hundred fifty-eight dollars and no cents (\$669,958.00).

INTRODUCTION

The purpose of this item is to approve repairs to East Simonds Road.

BACKGROUND

On or about May 15, 2023, the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement. the City of Forney, Texas and, Anderson Asphalt & Concrete Paving have previously entered into an agreement for, Anderson Asphalt & Concrete Paving, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$669,958.00 for provision of asphalt road work on East Simonds Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C.

FINANCIAL IMPACT

\$669,958.00- FY2024 Street budget.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

1. Resolution
2. Master Interlocal Purchasing Agreement (Exhibit A)
3. Anderson Asphalt & Concrete Paving (Exhibit B)
4. Estimate from Anderson Asphalt (Exhibit C)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS
RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING ANDERSON ASPHALT & CONCRETE PAVING TO PROVIDE ASPHALT ROAD REPAIR WORK ON EAST SIMONDS ROAD FOR COMPENSATION IN AN AMOUNT NOT TO SIX HUNDRED SIXTY NINE THOUSAND NINE HUNDRED FIFTY EIGHT DOLLARS AND ZERO CENTS (\$669,958.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code, under which the City of Forney acted as purchasing agent for the purchase of various goods and services through the competitive bidding process, attached hereto and incorporated herein as Exhibit "A", and

WHEREAS, the City of Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement; and

WHEREAS, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$669,958.00 for provision of asphalt road repair work on East Simonds Road, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the estimate and has determined it to be in the best interest of the City to authorize the City Manager to execute any documents necessary to authorize Anderson Asphalt & Concrete Paving to provide asphalt road repair work on East Simonds Road as set forth in Exhibit C;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City Council hereby authorizes Anderson Asphalt & Concrete Paving to

provide asphalt road repair work on East Simonds Road, to include provision of all necessary labor, equipment, and materials, for compensation in an amount not to exceed Six Hundred Sixty Nine Thousand Nine Hundred Fifty Eight Dollars and Zero cents (\$669,958.00), as set forth in Exhibit C, attached hereto and incorporated herein; and, the City Manager is authorized to execute any documents necessary for the work to be performed.

SECTION 2. This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

DULY ORDERED by the City Council of the City of Seagoville, Texas, this the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. 38-R-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF FORNEY AND CITY OF SEAGOVILLE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Seagoville, Texas desires to enter into an Interlocal Agreement with the City of Forney ("Agreement"); and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Seagoville to enter into said Agreement with the City of Forney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City Council hereby approves the terms and conditions of the Interlocal Agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A", with the City of Forney, Texas and the City of Seagoville, Texas and the City Manager is hereby authorized, on behalf of the City of Seagoville, Texas to sign said Agreement.

SECTION 2. All resolutions of the City of Seagoville heretofore adopted which are in conflict with the provisions of this resolution, and the same are hereby repealed, and all resolutions of the City of Seagoville not in conflict with the provisions hereof shall remain in full force and effect.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

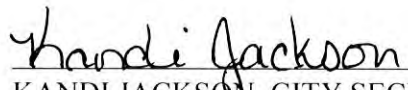
SECTION 4. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY RESOLVED by the City Council of the City of Seagoville, Texas, this the 15th day May, 2023.

APPROVED:


DENNIS K CHILDRESS, MAYOR
Lackey Stepper Sebastian

ATTEST:


KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:


VICTORIA THOMAS, CITY ATTORNEY



CITY OF FORNEY, TEXAS
RESOLUTION NO. 23-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS APPROVING AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF FORNEY, TEXAS AND THE CITY OF SEAGOVILLE, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

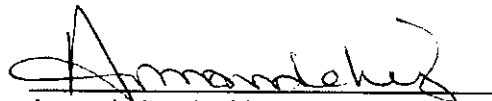
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

SECTION 1. The proposed Interlocal Agreement by and between the City of Forney, Texas and the City of Seagoville, Texas is hereby approved and the City Manager is authorized to execute all necessary documents to comply with this Resolution.

SECTION 2. A substantial copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein for reference.

SECTION 3. This Resolution shall take effect immediately from and after its passage.

PRESENTED AND PASSED by the City Council of the City of Forney, Texas, this the 2nd day of May, 2023.


Amanda Lewis, Mayor

ATTEST:


Rosa Rios, Interim City Secretary



APPROVED AS TO FORM:


Jennifer Smith, City Attorney

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF SEAGOVILLE
AND CITY OF FORNEY**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Seagoville and City of Forney desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs, and services;

WHEREAS, The City of Seagoville and City of Forney represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise, and agree as to each of the other as follows:

1. The City of Seagoville and City of Forney are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
1. The City of Seagoville and City of Forney agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Seagoville nor City of Forney warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

a dispute arises between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals, and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Seagoville or City of Forney, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Seagoville and City of Forney agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with

successful send confirmation, or by certified mail to the last business address as listed herein.

City of Seagoville: City of Seagoville
Attn: City Secretary
702 N. Highway 175
Seagoville, Texas 75159
Phone (972) 287-6819
kjackson@seagoville.us

City of Forney: City of Forney
101 E. Main Street
Forney, TX 75126
972-552-6620
jsmith@forneytx.gov

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Kaufman County, Texas, United States of America for City of Forney and shall be Dallas County, Texas, United States of America for the City of Seagoville.
16. **Authority to Enter Contract.** Each party has the full power and authority to enter and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party.

thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

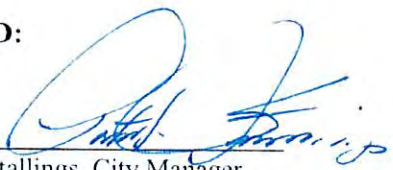
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

BY:


Patrick Stallings, City Manager

APPROVED:

BY:


Charles Daniels, City Manager

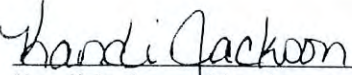
DATE:

May 15, 2023

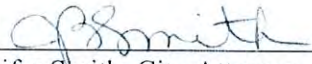
DATE:

May 8, 2023

ATTEST:


Kandi Jackson, City Secretary

ATTEST:


Jennifer Smith, City Attorney

APPROVED AS TO FORM:


Victoria Thomas, City Attorney



thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

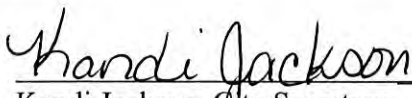
BY:


Patrick Stallings, City Manager

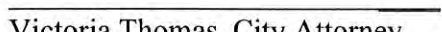
DATE:

May 16, 2023

ATTEST:

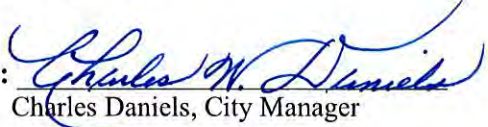

Kandi Jackson, City Secretary

APPROVED AS TO FORM:


Victoria Thomas, City Attorney

APPROVED:

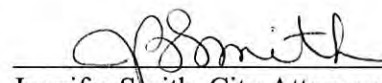
BY:


Charles Daniels, City Manager

DATE:

May 8, 2023

ATTEST:


Jennifer Smith, City Attorney





CITY OF FORNEY, TX REQUEST FOR PROPOSALS

Proposal Reference Number: 2021-004

Bid Documents, Proposal, and Contract Documents for

**ANNUAL PRICE AGREEMENT CONTRACT
for ASPHALT MAINTENANCE and MATERIALS
(VARIOUS LOCATIONS)**

ENGINEERING DEPARTMENT

MARCH 2021

Time Critical Competitive Sealed Bid Deliveries: The City of Forney, Texas cannot guarantee, due to internal procedures that any documents sent Priority Mail will be picked up and delivered by the closing date and time. Bidders are encouraged to choose the best delivery method for their situation.

TABLE OF CONTENTS

SECTION I:	SOLICIATION.....	3
SECTION II:	NOTICE TO BIDDERS RFP 2021-004.....	4
SECTION III:	GENERAL TERMS AND CONDITIONS	14
SECTION IV:	SCOPE OF WORK/SPECIFICATIONS	19
SECTION V:	EXHIBITS.....	25
	SAMPLE FORM "1": ASPHALT WORK ORDER.....	25
	EXHIBIT "A": MINIMUM INSURANCE & BONDING REQUIREMENTS	27
	EXHIBIT "B": PROPOSAL CHECKLIST, BID FORM & VENDOR ACKNOWLEDGEMENT	30
	EXHIBIT "C": BIDDERS QUAILIFICATION STATEMENT	35
	EXHIBIT "D": CLIENT WORK HISTORY.....	37
	EXHIBIT "E": CONTRACTOR'S SAFETY RECORD	38
	EXHIBIT "F": STANDARD FORM OF AGREEMENT.....	41
	EXHIBIT "G": BID BOND.....	43
	EXHIBIT "H": PERFORMANCE BOND	45
	EXHIBIT "I": PAYMENT BOND.....	48
	EXHIBIT "J": CONFLICT OF INTEREST QUESTIONNAIRE.....	51
	EXHIBIT "K": SUSPENSION OR DEBARMENT CERTIFICATE	54
	EXHIBIT "L": FOR MINORITY AND/OR WOMAN OWNED BUSINESS ENTERPRISES.....	55
	EXHIBIT "M": PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL..	56
SECTION VI:	GENERAL CONTRACT CONDITIONS FOR CONSTRUCTION	57
SECTION VII:	SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT.....	58
SECTION VIII:	AGGREGATE BASE COURSES (FLEXIBLE)	
SECTION IX:	ROAD-MIX ASPHALT PAVING	

SECTION I: SOLICITATION



CITY OF FORNEY REQUEST FOR PROPOSAL (RFP 2021-004)

The City of Forney is accepting Bids for an Annual Price Agreement Contract for Asphalt Street Maintenance & Materials

Sealed proposals addressed to the City of Forney will be received by the Finance Department, located on the first floor of City Hall at 101 E. Main Street, Forney Texas 75126, until 2:00 p.m. April 12, 2021. Proposals may be mailed to the City of Forney, P.O. Box 826, Forney TX 75126 or hand-delivered to the first floor of City Hall at 101 E. Main, Forney, Texas 75126. Sealed Bids will be opened at 2:00 p.m. on April 12, 2021, however, there will be no public opening due to COVID 19.

Bidders must submit with their bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of the bid payable without recourse to the Owner or a proposal bond in the same amount. The contract award is contingent upon City Council approval at the May 04, 2021, City Council meeting.

Proposal envelope must state: RFP 2021-004

ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS

Scope of Work:

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification.

Bidders are required to provide all materials, equipment, and labor required for the construction of the project along with a two (2) year Performance and Maintenance Bond in the amount of Contract. The effective date of the maintenance period will commence upon the date of project acceptance by the City of Forney City Council. The successful Bidder will be required to furnish not only a performance bond in the amount of the contract but also a payment bond for the protection of all claimants supplying labor and materials.

The bid package is available on the City of Forney Website www.forneytx.gov or CivCast www.civcast.com. Paper copies can be obtained by contacting Forney Engineering Department at 972-564-7375. All questions **are required** to be asked and answered from the CivCast website.

SECTION II: NOTICE TO BIDDERS RFP 2021-004

ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS (VARIOUS LOCATIONS)

DEFINITIONS:

- The terms “City” or “Owner” as used throughout these documents will mean the City of Forney, Texas.
- The terms “Contractor” or “Bidder” is used throughout these documents will mean the Contractor submitting a bid.

TERM:

The City intends to award Price Agreements to qualified bidders, and establish an annual agreement with renewals. The agreement will contain a fixed pricing structure with an initial one (1) year term. The City retains the right and option to extend the term of the agreement for four (4) additional, one (1) year periods upon the same terms and conditions. The City also retains the right and option to terminate the agreement upon thirty (30) days written notice.

WORK ORDER TIME – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions.

INVITATION: - COMPETITIVE SEALED BIDS WILL BE ACCEPTED FOR THE FOLLOWING:

Project Title: **RFP 2021-004 ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**

Project Address: Various locations within the City of Forney, Texas

DESCRIPTION:

- The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

Annual Agreements - Issued by the City of Forney to create an annual agreement between the City and a vendor for specific items and/or services to be provided at a certain price, on an as-needed basis. Annual agreements do not encumber funds until a release against the blanket order is issued. Annual agreements are normally issued following a bid award by the City Council where the annual expenditure is expected to exceed \$50,000. Annual agreements may be for the exclusive use of an individual operating department or split between operating departments or may be established for citywide use.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

- City’s Estimated Annual Asphalt Budget: **\$500,000** (*may vary from fiscal year to fiscal year and is subject to annual budgetary approval by Council)
- Consideration for Award: The City may consider the following minimum criteria, and may make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with the bid specifications:

- Price
- Bidder’s experience and reputation
- Quality of the bidder’s goods and/or services
- Bidder’s safety record
- Bidder’s proposed personnel
- Bidder’s financial capabilities

PROJECT COMPLETION SCHEDULES:

The completion schedule for each project will be mutually agreed upon in writing by both parties per Sample Form 1 – Asphalt Repair Work Order Form.

PRE-BID MEETING: No Meeting will be Held Unless Questions Warrant It

QUESTIONS DEADLINE: Wednesday, April 07, 2021, @ 12:00 CST

QUESTION WILL NOT BE ANSWERED VIA TELEPHONE OR FAX

All questions are required to be asked and answered from the CivCast Website
<https://www.civcastusa.com/>

Responses will be published in the form of an addendum and/or on CivCast Website. Verbal inquiries will not be accepted, and respondents should refrain from seeking additional information, clarification or other communications from any outside agency or City employee other than the City of Forney Engineering Department.

ADDENDUMS:

All interpretations, answers to questions, corrections and/or changes to a bid solicitation, or extensions to the opening date will be made by addendum. Addendums will be published in writing and will be made available via the City of Forney Engineering Department and on CivCast web site at <https://www.civcastusa.com/>

The bidder is required to acknowledge receipt of addendums on **Exhibit B**.

It is the responsibility of all bidders to check the CivCast for all addendums.

BIDS DUE: One (1) original sealed bid submitted **prior to Monday, April 12, 2021 @ 2:00 pm CT**

All costs associated with the preparation/delivery of the bid, and or any subsequent presentations or request for other documentation, are the sole responsibility of the bidder. Note: Bids will be registered by received stamp. The City of Forney Finance Department clock stamp is the official clock, and no other time sources will be accepted.

1. **Bid Receiving Location:**

Via U.S. Mail:	Via Delivery Services / Personal Delivery:
City of Forney Finance Department	City of Forney Finance Department
P.O. Box 826	101 E Main Street
Forney, TX 75126	Forney, TX 75126
	Note: US Mail does not deliver to the street address

2. **Sealed:** All bids must be sealed and the face of the envelope must contain the following information:

Bid No.: **RFP 2021-004**
Name of Project: **ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**
Name of Bidder: Contractor's Name

3. Bids are valid only if deposited at a designated receiving location prior to receiving time.
4. Bids deposited after receiving time by the bidder, a delivery service, or any other delivery method will be returned unopened.

TIME SCHEDULE:

City Council Approval:	January 19, 2021
Advertising (paper notice):	March 25, 2021, and April 01, 2021
Pre-Bid Meeting:	No Meeting will be Held Unless Questions Warrant It
Questions Deadline:	Wed, April 7, 2021, prior to 12:00 (noon) CT
Bids Due:	Mon, April 12, 2021, prior to 2:00 pm CT
Council Award:	Tentative: May 04, 2021, City Council Meeting

Note: All times are subject to change at the City's discretion.

BID FORM/PRICING:

Bidders are requested to submit bids utilizing **Exhibit "B" Bid Form and Vendor Acknowledgment.**

BONDS:

- Bid Bond (5%)
- Performance and Payment Bonds (100%) - In accordance with Government Code 2253 and Local Government Code 252, successful bidder shall submit Owner's Performance bond in the amount of one hundred percent (100%) of each Asphalt Work Order of \$100,000.00 or greater and power of attorney; and a Material and Labor Payment Bond and power of attorney in the amount of one hundred percent (100%) of each Asphalt Work Order of \$50,000 or greater. Bonds must be from an

approved surety company holding a permit from the State of Texas to act as surety, or other sureties acceptable to the OWNER, on the forms provided in the specifications.

CLIENT WORK HISTORY:

Contractor to provide a five (5) year work history (**Client Work History Form - Exhibit D**), including client's names, addresses, telephone numbers, points of contact, and length of continuous service. The City reserves the right to request additional reasonable information from which the vendor's condition of responsibility can be determined as designated by State law. A Client Information Work History Worksheet is attached, and bids received without this worksheet may be deemed as non-responsive.

INDEPENDENT CONTRACTOR:

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

INSURANCE:

Within ten (10) working days of being notified of potential award of this contract by the City of Forney, vendors will be required to furnish a valid insurance certificate to the City that meet all of the requirements as stated in the **City of Forney Insurance Requirements Exhibit "A"**. If this time requirement is not met, the City has the right to declare a vendor non-responsive.

NOTE: Vendor to provide services by company employees only; subcontractors are not acceptable.

RESERVATION OF RIGHTS:

The City of Forney reserves the right to reject any or all bids and to waive informalities. In case of ambiguity or lack of clearness in stating prices in the bids, the City of Forney reserves the right to request clarification thereof, to reject the bid, or allow the bidder to withdraw the bid when applicable. Unreasonable (or "unbalanced") unit prices may deem the bidder's offer as non-responsible and may authorize the City of Forney to reject any bid.

INTENT TO AWARD

The City shall give notice of intent to award within sixty (60) calendar days following the opening of bids. Contractors must qualify within ten (10) working days after receipt of written request, by submitting such additional evidence as may be required by the City including evidence of insurance that meets the City requirements as stated in the bid specifications.

Should the Contractor fail to produce evidence satisfactory to the City on any of the foregoing points, the bidder may be deemed non-responsive and the work awarded to the next responsible bidder so qualifying. The Contractor agrees to commence work within then (10) days after the date of written notice to do so.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where

directed by the City. Upon written notification of award of the contract, the unit prices shall be valid through the period ending January ___, 2021. The contract will serve as an "annual" contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

CHANGE ORDERS/CONTRACT MODIFICATIONS

No oral statement of any person shall modify or otherwise change, or affect the term, conditions, or specifications stated in the resulting contract. All change orders and/or modifications to the contract will be made in writing by the Purchasing Agent.

OTHER DEADLINES

- **Corporate Resolution:** Upon request by the City, bidder shall submit, within seven (7) business days after notice of award of contract, a corporate resolution, certificate of partnership agreement or joint venture agreement which identifies the person(s) authorized to execute a contract on behalf of the corporation, partnership, or joint venture.
- **Insurance:** Upon request by the City, bidder shall furnish certificates of insurance and endorsement pages that meet the City requirements within ten (10) business days. Failure of the bidder to produce the required documents may deem the bidder as non-responsive.
- **Miscellaneous Documents:** Upon request by the OWNER, bidder must submit, within five (5) business days such documentation as the City requests to evaluate the qualifications of the bidder to perform the work. Failure of the bidder to produce documentation of qualifications in a timely manner may deem the bidder as non-responsive.

DISCLOSURE OF CERTAIN RELATIONSHIPS

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE REQUIRES THAT ANY VENDOR OR PERSON CONSIDERING DOING BUSINESS WITH A LOCAL GOVERNMENT ENTITY DISCLOSE IN THE QUESTIONNAIRE FORM CIQ, THE VENDOR OR PERSON'S AFFILIATION OR BUSINESS RELATIONSHIP THAT MIGHT CAUSE A CONFLICT OF INTEREST WITH A LOCAL GOVERNMENT ENTITY. BY LAW, THIS QUESTIONNAIRE MUST BE FILED WITH THE RECORDS ADMINISTRATOR OF THE CITY OF FORNEY NO LATER THAN THE 7TH BUSINESS DAY AFTER THE DATE THE PERSON BECOMES AWARE OF FACTS THAT REQUIRE THE STATEMENT TO BE FILED. SEE SECTION 176.006, LOCAL GOVERNMENT CODE. A PERSON COMMITS AN OFFENSE IF THE PERSON VIOLATES SECTION 176.006, LOCAL GOVERNMENT CODE. AN OFFENSE UNDER THIS SECTION IS A CLASS C MISDEMEANOR. BY SUBMITTING A RESPONSE TO THIS REQUEST, THE VENDOR REPRESENTS THAT IT IS IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE.

FORM IS ATTACHED TO THE BID SPECIFICATIONS; **EXHIBIT "I"**

PREVAILING WAGE RATES:

The following information from Chapter 2258 Texas Government Code Title 10 requires state agencies, cities, counties, independent school districts, and all other political subdivisions that engage in construction projects (highways, road, excavation, repair work or other project development or improvement) using public funds to include prevailing wage rate in the project bid documents and the construction contract.

By submitting an offer, bidders certify that they are in compliance with all application federal, state, and local laws.

2258.021. Duty of Governmental Entity to Pay Prevailing Wage Rates

- (a) The state or any political subdivision of the state shall pay a worker employed by it or on behalf of it:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

DEBARMENT:

Bidder certifies that at the time of submission of its bid, Bidder was not on the federal government's list of suspended, ineligible, or debarred contractors and that Bidder has not been placed on this list between the time of its bid submission and the time of execution of the Contract. If Bidder is placed on this list during the term of the Contract, Bidder shall notify the City of Forney Purchasing Agent. False certification or failure to notify may result in termination of the Contract for default.

CONFIDENTIAL OR PROPRIETARY INFORMATION:

If a bidder believes that parts of an offer are confidential, then the bidder must so specify. The bidder must stamp in bold letters the term CONFIDENTIAL on that part of the offer which the bidder believes to be confidential. The bidder must submit in writing specific detailed reasons, including any relevant legal authority, stating why the bidder believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Forney will be the sole judge as to whether a claim is general and/or vague in nature. All offers and parts of offers, which are not marked as confidential, will be automatically considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

CONTRACT ADMINISTRATION:

The City of Forney Engineering and Public Works Department together with the Finance Department shall be responsible for administration of the contract for compliance with the interpretation of scope, schedule, billings, requirements, and budget.

INSTRUCTIONS FOR BIDDING

CITY OF FORNEY GENERAL TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE CITY.

1. **BID NOTIFICATION:** City of Forney utilizes the following procedures for notification of bid opportunities: the Forney Messenger: www.Forneymessengers.com. City of Forney shall not be responsible for receipt of notification and information from any source other than that listed. It shall

be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

2. **REQUIRED INFORMATION:** City of Forney (City) bid/proposal packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the bidder may be found non-responsive. Vendors may be required to complete and supply all information contained in the "supplemental information" portion of the packet at a date after bid opening. Failure to complete "supplemental information" requirements in a timely manner, prior to council award, may be used by the City in determining a vendor's responsibility.
3. **MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** a prospective bidder must affirmatively demonstrate their responsibility. The City of Forney may request representation and other information sufficient to determine bidder's ability to meet these minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Be able to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Otherwise qualified and eligible to receive an award.
4. **CORRESPONDENCE:** the number of this bid packet must appear on all correspondence, or inquiries, pertaining to this quotation.
5. **PREPARATION COST:** The City will not be liable for any costs associated with the preparation, transmittal, or presentation of any bids or materials submitted in response to any bid, quotation, or proposal.
6. **NOTICE OF PUBLIC DOCUMENTS:** any and all materials initially or subsequently submitted as part of the bid process shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.
7. **ADDENDA:** any interpretations, corrections, or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Forney purchasing division. Addenda will be made available to all who are known to have received a copy of this bid packet, if the addenda contain changes to the "specification" or "bid form", bidders shall acknowledge receipt of all addenda or they may be declared non-responsive.
8. **NON-RESIDENT BIDDERS:** Texas government code, chapter 2252: non-resident bidders. Texas law prohibits City and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid in the non-resident bidder's state.
9. **INSURANCE:** The City requires vendor(s) to carry the minimum insurance as required by state laws, and insurance requirements as outlined in the bid/proposal documents. Vendors must submit endorsement pages as well as insurance certificates.

10. **NO PROHIBITED INTEREST:** Bidder acknowledges and represents that they are aware of the laws, City Charter regarding conflicts of interest. The City Charter states that “no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service....”.
11. **SILENCE OF SPECIFICATION:** the apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
12. **SAMPLES:** any catalog, brand names, or manufacturer’s reference in this bid packet is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Please quote as listed or give equal. If item offered is other than as indicated, bidder must state make, model, and part number of product quoted. Equality will be determined by the City, per the specifications. Samples, if required, shall be furnished free of expense to the City. **Samples should not be enclosed with bid unless requested.**
13. **PRICING:** bid price(s) quoted, must be held firm for ninety (90) days to allow for evaluation unless otherwise stated in this document.
14. **ERROR-QUANTITY:** bid price must be submitted on units of quantity specified, extended, and total shown, in the event of discrepancies in extensions, the unit price shall govern.
15. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By submittal of this bid, in addition to the guarantees and warranties provided by law, vendor expressly guarantees and warrants as follows:
 - A. That the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the vendor will bear the cost of inspecting and/or testing articles rejected.
 - B. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the vendor will, at vendor’s own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities, and suits arising there from.
 - C. That the articles to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
 - D. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
16. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
17. **SHIPMENT/TITLE/RISK OF LOSS:** quotations shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The title and risk of loss of goods shall not pass to the City until the City actually receives and takes possession of the goods at the point(s) of delivery. The City of Forney assumes no liability for goods delivered in damaged or unacceptable condition. The

successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

18. **DELIVERY PROMISE – PENALTIES:** quotations must show the number of calendar days required to place the materials in the possession of the City (do not quote shipping dates) and deliveries will be acceptable only during normal working hours at the designated location. When delivery delay can be foreseen, the bidder shall give prior notice to the purchasing division, who shall have the right to extend the delivery date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting bidder.
19. **PRESENTATION OF BIDS:** complete bid packets must be presented to the Finance Department in a sealed envelope unless otherwise indicated.
20. **ALTERING BIDS:** bid prices cannot be altered or amended after submission deadline. Any inter-lineation alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.
21. **LATE BIDS:** bid packets received in the purchasing department after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Forney is not responsible for the lateness of mail carrier, weather conditions, etc.
22. **WITHDRAWAL OF BIDS:** Bids filed with the City may be withdrawn, modified and/or resubmitted prior to the time set in the bid specifications. Bidder agrees that once opened, a bid price may not be withdrawn or canceled by the bidder for a period of ninety (90) days following the date designated for the receipt of bids without written approval of the City.
23. **BID OPENINGS:** all bids submitted will be read at the City's regularly scheduled bid opening for the designated project. However, the reading of a bid at bid opening should not be construed as a comment on the responsiveness of such bid or as any indication that the City accepts such bid as responsive. The City will make a determination as to the responsiveness of bids submitted based upon compliance with all applicable laws, City of Forney purchasing guidelines, and project documents, including but not limited to the bid/proposal specifications and required submittal documents. The City will notify the successful bidder upon award of the contract and, according to state law all bids received will be available for inspection at that time.
24. **BID SUMMARY SHEET:** bid summary results will be made available forty-eight (48) hours after bid opening. Bidders desiring a copy of the bid summary sheet may request the results forty-eight hours (48) hours after the bid opening through the CivCast website or by emailing kgroves@forneytx.gov
25. **MINOR DEFECT:** the City reserves the right to waive any minor defect, irregularity, or informality in any bid. The City may also reject any or all bids without cause prior to award.
26. **EVALUATION:** bids/proposals will be evaluated as outlined in the bid/proposal document. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities

not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

27. **SPLIT AWARD:** the City reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid. The City reserves the right to take into consideration contract administration costs for multiple award contracts when determining low bid.
28. **PROTESTS:** all protests regarding the bid solicitation process must be submitted in writing to the Finance Department within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the local government code, as well as any protests relating to alleged improprieties or ambiguities in the specifications. The limitation does not include protests relating to staff recommendations as to award of this bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary prior to council award. All staff recommendations will be made available for public review ninety-six (96) hours prior to consideration by the City Council by emailing: kgroves@forneytx.gov.

SECTION III: GENERAL TERMS AND CONDITIONS

BONGING, PURCHASE ORDER AND PAYMENTS:

1. **BID SECURITY/BOND REQUIREMENTS:** If required, bid security shall be submitted with bids. Any bid submitted without bid bond, or cashiers/certified check, shall be considered non-responsible and will not be considered for award. Performance and/or payments bonds, when required, shall be submitted (along with power of attorney), to the City prior to commencement of any work pursuant to the agreement provisions.

A BOND REQUIRED BY THIS SECTION MUST BE EXECUTED BY A CORPORATE SURETY IN ACCORDANCE WITH SECTION 1, CHAPTER 87, ACTS OF THE 56TH LEGISLATURE, REGULAR SESSION, 1959 (ARTICLE 7.19-1, VERNON'S TEXAS INSURANCE CODE).

A BOND REQUIRED UNDER THIS SECTION MUST CLEARLY AND PROMINENTLY DISPLAY ON THE BOND OR ON AN ATTACHMENT TO THE BOND:

THE NAME, MAILING ADDRESS, PHYSICAL ADDRESS, AND TELEPHONE NUMBER, INCLUDING THE AREA CODE, OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT.

2. **FUNDING:** The Contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Forney, which fiscal year ends on September 30th of each year, shall be subject to Forney City Council approval. In the event that the Forney City Council does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

3. **ADDITIONAL TERMS:** Notwithstanding acceptance by the City of the goods or services resulting from an award, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by City.
4. **PURCHASE ORDERS:** a purchase order(s) shall be generated by the City to the successful vendor. The purchase order number must appear on all itemized invoices and packing slips. The City will not be held responsible for any work orders placed and/or performed without a valid current purchase order number.
5. **PAYMENT FOR LABOR AND MATERIALS; NO LIENS**

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

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

A five percent (5%) retainage with respect to progress payments will be withheld until final completion and the project has been accepted by City Council.

Work Order Time – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided and approved in the executed Work Order Form.

Liquidated Damages: For each day Contractor fails to achieve Substantial Completion of the Project Work Order within the completion times approved by the City and Contractor (legal holidays excluded), Contractor shall pay the sum of Two Hundred Fifty Dollars (\$250.00) in Liquidated Damages for each and every calendar day that the City is unable to utilize the Project Work Order for its intended use. Any sums due and payable hereunder by Contractor shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Agreement.

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm, or corporation having furnished labor, material, or both in the performance of this contract. It shall be the responsibility of each person, firm, or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however, that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of the 5% retainage that will be withheld.

Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer, and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

6. SCOPE AND PERIOD OF GUARANTEE

The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.

The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.

The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.

If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

7. **PRICE ESCALATION:** price escalations may be permitted by the City of Forney during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the Contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply

only to the products(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The City of Forney reserves the right to accept or reject any/all price escalations.

8. **PRICE REDUCTION:** if during the life of the contract, the Contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the City of Forney's contracted prices, an equitable adjustment shall be made in the contract price.
9. **INVOICING:** Invoices shall be submitted to the City of Forney, Attention: Engineering Department, PO Box 826, Forney, TX 75126 or electronically to kgoves@forneytx.gov
10. **PAYMENT TERMS:** Are net 30 in accordance with the Texas Prompt Payment Act (Texas Government Code, Chapter 2251), unless otherwise specified by the City in the bid/proposal packet.
11. **TAXES:** The City of Forney is exempt from federal manufacturer's excise and state sales and use tax under Section 151 of the Texas Tax Code. Tax must not be included in bid. Tax exemption certificates will be executed by the City and furnished upon request, and the Contractor shall comply with all provisions of Section 151.309.
12. **DELINQUENT TAXES:** section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Forney. Therefore, payment to a Contractor for goods or services provided to the City under contract or Purchase Order may be withheld in the event the Contractor owes delinquent taxes to the City.

CONTRACT:

13. **INTERLOCAL AGREEMENT:** successful bidder agrees to extend prices and terms to all entities who have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Forney.
14. **PATENT RIGHTS:** The Contractor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
15. **ASSIGNMENT:** The Contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
16. **AUDIT:** The City of Forney reserves the right to audit the records and performance of Contractor during the contract and for three years thereafter or as specified.
17. **CHANGE ORDERS:** no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the City of Forney.
18. **INDEMNIFICATION:** Vendor/Contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the Contractor, its officers,

agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the Contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate contractors. City does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Vendor/Contractor, at its own expense, is expressly required to defend City against all such claims. City reserves the right to provide a portion or its own entire defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If Contractor fails to retain counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City.

In addition to Contractor's intellectual property infringement indemnification and defense requirements herein, if an infringement claim occurs, or in Contractor's opinion is likely to occur, Contractor shall, at its expense: (a) procure for city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by Contractor to City whether manufactured by Contractor or a third party. Contractor represents that, to the best of its knowledge, City's use of products that are provided supplied, or sold by Contractor to City as part of this agreement does not constitute an infringement of any intellectual property rights and City has the legal right to use said products. City enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the Contractor.

19. **TERMINATION FOR DEFAULT:** the City of Forney reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract immediately in the event the Contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
20. **REMEDIES:** The Contractor and the City of Forney agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
21. **VENUE:** this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Kaufman County, Texas. Exclusive venue shall be in Kaufman County, Texas.

22. **EMPLOYMENT ELIGIBILITY VERIFICATION:** the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The Contractor warrants that Contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the City. Contractor warrants that Contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

23. **DISCLOSURE OF CERTAIN RELATIONSHIPS:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Forney not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. By submitting a response to this request, Contractor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code

SECTION IV: SCOPE OF WORK/SPECIFICATIONS

1. PROJECT

The following specifications are intended to describe the minimum requirements for Asphalt repair. The bid shall be based on a fixed price per the specification as required, and shall also be provided for the removal of existing Asphalt.

The City estimates the average annual expenditures for Asphalt Rehabilitation Work to be approximately **\$500,000**. This estimate does not constitute an order, but only implies the City's probable expenditures for the contract period. Work performed under the contract will be ordered and scheduled on an as needed basis through the use of "Asphalt Work Orders" (**Sample Form "1"**), and is subject to annual budgetary appropriations.

The Contractor shall furnish all labor, materials and equipment necessary to complete Asphalt projects in accordance with the City's specifications and scheduling for each project.

The rates quoted on the Bid Form (bid pricing sheets) within CivCast must be all-inclusive. "All-inclusive" shall be construed as costs incorporating all charges for labor, material, equipment and any other cost incurred. No separate line item rates or charges will be accepted.

Unless otherwise stated herein, all materials, equipment, and construction methods covered under this contract shall conform to the Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments, Texas Department of Transportation (TXDOT, as applies) and the City of Forney Design Standards.

COMPLIANCE WITH LAWS The contractor shall fully comply with all local, State and Federal laws, including all codes, ordinance and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

CONTRACTOR MUST OBTAIN COPIES OF THE LATEST CITY OF FORNEY STANDARD DETAILS www.forneytx.gov AND NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENT STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION WITH FORNEY AMENDMENTS. CONTRACTOR SHALL HAVE ONE COPY ON THE PROJECT AT ALL TIMES.

Bid prices shall remain firm for a period of one year. Contractor shall provide written notification to the City of any proposed price increase. Contract renewals are not dependent upon approval of price increases.

Unit prices as stated on the "Bid Form" (Exhibit "B") will be the basis for the payment to the Contractor for completion of work.

2. GENERAL INFORMATION

For this contract, the basis for determining quantities and project schedule will be for the entire work directed by the City for an individual project in a specific geographic area. The work for each individual project may include one or more intermittent repair areas throughout the project length.

The Contractor will be responsible for all signing and barricading and will comply with those portions of the "Texas Manual on Uniform Traffic Control Devices for Streets and Highways" which pertain to construction.

The Contractor shall provide means for adequately controlling and avoiding soil erosion during construction (no separate pay item).

The Contractor shall coordinate with the property owners to determine the existence and extent of any existing sprinkler systems. If the Contractor encounters any sprinkler systems during construction, he shall repair and/or replace it in as good or better condition than before (no separate pay item).

Contractor shall provide door hangers to all affected property owners two (2) days prior to construction as directed by the City. Additional door hangers could be requested by City (no separate pay item). The door hangers as a minimum shall have the following information:

- Contractor's name and phone number
- Construction start date and estimated completion date
- Notify the residents not to park in the construction area

The Contractor is responsible for notifying and working with all utility companies as needed.

The Contractor shall take precautions and use care to avoid damaging, disturbing or disrupting existing private facilities on private or public property, i.e. fences, sprinkler facilities, shrubs, landscaping, etc. The Contractor shall restore, to the City's satisfaction, any damaged property at the Contractor's expense.

LABOR AND MATERIALS - Unless otherwise provided, the contractor shall provide and pay for all labor, equipment, tools, construction equipment and machinery, traffic control devices, tack, water, utilities, transportation, portland cement and other facilities and services, necessary for the proper execution and completion of the work.

Completion of a particular project is defined to include the satisfactory performance of all minor and non-pay work items such as form removal, backfill, final grading, clean-up, restoration/replacement of all damaged private and public property, etc.

3. WORK ORDER BOND REQUIREMENTS

For the duration of this contract Payment Bonds and Performance Bonds may be required (**Bond Exhibits F - I**), to be determined by the dollar value of each Asphalt Work Order (**Sample Form "1"**). Lien releases will be required and given to the City at the end of each work order. No payment by the City will be made to the Contractor for completed work until the Contractor delivers a lien release for any costs, actual or incidental, incurred during the completion of each work order.

4. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS

All bidders must affirmatively demonstrate responsibility, and must meet the following requirements:

- have adequate financial resources, or the ability to obtain such resources as required;
- be able to comply with the required or proposed delivery schedule;
- have a satisfactory record of performance and safety;
- have a satisfactory record of integrity and ethics;
- be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

5. OFFERS

Bidders shall fill out the bid form completely, stating all prices in figures. The prices in the offer shall be full compensation. The costs of all material, labor, equipment, and incidental work required to complete the project ready for use must be included in the unit prices for the bid items provided on **Sample Form "1"**, and no direct compensation will be made for any other work. Material on hand will not be paid until all work is completed.

6. TESTING

All tests required will be paid for by the City. All re-testing will be paid for by the Contractor. The Contractor shall use care in removing existing pavement so as not to damage the subgrade. If the City indicates that additional compaction tests or methods are required for specific areas, costs associated with such will be paid for by the City, provided the tests are not required due to Contractor negligence. Generally, no heavy-duty trucks or construction machinery will be allowed on a recently poured sections until cured to the required strength per City standards.

7. GRADES

Contractor is responsible for all surveying and staking for projects covered by this agreement as needed. Contractor is responsible for insuring that gutter grades allow for proper drainage.

11. EXCAVATION AND BORROW

There will be no extra pay item for typical grading operations required to reconstruct or match existing pavement grades, profiles, or cross-sections. There will be no extra pay item for typical backfilling procedures.

12. WORK ORDERS

City shall issue Asphalt Work Orders for each project (Sample Form 1). Each work order shall be uniquely numbered, and shall contain a description of the location and required work. Contractors awarded an agreement shall review the work order, complete the project cost (based on the contracted pricing) and provide an estimated start and completion date. The City **must review and approve in writing** each work order before work is to commence. Note: That Performance and Payment Bonds will be required as stipulated in Section I/Paragraph "Bonds".

13. CONSTRUCTION SCHEDULE

Contractor must give notice of any water service interruptions to residents at least **48** hours in advance.

14. PROTECTION OF PUBLIC AND PRIVATE PROPERTY

The Contractor shall exercise reasonable care to protect all existing features and utilities in the public right-of-way (ROW). This includes but not limited to landscaping, fencing, sprinkler systems, drain lines, and invisible dog fences. Any item damaged due to negligence shall be repaired or replaced in kind by the Contractor as directed by the Engineer no additional compensation will be allowed.

During performance and up until the date of final acceptance, the contractor shall be under the absolute obligation to protect the finished work against any damage. In the event such damage, the contractor shall promptly replace or repair such work, whichever the City shall determine to be preferable. All risk of loss or damage to the work shall be borne solely by the contractor until final completion and acceptance of all work by the City of Forney.

15. EASEMENTS

- a) Contractor must conduct all work within the street right-of-way, within designated areas on City-owned property, or within easements obtained for this project. All disturbed areas shall be reshaped, smoothed, top soiled, seeded, and/or sodded. All removal items shall be completely removed and disposed of. All remaining items shall be saved from damage.
- b) Any damage that occurs to private property will be the responsibility of the Contractor. In the event the Contractor gets off the permanent or temporary easements, then all costs to restore the property shall be at the Contractor's expense and final acceptance of the project may be withheld unless the claim is being addressed.
- c) All areas of new sidewalk construction will be subject to the availability of right-of-way in that given area.
- d) Any obstructions or structures in place in City right-of-way that are in conflict with the placement of the sidewalks are to be removed as carefully and prudently as possible and placed within the private property line. All costs of removal are incidental to the project.
- e) In the event that a citizen makes a claim against the Contractor or subcontractor, the Contractor shall do the following:
 - i. Investigate the claim within a reasonable period of time when notified by a citizen or the City of Forney.
 - ii. Within 5 days after completing the investigation, the Contractor shall notify in writing the person making the claim that the Contractor is approving or denying the claim or a part thereof. The City shall receive a copy of the written notification.
 - iii. Assure that claims shall not be denied for frivolous reasons.
 - iv. In the event, the City of Forney determines after notification by a citizen that the Contractor has failed to comply with the above provisions and after notifying the Contractor and determining that the Contractor has failed to comply with the above provisions, the City of Forney may, in its direction, withhold payment to the Contractor until the provisions set forth above are complied with.

16. CONTROL OF CONTRACTOR

- a) The Contractor shall be fully responsible for maintaining alignment and grade.
- b) The Contractor shall set and maintain all intermediate points, offset points, lines, grades, elevations, and offset elevations not set by the Engineer. The accuracy of the Contractor's surveys and staking shall be his responsibility.

- c) A reasonable amount of time shall be allowed by the Contractor after he calls for inspections of the form boards by the City prior to placement of the Asphalt. The Contractor shall not claim additional compensation for any delay due to the City exercising this right, for any corrective work which may be required as the result of the Contractor's errors or any removal and replacement of items not inspected or approved.
- d) Removal of existing sidewalks, curbs, 4" stone base beneath Asphalt, all finishing, backfill, and seeding, forming of ramped areas, and other related activities shall be incidental to the cost of the contract.
- e) No imperfections in the completed sidewalk will be accepted. It will be the Contractor's responsibility to prevent vandalism or destruction on the surface of wet Asphalt.
- f) Before work is to commence, the Contractor is to video all existing conditions with the date and timestamp and provide a copy to the City.

17. INSPECTION

The Contractor shall conduct his work in full cooperation with the City. The City must be notified for inspection prior to the placement of any materials; patch, curb, panel replacement, street work, sidewalk or restoration. Any materials placed before an inspection by the City shall be deemed unacceptable and no compensation will be allowed.

18. INCIDENTAL ITEMS

Unless otherwise indicated, there will be no separate pay items for the following miscellaneous construction items. Costs for these items shall be considered incidental to other contract bid items.

- Removing asphalt patches, or capping
- Adjusting water valve stacks in the paving and parkway area (Asphalt pad is paid under sidewalk)
- Adjusting Manholes and Cleanouts in the paving area
- Final cleanup
- Erosion control
- Irrigation damage or irrigation adjustments

20. DELIVERY CHARGES

All delivery charges (FOB work sites) shall be included in the bid price.

21. BARRICADING AND TRAFFIC CONTROL

Streets will remain open to thru traffic and emergency vehicles during the duration of each project **(They can be closed to thru traffic in certain situations with pre-approval)**. Barricading and construction signage shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD) requirements and shall be considered incidental in cost.

22. SAW-CUTTING

All existing Asphalt shall be sawed to limits of removal to insure uniformity. Any waste or slurry created from cutting the Asphalt shall be vacuumed and properly disposed of. Costs for saw cutting shall be addressed on the Bid Form (**Exhibit "B"**).

23. LOCATING UTILITIES

Contractor shall be required to locate and protect all utilities, including sprinkler systems and other private underground installations. The Contractor shall protect all utilities during construction. Sprinkler system and other private underground installation relocation and repair shall be done at Contractor's expense if damaged.

24. FINAL CLEAN UP

Contractor will be responsible for the removal and proper disposal of waste created during the project duration, and will restore all disturbed areas to original condition or better. Areas disturbed by construction are to be sodded with the same type of grass that existed before construction began. The Contractor is encouraged to minimize the grassed area that is disturbed because all grass restoration shall be included. All damage to grassed areas shall be held to a minimum that only the edges need restoration. All disturbed areas caused by work will need to be reestablished back to existing conditions prior to construction.

Cleanup shall follow immediately after and at the same rate as construction. Cleanup shall not be delayed until the entire project is finished. All work shall be limited to one side of a street at a time. All work, including cleanup and backfilling, shall be completed before moving to another area, with the exceptions of seeding and mulching and any asphalt repairs. The Contractor will have dry black dirt available at all times for backfill. No delays in backfilling will be allowed due to weather. Final clean up shall be complete prior to payment from the City for each work order.

25. WARRANTY

Successful bidder shall warrant that all work shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title, for a minimum of 2 years.

SECTION V: EXHIBITS

EXAMPLE FORM "1": ASPHALT WORK ORDER



ASPHALT WORK ORDER -Example
Forney Agreement RFP 2021-004

Asphalt Work Order # _____ Date: _____

Contractor: _____ Phone: _____

Forney Contact: _____ Phone: _____

Location of Work: _____

Description of Work:

Contractor's Response:

Item	Description	Unit	Quantity	Unit Price	Total Price
1	Saw-Cut and Remove Existing Asphalt	SY			
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY			
3	4" Type D HMAC (48 Ton Minimum)	SY			
4	2" Type D HMAC (48 Ton Minimum)	SY			
5	6" Flexbase	SY			
6	Crack Sealing	LF			
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY			
8	Milling Work (2")	SY			

9	Wedge Mill (1-2")	SY			
10	Wedge Mill (2-4")	SY			
11	Wedge Mill (4-6")	SY			
12	Petromat 4598 Paving Fabric	SY			
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF			
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF			
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF			
16	12" White Crosswalk Lines (Traffic Paint)	LF			
17	Install 24" Stop Bar (Traffic Paint)	LF			
18	Removal of Existing Markings	LF			
19	Type B Material Delivered (6 Ton Minimum)	PER TON			
20	Type D Material Delivered (6 Ton Minimum)	PER TON			
21	Asphalt Rejuvenation	SY			

*All items include traffic control, testing, and mobilization.

Total Price: _____

Start Date: _____ Completion Date: _____

Special Requirements: _____

Performance Bond No.: _____ Payment Bond No.: _____

Before Photos Taken: _____ Yes _____ No

After Photos Taken: _____ Yes _____ No

Approved by City of Forney

Approved by Contractor

Signature

Signature

Print Name

Print Name

Date

Date

***By accepting this work order the contractor acknowledges that it has examined and carefully studied the specifications and details and clearly understands the work to be performed as identified above.**

EXHIBIT "A":

MINIMUM INSURANCE & BONDING REQUIREMENTS

By submitting a quote or bid the Contractor is acknowledging the insurance requirements, and is asserting that if awarded a written contract or purchase order, the vendor will comply with all insurance requirements as specified herein within 10 days of request by the City. Should the Contractor fail to submit the required insurance certificate within 10 days of request, vendor understands that they shall be deemed non-responsive and forfeit any applicable bid bond. Contractor also acknowledges that in award of a contract, the bid specification and subsequent purchase order constitutes a written contract and all insurance requirements are in effect.

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid. A certificate of insurance and endorsement pages meeting all requirements and provisions outlined herein shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. The City, at its own discretion, may require a certified copy of the policy.

The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, Owner shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, durations, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Forney.

MINIMUM INSURANCE AND BONDING REQUIREMENTS

A. Purpose

The Owner seeks comprehensive insurance and bonding protection with limits adequate to respond to exposure confronting the Owner, the Engineer, and any other public entity (herein "Public Entity") in which the work is undertaken.

B. Conditions Applicable to All Policies:

1. **Qualifications of Insurers:** Insurers shall be duly licensed or approved non-admitted carriers and comply with all applicable state insurance laws and requirements of duly constituted insurance regulatory authorities.
2. **Insurance Company Rating:** Insurers shall maintain an A.M. Best Insurance Guide rating of at least B+VI, or better. Surplus lines carriers shall maintain an A.M. Best Insurance Guide rating of at least A+VI.

3. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact: Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by the TDI to the company affording coverage may be a signatory on the Certificate of Insurance and Bond Power of Attorney or Attorney-In-Fact (verification with TDI will be required). In the case of surplus lines carriers or non-admitted carriers only agents licensed as surplus lines agents may sign a Certificate of Insurance on behalf of the surplus lines carrier or non-admitted carrier affording coverage (verification with TDI will be required).
 4. Cancellation Notice: The Owner shall be given at least 30 days' notice by certified mail before the cancellation, or any material change in coverage.
 5. Additional Insured: With the exception of Workers' Compensation policies, the Owner, or Public Entity, and Engineer shall be named as additional insureds.
 6. Waiver of Subrogation: All policies must include a Waiver of Subrogation in favor of the Owner.
 7. Certificate Holder: The Owner shall be listed as a certificate holder.
 8. Deductibles: Deductibles may not exceed \$1,000, unless approved by the Owner.
 9. Occurrence Policy: Insurers must furnish "occurrence" policies.
 10. These requirements are in addition to the requirements adopted by the Texas section of the American Society of Civil Engineers.
 11. The Owner reserves the right to modify these requirements in the event it deems said modifications(s) to be appropriate.
- C. Comprehensive General Liability (CGL) (including independent contractor's liability, completed operations and contract liability)
1. Minimum Policy Limits (minimum combined single limits (CSL) for bodily injury and property damage)
 - a. \$1,000,000 per occurrence
 - b. \$2,000,000 general aggregate
 - c. \$2,000,000 aggregate for products and completed operations coverage
 2. Owner's and Contractor's Protective Liability Coverage (OC&P): Minimum policy limits of \$1,000,000
 3. XCU: XCU exclusions must be removed from the policy.
 4. Contractual Liability Insurance: If surplus lines policy, any non-standard exclusions must be attached to Certificate of Insurance.
 5. Policy Exclusions: Certificate of Insurance must identify all policy exclusions (*i.e.*, pollution, punitive damages, subcontractors).
- D. Comprehensive Auto and Truck Liability Insurance - Minimum CLS policy limits for bodily injury and property damage
1. \$500,000 per occurrence

2. \$1,000,000 aggregate for vehicles with gross weight of 26,000 lbs. or more.
3. Coverage shall be afforded for hired and non-owned autos.

E. Workers' Compensation

1. Authority to do Business in Texas: Insurance carrier must be authorized to conduct business in the State of Texas or must obtain a Texas endorsement.
2. Policy Limits: Maintain minimum statutory policy limits \$100,000/\$100,000/ \$500,000
3. Waiver of Subrogation: Policy must include a waiver of subrogation in favor of the Owner.
4. Certificate Holder: The Owner must be listed as a certificate holder.
5. Staff Leasing Agreement:
In the event of a staff leasing agreement:
 - a. Staff leasing company must furnish a Certificate of Insurance.
 - b. Staff leasing company must be licensed.
 - c. Staff services agreement must meet the requirements of Section 91.032 of the Texas Labor Code.
 - d. The Contractor must represent in writing that only employees covered under the staff services agreement will work on the project.
 - e. Contractor and staff leasing company must furnish the Owner with 30 days advance written notice of either parties' intent to terminate the staff services agreement.

F. Performance, Payment and Maintenance Bonds:

1. A surety company shall be listed on Treasury Circular 570. In determining whether the surety on the bond holds a certificate of authority from the United States Secretary of the Treasury, a party may conclusively rely on the list of companies holding certificates of authority as acceptable sureties on federal bonds published in the Federal Register by the United States Department of the Treasury covering the date on which the bond was executed.
2. A bond that is made, given, tendered, or filed may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.
3. The bonds shall be effective for at least two years from the date final payment is made.
4. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact – Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by TDI to the company affording coverage may be a signatory on the Bond (verification with TDI will be required).
5. Bonding company shall maintain an A.M. Best rating of A+V or better.

VERIFICATION OF COVERAGE

Contractor shall provide the City with certificates of insurance indication coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City of Forney reserves the right to require complete, certified copies of all required insurance policies at any time.

1. Exhibit B – Proposal Document Check List

Submittal Checklist: *(To determine validity of proposal each of the following must be included in the proposal submittal.)*

- ☒ Exhibit B – Checklist / Bid Form / Vendor Acknowledgement
- ☒ Acknowledge Addenda *(If applicable)*
- ☒ Exhibit C - Bidders Qualification Statement
- ☒ Exhibit D - Client Work/Reference History
- ☒ Exhibit E - Contractor's Safety Record
- ☒ Exhibit G - Bid Bond or Cashier's Check *(If submitting bid and are electing to provide a cashier's check in lieu of a bid bond, the cashier's check must be physically dropped off in a sealed envelope referencing the RFP No. before the due date of this bid at the address provided on the City of Forney Bid Cover Sheet.)*
- ☒ Exhibit J - Conflict of Interest (CIQ) Form
- ☒ Exhibit K - Suspension of Debarment Certificate
- ☒ Exhibit L - Minority and /or Woman Owned Business
- ☒ Form 1295 Certificate of Interested Party must be submitted with the Texas Ethics Commission
- ☒ Confidentiality/Non-Disclosure Agreement
- ☒ Cooperative Governmental Purchasing Notice

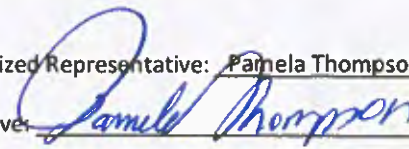
All proposals submitted to the City of Forney shall include this page with the submitted Proposal.			
RFQ Number:	2021-004		
Project Title:	Annual Price Agreement Asphalt Maintenance and Repair		
Submittal Deadline:	April 12, 2021, 2:00 p.m. CST		
Proposer(s)'s Legal Name:	Anderson Asphalt & Concrete Paving, LLC		
Address:	11343 Mathis Avenue		
City, State & Zip	Dallas, Texas 75229		
Federal Employers Identification Number #	26-3494724		
Phone Number:	(214) 352-3400	Fax Number:	(214) 352-3402
E-Mail Address:	coryh@aacpaving.com		
Proposer(s) Authorization			
I, the undersigned, have the authority to execute this Proposal in its entirety as submitted and enter into a contract on behalf of the Proposer(s).			
Printed Name and Position of Authorized Representative: Pamela Thompson			
Signature of Authorized Representative: 			
Signed this 08 (day) of April (month), 2021 (year)			

EXHIBIT "B":

BID FORM AND VENDOR ACKNOWLEDGEMENT

**CITY OF FORNEY ANNUAL PRICE AGREEMENT CONTRACT for
ASPHALT MAINTENANCE & MATERIALS**

PAY ITEMS

Any and all work specifically called for in the Contract Documents or which is required for the proper construction of items called for in the Contract Documents is to be performed by the Contractor unless specifically indicated otherwise. The cost of all work for which there is no separate pay item in the proposal shall be included in the price for a related pay item such that work called for or required by the Contract Documents will be constructed for the Contract Price.

The following descriptions are intended to clarify the nature of the work required for this project. The provisions of the standard technical specifications shall apply, except as otherwise specified herein: Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item. The contract shall be awarded based on the "TOTAL BASE BID FOR ALL ITEMS".

Pay Item 1: Saw-Cut and Remove Existing Asphalt

This item shall consist of the work, labor and materials necessary to saw cut and remove existing pavement of various thickness and for all types of pavement under the visible pavement. This pay item includes the proper disposal and haul off of the material. Measurement for payment shall be on a square yard basis.

Pay Item 2: 6" HMA (2" Type D on 4" Type B)

This item shall consist of the work, labor and materials necessary to install (2" Type D HMA on 4" Type B HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 2" Type D and 4" Type B. Measurement for payment shall be on a per square yard basis.

Pay Item 3 and 4: 4" and 2" Type D HMA

This item shall consist of the work, labor and materials necessary to install 4" Type D HMA or 2" Type D HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 4" Type D and 2" Type D. Measurement for payment shall be on a per square yard basis. This work includes all testing, surface prep, seal coats, and tack coats.

Pay Item 5: 6" Flexbase

This item shall consist of all the work, labor, materials and equipment associated with providing and installing flexbase at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 301.5. Dust control is part of this item. Measurement shall be on a square yard basis.

Pay Item 6: Crack Sealing

This item shall consist of all the work, labor, materials and equipment associated with providing and installing crack sealing at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 302. Material specifications shall be provided at the request of the City prior to installing the crack sealing. Measurement shall be on a linear foot basis.

Pay Item 7: Pulverize, Cement Treat/Stabilize

Pulverize, Cement Treat/Stabilize: This item shall consist of all the work, labor and materials associated with pulverizing existing asphalt into the existing base (6") and treat with 22lb/SY of cement. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 8: Milling Work

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement (2") at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 9 - 11: Wedge Mill

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 19 & 20: Material to be Delivered

This item shall consist of all the labor, hauling of the materials per bid item to location directed by the City (location site is Public Works at 2011 E Buffalo Street, Forney, TX 75126). All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a tonnage basis.

*All pay items not listed is describe in description in bid form.

RAP is not allowed in the HMA – Material specs must meet North Central Texas COG Public Works Construction Standards.

*Clarification
accepted*

City of Forney Bid Form RFP 2021-004

Item	Description	Unit	Bid Price
1	Saw-Cut and Remove Existing Asphalt	SY	\$ 67.75
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY	\$ 282.00
3	4" Type D HMAC (48 Ton Minimum)	SY	\$ 45.00
4	2" Type D HMAC (48 Ton Minimum)	SY	\$ 31.50
5	6" Flexbase	SY	\$ 40.00
6	Crack Sealing	LF	\$ 3.50
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY	\$ 51.55
8	Milling Work (2")	SY	\$ 3.75
9	Wedge Mill (1-2")	SY	\$ 3.75
10	Wedge Mill (2-4")	SY	\$ 4.00
11	Wedge Mill (4-6")	SY	\$ 4.60
12	Petromat 4598 Paving Fabric	SY	\$ 35.60
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF	\$ 6.00
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF	\$ 7.00
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF	\$ 7.00
16	12" White Crosswalk Lines (Traffic Paint)	LF	\$ 25.00
17	Install 24" Stop Bar (Traffic Paint)	LF	\$ 25.00
18	Removal of Existing Markings	LF	\$ 25.00
19	Type B Material Delivered (6 Ton Minimum)	TON	\$ 190.00
20	Type D Material Delivered (6 Ton Minimum)	TON	\$ 230.00
21	Asphalt Rejuvenation	SY	\$ 13.00

*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.

City of Forney Bid Form RFP 2021-004

Item	Description	Unit	Bid Price
1	Saw-Cut and Remove Existing Asphalt	SY	\$67.75
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY	\$282.00
3	4" Type D HMAC (48 Ton Minimum)	SY	\$5.00
4	2" Type D HMAC (48 Ton Minimum)	SY	\$3.50
5	6" Flexbase	SY	\$40.00
6	Crack Sealing	LF	\$3.50
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY	\$51.55
8	Milling Work (2")	SY	\$3.75
9	Wedge Mill (1-2")	SY	\$3.75
10	Wedge Mill (2-4")	SY	\$4.00
11	Wedge Mill (4-6")	SY	\$4.60
12	Petromat 4598 Paving Fabric	SY	\$35.60
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF	\$6.00
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF	\$7.00
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF	\$7.00
16	12" White Crosswalk Lines (Traffic Paint)	LF	\$25.00
17	Install 24" Stop Bar (Traffic Paint)	LF	\$25.00
18	Removal of Existing Markings	LF	\$25.00
19	Type B Material Delivered (6 Ton Minimum)	TON	\$190.00
20	Type D Material Delivered (6 Ton Minimum)	TON	\$230.00
21	Asphalt Rejuvenation	SY	\$13.00

*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.

This budget may vary from fiscal year to fiscal year and is subject to annual budgetary approval by City Council. The City will also have the option to decrease or increase the amount of work during the contract period, as needed, based on funding. Some of the pay items may not be used.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where directed by the City. Upon written notification of award of the contract, the unit prices shall be valid for a period of one year. The contract will serve as an "annual" contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

Refer to the specific terms outlined for an "Automatic Option to Extend" in the Standard Form of Agreement.

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

Company Name: Anderson Asphalt & Concrete Paving, LLC

Principal Place of Business Address: 11343 Mathis Street, Dallas Texas 75229

Principal Place of Business Phone: (214) 352-3400

Authorized Representative Signature: 

Printed Name: Pamela Thompson

E-mail Address of Representative: coryh@aacpaving.com

Title: President

Date: 04/09/2021

Acknowledgement of Addenda: #1 #2 #3 #4 #5

EXHIBIT "C":

BIDDERS QUALIFICATION STATEMENT

Project: Bid No. RFP 2021-004 Annual Price Agreement Contract - Asphalt

Contractor: Anderson Asphalt & Concrete Paving, LLC

Indicate One: Sole Proprietor _____ Partnership X _____
Corporation _____ Joint Venture _____ Other _____

Name: Pamela Thompson Partner: Ronald Adnerson

Title: President Title: Vice President

Address: 11343 Mathis Street Address: 11343 Mathis Street

City: Dallas City: Dallas

State & Zip: Texas, 75229 State & Zip: Texas, 75229

Phone: (214) 352-3400 Phone: (214) 352-3400

Email: coryh@aacpaving.com Email: coryh@aacpaving.com

State and Date of Incorporation, Partnership, Ownership, Etc. Texas

Location of Principal Office: 11343 Mathis, Dallas, Texas 75229

Contact and Phone at Principal Office: Cory Henneberg (972) 310-2259

Number of Years in Business as a Contractor on Above Types of Work: 12

Liability Insurance Provider and Limits of Coverage: USI Southwest Dallas /CL 1,000,000.00

Workers Compensation Insurance Provider: USI Southwest Dallas /CL

Address: 2711 N Haskell Ave Suite 2000, Dallas, TX 75204

Contact and Phone: _____

Contact's Email Address: _____

EXHIBIT "D":

CLIENT WORK HISTORY/REFERENCES

Bidder: See Attached

List all experience/awarded contracts of similar size and the scope of work during the past (5) years.

1. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

2. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

3. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

4. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

PROJECT 1 MISCELLANEOUS ASPHALT PATCHING BID NO. 2019-55-B

Project Name: Town of Prosper

Project Location: Asphalt Patching

Project Description: _____

Project Start Date: 07/01/2019 Original Completion Date: _____ Actual Completion Date: _____

Reason for Final Completion Date Adjustment (if applicable): _____

Original Project Award Amount: 119,530.00 Change Order(s) Amount: NONE

Reason for Change Order(s): _____

Owner Name: TOWN OF PROSPER

Owner Address: 601 W. FIFTH ST.

PROSPER, TX 75078

Owner Contact Name: Frank Owner Contact Phone: _____

Owner Contact Email Address: _____

PROJECT 2

Project Name: Mill & Overlay Pavement Resurfacing Project – Bid # RFP 2019-007

Project Location: City of Forney

Project Description: Mill & Overlay existing streets

Project Start Date: 07/22/2019 Original Completion Date: _____ Actual Completion Date: _____

Reason for Final Completion Date Adjustment (if applicable): _____

REFERENCE 1 City of GrandviewCompany Name: 304 E. CrinerAddress: Grandview, Texas 76050Contact Name: David Henley Phone: (817)866-3399 ext 228

Contact Email Address: _____

Project Name/Description: Main Street - From FM 4 to 32' from Railroad Tracks

Project Completion Date: _____ Final Project Amount: _____

REFERENCE 2Company Name: IRON MIKE CONSTRUCTIONAddress: 6950 S. Tucson Way, Suite LCentennial, CO 80112Contact Name: Michael Yaggi Phone: (720) 474-4653Contact Email Address: myaggi@ironmikeconstruction.comProject Name/Description: Cowboy Club Entrance and Dam RepairProject Completion Date: 09/19 Final Project Amount: 125,000.00**REFERENCE 3**Company Name: Town of Shady ShoresAddress: 101 S. Shady Shores RoadShady Shores, TX 76208Contact Name: Richard A. Arvizu, PE Phone: 972.644.2800Contact Email Address: RAA@binkleybarfield.comProject Name/Description: "Pothole" Repairs - W Shady and S ShadyProject Completion Date: _____ Final Project Amount: 35,000.00

EXHIBIT "E":

CONTRACTOR'S SAFETY RECORD

- I. Complete the matrix below for the last five years, as obtained from OSHA required logs:

OSHA Log # _____ (contractor to indicate the OSHA reporting form used to report the numbers below)

Description	2016	2017	2018	2019	2020
Number of injuries & illnesses					
Number of lost time accidents					
Number of recordable cases					
Number of fatalities					

- II. Please answer the following questions regarding your safety program

- a. Are regular project safety meetings held for Field Supervisor(s)?

☒ yes
☐ no

If yes, frequency:

☒ weekly
☐ bi-monthly
☐ monthly
☐ as needed

- b. Are project safety inspections conducted?

☒ yes
☐ no

If yes, who performs inspections? safety officer

How often? weekly

Who is required to attend? all field employees

- c. Does your organization have a written safety program?

☒ yes
☐ no

If yes, provide a copy. It will become a compliance document upon contract award.

- d. Does your organization have a safety orientation program for new employees?

☒ yes
☐ no

For employees promoted to Field Supervisor?

☒ yes
☐ no

If yes, does your Supervisor Safety Program include instructions on the following:

Safety work practices	☒ yes	☐ no
Tool box safety meetings	☒ yes	☐ no
First aid procedures	☐ yes	☒ no
Accident investigation	☒ yes	☐ no
Fire protection	☐ yes	☒ no
New worker's orientation	☒ yes	☐ no

CITY OF FORNEY, TEXAS

RESOLUTION NO. 21-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS
AWARDING A CONTRACT FOR SERVICES TO ANDERSON ASPHALT &
CONCRETE PAVING, LLC FOR ASPHALT MAINTENANCE SERVICES AND
MATERIALS SERVICES WITHIN THE CITY OF FORNEY; AUTHORIZING THE
CITY MANAGER TO TAKE ALL ACTION NECESSARY TO COMPLY WITH THIS
RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Forney, Texas (the "City") desires to award a contract for services and execute an agreement between the City of Forney and Anderson Asphalt & Concrete Paving, LLC for asphalt maintenance services and materials within the City of Forney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

Section 1. The above and foregoing premises are true and correct and are incorporated herein and made part hereof for all purposes.

Section 2. The bid for asphalt maintenance services and materials within the City of Forney is hereby awarded to Anderson Asphalt & Concrete Paving, LLC and the City Manager is authorized to enter into an Agreement for the services.

Section 3. This Resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS, this 4 day of May, 2021.

ATTEST:


Mary Penn, Mayor


Dorothy Brooks, City Secretary



CITY OF FORNEY
ENGINEERING DEPARTMENT



May 6, 2021

Cory Henneberg
Anderson Asphalt & Concrete Paving, LLC
11343 Mathis Street
Dallas, TX 75229

Capital Improvement Program

P.O. Box 826
402 N. Bois d'Arc St.
Forney, TX 75126

972.552.6561 P
469.689.0719 F

cmcquiston@forneytx.gov
cityofforney.org

Reference: 2021 Annual Price Agreement Contract - Asphalt
Bid # RFP 2021-004 - Notice to Award Contract

Dear Mr. Henneberg:

On May 4, 2021, the City Council awarded the contract to Anderson Asphalt & Concrete Paving, LLC for the above-referenced project.

Please execute the following enclosed documents and return them to our office:

1. Standard Form of Agreement
2. Performance Bond (as needed with each approved Work Order)
3. Payment Bond (as needed with each approved Work Order)
4. Insurance Information
5. Vendor Information Sheet
6. W-9 Form
7. Complete Form 1295

Please print two sets of the contract documents and return two executed original sets to our office. The City also requires documentation for the proof of the insurance coverage, a copy of the minimum insurance and bonding requirements is attached for your convenience. Please make sure to include two (2) copies of the Certificates of Insurance.

Upon receiving the contract documents from you, we will obtain the City Manager's signature and return two executed copies to you.

Should you have any questions, please contact my office at 972-552-6561.

Sincerely,

Candy McQuiston,
Manager of Capital Improvement Program

EXHIBIT "F":

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF KAUFMAN }

THIS AGREEMENT, made and entered into this the 4th day of May, A.D. 2021, by and between the City of Forney, of the County of Kaufman and State of Texas acting through its Mayor, thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Anderson Asphalt & Concrete Paving, LLC of the City of Dallas, County of Dallas and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Request for Proposals, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by City of Forney, herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same in accordance with the terms of the individual work orders, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year

and day first above written.

City of Forney

Anderson Asphalt & Concrete Paving, LLC

Party of the First Part (Owner)

Party of the Second Part (Contractor)

By:



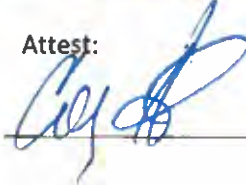
By:



Attest:



Attest:



END OF STANDARD FORM OF AGREEMENT

RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street
Maintenance & Materials

EXHIBIT "G":

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, Anderson Asphalt & Concrete Paving, LLC
as PRINCIPAL, and SureTec Insurance Company, as SURETY are held and firmly bound unto the City
of Forney hereinafter called the "Local Public Agency", in the penal sum of five percent of the Gross Amount
of Bid, lawful money of the United States, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying
Bid, dated April 12th, 2021, for RFP 2021-004 - Annual Price Agreement Contract for Asphalt
Street Maintenance & Materials (Project Description)

NOW, THEREFOR, if the Principal shall not withdraw said Bid within the period specified therein after
the opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and
shall within the period specified therefor, or if no period be specified, within ten (10) days after the
prescribed forms are presented to him for signature, enter into a written contract with the Local
Public Agency in accordance with the Bid as accepted, and give bond with good and sufficient surety or
sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or
in the event of the withdrawal of said Bid within the period specified, or the failure to enter into such
Contract and give such bond within the time specified, if the Principal shall pay the Local Public Agency the
difference between the amount specified in said Bid and the amount for which the local Public Agency
may procure the required work or supplies or both, if the latter be in excess of the former, then the above
obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several
seals this 12th day of April, 2021, the name and corporate seal of each corporate party being hereto
affixed and these presents signed by its undersigned representative, pursuant to authority of its governing
body.

Anderson Asphalt & Concrete Paving, LLC (SEAL)



(SEAL)

Attest By: _____



SureTec Insurance Company

IMPORTANT NOTICE

Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll-free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

Obligee: City of Forney
Project: RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street Maintenance & Materials
Principal: Anderson Asphalt & Concrete Paving, LLC
Bid Bond

POA #: 4221029

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Clem F. Lesch, Eric Lesch, Melissa Lesch, Felix Navejar

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 25th day of November, A.D. 2019.



SURETEC INSURANCE COMPANY

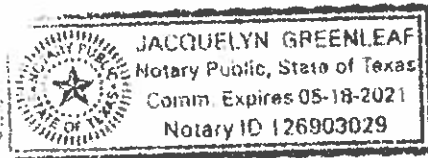
By: _____

John Knox Jr., CEO

State of Texas
County of Harris

ss:

On this 25th day of November, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Greenleaf, Notary Public
My commission expires May 18, 2021

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 12th day of April, 2021, A.D.

M. Brent Beaty, Assistant Secretary

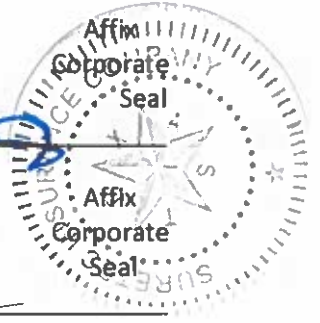
Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221029
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

Felix Navejar, Attorney-in-Fact

Attest By:

Eric Lesch, Witness



Countersigned

By N/A

*Attorney-in Fact, State of N/A

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Pamela Thompson ^{President} ~~Secretary~~ of the LLC. Corporation named as Principal in the within bond: that _____, who signed the said bond on behalf of the Principal was then PRESIDENT of said corporation; that I know his signature, and his signature thereto is genuine; that said bond was duly signed, sealed, and attested to, for in behalf of said corporation by authority of this governing body.

EXHIBIT "H":

PERFORMANCE BOND

Bond No. _____

STATE OF TEXAS §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: That _____ ("Principal") of the City of _____, County of _____, and State of Texas, as principal, and _____ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of _____ Dollars and Zero Cents (\$_____.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the ____ day of _____, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is hereby referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the ____ of _____, A.D. _____ 20____, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

WORK ORDER # _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal shall fully and faithfully perform all the terms, covenants and conditions of the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of any Principal default, and reimburse and repay Owner all outlay and expense which Owner may incur in making good such default, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

PROVIDED FURTHER, that Surety, for value received, stipulates and agrees that no change, extension of

time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way 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, covenants and conditions of the Contractor to the work performed thereunder.

PROVIDED FURTHER, that the penal sum of this bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this bond.

PROVIDED FURTHER, that Surety agrees that the bond provides for the repairs and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of completion and acceptance of the improvements by the Owner.

The undersigned agent of Surety is hereby designated by Surety as the Resident Agent in _____ County to whom any requisite notices may be delivered and upon whom service of process may be had in matters arising out of this bond.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day ____ of, 2021.

PRINCIPAL

SURETY

By: _____ By: _____

Printed or Typed Name

Printed or Typed Name

Title

Title

Address:

Mailing Address:

Physical Address (if not same as mailing address):

Telephone Number (including area code):

Email Address:

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):
1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

EXHIBIT "I":

PAYMENT BOND

Bond No. _____

STATE OF TEXAS §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: _____ ("Principal") of the City of _____, County of _____, and State of Texas, as principal, and _____ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of _____ Dollars and Zero Cents (\$_____.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the ____ day of _____, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the ____ of _____, A.D. 20____, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)
AGREEMENT# RFP 2021-004

WORK ORDER # _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal and its subcontractors shall well and faithfully make payment to each and every claimant, as defined in Chapter 2253 of the Texas Government Code, as amended, supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the

provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way 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, covenants and conditions of the Contractor to the work performed thereunder.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day ____ of, 2021.

PRINCIPAL

SURETY

By: _____ By: _____

Printed or Typed Name

Printed or Typed Name

Title

Title

Address:

Mailing Address:

Physical Address (if not same as mailing address):

Telephone Number (including area code):

Email Address:

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):

1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

Exhibit "J":

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code. A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	OFFICE USE ONLY 	
1 Name of vendor who has a business relationship with local governmental entity.		
2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3 Name of local government officer about whom the information in this section is being disclosed. <u> N/A </u> Name of Officer This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor? ☐ Yes ☒ No B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☒ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more? ☐ Yes ☒ No D. Describe each employment or business and family relationship with the local government officer named in this section.		
4 Signature of vendor doing business with the governmental entity Date		

EXHIBIT "K":

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making subcontract awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$100,000.00 or more and all subcontract recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, Proposer certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, Common Rule.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

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

City of Forney
Forney, TX United States

Certificate Number:
2021-754844

Date Filed:
05/20/2021

Date Acknowledged:

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

City of Forney

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

2021-004
Annual Road Maintenance Contract

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



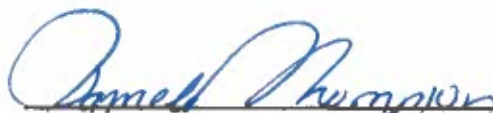
6 UNSWORN DECLARATION

My name is Pamela Thompson, and my date of birth is 10/08/1961.

My address is 9829 Stonehearth Lane, Forney, TX, 75126, Kaufman.
(street) (city) (state) (zip code) (country)

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

Executed in Kaufman County, State of Texas, on the 21st day of May, 20 21.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

EXHIBIT "L":

FOR MINORITY

AND/OR

WOMAN OWNED BUSINESS ENTERPRISES

(To be completed only if applicable)

Minority and/or Woman-Owned Business Enterprises are encouraged to participate in City of Forney's procurement process. In order to be identified as a Qualified Minority and/or Woman-Owned Business Enterprise in the City of Forney, this form, along with a copy of your certification, must be returned to the City of Forney Purchasing Division. You should return these documents with this response, or if you have already submitted this form and a copy of your certification to the Purchasing Division, it is not necessary to re-send certification.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

FAX NO.: (214) 352-3402

INDICATE ALL THAT APPLY

 Minority Owned Business Enterprise

 X Woman Owned Business Enterprise

EXHIBIT "M":

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

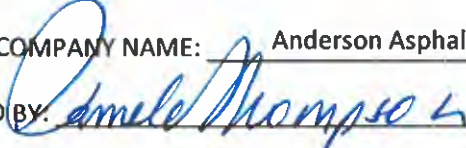
CERTIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2270.001

State law requires certification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public fund of the governmental entity.

By signing below, Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

The following definitions apply to this state statute:

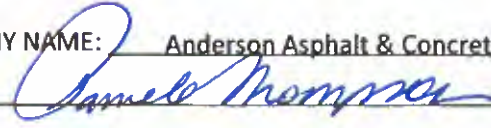
(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By signing below, Contractor hereby certifies that Section 2270.001 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

SECTION VI:

GENERAL CONDITIONS OF THE CONTRACT

Non-Collusion Acknowledgment

The undersigned Proposer affirms that they are duly authorized to execute this Proposal, that this company, corporation, firm, partnership or individual has not prepared this Proposal in collusion with any other Proposer, and that the contents of this Proposal as to prices, terms and conditions thereof have not been communicated by the undersigned Proposer, nor by Proposer's employee, affiliate, representative, partner, subcontractor, or agent, to any other individual or entity engaged in this type of business prior to the official opening of this RFP.

Company Name: Anderson Asphalt & Concrete Paving, LLC

Signature of Company Officer: 

Company Officer Printed Name: Pamela Thompson

Title President



ACCOUNTS PAYABLE
P.O. BOX 826
FORNEY, TX 75126
972-564-7300 x106
FAX: 972-564-7350

COMPANY NAME Anderson Asphalt & Concrete Paving LLC

PAYMENT INFORMATION

CONTACT PERSON Pamela Thompson SECOND CONTACT Bonnie Bishop

TELEPHONE NUMBER 214 352-3400 FAX 214 352-3402 E-MAIL pthompson@aacpaving.com

PAYMENT ADDRESS 11343 Mathis Ave

CITY Dallas STATE Texas ZIP CODE 75229

FEDERAL ID NUMBER 26-3494724 TYPE OF BUSINESS

☐ SOLE PROPRIETORSHIP

☒ PARTNERSHIP LLC-P

☐ CORPORATION

PAYMENT TERMS Per Contract

CITY OF FORNEY
ACCOUNT NUMBER _____

ORDERING INFORMATION (IF DIFFERENT FROM PAYMENT INFORMATION)

CONTACT PERSON _____ SECOND CONTACT _____

TELEPHONE NUMBER _____ FAX _____ E-MAIL _____

PAYMENT ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

FEDERAL ID NUMBER _____ PAYMENT TERMS _____

CITY OF FORNEY
ACCOUNT NUMBER _____

PLEASE COMPLETE AND MAIL OR FAX BACK, ATTENTION ACCOUNTS PAYABLE

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2021-754844

Date Filed:
05/20/2021

Date Acknowledged:

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

City of Forney
Forney, TX United States

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

City of Forney

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

2021-004
Annual Road Maintenance Contract

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



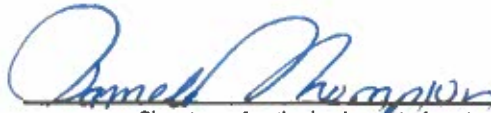
6 UNSWORN DECLARATION

My name is Pamela Thompson, and my date of birth is 10/08/1961.

My address is 9829 Stonehearth Lane, Forney, TX, 75126, Kaufman
(street) (city) (state) (zip code) (country)

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

Executed in Kaufman County, State of Texas, on the 21st day of May, 20 21.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/20/2021

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

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

PRODUCER Independent Insurance Group, Inc. 3030 LBJ Freeway, Suite 1300 Dallas TX 75234-7004	CONTACT NAME: Connor Sparks
	PHONE (A/C, No, Ext): 972-231-8277 FAX (A/C, No): 972-231-8291
	E-MAIL ADDRESS: certs@indinsgrp.com
	INSURER(S) AFFORDING COVERAGE
	INSURER A: Continental Casualty Company
	INSURER B: Valley Forge Ins. Co
	INSURER C: Great American Insurance Group
	INSURER D:
	INSURER E:
	INSURER F:

INSURED
Anderson Asphalt & Concrete Paving, LLC
11343 Mathis Ave
Dallas TX 75229

ANDEASP-01

COVERAGES

CERTIFICATE NUMBER: 1487247421

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7011840785	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	7011840799	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☐ EXCESS LIAB ☒ DED ☒ RETENTION \$ 10,000	Y	Y	TUU 3743274 00	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	7011840804	1/1/2021	1/1/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The above checked ADDL INSR and SUBR WVD boxes refer to the following specific endorsements listed below and copies attached:

General Liability CNA74705XX- 01-15 Contractors General Liability Extension Endorsement: Additional Insured with written contract or agreement, Additional Insured-Primary and Non-Contributory to Additional Insured's Insurance, General Aggregate Limits of Insurance-Per Project, Waiver of Subrogation with written contract, Additional Insured-Lessor of Equipment, Land, Premises CNA75079XX- 10-16 Blanket Additional Insured-Automatic Status if Required by Written Contract Completed operations which includes Primary and Noncontributory CNA74702XX 1-15 Notice of Cancellation or Material Restriction Endorsement

Auto Liability CNA63359XX 04-2012 Contractors Extended Coverage Endorsement: includes automatic Additional Insured, Primary and Noncontributory and waiver of subrogation when required by in a written contract CNA68021XX 02-2013 Notice of Cancellation to Certificate Holders See Attached...

CERTIFICATE HOLDER

CANCELLATION

City of Forney
P.O. Box 826; 402 N. Bois d'Arc St.
Forney TX 75126

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Anderson Asphalt & Concrete Paving LLC	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► P Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ►	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5 Address (number, street, and apt. or suite no.) See instructions. 11343 Mathis Ave	Requester's name and address (optional) City of Duncanville PO Box 380280 Duncanville, Texas 75138-0280
6 City, state, and ZIP code Dallas, Texas 75229	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
OR									
Employer identification number									
2	6			-	3	4	9	4	7
									2
									4

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person

Camela Thompson

Date ► 05/06/2021

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

SECTION VI:

GENERAL CONDITIONS OF THE CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Copyright© 2018

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology	6
Article 2—Preliminary Matters	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	7
2.04 Preconstruction Conference; Designation of Authorized Representatives	8
2.05 Acceptance of Schedules	8
2.06 Electronic Transmittals	8
Article 3—Contract Documents: Intent, Requirements, Reuse.....	9
3.01 Intent.....	9
3.02 Reference Standards.....	9
3.03 Reporting and Resolving Discrepancies	10
3.04 Requirements of the Contract Documents.....	10
3.05 Reuse of Documents	11
Article 4—Commencement and Progress of the Work	11
4.01 Commencement of Contract Times; Notice to Proceed.....	11
4.02 Starting the Work.....	11
4.03 Reference Points	11
4.04 Progress Schedule	12
4.05 Delays in Contractor’s Progress	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	13
5.01 Availability of Lands	13
5.02 Use of Site and Other Areas.....	14
5.03 Subsurface and Physical Conditions.....	15
5.04 Differing Subsurface or Physical Conditions	16

5.05	Underground Facilities	17
5.06	Hazardous Environmental Conditions at Site	19
Article 6—Bonds and Insurance.....		21
6.01	Performance, Payment, and Other Bonds	21
6.02	Insurance—General Provisions	22
6.03	Contractor’s Insurance.....	24
6.04	Builder’s Risk and Other Property Insurance	25
6.05	Property Losses; Subrogation	25
6.06	Receipt and Application of Property Insurance Proceeds	27
Article 7—Contractor’s Responsibilities		27
7.01	Contractor’s Means and Methods of Construction	27
7.02	Supervision and Superintendence	27
7.03	Labor; Working Hours	27
7.04	Services, Materials, and Equipment	28
7.05	“Or Equals”	28
7.06	Substitutes	29
7.07	Concerning Subcontractors and Suppliers.....	31
7.08	Patent Fees and Royalties.....	32
7.09	Permits	33
7.10	Taxes	33
7.11	Laws and Regulations.....	33
7.12	Record Documents.....	33
7.13	Safety and Protection	34
7.14	Hazard Communication Programs	35
7.15	Emergencies	35
7.16	Submittals	35
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	39
Article 8—Other Work at the Site.....		40
8.01	Other Work	40
8.02	Coordination	41
8.03	Legal Relationships.....	41

Article 9—Owner’s Responsibilities	42
9.01 Communications to Contractor	42
9.02 Replacement of Engineer	42
9.03 Furnish Data	42
9.04 Pay When Due.....	42
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance.....	43
9.07 Change Orders	43
9.08 Inspections, Tests, and Approvals.....	43
9.09 Limitations on Owner’s Responsibilities	43
9.10 Undisclosed Hazardous Environmental Condition.....	43
9.11 Evidence of Financial Arrangements.....	43
9.12 Safety Programs	43
Article 10—Engineer’s Status During Construction	44
10.01 Owner’s Representative.....	44
10.02 Visits to Site.....	44
10.03 Resident Project Representative.....	44
10.04 Engineer’s Authority	44
10.05 Determinations for Unit Price Work	45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.07 Limitations on Engineer’s Authority and Responsibilities	45
10.08 Compliance with Safety Program.....	45
Article 11—Changes to the Contract	46
11.01 Amending and Supplementing the Contract	46
11.02 Change Orders	46
11.03 Work Change Directives.....	46
11.04 Field Orders.....	47
11.05 Owner-Authorized Changes in the Work	47
11.06 Unauthorized Changes in the Work.....	47
11.07 Change of Contract Price	47
11.08 Change of Contract Times.....	49
11.09 Change Proposals.....	49
11.10 Notification to Surety.....	50

Article 12—Claims.....	50
12.01 Claims.....	50
Article 13—Cost of the Work; Allowances; Unit Price Work	51
13.01 Cost of the Work	51
13.02 Allowances	55
13.03 Unit Price Work.....	55
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	56
14.01 Access to Work.....	56
14.02 Tests, Inspections, and Approvals.....	56
14.03 Defective Work	57
14.04 Acceptance of Defective Work.....	58
14.05 Uncovering Work	58
14.06 Owner May Stop the Work	58
14.07 Owner May Correct Defective Work.....	59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period	59
15.01 Progress Payments.....	59
15.02 Contractor’s Warranty of Title	62
15.03 Substantial Completion.....	62
15.04 Partial Use or Occupancy	63
15.05 Final Inspection	64
15.06 Final Payment.....	64
15.07 Waiver of Claims	65
15.08 Correction Period	66
Article 16—Suspension of Work and Termination	67
16.01 Owner May Suspend Work	67
16.02 Owner May Terminate for Cause.....	67
16.03 Owner May Terminate for Convenience.....	68
16.04 Contractor May Stop Work or Terminate	68
Article 17—Final Resolution of Disputes	69
17.01 Methods and Procedures.....	69
Article 18—Miscellaneous	69
18.01 Giving Notice	69
18.02 Computation of Times.....	69

18.03	Cumulative Remedies	70
18.04	Limitation of Damages	70
18.05	No Waiver	70
18.06	Survival of Obligations	70
18.07	Controlling Law	70
18.08	Assignment of Contract.....	70
18.09	Successors and Assigns	70
18.10	Headings.....	70

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, 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, risks, 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 Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, 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 fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

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

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then 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 will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

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

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. 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.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION VII:

SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT

Definitions – Add the following paragraphs:

SC-1.01

52. *Written Notice* - Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
53. *Extra Work* - The term "Extra Work" as used in this contract shall be understood to mean and include all work that may be required by the Engineer or Owner to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under Section 3.04, herein.
54. *Working Day* - A "Working Day" is defined as any day not including Saturdays, Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.
55. *Calendar Day* - "Calendar Day" is any day of the week or month, no days being excepted.
56. *Substantially Complete* - By the term "substantially completed" is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

SC-3.03,B *Reporting and Resolving Discrepancies – Add the following paragraph:*

2. As provided in Article 3.03,A of the General Conditions, the Contractor is responsible for reporting discrepancies in the Contract Documents to the Engineer for interpretation and instructions. However, should the Contractor fail to report the discrepancy to the Engineer, the Contract Documents shall be interpreted in the following order with the first-listed elements having priority over subsequently listed elements:
 - a. Signed Agreement
 - b. Performance and Payment Bonds
 - c. Special Bonds (if any),
 - d. Proposal
 - e. Supplementary Conditions of the Construction Contract
 - f. Request for Proposals (Advertisement)
 - g. Technical Specifications
 - h. General Conditions of the Construction Contract
 - i. Plans

In the event differing degrees of performance are required by any of Contract Documents, the more stringent requirement, as determined by the Engineer, will be enforced. In cases of dimensional discrepancies, annotated and calculated dimensions shall govern over scaled dimensions.

SC-5.06 Property Insurance – Add the following paragraph:

- F. All losses or damage arising out of the nature of the work, or from the action of the elements, or from groundwater, or from any unusual obstruction or difficulty, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

SC-6.02 Labor, Working Hours – Add the following paragraph:

- C. The Contractor shall employ only competent, efficient workers and shall not use any unfit person on the work or one not skilled in the work assigned to him; and shall at all times maintain good order among his employees.

Whenever the Owner shall inform the Contractor in writing that, in his opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the Owner may orally require immediate removal of an employee for cause, to be followed by written confirmation.

SC-6.03 Services, Materials, and Equipment – Add the following paragraphs:

- D. Unless otherwise expressly provided in the contract drawings or specification, the work shall be performed according to the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The Owner shall judge and determine the Contractor's compliance with these requirements. All materials used in the construction of this project shall be new.
- E. All materials salvaged from the Owner's property shall remain the property of the Owner. The Contractor shall take reasonable care not to damage materials which are to be removed as a part of this construction. Should the Owner decline to accept the salvaged materials, the Contractor shall dispose of the materials as described herein for construction debris.

SC-6.09 Laws and Regulations – Add the following paragraphs:

- D. The contractor shall fully comply with all local, state and federal codes and ordinances applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.
- E. Codes and ordinances having jurisdiction and specified codes shall serve as minimum requirements, but, if the contract documents indicate requirements which are in excess of those minimum requirements, then the requirements of the contract documents shall be followed. Should there be any conflicts between the contract documents and codes, or any ordinances, report these with the bid.

SC-6.10 Taxes – Add the following paragraph:

- B. This contract is issued by an organization that qualifies for exemption pursuant to the provisions of Section 151.309 of VTCA Tax Code. According to amended Section 151.311 of the VTCA Tax Code, the Contractor performing this separated contract is considered a seller of the materials that will remain as an improvement to the realty on this project. To be exempt from sales tax on these materials, the Contractor must issue a resale certificate to its supplier(s) and obtain an exemption certificate from the Owner.

SC- 6.19 Contractor's General Warranty and Guarantee – Add the following paragraph:

- D. All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner without the necessity of separate transfer or assignment thereof; provided, that if directed by the Engineer, the Contractor shall assign such warranties and guarantees in writing to the Owner.

SC-8 Owner's Responsibilities – Add the following section:

8.13 Collateral Contracts

The Owner agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such a manner as not to delay the progress of the work, or damage said Contractor, except where such delays are specifically mentioned elsewhere in the Contract Documents.

SC-9.04 Authorized Variations in Work – Add the following paragraph:

- C. No verbal conversation, understanding or agreement with any officer or employee or agent of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms, conditions or obligations contained in the contract documents.

SC-10 Changes in the Work; Claims– Add the following section:

10.06 Extra Work

It is agreed that the basis to compensation to the Contractor for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method "A" - by agreed unit prices; or

Method "B" - by agreed lump sum; or

Method "C" - If neither Method "A" nor Method "B" is agreed upon before the Extra Work is commenced or afterward, at the Owner's choosing, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method "C", then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the Contractor of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Owner, or by them agreed to. The ENGINEER may direct the from in which accounts of the "actual field cost" shall be kept

and the records of these accounts shall be made available to the Engineer. The Engineer or Owner may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 per cent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) per cent of the "actual field cost" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by the Engineer. In case any orders or instructions, either oral or written, appear to the Contractor to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the Engineer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the Engineer insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method "C".

SC-13.07 *Correction Period*

In this section, change the words "Substantial Completion" to read "Certificate of Completion and Acceptance".

SC-14.02 *Progress Payments*

Change paragraph A.3 to read:

3. When progress payments are made, the Owner shall then pay the Contractor the total amount for Work completed in the approved Application for Payment, less 5 percent of the amount thereof, which 10 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the Owner under the terms of this Agreement.

Change paragraph C.1 to read:

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

SC-14.06 *Final Inspection* – Add the following paragraph:

- B. If the work is found to be completed in accordance with the Contract Documents, the Engineer, when requested to do so by the Contractor, shall issue to the Owner and the Contractor the Certificate of Completion and Acceptance or to advise the Contractor in writing of the reason for non-acceptance. All project warranties and guarantees shall begin not before the date the Certificate of Completion and Acceptance is issued by the Engineer.

SC-14.07 Final Payment – Add the following paragraphs:

D. Payments Withheld

The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

1. Defective work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Failure of the Contractor to make payments properly to sub-contractors or for material or labor.
4. Damage to another contractor.
5. Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
6. Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

E. Delayed Payments

Should the Owner fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, then the Owner shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) per cent per annum, unless otherwise specified, from date due as provided under "Progress Payments" and "Final Payment," until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment, but the right is expressly reserved to the Contractor in the event payments be not promptly made, as provided under "Progress Payments," to at any time thereafter treat the contract as abandoned by the Owner and recover compensation, as provided under "Abandonment by Contractor" or "Abandonment by Owner," unless such payments are withheld in accordance with the provisions of "Payment Withheld."

F. Payment for Labor and Materials; No Liens

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

SC-14 *Payments to Contractor and Completion – Add Sections 14.10 and 14.11 as follows:*

14.10 Delays; Extension of Time; Liquidated Damages

The Contractor shall be entitled to an extension of working time under this contract only when claim for such extension is submitted to the Owner in writing by the Contractor within seven days from and after the time when any alleged cause of delay shall occur; and then only when such time is approved by the Owner. In adjusting the contract working time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to inability to obtain supplies and materials, acts of God, or the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions or delays of subcontractors due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the contract should require work and materials in greater amounts or quantities than those set forth in the contract, requiring more time for completion than the anticipated time, then the contract working time shall be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the Contractor.

No adjustment to working time shall be made if, concurrently with the equitable cause for delay, there existed a cause for delay due to the fault or negligence of the Contractor, his agents, employees or subcontractors; and no adjustment shall be made to the contract price and the Contractor shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in adjustment to the working time hereunder, including delays caused by the acts or negligence of the Owner. Notwithstanding any other provision of the contract documents, all claims for extension of working time must be submitted in accordance with paragraph 12.03, and no act of the Owner shall be deemed a waiver or entitlement of such extension.

14.11 Liquidated damages for failure to complete on time:

The amount of liquidated damages for this project is \$ 500.00 per calendar day.

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the Contractor shall be in default after the time stipulated in the contract by and between Owner and Contractor because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amounts are agreed to be the amounts of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Contractor under this contract; and if said monies are insufficient to cover the amount owing, then the Contractor or his surety shall pay any additional amounts due.

Where there are multiple items of work that each have a separate time of completion, liquidated damages shall be applied to each time of completion. Liquidated damages shall be applied for each day from the specified time of completion until the requirements for that item of work have been met.

SC-15 *Suspension of Work and Termination – Add the following sections:*

15.05 Termination of Contract in Case of National Emergency

Whenever, because of a national emergency, so declared by the President of the United States or other lawful authority, it becomes impossible for the Contractor to obtain all the

necessary labor, material and equipment for the prosecution of the work with reasonable continuity for a period of two months, the Contractor shall within seven (7) days notify the Owner in writing, giving a detailed statement of the efforts which have been made and listing all necessary items of labor, material and equipment not obtainable. If, after investigation, the Owner finds that such conditions exist and that the inability of the Contractor to proceed is not attributable in whole or in part to the fault or neglect of the Contractor, then if the Owner cannot after reasonable effort assist the Contractor in procuring and making available the necessary labor, materials and equipment within thirty (30) days, the Contractor may request the Owner to terminate the contract and the Owner shall within thirty (30) days comply with the request, and the termination shall be based on a final settlement, which shall include, but not be limited to, the payment for all work executed and any loss sustained upon any plant or materials and reasonable profit thereon, but not anticipated profits on work which has not been performed.

15.06 Abandonment by Contractor

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or the Engineer, or if the Contractor fails to comply with the orders of the Engineer, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the Owner or the Surety on the performance bond, or another contractor in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Articles 10 and 12, it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after receipt of such notice, then the Owner may provide for completion of the work in either of the following elective manners:

B. The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or his Surety shall pay the amount of such excess to the Owner; or

C. The Owner under sealed bids, after give (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract

prove to be less than what would have been the cost to complete under this contract, the Contractor and/or his Surety shall be credited therewith. When the work shall have been substantially completed the Contractor and his Surety shall be so notified and the Certificates of Completion and Acceptance shall be issued. A complete itemized statement of the contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and his Surety, whereupon the Contractor and/or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificates of Completion and Acceptance.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this contract; or when the Contractor and/or his Surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety at the respective addresses designated in this contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the Contractor or his Surety, to their proper owners. The books on all operations provided herein shall be open to the Contractor and his Surety.

15.07 Abandonment by Owner

In case the Owner shall fail to comply with the terms of this contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the Contractor and have not been wrought into the work. And thereupon the Engineer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Agreement and shall certify same to the OWNER who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor the balance shown by said final statement as due the Contractor, under the terms of this Agreement.

SC-17 *Miscellaneous – Add the following sections:*

17.7 Assignments

The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the Owner.

17.8 Unlawful Provisions Deemed Stricken

If this contract contains any unlawful provisions not an essential part of the contract and which shall not appear to have been a controlling or material inducement to the making thereof, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful part shall be considered stricken from the contract without affecting the remainder of the contract.

17.9 Service of Notices

The Owner and the Contractor shall each designate addresses where all notices, directions or other communication may be delivered, or to which they may be mailed.

Notices to the surety or sureties on contract bonds shall be directed or delivered to the home office, or to the agent or agents who executed the bonds on behalf of the surety or sureties, or to their designated agent for delivery of notices.

Actual delivery of any such notice, direction or communication to the aforesaid places, or depositing it in a postpaid wrapper addressed thereto in any post office regularly maintained by the United States Postal Service shall be conclusively deemed to be sufficient service thereof upon the above persons as of the date of such delivery or deposit.

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally, or, if the Contractor be a corporation, upon any officer or director thereof.

17.10 All Legal Provisions Included

It is the intent and agreement of the parties of this contract that all legal provisions of law required to be inserted herein, shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

17.11 No Waiver of Legal Rights

Inspection by the Engineer, any order, measurement, quantity or certificate by the Engineer, any order by the Owner for payment of money, any payment for or acceptance of any work, any extension of time or possession taken by the Owner, shall not operate as a waiver of any provisions of the contract or any power therein reserved to the Owner of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The Owner reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the Contractor or his agents

and the Engineer or his assistants, discovered in the work after the final payment has been made.

Neither final acceptance of the work, nor final payment, shall relieve the Contractor of the responsibility for faulty materials or workmanship, and the Contractor shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the Owner shall constitute acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

17.12 Obligation to Perform Functions

Any failure or neglect on the part of Owner, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve Contractor from full compliance with the contract documents nor render Owner liable to Contractor for money damages, extensions of time or increased compensation of any kind.

SECTION VIII
GENERAL REQUIREMENTS

SUMMARY OF WORK

PART 1: GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of asphalt streets, parking lots, driveways, driveway aprons, flumes, sidewalks, curbs, and gutters. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as – needed basis to perform general asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

1.02 CONTRACTS

A. Contract Documents

1. The Contract Documents under which this project is to be constructed include the following:
 - a. Request for Proposals
 - b. Instructions to Bidders.
 - c. Proposal.
 - d. Contract including the General Conditions and Supplementary Conditions of the Construction Contract.
 - e. Bond Forms
 - f. Specifications – Technical Specifications Divisions 1 through Division 2, the North Central Texas Council of Governments Standard Specifications for Public Works Construction – 4th Edition and the City of Forney Addendum thereto, and the Texas Department of Transportation “Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges”, dated June 1, 2004.
2. Contract Drawings and Specifications if applicable

The Owner shall furnish the Contractor, without charge, four (4) copies of the contract and any supplemental drawings and specifications. At least one copy of all drawings and specifications shall be accessible at all times to the Owner at the job site.

3. Supplemental Drawings and Specifications

In order to carry out the intent of the contract documents and to assist the Contractor in performing his work, the Owner, after the execution of the contract, may, by supplemental

drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the contract documents and reasonably inferable therefrom. Therefore, no extra costs shall be allowed by the Owner on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the contract documents, incurring extra costs, unless the Contractor has first brought the matter, in writing, to the Owner's attention for adjustment before proceeding with the work covered by such.

If the Owner shall decide that there is no departure from the requirements of the contract documents, the Contractor shall then proceed with the work as shown, specified or directed. If the Owner shall decide that extra work is involved, he shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued.

4. Errors and Corrections in Drawings and Specifications

The Contractor shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications; and the Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the contract documents. In case of any errors, omissions or discrepancies in the drawings or specifications, the Contractor shall promptly submit the matter to the Owner who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the Contractor without this determination and instructions shall be at the Contractor's own risk and expense. The work is to be made complete as intended by the contract documents.

B. Alteration of Plans and Specifications

The Owner reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract and bonds. Such changes shall be issued by the Engineer.

1.03 CONTRACTOR USE OF PREMISES

A. Land for Construction Purposes

1. The Contractor shall confine his operations within the Owner's easements and property. The Owner reserves the right to limit the Contractor's access to certain portions of his property to limit interference with the Owner's operations. The Owner will designate areas that may be used by the Contractor for storage of materials and equipment, employee parking and for other construction uses.
2. Contractor shall be solely responsible for obtaining and shall pay all costs in connection with any additional work area, or storage site access to the site. The Contractor shall submit to the Owner, written agreements with private property owners for the use of their land for construction purposes.
3. It shall be understood that the responsibility for protection and safekeeping of equipment and materials on or near the site will be entirely that of the Contractor and that no claim shall be made against the Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by these stored materials and equipment, the Contractor owning or responsible for the

stored material, or equipment, shall immediately move same. No materials or equipment may be placed upon the property until Owner has agreed to the location contemplated by the Contractor to be used for storage.

B. Damage to Existing Property

1. The Contractor will be held responsible for any damage to existing structures, work, plantings, materials, equipment or other improvements because of his operations and shall repair or replace any damaged structures, work, plantings, materials, equipment or other improvements to the satisfaction of, and at no additional cost to the Owner.
2. The Contractor shall protect all existing structures, work, plantings, materials, equipment or other improvements and property from damage and shall provide bracing, shoring or other work necessary for such protection at no additional cost to the Owners.
3. The Contractor shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges or other public or private property that may be caused by transporting equipment, materials or men to or from work. Contractor shall make satisfactory and acceptable arrangements with the agency having jurisdiction over the damaged property concerning its repair or replacement.

C. Protection of Persons and Property

The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any are adjacent to said work site. No separate compensation shall be paid to the Contractor for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property.

The Contractor shall assume all duties owed by the Owner to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the Contractor shall at his own cost and expense provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, lights, signs and other precautionary measures for the protection of persons or property as may be prudent or necessary, or as are required by law. The Contractor's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs and lights and other precautionary measures shall not cease until the project shall have been completed and accepted by the Owner, and shall cease when the certificate of acceptance is issued by the Owner.

If the Owner discovers that the Contractor has failed to comply with the applicable federal and state law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the Owner may order the Contractor to take such additional precautionary measures as required by law to be taken to protect persons and property.

In addition, the Contractor shall be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such

damage, the Owner may order the damaged portion immediately removed and replaced by and at the cost and expense of the Contractor.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas State Department of Transportation.

D. Protection of Work

During performance and up to date of final acceptance, the Contractor shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the Contractor shall promptly replace or repair such work, whichever the Owner shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the Owner's approval of or failure to prohibit means and methods of construction used by the Contractor. All risk of loss or damage to the work shall be borne solely by the Contractor until final completion and acceptance of all work by the Owner, as evidenced by the Owner's issuance of a certificate of acceptance.

**PAYMENT
PROCEDURES**

PART 1:GENERAL

1.1 MEASUREMENT

A. General

1. This is a unit price project. The unit bid price(s) shall cover all work described in the proposal. All other work shown on the contract drawings, or required by the specifications or other contract documents shall be subsidiary to the bid items described in the proposal. All costs in connection with the work, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction plant equipment, and tools; and performing all labor and supervision necessary to complete the work shall be included in the bid price(s) named in the proposal.
2. No item required by the Contract Documents for the proper and successful completion of the work will be paid for outside of or in addition to the price submitted in the proposal. Work done solely for the convenience of the Contractor shall not be measured and paid for unless such work has been authorized in writing by the Owner or his representative. Work done of a temporary nature will not be measured or paid for.

1.2 PAYMENT

Payment for all work performed under the proposed Contract will be made by the Owner in the manner set forth in the General Contract Conditions for Construction and the Supplementary Conditions of the Construction Contract.

PROJECT MANAGEMENT AND COORDINATION

PART 1: GENERAL

1.01 INDEPENDENT CONTRACTOR

The relation of the Contractor to the Owner shall be that of an independent Contractor.

1.02 RELATIONS WITH OTHER CONTRACTORS

A. Working Area, Coordination with other Contractors, Final Cleanup

The Contractor shall confine his equipment, storage of materials and construction operations to the area shown on the contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the Owner, and shall not unreasonably encumber the site or public right-of-way with his construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the Contractor. Other Contractors of the Owner may enter upon and use such portions of the area and for such times as determined by the Owner are necessary for all purposes required by their contracts. The Contractor shall give to such other Contractors all reasonable facilities and assistance to the end that the work on this and the other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the Contractor for his use shall be provided by him at his own cost and expense.

Upon completion of the work and before final acceptance and final payment shall be made, the Contractor shall completely clean and remove from the site of the work surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at Contractor's sole cost.

B. Other Contractors, Obligation to Cooperate

The Owner may award other contracts for additional work on this project, and the Contractor shall fully cooperate with such other contractors and shall coordinate and fit his work to be done hereunder to such additional work as may be contracted by the Owner. At the time of bidding, prospective bidders shall be advised of other planned contract work that is expected to affect the work area. The Contractor shall not commit or permit any acts that shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the Contractor that another contractor is failing to coordinate his work with the work under this contract as directed by the Owner, the Owner will investigate the charge and take such necessary action as the situation may require. However, the Owner shall not be liable to the Contractor for damages suffered by the Contractor due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the Owner. Should any interference occur between contractors, the Engineer may furnish the Contractor with written instructions designating priority of effort or change in methods; whereupon the Contractor shall immediately comply with such direction. In such event, Contractor shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the contract price shall be due the Contractor.

1.03 PROJECT COORDINATION

No attempt has been made in the contract documents to segregate work to be performed by any trade or subcontract. Any segregation between trades and crafts will be solely a matter for agreement between the Contractor and his subcontractors. The Contractor will be responsible for the coordination of all trades and work under the various divisions and sections of the specifications. All transactions of the Engineer will be with the Contractor. Subcontractors will be considered only in the capacity of employees or workers, and shall be subject to the same requirements as to character and competency as the Contractor.

1.04 METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the contract drawings, specifications or bulletins, the means and methods of construction shall be such as the Contractor may choose; subject, however, to the Owner's right to prohibit means and methods proposed by the Contractor that in the Owner's judgment:

- A. shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
- B. shall cause unnecessary or unreasonable inconvenience to the public; or
- C. shall not produce finished work in accordance with the requirements of the contract documents; or
- D. shall not assure the work to be completed within the time allowed by the contract.

The Owner's approval of the Contractor's means or methods of construction, or the Owner's failure to exercise his right to prohibit such means or methods, shall not relieve the Contractor of his responsibility for the work or of his obligation to accomplish the result intended by the contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the Contractor against the Owner. Where the contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, the Contractor shall submit his proposed plan of procedure to the Owner sufficiently in advance to permit a reasonable time for determining the adequacy and safety of the proposed plan. Failure to submit the proposed plan within a reasonable time shall not create a cause of action for damages for resulting delay in the work or be a cause for extension of working time for completion of the work.

1.05 TRAFFIC CONTROL

- A. The Contractor shall provide, to the Owner, a Traffic Control Plan for each street at least five (5) days before beginning work on the project. The Traffic Control Plan shall include, but is not limited to, estimated volume of traffic, traffic patterns during each construction phase and locations of any required temporary roadways. The Contractor shall not begin work on any street until receiving, in writing, an approved Traffic Control Plan.

PROJECT MEETINGS

1.01 PRECONSTRUCTION CONFERENCE

Before any construction begins on the project a preconstruction conference may be held at the direction of the Engineer. The date, time and location of meeting will be selected by the Engineer or CIP Manager. The Contractor or his Contract Coordinator, the Contractor's superintendent and any key foreman shall be present at this conference. The Engineer, his field representative and the Owner or his representatives may also be present. At this conference, the Contractor shall present the following submittals as required in Section 01 33 00– Submittal Procedures:

- A. Construction Schedule
- B. Schedule of Monthly Payments
- C. Schedule of Values

1.02 PROGRESS MEETINGS

At the direction of the City, the Contractor and his superintendent shall attend job progress meetings to discuss critical aspects in the prosecution of the work. The Owner or his representatives may also attend these meetings. The meetings will be held at a place and time selected by the Engineer.

CODES

PART 1: GENERAL

1.01 REFERENCE SPECIFICATIONS

Whenever reference is made to the furnishing of materials or testing thereof to conform to the Standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification or tentative specification adopted and published at the time of advertisement for bids, even though reference has been made to an earlier standard. Such standards are made a part hereof to the extent that is indicated or intended.

The following are names and abbreviations of such groups:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ALSC	American Lumber Standards Committee
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASA	American Standards Association
ASTM	American Society for Testing Materials
AWSC	American Welding Society Code
AWWA	American Water Works Association
Fed. Spec.	Federal Specification
Navy Spec.	Navy Department Specification
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NCTCOG	North Central Texas Council of Governments Standard Specifications for Public Works Construction
U.L. Inc.	Underwriter's Laboratories, Incorporated

Where no reference is made to a code, standard, or specification, the Standard Specifications of the agencies listed above, as appropriate, shall govern.

1.02 COORDINATION OF SPECIFICATIONS AND CODES

If the Specifications and Drawings show requirements that are in excess of codes and ordinances, then the Specifications and Drawings shall be followed. Should there be any conflicts between the Specifications and Drawings and the codes and ordinances having jurisdiction, the Contractor shall report these in his bid.

**ABBREVIATIONS AND
ACRONYMS**

PART 1: GENERAL

1.01 ABBREVIATIONS AND SYMBOLS

The following abbreviations and symbols are used in the Specifications and Drawings. The Contractor shall notify the Engineer if the meaning of any abbreviation or symbol is unclear.

Asph.	Asphalt
Assy.	Assembly
@	At
Ave.	Avenue
BL or $\perp$	Base Line
Bot or Btm.	Bottom
Cl	Clear
CL or $\oplus$	Center Line
CO	Clean Out
Cond.	Conduit
Corr.	Corrugated
Cu.	Cubic
CF	Cubic Feet
CY or C.Y.	Cubic Yard
Culv.	Culvert
Dia. or $\varnothing$	Diameter
Dr.	Driveway
Dwls	Dowels
°	Degree
EA.	Each
EF	Each Face
Elev. or EL.	Elevation

EW	Each way
F.	Fahrenheit
Ft. or '	Foot or Feet
Gal.	Gallon
Galv.	Galvanized
HDG	Hot-dip galvanized
Hor.	Horizontal
In. or "	Inches
ID	Inner Diameter
Lin.	Linear
L.F.	Linear Foot
Lb.	Pound
MH	Manhole
Max.	Maximum
'	Minutes
Min.	Minimum
Mono.	Monolithic
NCTCOG	North Central Texas Council of Governments
NCTCOG Specs	Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments
No. or #	Number
OC	On Center
OCEW	On Center Each Way
OD	Outer Diameter
/	Per
%	Per Cent
Ø	Phase or Diameter
PE	Plain End
PSI or psi	Pounds per square inch

PV or P.V.	Plug Valve
PVC	Polyvinylchloride
R.	Radius
RCP	Reinforced Concrete Pipe
Reinf.	Reinforced
Rem.	Remove
Rep.	Replace
R/W or ROW	Right-of-way
Sani.	Sanitary
"	Seconds
Sim.	Similar
Spa.	Spaces or Spacing
Sq.	Square
SF or S.F.	Square Feet
SY or S.Y.	Square Yard
Std.	Standard
St.	Street or Storm
Str.	Strength or Structure
SL or §	Survey Line
Sym.	Symmetrical
Typ.	Typical
T.C.E.Q.	Texas Commission on Environmental Quality
TxDOT	Texas Department of Transportation
Vert.	Vertical
Vol.	Volume
w/	With
WWF	Welded Wire Fabric
Yd.	Yard

DEFINITIONS

PART 1: GENERAL

1.01 DEFINITIONS

Supplementing the Definition of Terms contained in the General Provisions, words, phrases or other expressions used in these Contract Documents shall have the meanings as follows:

- A. "Contract Documents" shall be synonymous with the term "Contract."
- B. "Owner" shall be synonymous with the term "City" and shall mean the City of Forney.
- C. "Consulting Engineer" shall mean the City of Forney City Engineer, or its duly authorized agents acting within the scope of the particular duties entrusted them in each case.
- D. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner or a basis for Proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings submitted by the successful bidder with his Proposal, provided such drawings are acceptable to the Owner, (d) drawings furnished by the Owner to the Contractor during the progress of the work, and (e) engineering data and drawings submitted by the Contractor during the progress of the work, provided such drawings are acceptable to the Consulting Engineer.
- E. Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as allowed" or words or phrases of like importance are used, it shall be understood that the order, direction, requirement, permission or allowance of the Owner or Consulting Engineer is intended only to the extent of judging compliance with the terms of the contract. None of these terms shall imply the Owner or the Consulting Engineer has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision and the sole responsibility therefor are strictly reserved for the Contractor.
- F. Similarly the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import are used, it shall be understood that such work, materials and methods shall be approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner or Consulting Engineer to the extent provided in "E" above.
- G. Whenever in these Contract Documents the expression "it is understood and agreed," or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract.
- H. Whenever in these Contract Documents the words "Provide, "Furnish and Install," "Install" or words of like effect and import, unless otherwise particularly specified, shall mean that the Contractor is to both purchase all materials and provide all labor and equipment required to perform the work described. The Owner will not furnish any material, labor or equipment unless specifically provided for in the Contract Documents.
- I. Whenever in these Contract Documents, the word "Proposed" or words of like effect and import are used, it shall be understood that the work described as being "proposed" is to be constructed as a part of this contract.

- J. Whenever in these Contract Documents, the word "New" or words of like effect and import are used, it shall be understood that the work described as being "new" is to be constructed as a part of this contract.
- K. Whenever in these contract documents, the word "Future" or words of like effect and import are used, it shall be understood that the work described as being "future" is not to be constructed as a part of this contract but is contemplated in the future and is referenced in these documents only for the information of the Owner and Contractor.

QUALITY CONTROL

1.01 TESTING LABORATORY SERVICES

- A. Material testing shall be performed by an independent testing laboratory that is paid for by the City. Any retests and additional testing required by the city inspector will be paid for by the Contractor. The city will choose testing locations. The testing laboratory shall be acceptable to the city.
- B. Testing Laboratory Services to be Paid for by Contractor
 - 1. All material tests including retests and additional testing required by the city inspector.
- C. The Owner reserves the right to initiate any other tests of materials and workmanship.
- D. When the Engineer or the Owner's representative does initiate any test which reveals a condition that does not meet the requirements of the specifications, then the Contractor shall reimburse the Owner for the cost of such failing tests, as well as for subsequent tests made at the direction of the Engineer until it is found that the deficiency so revealed has been corrected. Nothing in this paragraph shall be construed to relieve the Contractor of the cost of testing any material in which technical specifications require the Contractor to pay such costs.

1.02 ENGINEERING OBSERVATION SERVICES

- A. The Owner may appoint (either directly or through the Engineer) such observers as the Owner deems proper to review the material furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the Engineer, or observers, for the proper observation of the work. Should the Contractor object to any interpretation of the contract by an observer, the Contractor may make written appeal to the Engineer for a decision.
- B. Observers shall have the authority to reject work that is unsatisfactory, faulty, or defective or does not conform to the requirements of the drawings and specifications. Observation shall not relieve the Contractor from any obligation to construct the work strictly in accordance with the drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at his own expense.

1.03 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

- A. All work that has been rejected or condemned shall be repaired or if it cannot be repaired satisfactorily, it shall be removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given (save as herein provided), work done without proper inspection, or any extra or unclassified work done without written authority and prior agreement in writing as to prices, may be ordered removed at the Contractor's expense. Upon failure to repair satisfactorily or to remove and replace (if so directed) rejected, unauthorized or condemned work or materials immediately after receiving notice from the Engineer, the Engineer will (after giving written notice to the Contractor) have the authority to cause defective work to be remedied, removed, replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due (or to become due) to the Contractor.
- B. In the event defective work or unauthorized work cannot be satisfactorily removed from the work as determined by the Owner and the Engineer, the Owner may deduct from any monies due (or to become due) the Contractor such amount as would be required, as determined by the Engi-

neer, to remove and replace such defective work or unauthorized work even though such work may remain in place.

- C. Neither the observation by the Owner or Consulting Engineer or any of their officials, employees, or agents nor any order by the Owner or Consulting Engineer for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Owner or Consulting Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of provision of this Contract, or of any power herein reserved to the Owner, or any right to damages herein provided, nor shall waiver of any breach in this Contract be held to be a waiver of any other subsequent breach.

1.04 UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely thereby. No portions of the work shall be constructed under conditions that would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

TEMPORARY FACILITIES AND CONTROLS

1.01 TEMPORARY CONSTRUCTION ELECTRICITY

All power for lighting, operation of the Contractor's plant or equipment, or for any other use by the Contractor shall be provided by the Contractor, at his sole cost and expense.

1.02 TEMPORARY WATER

All water required for and in connection with the work to be performed and for any specified tests of piping, equipment, devices, etc., for compacting backfill material or for any other use as may be required for proper completion of the work, shall be provided by the Contractor at his expense. No separate payment for water used or required will be made and all costs in connection therewith shall be included in the proposal.

1.03 TEMPORARY SANITARY FACILITIES

Enforce strict observance of sanitary and health regulations by employees on the plant site. Furnish an adequate number of chemical toilets. The chemical toilets and their maintenance shall meet requirements of the Texas Commission on Environmental Quality. Immediately correct facilities or maintenance methods failing to meet these requirements.

1.04 PROTECTION AND RESTORATION OF PROPERTY

The Contractor shall be responsible for all damage or injury to property of any character by any act by the Contractor, or agents, or any time due to defective works or materials or due to his failure reasonably or properly to prosecute the work, and said responsibility shall not be released until the work shall have been completed or accepted. When and where any such damage or injury is done to public or private property by the Contractor, he shall restore or have restored at his own cost and expense such property to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in a manner acceptable to the Owner or the Engineer. In case of failure by the Contractor to restore such property or make good such damage or injury, the Engineer may, upon forty-eight hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any monies due the Contractor under his contract.

1.05 FENCES AND FENCE GAPS

- A. The Contractor shall construct and maintain all fence gaps required for the construction of these projects at his own expense as required by the Engineer. All fence gaps required shall be so constructed that they will be equal to the fence in which they are built. When requested by property owners, the Contractor shall maintain locks on all fence gaps.
- B. Before constructing a fence gap, the Contractor shall brace the fence on both sides of the cut to prevent sagging.
- C. Fences which must be removed completely during construction shall be replaced immediately with an equal or better quality fence.

1.06 CONSTRUCTION ACCESS

The Contractor's access to the construction site shall be from existing City streets and highways.

1.07 LAND FOR CONSTRUCTION PURPOSES

The Contractor shall confine his construction operations to stay within the limits of the property owned by the Owner or easements obtained by the Owner. Authority to enter private property outside these limits shall be obtained in writing from the owner of the property and a copy filed with the Owner.

1.08 CONTROL OF TRASH AND DEBRIS

Clean the working areas each day, remove all trash and waste materials, and maintain the site in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is waste material or rubbish and the manner and place of disposal. On or before the completion of the work, carefully clean out all pits, pipes, chambers or conduits; remove all temporary structures and remove all rubbish from the area, leaving them in first-class condition.

1.09 CROSSINGS, BARRICADES, LIGHTS AND FLAGMEN

- A. The Contractor, at his own expense, must maintain such crossings as designated by the Engineer, to prevent serious interruption of traffic on streets and highways.
- B. Where the work is carried on in or adjacent to any street or highway, the contractor shall, at his own expense, furnish, erect and maintain such barricades, fences, lights and danger signals, shall provide such flagmen, and shall take such other precautionary measures for the work, as are necessary. All barricades shall be painted in a color that will be visible at night and shall be illuminated by lights from sunset to sunrise. The term "lights," as used herein, shall mean flares, flashers or both. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish flagmen in sufficient numbers to protect the work.
- C. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by the Contractor at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs and lights, and for providing watchmen, shall not cease until the project shall have been accepted by the Owner.

PRODUCT REQUIREMENTS

PART 1: GENERAL

1.01 MATERIALS AND CONSTRUCTION METHODS

- A. The detailed Specifications herein are divided into several sections, covering various materials and methods of construction, and the applicable parts of each section shall apply to the Contract work.
- B. Rejected or condemned materials shall be immediately removed from the site of the work.
- C. All materials to be used in this project must be new, except for the encasement pipe for highway bores. Do not incorporate materials which have been used for temporary purposes into the permanent construction unless written consent of the Engineer has been obtained.

1.02 ACCEPTANCE AND SUBSTITUTIONS

- A. Where materials or equipment are specified by the trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to establish an equal basis for the evaluation of bids. Where the words "equivalent," "proper," or "equal to" are used, they shall be understood to mean that the article or process is equal, in the opinion or judgment of the Engineer, to the article or process specified by name. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved samples. Notwithstanding that the words "equal to" or other such expressions are not used in the Specifications, the material, manufactured article, or process specifically designated shall be used. A substitute shall be approved in writing by the Engineer, and the Engineer shall have the right to require the use of such specifically designated material, article or process.
- B. Substitutions after the award of Contract shall be made only within sixty (60) days after the notice to proceed. Furnish all required supporting data. The submittal of substitutions for review shall not be cause for time extensions.
- C. Where substitutions are offered, the substituted product shall meet the product performance as set forth in the specified manufacturer's current catalog literature, as well as meeting the details of the Contract Documents.
- D. The details on the drawings and the requirements of the Specifications are based on the first listed material or equipment. If any other than the first listed material or equipment is furnished, then assume responsibility for the correct function, operation, and accommodation of the substituted item. If there are misfits or changes in work required, either in this section or other sections of the Contract, or in both, bear all costs concerning all changes arising out of the use of other than the first listed item specified.

1.03 STORAGE OF MATERIALS

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground and shall be placed under cover when so directed. Stored materials shall be placed and located to facilitate prompt inspections.

1.04 STORAGE OF EQUIPMENT

- A. All equipment shall be boxed, crated, or otherwise completely enclosed and protected during shipment, handling, and storage. All equipment shall be protected from exposure to the elements and shall be kept thoroughly dry at all times.
- B. Equipment shall be stored according to the manufacturer's recommendations.
- C. Painted surfaces shall be protected against impact, abrasion, discoloration and other damage. All painted surfaces damaged before acceptance of equipment shall be repainted to the satisfaction of the Engineer.
- D. Electrical equipment, controls, and insulation shall be protected against moisture or water damage. All space heaters provided in the equipment shall be kept connected and operating at all times until equipment is placed in service.

**FIELD
ENGINEERING**

PART 1: GENERAL

1.01 LINE AND GRADES

1. Dimensions for lines and elevations for grades of structures, appurtenances, and utilities are indicated on Drawings, together with other pertinent information required for laying out work.
2. Basic horizontal and vertical control points will be established or designated by the Engineer. These points shall be used as datum for work under this contract. All additional survey, layout, and measurement work shall be performed by the Contractor as a part of the work under this contract. If conditions vary from those indicated, notify Engineer immediately, who will make minor adjustments required.
3. The Contractor shall provide an experienced instrument man, competent assistants, and such instruments, tools, stakes, and other materials as required to complete the survey, layout, and measurement work. In addition, the Contractor shall furnish, without charge, competent men from his force and such tools, stakes and other materials as the Engineer may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by the Contractor.
4. The Contractor shall keep the Engineer informed, a reasonable time in advance, of the times and places at which he wishes to do work, so that horizontal and vertical control points may be established and any checking deemed necessary by the Engineer may be done with minimum inconvenience to the Engineer and minimum delay to the Contractor.
5. Engineer may perform checks to verify accuracy of Contractor's layout work and that completed Work complies with Contract Documents.
6. Any existing survey points or other control markers destroyed without proper authorization will be replaced by owner of the survey points or control markers at the Contractor's expense.

1.02 CONTRACTOR'S RESPONSIBILITIES

- A. Provide additional survey and layout required.
- B. Locate and protect reference points prior to starting site preparation.
- C. Check and establish exact location of existing facilities prior to construction
- D. In event of discrepancy in data or staking provided by Engineer, request clarification before proceeding with work.
- E. Preserve and leave undisturbed control staking until Engineer has completed checks it deems necessary.
- F. Re-establish reference points resulting from destruction by Contractor's operations.
- G. Maintain accurate log of survey work as it progresses as a Record Document.
- H. On request of Engineer, submit documentation.

- I. Provide competent employee(s), tools, stakes, and other equipment and materials as Engineer may require to:
 - 1. Establish control points, lines, and easement boundaries.
 - 2. Check layout, survey, and measurement work performed by others.
 - 3. Measure quantities for payment purposes.
- J. Cooperate with Engineer so that checking and measuring may be accomplished with least interference to Contractor's operations.
- K. Any work done without being properly located may be ordered removed and replaced at the Contractor's expense.

1.03 PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, bench marks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or bench marks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or bench marks.

CLEANING AND WASTE MANAGEMENT

PART 1: GENERAL

1.01 DESCRIPTION

- A. Throughout the construction period, maintain the project in a standard of cleanliness as described in this Section.
- B. Beyond the standards described in this Section, comply with requirements for cleaning up as described in various other Sections of these Specifications.

1.02 QUALITY ASSURANCE

- A. Conduct daily inspection to verify that requirements of cleanliness are being met.
- B. In addition to the standards described in this Section, comply with pertinent requirements of governmental agencies having jurisdiction.

PART 2: PRODUCTS

2.01 CLEANING MATERIALS AND EQUIPMENT

Provide personnel, equipment and materials needed to maintain the specified standard of cleanliness.

2.02 COMPATIBILITY

Use only cleaning materials and equipment that are compatible with the surface being cleaned, as recommended by the manufacturer of the material or as approved by the Engineer.

PART 3: EXECUTION

3.01 PROGRESS CLEANING

A. General

1. Retain stored items in an orderly arrangement allowing maximum access, not impeding drainage or traffic and providing protection of materials.
2. Do not allow the accumulation of scrap, debris and waste material.
3. Provide adequate storage for items awaiting removal from the job site, observing requirements for fire protection and protection of the ecology.

B. Site

1. Daily inspect the site and pick up scrap, debris and waste material. Remove such items to the place designated for their storage.
2. Weekly inspect arrangements of materials stored on the site; restack, tidy or otherwise service all arrangements to meet the requirements of paragraph above.

3. Maintain the site in a neat and orderly condition to the approval of the Engineer.

C. Graffiti

Promptly remove all evidence of graffiti.

3.02 FINAL CLEANING

A. Before completion of the Work, remove from the job site all tools, surplus materials, equipment, scrap, debris and waste. Conduct final progress cleaning as described in Article above.

B. Unless otherwise specifically directed by the Engineer, hose down all paved areas on the site and all sidewalks. Completely remove all resultant debris.

C. Exterior - Structures

Visually inspect all exterior surfaces and remove all traces of soil, waste material, smudges and other foreign matter. Remove all traces of splashed material from adjacent surfaces. If necessary to achieve a uniform degree of exterior cleanliness, hose down the exterior of the structure. Where there are stubborn stains not removable with water, the Engineer may require light sandblasting, repainting, or other cleaning at no additional cost to the Owner.

D. Schedule final cleaning as approved by the Engineer to enable the Owner to accept a completely clean project.

CLOSEOUT PROCEDURES

1.01 CLEANING

Upon completion of the work, the Contractor shall remove from the site all plant materials, tools, and equipment belonging to him and leave the site with an appearance acceptable to the Engineer. The Contractor shall thoroughly clean and polish all equipment and materials installed by him and deliver over such materials and equipment in a bright, clean, polished and new-appearing condition.

1.02 FINAL OBSERVATION

When the work has been substantially completed, and at a time mutually agreeable to the Owner, Consulting Engineer, and Contractor, the Consulting Engineer will make a final observation of the work and report to the Owner his findings as to the acceptability and completeness of the work.

1.03 PROJECT RECORD DOCUMENTS

Before final payment on the project is made, the Contractor will be furnished with two sets of Plans to record project data. Project data shall include but not be limited to the following:

A. Changes in construction not covered by a change order or field order including:

1. Changes in dimensions.
2. Changes in material.
3. Any variation in construction details.
4. Any critical dimensions not shown on the original Plans to include:
 - a. Location of electrical conduits.
 - b. Location of miscellaneous piping and utilities, including all utilities uncovered or otherwise located during the construction of the project

B. Mark both sets of prints and submit to Engineer for approval.

1.04 OPERATIONS AND MAINTENANCE DATA

A. The Contractor shall furnish, before initial testing, four (4) copies of an indexed Maintenance Manual, composed of suppliers' brochures on all equipment and materials with moving parts, including performance curves, with size, model, figure number, etc., indicated to identify the unit furnished. Maintenance Manuals are to be of a hard back, loose-leaf type and of a durable quality. Manuals shall be indexed and tabbed.

B. Each set to include the following:

1. Manufacturers' parts list identified with the make, model and serial number of the equipment furnished.
2. Control and wiring diagrams.
3. Installation, operation, lubrication and maintenance instructions.
4. Manufacturers' recommended spare parts lists.

- C. Provide schematic system flow and control diagrams identifying the location and function of all system components, valves and controls.
- D. Two (2) copies are to be supplied to the Owner and two (2) copies to the Engineer before the inspection and testing of the equipment. Following the testing phase, the Engineer's approval of the submitted documents shall be requested by the Contractor. Final Payment on the project will not be made until an approved manual (4 copies) has been delivered.

1.05 FINAL PAYMENT

- A. Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of retainage.
- B. Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

1.06 GUARANTEE

A. Scope and Period of Guarantee

- 1. The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.
- 2. The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.
- 3. The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

B. Notification and Service under the Guarantee

- 1. Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.
- 2. If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments, or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety.
- 3. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party

chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

SECTION
AGGREGATE BASE COURSES

PART 1:GENERAL

1.1 DESCRIPTION

This section of the specifications includes the furnishing of all plant, labor, equipment, and materials, and the performance of all operations required to complete the flexible base. The flexible base shall be constructed in one or more courses in conformity with these specifications and the lines, grades, and sections shown on the drawings.

1.2 QUALITY ASSURANCE

A. Testing Agency

The Contractor shall employ the services of an independent testing laboratory, acceptable to the Owner, to test the degree of compaction of all completed flexible base and to test the thickness. The Owner or his representative will select the exact location of the tests. Furnish one test for each 500 square yards of roadway surface or fraction thereof.

The Owner will employ the services of an independent testing laboratory to test the degree of compaction of all completed flexible base and to test the thickness. The Owner will pay for the cost of each density test which meets the specified density. The Contractor will pay for the cost of each density test which does not meet the density requirement.

B. Reference Standards

Moisture - Density Relationships of Soils (ASTM D698)

1.3 SUBMITTALS

A. Submit the following data on flexible base furnished on this project:

1. Name and location of pit or quarry.
2. Name of supplier
3. Test data showing compliance with all provisions of this specification.

B. If requested, submit a 40 lb. representative sample of the base material to the Engineer for independent analysis.

1.4 PROTECTION

A. Work on the sub-base or base course(s) shall not be accomplished during freezing temperatures nor when the subgrade is wet. When the aggregates contain frozen materials or when the underlying course is frozen, the construction shall be stopped.

B. Hauling equipment may be routed over completed portions of the course, provided no damage results and provided that such equipment is routed over the full width of the course to avoid rutting or uneven compaction. However, the Engineer in charge shall have full and specific authority to stop all hauling over completed or partially completed base course when, in his opinion, such hauling is causing damage. Any damage resulting to the course from routing equipment over the course shall be repaired by the Contractor at his own expense.

PART 2:PRODUCTS

2.1 AGGREGATES

- A. The aggregate shall be crushed stone and the fine aggregate shall be screenings obtained from crushed stone.
- B. The crushed stone shall consist of hard, durable particles or fragments of stone, free from dirt or other objectionable matter, and shall contain not more than 8 percent of flat, elongated, soft or disintegrated pieces.
- C. The crushed aggregate shall have a percent of wear not more than 45 at 500 revolutions, as determined by AASHTO T 96 (Los Angeles Rattler Test).
- D. The crushed aggregate shall have a minimum soaked and re-molded laboratory CBR of 100 at 100 percent maximum density.
- E. The crushed aggregate shall not show evidence of disintegration nor show a total loss greater than 12 percent when subjected to five cycles of the sodium sulphate accelerated soundness test using AASHTO T 104.
- F. All material passing the No. 4 mesh sieve produced in the crushing operation of the stone shall be incorporated in the material unless there is an excessive amount that, if included, would not meet the gradation requirements.
- G. The crushed aggregate shall meet the requirements of the gradations given in the following table when tested by AASHTO T 11 and T 27.

TABLE 1. REQUIREMENTS FOR GRADATION OF AGGREGATE

Sieve Designation (square openings)	Percentage by Weight Passing Sieve
2 inch	100
1½ inch	100
1 inch	70-95
¾ inch	55-85
No. 4	30-60
No. 40	10-25
No. 200	3-20

- H. The gradations in the table represent the limits that shall determine suitability of aggregate for use from the sources of supply. The final gradations selected within the limits designated in the table shall be well graded from coarse to fine and shall not vary from the low limit on one sieve to the high limit on the adjacent sieves or vice versa.
- I. The amount of the fraction of material passing the No. 200 mesh sieve shall not exceed one half the fraction passing the No. 40 mesh sieve.
- J. The portion of the aggregate, including any blended material, passing the No. 40 mesh sieve shall have a liquid limit of not more than 35 and a plasticity index of not more than 10 when tested following AASHTO T 89 and T 90.

- K. The selection of any of the gradations shown in the table shall be such that the maximum size aggregate used in any course shall not be more than two thirds the thickness of the layer of course being constructed.

2.2 ADDITIONAL FINE MATERIAL

If additional fine material, more than that naturally present in the base course material, is necessary for correcting the gradation to the limitations of the specified gradation, or for the satisfactory bonding of the base material, or for changing the soil constants of the material passing the No. 40 mesh sieve, it shall be uniformly blended and mixed with the base course material at the crushing plant or by an approved plant. There shall be no reworking of the base course material in place to obtain the specified gradation. The additional fine material for this purpose shall be obtained from the crushing of stone, gravel or slag and when used, shall be of a gradation as necessary to accomplish the specified gradation in the final mixed base course material.

2.3 MATERIAL

- A. The material for the flexible base shall be composed of crusher-run broken stone, obtained from approved sources, and shall consist of hard durable particles of stone mixed with approved binding material. The material shall be screened or otherwise manipulated before crushing, in a manner satisfactory to the Engineer, so that all soil, clay, and other objectionable material will be removed. Crushed stone mined from the Austin Chalk formation will not be used.
- B. When properly slaked and tested by standard laboratory methods, the processed flexible base material shall meet the following requirements:

Retained on 1¾" sieve	0%
Retained on ¾" sieve	20-60%
Retained on No. 4 sieve	40-75%
Retained on No. 40 sieve	70-85%

- C. Material passing the No. 40 sieve shall be known as "Soil Binder" and shall meet the following requirements when tested by standard laboratory methods:

The liquid limit shall not exceed	40.0
The plasticity index shall not exceed	10.0

2.4 EQUIPMENT

- A. Sheepsfoot Rollers

Sheepsfoot rollers shall meet the applicable requirements of TxDOT Specification Item 212, except that the provisions relating to measurement and payment shall not be applicable.

- B. Pneumatic Tired Roller

Pneumatic tired rollers shall meet the applicable requirements of TxDOT Specification Item 214, except that the provisions relating to measurement and payment shall not be applicable.

- C. Flat Wheel Rollers

Flat wheel rollers shall be either self propelled two-axle tandem roller weighing not less than eight (8) tons, or a self propelled three-wheel roller weighing not less than ten (10) tons.

PART 3:EXECUTION

3.1 OPERATION AT SOURCES OF SUPPLY

All work involve in clearing and stripping of quarries and pits, including the handling of unsuitable material, shall be performed by the contractor at his own expense. The material shall be obtained from approved sources. Unless otherwise specified, all material shall be mined from full depth vertical sections of the pit or quarry. The material shall be handled in a manner that shall secure a uniform and satisfactory product.

3.2 EQUIPMENT

All equipment necessary for the proper construction of this work shall be on the project, in first-class working condition, and approved by the Engineer before construction is permitted to start.

3.3 SUBGRADE PREPARATION

- A. The subgrade shall be constructed in conformity with the lines, grades and sections shown on the drawings. All unstable or otherwise objectionable material shall be removed from the subgrade and replaced with approved material. All holes, ruts and depressions shall be filled with approved material, and if required, the subgrade shall be thoroughly wetted with water and reshaped and rolled to the extent directed by the Engineer to place the subgrade in an acceptable condition to receive the base material.
- B. The surface of the subgrade shall be finished to line and grade as established and in conformity with the typical section shown on the drawings. Any deviation in cross section greater than one-half (1/2") inch in a length of sixteen (16') feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping and re-compacting by sprinkling and rolling.
- C. Sufficient subgrade shall be prepared in advance to insure satisfactory prosecution of the work. Material excavated in the preparation of the subgrade that is not needed for the embankment shall be used in the construction of adjacent shoulders and slopes or otherwise disposed of as directed. Any additional material required for the completion of the shoulders and slopes shall be secured from sources shown on the drawings or as designated by the Engineer.

3.4 PLACING OF BASE MATERIAL

A. First Course

- 1. Immediately before placing the base material, the subgrade shall be checked as to conformity with grade and section. No material shall be placed in snow or on a soft, muddy, or frozen underlying course.
- 2. The material shall be delivered in approved vehicles of a uniform capacity and it shall be the responsibility of the Contractor that the required amount of specified material shall be delivered in each 100 - foot station. Hauling over the non-compacted base course shall not be permitted.
- 3. Material deposited upon the subgrade shall be spread and shaped the same day unless otherwise directed in writing by the Engineer. In the event inclement weather or other unforeseen circumstances render impractical the spreading of the material during the first twenty-four (24) hour period, material shall be scarified and spread as directed by the Engineer.
- 4. The material shall be deposited and spread in lanes in uniform layers and without segregation of size to such loose depth that, when compacted, the layers shall have the required thickness.

5. The base aggregate shall be spread by spreader boxes, motor graders or other approved devices or methods that shall spread the aggregate in the required amount to avoid or minimize the need for re-handling the material and to prevent the rutting of the underlying course. The devices shall be equipped with strike-off templates or screeds that can be adjusted or controlled to secure the required thickness of the material.
6. All areas and "nests" of segregated coarse or fine material shall be corrected or removed and replaced with well-graded material as directed by the Engineer. Such binder material shall be carefully and evenly incorporated with the material in place by scarifying, harrowing, brooming or by other approved methods.
7. The course shall be sprinkled as required and compacted to the extent necessary to provide not less than the percent density as hereinafter specified under "Density." In addition to the requirements specified for density, the full depth of flexible base shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. Unless otherwise permitted by the Engineer, the aggregate shall not be spread more than 2,000 square yards in advance of the rolling. After each section of flexible base is completed, tests as necessary will be made by the Engineer. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements.
8. Throughout this entire operation, the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the drawings, and to the established lines and grades. In those areas on which pavement is to be placed, any deviation greater than one-fourth ($\frac{1}{4}$ ") inch in cross section in a length of sixteen feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping, and re-compacting by sprinkling and rolling. All irregularities, depressions, or weak spots that develop shall be corrected immediately by scarifying the areas affected, adding suitable material as required, reshaping and re-compacting by sprinkling and rolling. Should the base course, due to any reason or cause, lose the required stability, density and finish before the surfacing is complete, it shall be re-compacted and refinished at the sole expense of the Contractor.
9. When using sheepfoot rollers, the layer of loose material shall not exceed eight (8") inches for 25 ton pneumatic rollers, or ten (10") inches if fully loaded 50 ton pneumatic rollers are used.

B. Succeeding Courses

1. Construction methods shall be the same as prescribed for the first course.
2. The surface of the final course shall be finished smooth by "slush rolling" with a satisfactory flat wheeled roller. Before placing the surfacing on the completed base, the final course of flexible base shall be dry cured to the extent directed by the Engineer.

C. Density

The flexible base shall have a uniform compacted density throughout of 95%.

3.5 SURFACE TEST

After the course has been completely compacted, the surface shall be tested for smoothness and accuracy of grade and crown. Any portion lacking the required smoothness or failing in accuracy of grade or crown shall be scarified, reshaped, re-compacted and otherwise manipulated as the Engineer may direct until the required smoothness and accuracy are obtained. The finished surface shall not vary more than $\frac{3}{8}$ inch from a 16-foot straightedge when applied to the surface parallel with and at right angles to, the centerline. For area to receive pavement, the finished surface shall not vary more than $\frac{1}{4}$ inch from a 16-foot straightedge.

3.6 THICKNESS

The thickness of the base course shall be determined by depth tests or cores taken at intervals in such a manner that each test shall represent no more than 300 square yards. When the base deficiency is more than 1/2 inch, the Contractor shall correct such areas by scarifying, adding satisfactory base mixture, rolling, sprinkling, reshaping, and finishing in accordance with these specifications. The Contractor shall replace, at his own expense, the base material where borings have been taken for test purposes.

3.7 MAINTENANCE

Following the completion of the base course, the Contractor shall perform all maintenance work necessary to keep the base course in a condition satisfactory for priming. After priming, the surface shall be kept clean and free from foreign material. The base course shall be properly drained at all times. If cleaning is necessary, or if the prime coat becomes disturbed, any work or restitution necessary shall be performed at the expense of the Contractor.

END OF SECTION

SECTION IX
ROAD-MIX ASPHALT PAVING

PART 1:GENERAL

1.1 DESCRIPTION

This section covers the design, mixing and placing of hot mix asphaltic concrete for pavement. The pavement shall consist of a binder course, a leveling-up course, a surface course, or any combination of these courses as shown on the plans. The courses are to be composed of a compacted mixture of mineral aggregate and asphaltic material. The pavement shall be constructed on the previously completed and approved subgrade, base, existing pavement, bituminous surface or prepared slab as herein specified and in accordance with the details shown on the plans.

1.2 QUALITY ASSURANCE

A. Asphalt Design Mix

1. Pay for the services of an independent laboratory approved by the Engineer to perform design tests using varying proportions of aggregates and asphaltic materials.
2. Pay for laboratory to submit a written report in duplicate to the Engineer with the following data for each mix tested:

a. AGGREGATES

- (1) Source and type
- (2) Gradation
- (3) Deleterious substance

b. ASPHALT MIX

- (1) Gradation
- (2) Asphalt content (% by weight)
- (3) Percent voids
- (4) Theoretical specific gravity
- (5) Laboratory specific gravity
- (6) Percent laboratory density
- (7) Unit weight
- (8) Hveem stability
- (9) Grade asphalt

3. All materials shall meet or exceed the specifications listed under "Materials" and be approved by the Engineer.

4. Each type of mix shall conform to the master grading for each type listed in "Paving Mixture".

B. Source Quality Control

1. The materials proposed to be used may be inspected and tested at any time during their preparation for the work.
2. If the sources of supply do not furnish a uniform product or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved materials from other approved source.
3. Sources of supply may not be changed without prior approval from the Engineer.
4. Approval of both the materials and source of supply must be obtained from the Engineer prior to delivery of the material.
5. The mixing plant shall continuously produce a consistent mixture meeting all of the requirements of this specification.

1.3 SUBMITTALS

Submit copies of the design mix and results of tests for review.

1.4 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Prior to stockpiling of aggregates, the area shall be cleaned of trash, weeds and grass and be relatively smooth. Aggregates shall be stockpiled in such a manner as to prevent mixing of one aggregate with another.
- B. The asphaltic mixture shall be hauled to the work site in tight vehicles previously cleaned of all foreign material. The inside of the truck body may be given a light coating of oil to prevent the mixture from adhering to the body. In cool weather or long hauls, canvas covers and insulating of the truck may be required.

1.5 JOB CONDITIONS

A. Illumination

Do not place asphaltic concrete before sunrise or later than will normally permit completion of all finishing operations during sufficient natural light.

B. Protection

Do not place asphaltic concrete during rain, sleet or snow or when such precipitation is imminent.

C. Cold Weather Placement

1. The tack coat or the asphaltic concrete mixture when placed with a spreading and finishing machine shall not be placed when the air temperature is below 45 F and falling, but may be placed when the air temperature is above 40 F and rising.
2. The asphaltic concrete mixture when placed by hand or with a motor grader shall not be placed when the air temperature is below 60 F and falling, but may be placed when the air temperature is 50 F and rising.

3. The prime coat, tack coat or asphaltic mixture shall be placed only when the humidity, general weather conditions and temperature and moisture condition of the base, in the opinion of the Engineer, are suitable.
4. The air temperature shall be taken in the shade away from artificial heat.
5. No asphaltic mixture will be accepted which has a temperature of 225 F or less when delivered.

PART 2: PRODUCTS

2.1 MATERIALS

A. Mineral Aggregate

Mineral aggregate shall consist of fine aggregate, coarse aggregate and mineral filler.

1. Fine Aggregate - Aggregate passing No. 10 Sieve

Sieve	Percent Passing
10	100
200	10-30

Fine aggregate shall consist of sand or stone screenings or a combination thereof. Fine aggregate shall be comprised of durable particles, free from injurious foreign matter. The plasticity index of that part of the fine aggregate, passing the No. 40 sieve, shall not be more than 6.

2. Coarse aggregate - aggregate retained on No. 10 sieve. The coarse aggregate shall consist of clean, durable fragments of stone, or gravel of uniform quality throughout. Coarse aggregate shall be free from clay, organic or other injurious foreign matter occurring either free or as a coating on the aggregate. Materials removed by standard laboratory decantation shall be not more than two (2%) percent except when the plasticity index of the removed material is less than 6, the amount shall not be more than four (4%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent loss when subjected to the Los Angeles Abrasion Test.

3. Mineral Filler - The mineral filler shall consist of thoroughly dry stone dust, slate dust, portland cement or other mineral dust approved by the Engineer. The mineral filler shall be free from foreign and other injurious matter. When tested by TxDOT Bulletin 6-14, or equivalent, it shall meet the following grading requirements:

Passing a 30 mesh sieve	100%
Passing No. 80 sieve, not less than	90%
Passing a 200 mesh sieve, not less than	65%

B. Asphaltic Material

Asphalt for the paving mixture shall be of the type of oil asphalt as determined by the Engineer and shall meet the following requirements of asphalts. The grade of asphalt used shall be as

designated by the Engineer after design tests have been made using the mineral aggregates that are to be used in the project, and the various grades of asphalt. If more than one type of asphaltic concrete mixture is specified for the project only one grade of asphalt will be required for all types of mixture, unless otherwise shown on the plans.

1. Oil Asphalt

The materials shall be homogeneous, shall be free from water, shall not foam when heated at 347°F, and shall meet the following requirements:

Type-Grade	OA-90		OA-135		OA-230	
	Min.	Max.	Min.	Max.	Min.	Max.
Penetration at 32°F (0°C) 200g., 60 sec.	--	--	--	--	--	--
Penetration at 77°F (25°C) 100g., 5 sec.	85	100	120	150	210	250
Penetration at 115°F, 50g., 5 sec.	--	--	--	--	--	--
Ductility at 77°F (25°C), 5 cm/min., cms: Original	100	--	100	--	170	--
Flash Point C.O.C., °F (°C)	450 (230)	--	450 (230)	--	450 (230)	--
Softening point, R. & B., °F	113	140	104	140	86	122
Thin Film Oven Test, ½ in. Film, 50 g., 5 hours, 325°F (16°C)	--	0.8	--	1.3	--	1.5
Penetration of Residue, at 77°F (25°C), 100 g., 5 sec., % of Original Pen.	50	--	45	--	37	--
Solubility in Trichloroethylene, %	99.5	--	99.5	--	99.5	--

2. Cut Back Asphalt

The material shall be free from water and shall meet the requirements shown in the following table:

Type - Grade	RC-2		MC-1	
	Min.	Max.	Min.	Max.
Flash Point TOC °F	80	--	100	--
Furol Viscosity at 77°F, sec	--	--	110	150
Furol Viscosity at 122°F, sec	200	300	--	--
Furol Viscosity at 140°F, sec	--	--	--	--
Furol Viscosity at 180°F, sec	--	--	--	--
The distillate, expressed as percent by volume of total distillate to 680°F, shall be as follows:				

Off at 437°F	50	75	--	25
Off at 500°F	70	90	40	70
Off at 600°F	90	--	75	93
Off at 680°F	--	--	--	50
Off between 600°F and 680°F	--	--	--	--
Test on residue:				
Penetration at 77°F, 100 g., 5 sec.	110	150	150	200
Ductility at 77°F, 5 cm/min, cms.	100	--	100	--
Solubility in CCl ₄ %	99	--	99.5	--
Spot Test	Neg.		Neg.	

When tested in accordance with the AASHTO Standard Method of Test of Asphaltic Materials by Oliensis Spot Method T-102-38, oil asphalts, cut-back asphalts shall show a negative result unless it is definitely proved that the parent crude cannot be processed to yield asphaltic material which will give a negative result regardless of how carefully the crude is processed. When such proof is furnished, the use of the following modified solvent will be permitted, and no other clauses or requirements of the standard tests are waived or changed.

The modified solvent shall be distillate from the parent crude from which the asphaltic material under test was made, and shall have the following distillation characteristics:

Initial boiling point	Above 300°F
50 percent off at	335 to 355°F
End point	Below 410°F

3. Tack Coat

The material shall meet the requirements for Cut-Back Asphalt RC-2, diluted by the addition of not to exceed fifteen (15%) percent of an approved grade of gasoline and/or kerosene by volume, or a cut-back asphalt made by combining 50 to 70 percent of the asphaltic material as specified for the paving mixture with 30 to 50 percent gasoline and/or kerosene by volume.

2.2 ASPHALTIC CONCRETE MIXTURE

The paving mixture shall consist of a uniform mixture of coarse aggregate, fine aggregate, asphaltic material and mineral filler, if required.

A. Types

The grading of each constituent of the mineral aggregate shall be such as to produce, when properly proportioned, a mixture which when tested in accordance with standard laboratory methods will conform to the limitations for master grading given below for the type specified:

TYPE "A" (COARSE GRADED BINDER COARSE)

PASSING	RETAINED	PERCENT BY WEIGHT
2¼" screen		100%
2" screen		97-100%
2" screen	1" screen	15-40 %
1" screen	½" screen	15-40 %
½" screen	¼" screen	10-25 %
¼" screen	No. 10 mesh sieve	5-20 %
No. 10 mesh sieve (total)		65-80 %
No. 10 mesh sieve	No. 40 mesh sieve	5-20 %
No. 40 mesh sieve	No. 80 mesh sieve	3-15 %
No. 80 mesh sieve	No. 200 mesh sieve	1-8 %
No. 200 mesh sieve		1-10 %

Asphaltic material: 3% to 6% of the mixture by weight.

TYPE "B" (FINE GRADED BASE OR LEVELING UP COURSE)

PASSING	RETAINED	PERCENT BY WEIGHT
1¼" screen		100 %
1" screen		95-100 %
1" screen	½" screen	20-50 %
½" screen	¼" screen	10-40 %
¼" screen	No. 10 mesh sieve	5-25 %
No. 10 mesh sieve (total)		55-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-20 %
No. 80 mesh sieve	No. 200 mesh sieve	3-20 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 3.5% to 7% of the mixture by weight

TYPE "C" (COARSE GRADED SURFACE COURSE)

PASSING	RETAINED	PERCENT BY WEIGHT

1" screen		100 %
3/4" screen		95-100 %
3/4" screen	1/2" screen	15-40 %
1/2" screen	1/4" screen	10-35 %
1/4" screen	No. 10 mesh sieve	10-30 %
No. 10 mesh sieve (total)		50-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-25 %
No. 80 mesh sieve	No. 200 mesh sieve	3-25 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 3.5% to 7% of the mixture by weight.

TYPE "D"

PASSING	RETAINED	PERCENT BY WEIGHT
5/8" screen		100 %
1/2" screen		95-100 %
1/2" screen	1/4" screen	20-50 %
1/4" screen	No. 10 mesh sieve	10-30 %
No. 10 mesh sieve (total)		50-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-25 %
No. 80 mesh sieve	No. 200 mesh sieve	3-25 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 4.0% to 8.0% of the mixture by weight.

B. Tolerances

The exact grading of the aggregate and the asphalt content to be used in the above mixture, within the limits specified, will be designated by the Engineer and the mixture produced shall conform to this designated grading and asphalt content within the following respective tolerances:

PASSING	RETAINED	PERCENT BY WEIGHT
2" screen	1" screen	5 %

1" screen	½" screen	5 %
¾" screen	½" screen	5 %
½" screen	¼" screen	5 %
⅜" screen	¼" screen	5 %
¼" screen	No. 10 mesh sieve	5 %
No. 10 mesh sieve (total)		5 %
No. 10 mesh sieve	No. 40 mesh sieve	3 %
No. 40 mesh sieve	No. 80 mesh sieve	3 %
No. 80 mesh sieve	No. 200 mesh sieve	3 %
No. 200 mesh sieve		3 %

Asphaltic material: 0-5%

C. Testing

1. An independent laboratory, as approved by the Engineer, shall be engaged by the Contractor. The laboratory shall make the following minimum number of daily tests:
 - a. One sample (three test specimens) for determination of density and stability.
 - b. One sample for determination of proportioning of materials.
2. The asphaltic concrete shall have the following laboratory density and stability:
 - a. Density - 94% to 98% (optimum 96%)
 - b. Stability - not less than 40% (Hveem or equivalent)

D. Equipment

1. Mixing Plants

- a. Mixing plants that will not continuously produce a mixture meeting all of the requirements of this specification will be condemned.
- b. Mixing plants may be either the weight-batching type or the continuous mixing type. Both types of plants shall be equipped with satisfactory conveyor, power units, aggregate handling equipment, hot aggregate screens and bins and dust collectors and shall consist of the following essential pieces of equipment:

2. Asphaltic Material Heating Equipment

Asphaltic material heating equipment shall be adequate to heat the amount of asphaltic material required to the desired temperature. Asphaltic material may be heated by steam coils which shall be absolutely tight. Direct fire heating of asphaltic materials will be permitted, provided the heater used is manufactured by a reputable concern and there is positive circulation of the asphalt throughout the heater. Agitation with steam or air will not be permitted. The heating apparatus shall be equipped with a recording thermometer with a

24 hour chart that will record the temperature of the asphaltic material at the highest temperature.

PART 3:EXECUTION

3.1 EQUIPMENT

All equipment necessary for the construction of the hot mix asphaltic concrete pavement shall be on the project and shall be approved by the Engineer as to condition before the Contractor will be permitted to begin construction operations on which the equipment is to be used.

A. Spreading and Finishing Machine

The spreading and finishing machine shall be of a type approved by the Engineer and shall be capable of producing a surface that will meet the requirements of the typical cross section and the surface test.

B. Motor Grader

The motor grader, if used, shall be a self-propelled power motor grader; it shall be equipped with pneumatic tired wheels, shall have a blade length of not less than twelve (12') feet, shall have a wheel base of not less than sixteen (16') feet and shall be tight and in good operating condition and approved by the Engineer.

C. Pneumatic Tire Rollers

The pneumatic tire roller shall be an acceptable self-propelled roller mounted on pneumatic tired wheels, with the weight capable of being varied uniformly from 225 to 365 pounds per inch width of tire tread, so constructed as to be capable of being operated in both a forward and a reverse direction and shall have suitable provisions for moistening the surface of the tires while operating. All tires of the same roller shall be smooth tread of equal size and diameter and shall be arranged in such a manner that the gap between the tires of one axle will be covered by the tires of the other. The tire pressure of each tire shall be adjusted as directed by the Engineer and this pressure shall not vary by more than 5 pounds per square inch.

D. Tandem Roller

This roller shall be an acceptable power driven tandem roller weighing not less than eight (8) tons.

E. Three Wheel Roller

This roller shall be acceptable power driven three wheel roller weighing not less than ten (10) tons.

Straightedges and Templates

The Contractor shall provide acceptable 16 foot straightedges for surface testing. Satisfactory templates shall be provided as required by the Engineer.

3.2 BASE PREPARATION

Immediately before the tack coat or asphaltic concrete mixture is place, the base, subgrade, existing pavement, or bituminous surface shall be thoroughly cleaned in an approved manner to the satisfaction of the Engineer. Base shall be approved by Engineer prior to placement of any asphalt material.

3.3 APPLICATION

A. Tack Coat

1. When a tack coat is shown on the plans or is required by the Engineer, the surface shall be given a uniform application of tack coat. This tack coat shall be applied as directed by the Engineer, with an approved sprayer at a rate of not to exceed 0.10 gallon per square yard of surface. Where the asphaltic concrete mixture will adhere to the surface on which it is to be placed without the use of a tack coat, the tack coat may be eliminated by the Engineer. If in the opinion of the Engineer, a tack coat is necessary between any of the asphaltic concrete courses, a tack coat shall be used. The rate of tack coat application shall be estimated by the Engineer.
2. Care shall be taken not to injure the tack coat. The tack coat shall be allowed to stand long enough for sufficient evaporation of its volatile parts.
3. All surfaces of gutter, headers, manholes, valve boxes, etc. that will be in contact with the asphaltic concrete mixture, and all joints shall be given a thin uniform coat of the asphaltic material used for the tack coat.

B. Prime Coat

When a prime coat is shown on the plans or is required by the Engineer, the surface shall receive a uniform application of prime coat. This prime coat shall be applied as directed by the Engineer, with an approved sprayer evenly and smoothly under a pressure necessary for proper distribution. The Contractor shall provide all necessary facilities for determining the temperature of the asphaltic material and the rate at which it is applied.

C. Asphaltic Concrete

1. Generally, the asphaltic mixture shall be dumped and spread on the approved prepared surface with a spreading and finishing machine in such manner that when properly compacted the finished pavement will be smooth, of uniform density and will meet the requirements of the typical cross sections and the surface tests. Unless otherwise indicated or specified, all asphaltic concrete material shall be placed and shall receive its initial rolling during daylight hours. The mixture shall be at a temperature between 225 F and 325 F when placed. During the application of asphaltic material, care shall be taken to prevent splattering of adjacent pavement, curb and gutter and structures.
2. In placing a level-up course with the spreading and finishing machine in the forms, binder twine or cord shall be set to line and grade established by the Engineer. When directed by the Engineer, level-up courses shall be spread with the motor grader.
3. When the asphaltic mixture is placed in a narrow strip along the edge of an existing pavement, or used to level up small areas of an existing pavement or placed in small irregular areas where the use of a finishing machine is not practical, the finishing machine may be eliminated when authorized by the Engineer, provided a satisfactory surface can be obtained by other approved methods. When hand spreading is authorized, the asphaltic material shall be dumped outside the area on which it is to be spread, and the entire load shall be distributed by shovels or satisfactory mechanical means in a uniform layer of such depth that after receiving its ultimate compaction by rolling, the requirements of the typical cross sections and surface tests will be met.
4. In places where the leveling-up course will be greater than two (2") inches compacted thickness, the material shall be placed and compacted in two or more courses.

5. Adjacent to gutters, headers, manholes, valve boxes, and structures, the surface shall be finished uniformly high so that when compacted it will be slightly above the edge of the flush structures.

3.4 COMPACTION

A. Rolling

1. Rolling with the pneumatic, three wheel and tandem rollers shall start longitudinally at the sides and proceed toward the center of the pavement, overlapping on successive trips by at least half the width of the rear wheels. Alternate trips of the roller shall be slightly different in length. Rolling shall be continued until no further compression can be obtained and all roller marks are eliminated. At least two rollers, as specified herein, shall be provided for each job, one of which shall be a pneumatic roller. Additional rollers shall be provided if needed. If required, the pavement shall be rolled diagonally in each direction with the tandem roller, the second diagonal rolling crossing the line of the first.
2. The motion of the roller shall be slow enough at all times to avoid displacement of the asphaltic concrete mixture. If any displacement occurs, it shall be corrected at once by the use of rakes and addition of fresh mixture where required. The roller shall not be allowed to stand on pavement which has not been fully compacted and which has not cooled to the normal atmospheric temperature. To prevent adhesion of the surface mixture to the roller, the wheels shall be kept thoroughly moistened with water, but an excess of water will not be permitted. All rollers must be in good mechanical condition. Necessary precautions shall be taken to prevent the dropping of gasoline, oil, grease or other foreign matter on the pavement, either when the rollers are in operation or when standing.
3. The edges of the pavement along curbs, headers, manholes, valve boxes, and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the roller, shall be thoroughly compacted with lightly oiled hand operated vibrating rollers or mechanical tamps.
4. Each course after final compaction shall have a density of not less than 95% laboratory density.

B. Hand Tamping

The edges of the pavement along curbs, headers and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the rollers, shall be thoroughly compacted with lightly oiled tamps.

3.5 CONSTRUCTION JOINTS

The placing of the mixture shall be as nearly continuous as possible, and the roller shall pass over the unprotected edge of the freshly laid mixture only when the laying is discontinued for such length of time as will permit chilling or cooling the mixture. In every case when resuming the work, the material shall be cut back so as to produce a slightly beveled edge for the full depth of the course; the material cut away shall be immediately removed from the site of the work, and fresh mixture shall be laid against the fresh cut, or if desired, a stout rope may be placed across the pavement where the joint is made. When resuming the work, the material laid shall be cut back to the rope which will be removed, together with the surplus materials, and the fresh mixture shall be laid against the joint thus formed. Hot smoothing irons may be used for sealing joints, but extreme care shall be used to avoid burning the surface. Construction joints shall be either parallel to or at right angles to the longitudinal axis of the work.

3.6 SURFACE TEST

The surface of the pavement, after ultimate compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a sixteen (16') foot straightedge placed parallel to the centerline of the roadway, it shall have no deviation in excess of $\frac{1}{8}$ " per foot from the nearest point of contact. The maximum ordinate measured from the face of the straightedge shall not exceed $\frac{1}{4}$ " at any point. All areas not conforming to this requirement shall be immediately corrected as directed by the Engineer.

3.7 THICKNESS TEST

The Engineer may cut cores from the pavement at selected locations in order to determine if the specified thickness of asphaltic concrete is being placed. If any core indicates a deficient thickness, the Contractor shall have the privilege of cutting additional cores at his own expense in order to define the area of deficient thickness. The Contractor shall overlay the areas of deficient thickness designated by the Engineer with a minimum of 1½" of additional hot mix asphaltic concrete.

END OF SECTION

ASPHALT WORK ORDER NO # 2024-004

City of Seagoville

Anderson Asphalt & Concrete Paving, LLC

Date: June 14, 2024

Description of work: Work is for East Simonds Road

Street:	East Simonds Road (3722' x 23' Base\3722' x 22' Asphalt)	SF	82,915 - 79,310		
Scope:	Cement Stabilize using 45LB/SY, Microcrack, Prime, 4" Type B and 2" Type D. Includes Traffic Control (CLOSED TO THROUGH TRAFFIC)				
Item	Description	Unit	Quantity	Unit Price	Total Price
1	Mobilization / Bond	LS	1	\$ 12,800.00	\$ 12,800.00
2	Cement Stabilize using 40LB/SY 12" (INCL. PRIME COAT)	SF	82,915	\$ 2.40	\$ 198,996.00
3	4" Type B WMA TXDOT 340	SF	79,310	\$ 3.50	\$ 277,585.00
4	2" Type D WMA SUPERPAVE	SF	79,310	\$ 1.90	\$ 150,689.00
5	Backfill Edge of Pavement	SF	14,888	\$ 1.00	\$ 14,888.00
6	Traffic Control - (INCLUDES TWO MESSAGE BOARDS)	LS	1	\$ 15,000.00	\$ 15,000.00
	(BID IS BASED ON ROAD CLOSED TO THRU TRAFFIC)				
	Price is based on two phases.				
Sub-Total		East Simonds Road (3722' x 23' Base\3722' x 22' Asphalt)			\$ 669,958.00
		Overall Total			\$ 669,958.00
		Total Amount of Work Order			\$ 669,958.00

*All items include traffic control, and mobilization. Quantities are based on estimated measurements. Payment will be based on final field verification.

Start Date: Completion Date:

Special Requirements:

Performance Bond No.: Payment Bond No.:

Before Photos Taken: Yes No

After Photos Taken: Yes No

Before Video Taken: Yes No

Approved by City of Seagoville:

Signature

Print Name

Date

Approved by Contractor:

Cory Henneberg

Signature

Cory Henneberg

Print Name

6/14/2024

Date

Untitled Map

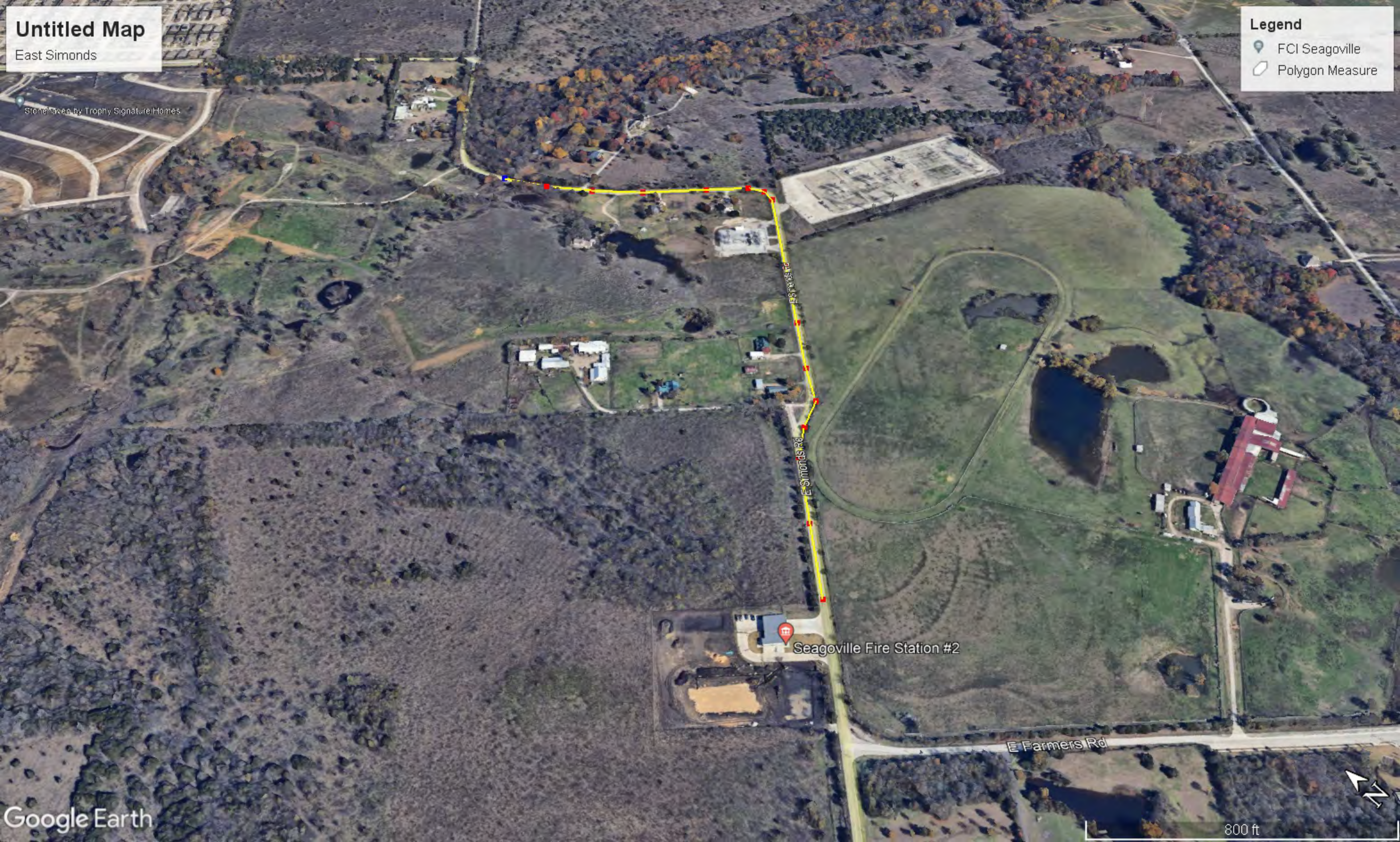
East Simonds

Stonehaven by Trophy Signature Homes

Legend

 FCI Seagoville

 Polygon Measure





TO: Mayor and City Council

FROM: Chris Ryan, Director of Public Works

DATE: July 1, 2024

ITEM: 17

DESCRIPTION: Discuss and consider a Resolution authorizing the City Manager to engage Anderson Asphalt & Concrete Paving to provide asphalt road repair work on McWhorter Road in an amount not to exceed one hundred twelve thousand five dollars and zero cents (\$112,005.00).

INTRODUCTION

The purpose of this item is to approve repairs to McWhorter.

BACKGROUND

On or about May 15, 2023, the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement. the City of Forney, Texas and Anderson Asphalt & Concrete Paving have previously entered into an agreement for, Anderson Asphalt & Concrete Paving, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement. Pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$112,005.00 for provision of asphalt road work on McWhorter, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C.

FINANCIAL IMPACT

\$112,005.00- FY2024 Street budget.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

1. Resolution
2. Master Interlocal Purchasing Agreement (Exhibit A)
3. Anderson Asphalt & Concrete Paving (Exhibit B)
4. Estimate from Anderson Asphalt (Exhibit C)

**A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS
RESOLUTION NO.**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS AUTHORIZING ANDERSON ASPHALT & CONCRETE PAVING TO PROVIDE ASPHALT ROAD REPAIR WORK ON MCWHORTER ROAD FOR COMPENSATION IN AN AMOUNT NOT TO ONE HUNDRED TWELVE THOUSAND AND FIVE DOLLARS AND ZERO CENTS (\$112,005.00) AS SET FORTH IN EXHIBIT C, ATTACHED HERETO AND INCORPORATED HEREIN; AUTHORIZING THE CITY MANAGER TO EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS the City of Seagoville and the City of Forney entered into a Master Interlocal Purchasing Agreement approved by the City Council of the City of Seagoville on May 15, 2023, under the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code and Subchapter F, Chapter 271, Texas Local Government Code, under which the City of Forney acted as purchasing agent for the purchase of various goods and services through the competitive bidding process, attached hereto and incorporated herein as Exhibit "A", and

WHEREAS, the City of Forney, Texas and , Anderson Asphalt & Concrete Paving have previously entered into an agreement for road repairs, a copy of which is attached hereto and incorporated herein as Exhibit "B," to provide concrete repairs, which agreement provides that other government entities may participate in the agreement under all terms, conditions, specifications, and pricing as set forth in that agreement; and

WHEREAS, pursuant to said Contract, Anderson Asphalt & Concrete Paving submitted an estimate in the amount of \$112,005.00 for provision of asphalt road repair work on McWhorter, including the provision of all necessary labor, equipment, and materials, a copy of which is attached as Exhibit C; and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the estimate and has determined it to be in the best interest of the City to authorize the City Manager to execute any documents necessary to authorize Anderson Asphalt & Concrete Paving to provide asphalt road repair work on McWhorter as set forth in Exhibit C;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City Council hereby authorizes Anderson Asphalt & Concrete Paving to provide asphalt road repair work on McWhorter, to include provision of all necessary labor,

equipment, and materials, for compensation in an amount not to exceed One Hundred Twelve Thousand and Five Dollars and Zero cents (\$112,005.00), as set forth in Exhibit C, attached hereto and incorporated herein; and, the City Manager is authorized to execute any documents necessary for the work to be performed.

SECTION 2. This resolution shall take effect immediately from and after its passage and it is accordingly resolved.

DULY ORDERED by the City Council of the City of Seagoville, Texas, this the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. 38-R-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF FORNEY AND CITY OF SEAGOVILLE; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; PROVIDING FOR THE REPEAL OF ANY AND ALL RESOLUTIONS IN CONFLICT; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council for the City of Seagoville, Texas desires to enter into an Interlocal Agreement with the City of Forney ("Agreement"); and

WHEREAS, the City Council for the City of Seagoville, Texas has reviewed the Interlocal Agreement and has determined it to be in the best interest of the City of Seagoville to enter into said Agreement with the City of Forney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City Council hereby approves the terms and conditions of the Interlocal Agreement, a copy of which is attached hereto and incorporated herein as Exhibit "A", with the City of Forney, Texas and the City of Seagoville, Texas and the City Manager is hereby authorized, on behalf of the City of Seagoville, Texas to sign said Agreement.

SECTION 2. All resolutions of the City of Seagoville heretofore adopted which are in conflict with the provisions of this resolution, and the same are hereby repealed, and all resolutions of the City of Seagoville not in conflict with the provisions hereof shall remain in full force and effect.

SECTION 3. If any article, paragraph, subdivision, clause or provision of this resolution, as hereby amended, be adjudged invalid or held unconstitutional for any reason, such judgment or holding shall not affect the validity of this resolution as a whole or any part or provision thereof, as amended hereby, other than the part so declared to be invalid or unconstitutional.

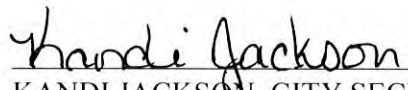
SECTION 4. This resolution shall take effect immediately from and after its passage, and it is accordingly so resolved.

DULY RESOLVED by the City Council of the City of Seagoville, Texas, this the 15th day May, 2023.

APPROVED:


DENNIS K CHILDRESS, MAYOR
Lackey Stepper Sebastian

ATTEST:


KANDI JACKSON, CITY SECRETARY

APPROVED AS TO FORM:


VICTORIA THOMAS, CITY ATTORNEY



CITY OF FORNEY, TEXAS
RESOLUTION NO. 23-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS APPROVING AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF FORNEY, TEXAS AND THE CITY OF SEAGOVILLE, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

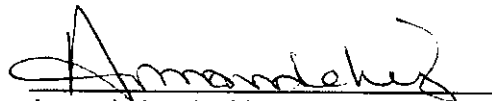
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

SECTION 1. The proposed Interlocal Agreement by and between the City of Forney, Texas and the City of Seagoville, Texas is hereby approved and the City Manager is authorized to execute all necessary documents to comply with this Resolution.

SECTION 2. A substantial copy of the Agreement is attached hereto as Exhibit "A" and incorporated herein for reference.

SECTION 3. This Resolution shall take effect immediately from and after its passage.

PRESENTED AND PASSED by the City Council of the City of Forney, Texas, this the 2nd day of May, 2023.


Amanda Lewis, Mayor

ATTEST:


Rosa Rios, Interim City Secretary



APPROVED AS TO FORM:


Jennifer Smith, City Attorney

**MASTER INTERLOCAL COOPERATIVE PURCHASING AGREEMENT
BETWEEN THE CITY OF SEAGOVILLE
AND CITY OF FORNEY**

WHEREAS, Chapter 791 of the Texas Government Code, also known as the Interlocal Cooperation Act, and Chapter 271.102 of the Texas Local Government Code authorize all local governments to contract with each other to perform governmental functions or services including administrative functions normally associated with the operation of government such as purchasing of necessary equipment, supplies and services;

WHEREAS, The City of Seagoville and City of Forney desire to enter into this Agreement for the purpose of fulfilling and implementing their respective public and governmental purposes, needs, objectives, programs, and services;

WHEREAS, The City of Seagoville and City of Forney represent that each are independently authorized to perform the functions or services contemplated by this Agreement;

WHEREAS, it is deemed in the best interest of all participating governments that said governments do enter into a mutually satisfactory agreement for the purchase of necessary equipment, supplies, and services;

WHEREAS, the participating governments are of the opinion that cooperation in the purchasing of equipment, supplies, services and auctions will be beneficial to the taxpayers of the governments through the efficiencies and potential savings to be realized; and

WHEREAS, each party has sufficient resources to perform the functions contemplated by this Agreement;

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein, promise, and agree as to each of the other as follows:

1. The City of Seagoville and City of Forney are authorized to participate in each other's current and/or future contracts for goods and services. Said contracts shall have been established in accordance with all appropriate procedures governing competitive bids and competitive proposals, if required.
1. The City of Seagoville and City of Forney agree that the ordering of goods and services is the responsibility of the local government seeking to obtain such goods and services under the established contract, and that participating government shall deal directly with the vendor in obtaining the goods and services and payment therefore. The participating government shall be liable to the vendor only for goods and services ordered and received by it, and shall not, by the execution of this Agreement, assume any additional liability. Neither the City of Seagoville nor City of Forney warrant, or is responsible for, the quality or delivery of goods or services from the vendor under contract. Should

a dispute arises between a participating government and a vendor, the same shall be handled by and between that participating government and the vendor.

3. Each government shall pay invoices directly to the providers of goods and services that are invoiced and delivered directly to each respective government.
4. Participation of either government in any cooperative purchasing activity is strictly voluntary. Nothing in this Agreement shall prevent either governments from purchasing and/or accepting and awarding bids, proposals, and contracts subject to this Agreement on its own behalf.
5. Each government shall ensure that all applicable laws and ordinances have been satisfied.
6. **Effective Date and Term.** This Agreement shall be effective when signed by the last party who's signing makes the Agreement fully executed and will remain in full force and effect indefinitely. Any party may modify or terminate this Agreement as provided in Paragraph(s) 7 or 8.
7. **Modification.** The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.
8. **Termination.** This Agreement may be terminated at any time by the City of Seagoville or City of Forney, with or without cause, upon thirty (30) days written notice to the other party in accordance with Paragraph 11 herein.
9. **Hold Harmless.** To the extent allowed by law, the City of Seagoville and City of Forney agree to hold each other harmless from and against any and all claims, losses, damages, causes of action, suits and liabilities of every kind, including all expenses of litigation, court costs and attorney's fees, for injury or death of any person, for damage to any property, or for any breach of contract, arising out of or in connection with the work done under this Agreement.
10. **Invalidity.** If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable by a court or other tribunal of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall use their best efforts to replace the respective provision or provisions of this Agreement with legal terms and conditions approximating the original intent of the parties.
11. **Written Notice.** Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent by email, by fax with

successful send confirmation, or by certified mail to the last business address as listed herein.

City of Seagoville: City of Seagoville
Attn: City Secretary
702 N. Highway 175
Seagoville, Texas 75159
Phone (972) 287-6819
kjackson@seagoville.us

City of Forney: City of Forney
101 E. Main Street
Forney, TX 75126
972-552-6620
jsmith@forneytx.gov

12. **Entire Agreement.** It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings between the parties relating to the subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent, or employee of any party before or after the execution of this Agreement shall affect or modify any of the terms or obligations hereunder.
13. **Amendment.** No Amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of both parties.
14. **Texas Law.** This Agreement has been made under and shall be governed by the laws of the State of Texas.
15. **Place of Performance.** Performance and all matters related thereto shall be in the County of the government originating the bid. This shall be Kaufman County, Texas, United States of America for City of Forney and shall be Dallas County, Texas, United States of America for the City of Seagoville.
16. **Authority to Enter Contract.** Each party has the full power and authority to enter and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective Government.
17. **Waiver.** Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in anyway affect the validity of this Agreement, any part hereof, or the right of either party.

thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

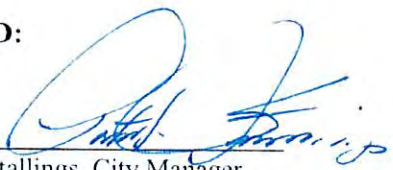
18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

BY:


Patrick Stallings, City Manager

APPROVED:

BY:


Charles Daniels, City Manager

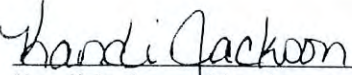
DATE:

May 15, 2023

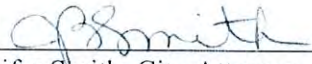
DATE:

May 8, 2023

ATTEST:


Kandi Jackson, City Secretary

ATTEST:


Jennifer Smith, City Attorney

APPROVED AS TO FORM:


Victoria Thomas, City Attorney



thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

18. **Agreement Read.** The parties acknowledge that they understand and intend to be bound by the terms and conditions of this Agreement.
19. **Multiple Originals.** It is understood and agreed that this Agreement may be executed in a number of identical copies, each of which shall be deemed an original for all purposes.

CITY OF SEAGOVILLE

CITY OF FORNEY

APPROVED:

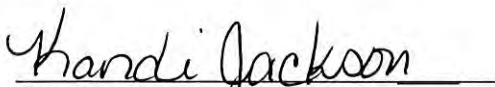
BY:


Patrick Stallings, City Manager

DATE:

May 16, 2023

ATTEST:

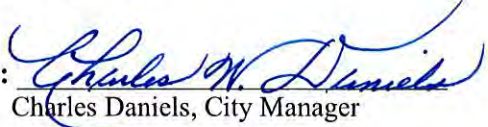

Kandi Jackson, City Secretary

APPROVED AS TO FORM:


Victoria Thomas, City Attorney

APPROVED:

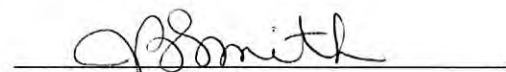
BY:


Charles Daniels, City Manager

DATE:

May 8, 2023

ATTEST:


Jennifer Smith, City Attorney





CITY OF FORNEY, TX REQUEST FOR PROPOSALS

Proposal Reference Number: 2021-004

Bid Documents, Proposal, and Contract Documents for

**ANNUAL PRICE AGREEMENT CONTRACT
for ASPHALT MAINTENANCE and MATERIALS
(VARIOUS LOCATIONS)**

ENGINEERING DEPARTMENT

MARCH 2021

Time Critical Competitive Sealed Bid Deliveries: The City of Forney, Texas cannot guarantee, due to internal procedures that any documents sent Priority Mail will be picked up and delivered by the closing date and time. Bidders are encouraged to choose the best delivery method for their situation.

TABLE OF CONTENTS

SECTION I:	SOLICIATION.....	3
SECTION II:	NOTICE TO BIDDERS RFP 2021-004.....	4
SECTION III:	GENERAL TERMS AND CONDITIONS	14
SECTION IV:	SCOPE OF WORK/SPECIFICATIONS	19
SECTION V:	EXHIBITS.....	25
	SAMPLE FORM "1": ASPHALT WORK ORDER.....	25
	EXHIBIT "A": MINIMUM INSURANCE & BONDING REQUIREMENTS	27
	EXHIBIT "B": PROPOSAL CHECKLIST, BID FORM & VENDOR ACKNOWLEDGEMENT	30
	EXHIBIT "C": BIDDERS QUAILIFICATION STATEMENT	35
	EXHIBIT "D": CLIENT WORK HISTORY.....	37
	EXHIBIT "E": CONTRACTOR'S SAFETY RECORD	38
	EXHIBIT "F": STANDARD FORM OF AGREEMENT.....	41
	EXHIBIT "G": BID BOND.....	43
	EXHIBIT "H": PERFORMANCE BOND	45
	EXHIBIT "I": PAYMENT BOND.....	48
	EXHIBIT "J": CONFLICT OF INTEREST QUESTIONNAIRE.....	51
	EXHIBIT "K": SUSPENSION OR DEBARMENT CERTIFICATE	54
	EXHIBIT "L": FOR MINORITY AND/OR WOMAN OWNED BUSINESS ENTERPRISES.....	55
	EXHIBIT "M": PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL..	56
SECTION VI:	GENERAL CONTRACT CONDITIONS FOR CONSTRUCTION	57
SECTION VII:	SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT.....	58
SECTION VIII:	AGGREGATE BASE COURSES (FLEXIBLE)	
SECTION IX:	ROAD-MIX ASPHALT PAVING	

SECTION I: SOLICITATION



CITY OF FORNEY REQUEST FOR PROPOSAL (RFP 2021-004)

The City of Forney is accepting Bids for an Annual Price Agreement Contract for Asphalt Street Maintenance & Materials

Sealed proposals addressed to the City of Forney will be received by the Finance Department, located on the first floor of City Hall at 101 E. Main Street, Forney Texas 75126, until 2:00 p.m. April 12, 2021. Proposals may be mailed to the City of Forney, P.O. Box 826, Forney TX 75126 or hand-delivered to the first floor of City Hall at 101 E. Main, Forney, Texas 75126. Sealed Bids will be opened at 2:00 p.m. on April 12, 2021, however, there will be no public opening due to COVID 19.

Bidders must submit with their bids a Cashier's Check or a Certified Check in the amount of five (5%) percent of the maximum amount of the bid payable without recourse to the Owner or a proposal bond in the same amount. The contract award is contingent upon City Council approval at the May 04, 2021, City Council meeting.

Proposal envelope must state: RFP 2021-004

ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS

Scope of Work:

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification.

Bidders are required to provide all materials, equipment, and labor required for the construction of the project along with a two (2) year Performance and Maintenance Bond in the amount of Contract. The effective date of the maintenance period will commence upon the date of project acceptance by the City of Forney City Council. The successful Bidder will be required to furnish not only a performance bond in the amount of the contract but also a payment bond for the protection of all claimants supplying labor and materials.

The bid package is available on the City of Forney Website www.forneytx.gov or CivCast www.civcast.com. Paper copies can be obtained by contacting Forney Engineering Department at 972-564-7375. All questions **are required** to be asked and answered from the CivCast website.

SECTION II: NOTICE TO BIDDERS RFP 2021-004

ANNUAL PRICE AGREEMENT CONTRACT FOR ASPHALT STREET MAINTENANCE & MATERIALS (VARIOUS LOCATIONS)

DEFINITIONS:

- The terms “City” or “Owner” as used throughout these documents will mean the City of Forney, Texas.
- The terms “Contractor” or “Bidder” is used throughout these documents will mean the Contractor submitting a bid.

TERM:

The City intends to award Price Agreements to qualified bidders, and establish an annual agreement with renewals. The agreement will contain a fixed pricing structure with an initial one (1) year term. The City retains the right and option to extend the term of the agreement for four (4) additional, one (1) year periods upon the same terms and conditions. The City also retains the right and option to terminate the agreement upon thirty (30) days written notice.

WORK ORDER TIME – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions.

INVITATION: - COMPETITIVE SEALED BIDS WILL BE ACCEPTED FOR THE FOLLOWING:

Project Title: **RFP 2021-004 ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**

Project Address: Various locations within the City of Forney, Texas

DESCRIPTION:

- The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of Asphalt streets, parking lots, driveways and aprons. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

Annual Agreements - Issued by the City of Forney to create an annual agreement between the City and a vendor for specific items and/or services to be provided at a certain price, on an as-needed basis. Annual agreements do not encumber funds until a release against the blanket order is issued. Annual agreements are normally issued following a bid award by the City Council where the annual expenditure is expected to exceed \$50,000. Annual agreements may be for the exclusive use of an individual operating department or split between operating departments or may be established for citywide use.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as-needed basis to perform general Asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

- City’s Estimated Annual Asphalt Budget: **\$500,000** (*may vary from fiscal year to fiscal year and is subject to annual budgetary approval by Council)
- Consideration for Award: The City may consider the following minimum criteria, and may make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with the bid specifications:

- Price
- Bidder’s experience and reputation
- Quality of the bidder’s goods and/or services
- Bidder’s safety record
- Bidder’s proposed personnel
- Bidder’s financial capabilities

PROJECT COMPLETION SCHEDULES:

The completion schedule for each project will be mutually agreed upon in writing by both parties per Sample Form 1 – Asphalt Repair Work Order Form.

PRE-BID MEETING: No Meeting will be Held Unless Questions Warrant It

QUESTIONS DEADLINE: Wednesday, April 07, 2021, @ 12:00 CST

QUESTION WILL NOT BE ANSWERED VIA TELEPHONE OR FAX

All questions are required to be asked and answered from the CivCast Website
<https://www.civcastusa.com/>

Responses will be published in the form of an addendum and/or on CivCast Website. Verbal inquiries will not be accepted, and respondents should refrain from seeking additional information, clarification or other communications from any outside agency or City employee other than the City of Forney Engineering Department.

ADDENDUMS:

All interpretations, answers to questions, corrections and/or changes to a bid solicitation, or extensions to the opening date will be made by addendum. Addendums will be published in writing and will be made available via the City of Forney Engineering Department and on CivCast web site at <https://www.civcastusa.com/>

The bidder is required to acknowledge receipt of addendums on **Exhibit B**.

It is the responsibility of all bidders to check the CivCast for all addendums.

BIDS DUE: One (1) original sealed bid submitted **prior to Monday, April 12, 2021 @ 2:00 pm CT**

All costs associated with the preparation/delivery of the bid, and or any subsequent presentations or request for other documentation, are the sole responsibility of the bidder. Note: Bids will be registered by received stamp. The City of Forney Finance Department clock stamp is the official clock, and no other time sources will be accepted.

1. **Bid Receiving Location:**

Via U.S. Mail:	Via Delivery Services / Personal Delivery:
City of Forney Finance Department	City of Forney Finance Department
P.O. Box 826	101 E Main Street
Forney, TX 75126	Forney, TX 75126
	Note: US Mail does not deliver to the street address

2. **Sealed:** All bids must be sealed and the face of the envelope must contain the following information:

Bid No.: **RFP 2021-004**
Name of Project: **ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE & MATERIALS**
Name of Bidder: Contractor's Name

3. Bids are valid only if deposited at a designated receiving location prior to receiving time.
4. Bids deposited after receiving time by the bidder, a delivery service, or any other delivery method will be returned unopened.

TIME SCHEDULE:

City Council Approval:	January 19, 2021
Advertising (paper notice):	March 25, 2021, and April 01, 2021
Pre-Bid Meeting:	No Meeting will be Held Unless Questions Warrant It
Questions Deadline:	Wed, April 7, 2021, prior to 12:00 (noon) CT
Bids Due:	Mon, April 12, 2021, prior to 2:00 pm CT
Council Award:	Tentative: May 04, 2021, City Council Meeting

Note: All times are subject to change at the City's discretion.

BID FORM/PRICING:

Bidders are requested to submit bids utilizing **Exhibit "B" Bid Form and Vendor Acknowledgment.**

BONDS:

- Bid Bond (5%)
- Performance and Payment Bonds (100%) - In accordance with Government Code 2253 and Local Government Code 252, successful bidder shall submit Owner's Performance bond in the amount of one hundred percent (100%) of each Asphalt Work Order of \$100,000.00 or greater and power of attorney; and a Material and Labor Payment Bond and power of attorney in the amount of one hundred percent (100%) of each Asphalt Work Order of \$50,000 or greater. Bonds must be from an

approved surety company holding a permit from the State of Texas to act as surety, or other sureties acceptable to the OWNER, on the forms provided in the specifications.

CLIENT WORK HISTORY:

Contractor to provide a five (5) year work history (**Client Work History Form - Exhibit D**), including client's names, addresses, telephone numbers, points of contact, and length of continuous service. The City reserves the right to request additional reasonable information from which the vendor's condition of responsibility can be determined as designated by State law. A Client Information Work History Worksheet is attached, and bids received without this worksheet may be deemed as non-responsive.

INDEPENDENT CONTRACTOR:

Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors, and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors, and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Contractor.

INSURANCE:

Within ten (10) working days of being notified of potential award of this contract by the City of Forney, vendors will be required to furnish a valid insurance certificate to the City that meet all of the requirements as stated in the **City of Forney Insurance Requirements Exhibit "A"**. If this time requirement is not met, the City has the right to declare a vendor non-responsive.

NOTE: Vendor to provide services by company employees only; subcontractors are not acceptable.

RESERVATION OF RIGHTS:

The City of Forney reserves the right to reject any or all bids and to waive informalities. In case of ambiguity or lack of clearness in stating prices in the bids, the City of Forney reserves the right to request clarification thereof, to reject the bid, or allow the bidder to withdraw the bid when applicable. Unreasonable (or "unbalanced") unit prices may deem the bidder's offer as non-responsible and may authorize the City of Forney to reject any bid.

INTENT TO AWARD

The City shall give notice of intent to award within sixty (60) calendar days following the opening of bids. Contractors must qualify within ten (10) working days after receipt of written request, by submitting such additional evidence as may be required by the City including evidence of insurance that meets the City requirements as stated in the bid specifications.

Should the Contractor fail to produce evidence satisfactory to the City on any of the foregoing points, the bidder may be deemed non-responsive and the work awarded to the next responsible bidder so qualifying. The Contractor agrees to commence work within then (10) days after the date of written notice to do so.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where

directed by the City. Upon written notification of award of the contract, the unit prices shall be valid through the period ending January ___, 2021. The contract will serve as an “annual” contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

CHANGE ORDERS/CONTRACT MODIFICATIONS

No oral statement of any person shall modify or otherwise change, or affect the term, conditions, or specifications stated in the resulting contract. All change orders and/or modifications to the contract will be made in writing by the Purchasing Agent.

OTHER DEADLINES

- **Corporate Resolution:** Upon request by the City, bidder shall submit, within seven (7) business days after notice of award of contract, a corporate resolution, certificate of partnership agreement or joint venture agreement which identifies the person(s) authorized to execute a contract on behalf of the corporation, partnership, or joint venture.
- **Insurance:** Upon request by the City, bidder shall furnish certificates of insurance and endorsement pages that meet the City requirements within ten (10) business days. Failure of the bidder to produce the required documents may deem the bidder as non-responsive.
- **Miscellaneous Documents:** Upon request by the OWNER, bidder must submit, within five (5) business days such documentation as the City requests to evaluate the qualifications of the bidder to perform the work. Failure of the bidder to produce documentation of qualifications in a timely manner may deem the bidder as non-responsive.

DISCLOSURE OF CERTAIN RELATIONSHIPS

CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE REQUIRES THAT ANY VENDOR OR PERSON CONSIDERING DOING BUSINESS WITH A LOCAL GOVERNMENT ENTITY DISCLOSE IN THE QUESTIONNAIRE FORM CIQ, THE VENDOR OR PERSON'S AFFILIATION OR BUSINESS RELATIONSHIP THAT MIGHT CAUSE A CONFLICT OF INTEREST WITH A LOCAL GOVERNMENT ENTITY. BY LAW, THIS QUESTIONNAIRE MUST BE FILED WITH THE RECORDS ADMINISTRATOR OF THE CITY OF FORNEY NO LATER THAN THE 7TH BUSINESS DAY AFTER THE DATE THE PERSON BECOMES AWARE OF FACTS THAT REQUIRE THE STATEMENT TO BE FILED. SEE SECTION 176.006, LOCAL GOVERNMENT CODE. A PERSON COMMITS AN OFFENSE IF THE PERSON VIOLATES SECTION 176.006, LOCAL GOVERNMENT CODE. AN OFFENSE UNDER THIS SECTION IS A CLASS C MISDEMEANOR. BY SUBMITTING A RESPONSE TO THIS REQUEST, THE VENDOR REPRESENTS THAT IT IS IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 176 OF THE TEXAS LOCAL GOVERNMENT CODE.

FORM IS ATTACHED TO THE BID SPECIFICATIONS; **EXHIBIT “I”**

PREVAILING WAGE RATES:

The following information from Chapter 2258 Texas Government Code Title 10 requires state agencies, cities, counties, independent school districts, and all other political subdivisions that engage in construction projects (highways, road, excavation, repair work or other project development or improvement) using public funds to include prevailing wage rate in the project bid documents and the construction contract.

By submitting an offer, bidders certify that they are in compliance with all application federal, state, and local laws.

2258.021. Duty of Governmental Entity to Pay Prevailing Wage Rates

- (a) The state or any political subdivision of the state shall pay a worker employed by it or on behalf of it:
 - (1) not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the work is performed; and
 - (2) not less than the general prevailing rate of per diem wages for legal holiday and overtime work
- (b) Subsection (a) does not apply to maintenance work.
- (c) A worker is employed on a public work for the purposes of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for the public work with the state, a political subdivision of the state, or any officer or public body of the state or a political subdivision of the state.

DEBARMENT:

Bidder certifies that at the time of submission of its bid, Bidder was not on the federal government's list of suspended, ineligible, or debarred contractors and that Bidder has not been placed on this list between the time of its bid submission and the time of execution of the Contract. If Bidder is placed on this list during the term of the Contract, Bidder shall notify the City of Forney Purchasing Agent. False certification or failure to notify may result in termination of the Contract for default.

CONFIDENTIAL OR PROPRIETARY INFORMATION:

If a bidder believes that parts of an offer are confidential, then the bidder must so specify. The bidder must stamp in bold letters the term CONFIDENTIAL on that part of the offer which the bidder believes to be confidential. The bidder must submit in writing specific detailed reasons, including any relevant legal authority, stating why the bidder believes the material to be confidential. Vague and general claims as to confidentiality will not be accepted. The City of Forney will be the sole judge as to whether a claim is general and/or vague in nature. All offers and parts of offers, which are not marked as confidential, will be automatically considered public information after the contract is awarded. The successful offer may be considered public information even though parts are marked confidential.

CONTRACT ADMINISTRATION:

The City of Forney Engineering and Public Works Department together with the Finance Department shall be responsible for administration of the contract for compliance with the interpretation of scope, schedule, billings, requirements, and budget.

INSTRUCTIONS FOR BIDDING

CITY OF FORNEY GENERAL TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE CITY.

1. **BID NOTIFICATION:** City of Forney utilizes the following procedures for notification of bid opportunities: the Forney Messenger: www.Forneymessengers.com. City of Forney shall not be responsible for receipt of notification and information from any source other than that listed. It shall

be the bidder's responsibility to verify the validity of all bid information received by sources other than those listed.

2. **REQUIRED INFORMATION:** City of Forney (City) bid/proposal packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the bidder may be found non-responsive. Vendors may be required to complete and supply all information contained in the "supplemental information" portion of the packet at a date after bid opening. Failure to complete "supplemental information" requirements in a timely manner, prior to council award, may be used by the City in determining a vendor's responsibility.
3. **MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS:** a prospective bidder must affirmatively demonstrate their responsibility. The City of Forney may request representation and other information sufficient to determine bidder's ability to meet these minimum standards including but not limited to:
 - A. Have adequate financial resources, or the ability to obtain such resources as required;
 - B. Be able to comply with the required or proposed delivery schedule;
 - C. Have satisfactory record of performance;
 - D. Have a satisfactory record of integrity and ethics;
 - E. Otherwise qualified and eligible to receive an award.
4. **CORRESPONDENCE:** the number of this bid packet must appear on all correspondence, or inquiries, pertaining to this quotation.
5. **PREPARATION COST:** The City will not be liable for any costs associated with the preparation, transmittal, or presentation of any bids or materials submitted in response to any bid, quotation, or proposal.
6. **NOTICE OF PUBLIC DOCUMENTS:** any and all materials initially or subsequently submitted as part of the bid process shall become the property of the City, and shall be treated as City documents subject to typical practice and applicable laws for public records.
7. **ADDENDA:** any interpretations, corrections, or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Forney purchasing division. Addenda will be made available to all who are known to have received a copy of this bid packet, if the addenda contain changes to the "specification" or "bid form", bidders shall acknowledge receipt of all addenda or they may be declared non-responsive.
8. **NON-RESIDENT BIDDERS:** Texas government code, chapter 2252: non-resident bidders. Texas law prohibits City and governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid in the non-resident bidder's state.
9. **INSURANCE:** The City requires vendor(s) to carry the minimum insurance as required by state laws, and insurance requirements as outlined in the bid/proposal documents. Vendors must submit endorsement pages as well as insurance certificates.

10. **NO PROHIBITED INTEREST:** Bidder acknowledges and represents that they are aware of the laws, City Charter regarding conflicts of interest. The City Charter states that “no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service....”.
11. **SILENCE OF SPECIFICATION:** the apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.
12. **SAMPLES:** any catalog, brand names, or manufacturer’s reference in this bid packet is descriptive and not restrictive, and is used to indicate type and quality level desired for comparison purposes unless specifically excluded. Please quote as listed or give equal. If item offered is other than as indicated, bidder must state make, model, and part number of product quoted. Equality will be determined by the City, per the specifications. Samples, if required, shall be furnished free of expense to the City. **Samples should not be enclosed with bid unless requested.**
13. **PRICING:** bid price(s) quoted, must be held firm for ninety (90) days to allow for evaluation unless otherwise stated in this document.
14. **ERROR-QUANTITY:** bid price must be submitted on units of quantity specified, extended, and total shown, in the event of discrepancies in extensions, the unit price shall govern.
15. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By submittal of this bid, in addition to the guarantees and warranties provided by law, vendor expressly guarantees and warrants as follows:
 - A. That the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the vendor will bear the cost of inspecting and/or testing articles rejected.
 - B. That the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the vendor will, at vendor’s own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities, and suits arising there from.
 - C. That the articles to be delivered hereunder will be manufactured, sold, and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
 - D. That nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
16. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
17. **SHIPMENT/TITLE/RISK OF LOSS:** quotations shall be bid F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The title and risk of loss of goods shall not pass to the City until the City actually receives and takes possession of the goods at the point(s) of delivery. The City of Forney assumes no liability for goods delivered in damaged or unacceptable condition. The

successful bidder shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.

18. **DELIVERY PROMISE – PENALTIES:** quotations must show the number of calendar days required to place the materials in the possession of the City (do not quote shipping dates) and deliveries will be acceptable only during normal working hours at the designated location. When delivery delay can be foreseen, the bidder shall give prior notice to the purchasing division, who shall have the right to extend the delivery date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting bidder.
19. **PRESENTATION OF BIDS:** complete bid packets must be presented to the Finance Department in a sealed envelope unless otherwise indicated.
20. **ALTERING BIDS:** bid prices cannot be altered or amended after submission deadline. Any inter-lineation alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.
21. **LATE BIDS:** bid packets received in the purchasing department after submission deadline shall be returned unopened and will be considered void and unacceptable. The City of Forney is not responsible for the lateness of mail carrier, weather conditions, etc.
22. **WITHDRAWAL OF BIDS:** Bids filed with the City may be withdrawn, modified and/or resubmitted prior to the time set in the bid specifications. Bidder agrees that once opened, a bid price may not be withdrawn or canceled by the bidder for a period of ninety (90) days following the date designated for the receipt of bids without written approval of the City.
23. **BID OPENINGS:** all bids submitted will be read at the City's regularly scheduled bid opening for the designated project. However, the reading of a bid at bid opening should not be construed as a comment on the responsiveness of such bid or as any indication that the City accepts such bid as responsive. The City will make a determination as to the responsiveness of bids submitted based upon compliance with all applicable laws, City of Forney purchasing guidelines, and project documents, including but not limited to the bid/proposal specifications and required submittal documents. The City will notify the successful bidder upon award of the contract and, according to state law all bids received will be available for inspection at that time.
24. **BID SUMMARY SHEET:** bid summary results will be made available forty-eight (48) hours after bid opening. Bidders desiring a copy of the bid summary sheet may request the results forty-eight hours (48) hours after the bid opening through the CivCast website or by emailing kgroves@forneytx.gov
25. **MINOR DEFECT:** the City reserves the right to waive any minor defect, irregularity, or informality in any bid. The City may also reject any or all bids without cause prior to award.
26. **EVALUATION:** bids/proposals will be evaluated as outlined in the bid/proposal document. Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities

not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

27. **SPLIT AWARD:** the City reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid. The City reserves the right to take into consideration contract administration costs for multiple award contracts when determining low bid.
28. **PROTESTS:** all protests regarding the bid solicitation process must be submitted in writing to the Finance Department within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the local government code, as well as any protests relating to alleged improprieties or ambiguities in the specifications. The limitation does not include protests relating to staff recommendations as to award of this bid. Protests relating to staff recommendations may be directed to the City Council by contacting the City Secretary prior to council award. All staff recommendations will be made available for public review ninety-six (96) hours prior to consideration by the City Council by emailing: kgroves@forneytx.gov.

SECTION III: GENERAL TERMS AND CONDITIONS

BONGING, PURCHASE ORDER AND PAYMENTS:

1. **BID SECURITY/BOND REQUIREMENTS:** If required, bid security shall be submitted with bids. Any bid submitted without bid bond, or cashiers/certified check, shall be considered non-responsible and will not be considered for award. Performance and/or payments bonds, when required, shall be submitted (along with power of attorney), to the City prior to commencement of any work pursuant to the agreement provisions.

A BOND REQUIRED BY THIS SECTION MUST BE EXECUTED BY A CORPORATE SURETY IN ACCORDANCE WITH SECTION 1, CHAPTER 87, ACTS OF THE 56TH LEGISLATURE, REGULAR SESSION, 1959 (ARTICLE 7.19-1, VERNON'S TEXAS INSURANCE CODE).

A BOND REQUIRED UNDER THIS SECTION MUST CLEARLY AND PROMINENTLY DISPLAY ON THE BOND OR ON AN ATTACHMENT TO THE BOND:

THE NAME, MAILING ADDRESS, PHYSICAL ADDRESS, AND TELEPHONE NUMBER, INCLUDING THE AREA CODE, OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT.

2. **FUNDING:** The Contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Forney, which fiscal year ends on September 30th of each year, shall be subject to Forney City Council approval. In the event that the Forney City Council does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

3. **ADDITIONAL TERMS:** Notwithstanding acceptance by the City of the goods or services resulting from an award, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by City.
4. **PURCHASE ORDERS:** a purchase order(s) shall be generated by the City to the successful vendor. The purchase order number must appear on all itemized invoices and packing slips. The City will not be held responsible for any work orders placed and/or performed without a valid current purchase order number.
5. **PAYMENT FOR LABOR AND MATERIALS; NO LIENS**

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

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

A five percent (5%) retainage with respect to progress payments will be withheld until final completion and the project has been accepted by City Council.

Work Order Time – Each section of work, as identified in the Work Order Form, will be substantially completed within the stated Calendar Days from the date when the Work Order Form commences to run as provided and approved in the executed Work Order Form.

Liquidated Damages: For each day Contractor fails to achieve Substantial Completion of the Project Work Order within the completion times approved by the City and Contractor (legal holidays excluded), Contractor shall pay the sum of Two Hundred Fifty Dollars (\$250.00) in Liquidated Damages for each and every calendar day that the City is unable to utilize the Project Work Order for its intended use. Any sums due and payable hereunder by Contractor shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Agreement.

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm, or corporation having furnished labor, material, or both in the performance of this contract. It shall be the responsibility of each person, firm, or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however, that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of the 5% retainage that will be withheld.

Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer, and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

6. SCOPE AND PERIOD OF GUARANTEE

The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.

The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.

The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.

If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

7. **PRICE ESCALATION:** price escalations may be permitted by the City of Forney during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the Contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply

only to the products(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The City of Forney reserves the right to accept or reject any/all price escalations.

8. **PRICE REDUCTION:** if during the life of the contract, the Contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the City of Forney's contracted prices, an equitable adjustment shall be made in the contract price.
9. **INVOICING:** Invoices shall be submitted to the City of Forney, Attention: Engineering Department, PO Box 826, Forney, TX 75126 or electronically to kgoves@forneytx.gov
10. **PAYMENT TERMS:** Are net 30 in accordance with the Texas Prompt Payment Act (Texas Government Code, Chapter 2251), unless otherwise specified by the City in the bid/proposal packet.
11. **TAXES:** The City of Forney is exempt from federal manufacturer's excise and state sales and use tax under Section 151 of the Texas Tax Code. Tax must not be included in bid. Tax exemption certificates will be executed by the City and furnished upon request, and the Contractor shall comply with all provisions of Section 151.309.
12. **DELINQUENT TAXES:** section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Forney. Therefore, payment to a Contractor for goods or services provided to the City under contract or Purchase Order may be withheld in the event the Contractor owes delinquent taxes to the City.

CONTRACT:

13. **INTERLOCAL AGREEMENT:** successful bidder agrees to extend prices and terms to all entities who have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Forney.
14. **PATENT RIGHTS:** The Contractor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
15. **ASSIGNMENT:** The Contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
16. **AUDIT:** The City of Forney reserves the right to audit the records and performance of Contractor during the contract and for three years thereafter or as specified.
17. **CHANGE ORDERS:** no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the City of Forney.
18. **INDEMNIFICATION:** Vendor/Contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the Contractor, its officers,

agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the Contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate contractors. City does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Vendor/Contractor, at its own expense, is expressly required to defend City against all such claims. City reserves the right to provide a portion or its own entire defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If Contractor fails to retain counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by City.

In addition to Contractor's intellectual property infringement indemnification and defense requirements herein, if an infringement claim occurs, or in Contractor's opinion is likely to occur, Contractor shall, at its expense: (a) procure for city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by Contractor to City whether manufactured by Contractor or a third party. Contractor represents that, to the best of its knowledge, City's use of products that are provided supplied, or sold by Contractor to City as part of this agreement does not constitute an infringement of any intellectual property rights and City has the legal right to use said products. City enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the Contractor.

19. **TERMINATION FOR DEFAULT:** the City of Forney reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract immediately in the event the Contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
20. **REMEDIES:** The Contractor and the City of Forney agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
21. **VENUE:** this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Kaufman County, Texas. Exclusive venue shall be in Kaufman County, Texas.

22. **EMPLOYMENT ELIGIBILITY VERIFICATION:** the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The Contractor warrants that Contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the City. Contractor warrants that Contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

23. **DISCLOSURE OF CERTAIN RELATIONSHIPS:** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a local government entity disclose in the Questionnaire Form CIQ, the vendor or person's affiliation or business relationship that might cause a conflict of interest with a local government entity. By law, this questionnaire must be filed with the records administrator of the City of Forney not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor. By submitting a response to this request, Contractor represents that it is in compliance with the requirements of Chapter 176 of the Texas Local Government Code

SECTION IV: SCOPE OF WORK/SPECIFICATIONS

1. PROJECT

The following specifications are intended to describe the minimum requirements for Asphalt repair. The bid shall be based on a fixed price per the specification as required, and shall also be provided for the removal of existing Asphalt.

The City estimates the average annual expenditures for Asphalt Rehabilitation Work to be approximately **\$500,000**. This estimate does not constitute an order, but only implies the City's probable expenditures for the contract period. Work performed under the contract will be ordered and scheduled on an as needed basis through the use of "Asphalt Work Orders" (**Sample Form "1"**), and is subject to annual budgetary appropriations.

The Contractor shall furnish all labor, materials and equipment necessary to complete Asphalt projects in accordance with the City's specifications and scheduling for each project.

The rates quoted on the Bid Form (bid pricing sheets) within CivCast must be all-inclusive. "All-inclusive" shall be construed as costs incorporating all charges for labor, material, equipment and any other cost incurred. No separate line item rates or charges will be accepted.

Unless otherwise stated herein, all materials, equipment, and construction methods covered under this contract shall conform to the Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments, Texas Department of Transportation (TXDOT, as applies) and the City of Forney Design Standards.

COMPLIANCE WITH LAWS The contractor shall fully comply with all local, State and Federal laws, including all codes, ordinance and regulations applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

CONTRACTOR MUST OBTAIN COPIES OF THE LATEST CITY OF FORNEY STANDARD DETAILS www.forneytx.gov AND NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENT STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION WITH FORNEY AMENDMENTS. CONTRACTOR SHALL HAVE ONE COPY ON THE PROJECT AT ALL TIMES.

Bid prices shall remain firm for a period of one year. Contractor shall provide written notification to the City of any proposed price increase. Contract renewals are not dependent upon approval of price increases.

Unit prices as stated on the "Bid Form" (Exhibit "B") will be the basis for the payment to the Contractor for completion of work.

2. GENERAL INFORMATION

For this contract, the basis for determining quantities and project schedule will be for the entire work directed by the City for an individual project in a specific geographic area. The work for each individual project may include one or more intermittent repair areas throughout the project length.

The Contractor will be responsible for all signing and barricading and will comply with those portions of the "Texas Manual on Uniform Traffic Control Devices for Streets and Highways" which pertain to construction.

The Contractor shall provide means for adequately controlling and avoiding soil erosion during construction (no separate pay item).

The Contractor shall coordinate with the property owners to determine the existence and extent of any existing sprinkler systems. If the Contractor encounters any sprinkler systems during construction, he shall repair and/or replace it in as good or better condition than before (no separate pay item).

Contractor shall provide door hangers to all affected property owners two (2) days prior to construction as directed by the City. Additional door hangers could be requested by City (no separate pay item). The door hangers as a minimum shall have the following information:

- Contractor's name and phone number
- Construction start date and estimated completion date
- Notify the residents not to park in the construction area

The Contractor is responsible for notifying and working with all utility companies as needed.

The Contractor shall take precautions and use care to avoid damaging, disturbing or disrupting existing private facilities on private or public property, i.e. fences, sprinkler facilities, shrubs, landscaping, etc. The Contractor shall restore, to the City's satisfaction, any damaged property at the Contractor's expense.

LABOR AND MATERIALS - Unless otherwise provided, the contractor shall provide and pay for all labor, equipment, tools, construction equipment and machinery, traffic control devices, tack, water, utilities, transportation, portland cement and other facilities and services, necessary for the proper execution and completion of the work.

Completion of a particular project is defined to include the satisfactory performance of all minor and non-pay work items such as form removal, backfill, final grading, clean-up, restoration/replacement of all damaged private and public property, etc.

3. WORK ORDER BOND REQUIREMENTS

For the duration of this contract Payment Bonds and Performance Bonds may be required (**Bond Exhibits F - I**), to be determined by the dollar value of each Asphalt Work Order (**Sample Form "1"**). Lien releases will be required and given to the City at the end of each work order. No payment by the City will be made to the Contractor for completed work until the Contractor delivers a lien release for any costs, actual or incidental, incurred during the completion of each work order.

4. MINIMUM STANDARDS FOR RESPONSIBLE PROSPECTIVE BIDDERS

All bidders must affirmatively demonstrate responsibility, and must meet the following requirements:

- have adequate financial resources, or the ability to obtain such resources as required;
- be able to comply with the required or proposed delivery schedule;
- have a satisfactory record of performance and safety;
- have a satisfactory record of integrity and ethics;
- be otherwise qualified and eligible to receive an award.

The City may request representation and other information sufficient to determine bidder's ability to meet these minimum standards listed above.

5. OFFERS

Bidders shall fill out the bid form completely, stating all prices in figures. The prices in the offer shall be full compensation. The costs of all material, labor, equipment, and incidental work required to complete the project ready for use must be included in the unit prices for the bid items provided on **Sample Form "1"**, and no direct compensation will be made for any other work. Material on hand will not be paid until all work is completed.

6. TESTING

All tests required will be paid for by the City. All re-testing will be paid for by the Contractor. The Contractor shall use care in removing existing pavement so as not to damage the subgrade. If the City indicates that additional compaction tests or methods are required for specific areas, costs associated with such will be paid for by the City, provided the tests are not required due to Contractor negligence. Generally, no heavy-duty trucks or construction machinery will be allowed on a recently poured sections until cured to the required strength per City standards.

7. GRADES

Contractor is responsible for all surveying and staking for projects covered by this agreement as needed. Contractor is responsible for insuring that gutter grades allow for proper drainage.

11. EXCAVATION AND BORROW

There will be no extra pay item for typical grading operations required to reconstruct or match existing pavement grades, profiles, or cross-sections. There will be no extra pay item for typical backfilling procedures.

12. WORK ORDERS

City shall issue Asphalt Work Orders for each project (Sample Form 1). Each work order shall be uniquely numbered, and shall contain a description of the location and required work. Contractors awarded an agreement shall review the work order, complete the project cost (based on the contracted pricing) and provide an estimated start and completion date. The City **must review and approve in writing** each work order before work is to commence. Note: That Performance and Payment Bonds will be required as stipulated in Section I/Paragraph "Bonds".

13. CONSTRUCTION SCHEDULE

Contractor must give notice of any water service interruptions to residents at least **48** hours in advance.

14. PROTECTION OF PUBLIC AND PRIVATE PROPERTY

The Contractor shall exercise reasonable care to protect all existing features and utilities in the public right-of-way (ROW). This includes but not limited to landscaping, fencing, sprinkler systems, drain lines, and invisible dog fences. Any item damaged due to negligence shall be repaired or replaced in kind by the Contractor as directed by the Engineer no additional compensation will be allowed.

During performance and up until the date of final acceptance, the contractor shall be under the absolute obligation to protect the finished work against any damage. In the event such damage, the contractor shall promptly replace or repair such work, whichever the City shall determine to be preferable. All risk of loss or damage to the work shall be borne solely by the contractor until final completion and acceptance of all work by the City of Forney.

15. EASEMENTS

- a) Contractor must conduct all work within the street right-of-way, within designated areas on City-owned property, or within easements obtained for this project. All disturbed areas shall be reshaped, smoothed, top soiled, seeded, and/or sodded. All removal items shall be completely removed and disposed of. All remaining items shall be saved from damage.
- b) Any damage that occurs to private property will be the responsibility of the Contractor. In the event the Contractor gets off the permanent or temporary easements, then all costs to restore the property shall be at the Contractor's expense and final acceptance of the project may be withheld unless the claim is being addressed.
- c) All areas of new sidewalk construction will be subject to the availability of right-of-way in that given area.
- d) Any obstructions or structures in place in City right-of-way that are in conflict with the placement of the sidewalks are to be removed as carefully and prudently as possible and placed within the private property line. All costs of removal are incidental to the project.
- e) In the event that a citizen makes a claim against the Contractor or subcontractor, the Contractor shall do the following:
 - i. Investigate the claim within a reasonable period of time when notified by a citizen or the City of Forney.
 - ii. Within 5 days after completing the investigation, the Contractor shall notify in writing the person making the claim that the Contractor is approving or denying the claim or a part thereof. The City shall receive a copy of the written notification.
 - iii. Assure that claims shall not be denied for frivolous reasons.
 - iv. In the event, the City of Forney determines after notification by a citizen that the Contractor has failed to comply with the above provisions and after notifying the Contractor and determining that the Contractor has failed to comply with the above provisions, the City of Forney may, in its direction, withhold payment to the Contractor until the provisions set forth above are complied with.

16. CONTROL OF CONTRACTOR

- a) The Contractor shall be fully responsible for maintaining alignment and grade.
- b) The Contractor shall set and maintain all intermediate points, offset points, lines, grades, elevations, and offset elevations not set by the Engineer. The accuracy of the Contractor's surveys and staking shall be his responsibility.

- c) A reasonable amount of time shall be allowed by the Contractor after he calls for inspections of the form boards by the City prior to placement of the Asphalt. The Contractor shall not claim additional compensation for any delay due to the City exercising this right, for any corrective work which may be required as the result of the Contractor's errors or any removal and replacement of items not inspected or approved.
- d) Removal of existing sidewalks, curbs, 4" stone base beneath Asphalt, all finishing, backfill, and seeding, forming of ramped areas, and other related activities shall be incidental to the cost of the contract.
- e) No imperfections in the completed sidewalk will be accepted. It will be the Contractor's responsibility to prevent vandalism or destruction on the surface of wet Asphalt.
- f) Before work is to commence, the Contractor is to video all existing conditions with the date and timestamp and provide a copy to the City.

17. INSPECTION

The Contractor shall conduct his work in full cooperation with the City. The City must be notified for inspection prior to the placement of any materials; patch, curb, panel replacement, street work, sidewalk or restoration. Any materials placed before an inspection by the City shall be deemed unacceptable and no compensation will be allowed.

18. INCIDENTAL ITEMS

Unless otherwise indicated, there will be no separate pay items for the following miscellaneous construction items. Costs for these items shall be considered incidental to other contract bid items.

- Removing asphalt patches, or capping
- Adjusting water valve stacks in the paving and parkway area (Asphalt pad is paid under sidewalk)
- Adjusting Manholes and Cleanouts in the paving area
- Final cleanup
- Erosion control
- Irrigation damage or irrigation adjustments

20. DELIVERY CHARGES

All delivery charges (FOB work sites) shall be included in the bid price.

21. BARRICADING AND TRAFFIC CONTROL

Streets will remain open to thru traffic and emergency vehicles during the duration of each project **(They can be closed to thru traffic in certain situations with pre-approval)**. Barricading and construction signage shall be in accordance with the Texas Manual on Uniform Traffic Control Devices (MUTCD) requirements and shall be considered incidental in cost.

22. SAW-CUTTING

All existing Asphalt shall be sawed to limits of removal to insure uniformity. Any waste or slurry created from cutting the Asphalt shall be vacuumed and properly disposed of. Costs for saw cutting shall be addressed on the Bid Form (**Exhibit "B"**).

23. LOCATING UTILITIES

Contractor shall be required to locate and protect all utilities, including sprinkler systems and other private underground installations. The Contractor shall protect all utilities during construction. Sprinkler system and other private underground installation relocation and repair shall be done at Contractor's expense if damaged.

24. FINAL CLEAN UP

Contractor will be responsible for the removal and proper disposal of waste created during the project duration, and will restore all disturbed areas to original condition or better. Areas disturbed by construction are to be sodded with the same type of grass that existed before construction began. The Contractor is encouraged to minimize the grassed area that is disturbed because all grass restoration shall be included. All damage to grassed areas shall be held to a minimum that only the edges need restoration. All disturbed areas caused by work will need to be reestablished back to existing conditions prior to construction.

Cleanup shall follow immediately after and at the same rate as construction. Cleanup shall not be delayed until the entire project is finished. All work shall be limited to one side of a street at a time. All work, including cleanup and backfilling, shall be completed before moving to another area, with the exceptions of seeding and mulching and any asphalt repairs. The Contractor will have dry black dirt available at all times for backfill. No delays in backfilling will be allowed due to weather. Final clean up shall be complete prior to payment from the City for each work order.

25. WARRANTY

Successful bidder shall warrant that all work shall conform to the proposed specifications and/or all warranties as stated in the Uniform Commercial Code and be free from all defects in material, workmanship and title, for a minimum of 2 years.

SECTION V: EXHIBITS

EXAMPLE FORM "1": ASPHALT WORK ORDER



ASPHALT WORK ORDER -Example
Forney Agreement RFP 2021-004

Asphalt Work Order # _____ Date: _____

Contractor: _____ Phone: _____

Forney Contact: _____ Phone: _____

Location of Work: _____

Description of Work:

Contractor's Response:

Item	Description	Unit	Quantity	Unit Price	Total Price
1	Saw-Cut and Remove Existing Asphalt	SY			
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY			
3	4" Type D HMAC (48 Ton Minimum)	SY			
4	2" Type D HMAC (48 Ton Minimum)	SY			
5	6" Flexbase	SY			
6	Crack Sealing	LF			
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY			
8	Milling Work (2")	SY			

9	Wedge Mill (1-2")	SY			
10	Wedge Mill (2-4")	SY			
11	Wedge Mill (4-6")	SY			
12	Petromat 4598 Paving Fabric	SY			
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF			
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF			
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF			
16	12" White Crosswalk Lines (Traffic Paint)	LF			
17	Install 24" Stop Bar (Traffic Paint)	LF			
18	Removal of Existing Markings	LF			
19	Type B Material Delivered (6 Ton Minimum)	PER TON			
20	Type D Material Delivered (6 Ton Minimum)	PER TON			
21	Asphalt Rejuvenation	SY			

*All items include traffic control, testing, and mobilization.

Total Price: _____

Start Date: _____ Completion Date: _____

Special Requirements: _____

Performance Bond No.: _____ Payment Bond No.: _____

Before Photos Taken: _____ Yes _____ No

After Photos Taken: _____ Yes _____ No

Approved by City of Forney

Approved by Contractor

Signature

Signature

Print Name

Print Name

Date

Date

***By accepting this work order the contractor acknowledges that it has examined and carefully studied the specifications and details and clearly understands the work to be performed as identified above.**

EXHIBIT "A":

MINIMUM INSURANCE & BONDING REQUIREMENTS

By submitting a quote or bid the Contractor is acknowledging the insurance requirements, and is asserting that if awarded a written contract or purchase order, the vendor will comply with all insurance requirements as specified herein within 10 days of request by the City. Should the Contractor fail to submit the required insurance certificate within 10 days of request, vendor understands that they shall be deemed non-responsive and forfeit any applicable bid bond. Contractor also acknowledges that in award of a contract, the bid specification and subsequent purchase order constitutes a written contract and all insurance requirements are in effect.

Services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid. A certificate of insurance and endorsement pages meeting all requirements and provisions outlined herein shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration. The City, at its own discretion, may require a certified copy of the policy.

The Contractor shall obtain and maintain the minimum insurance coverage set forth in this section. By requiring such minimum insurance, Owner shall not be deemed or construed to have assessed the risk that may or may not be applicable to the Contractor. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. The Contractor is not relieved of any liability or other obligation assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, durations, or types. The insurance requirements listed below do not replace any warranty or surety (performance, payment, or maintenance) bonds if required by preceding or subsequent sections of this contract

All insurance companies and coverage must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Forney.

MINIMUM INSURANCE AND BONDING REQUIREMENTS

A. Purpose

The Owner seeks comprehensive insurance and bonding protection with limits adequate to respond to exposure confronting the Owner, the Engineer, and any other public entity (herein "Public Entity") in which the work is undertaken.

B. Conditions Applicable to All Policies:

1. **Qualifications of Insurers:** Insurers shall be duly licensed or approved non-admitted carriers and comply with all applicable state insurance laws and requirements of duly constituted insurance regulatory authorities.
2. **Insurance Company Rating:** Insurers shall maintain an A.M. Best Insurance Guide rating of at least B+VI, or better. Surplus lines carriers shall maintain an A.M. Best Insurance Guide rating of at least A+VI.

3. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact: Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by the TDI to the company affording coverage may be a signatory on the Certificate of Insurance and Bond Power of Attorney or Attorney-In-Fact (verification with TDI will be required). In the case of surplus lines carriers or non-admitted carriers only agents licensed as surplus lines agents may sign a Certificate of Insurance on behalf of the surplus lines carrier or non-admitted carrier affording coverage (verification with TDI will be required).
 4. Cancellation Notice: The Owner shall be given at least 30 days' notice by certified mail before the cancellation, or any material change in coverage.
 5. Additional Insured: With the exception of Workers' Compensation policies, the Owner, or Public Entity, and Engineer shall be named as additional insureds.
 6. Waiver of Subrogation: All policies must include a Waiver of Subrogation in favor of the Owner.
 7. Certificate Holder: The Owner shall be listed as a certificate holder.
 8. Deductibles: Deductibles may not exceed \$1,000, unless approved by the Owner.
 9. Occurrence Policy: Insurers must furnish "occurrence" policies.
 10. These requirements are in addition to the requirements adopted by the Texas section of the American Society of Civil Engineers.
 11. The Owner reserves the right to modify these requirements in the event it deems said modifications(s) to be appropriate.
- C. Comprehensive General Liability (CGL) (including independent contractor's liability, completed operations and contract liability)
1. Minimum Policy Limits (minimum combined single limits (CSL) for bodily injury and property damage)
 - a. \$1,000,000 per occurrence
 - b. \$2,000,000 general aggregate
 - c. \$2,000,000 aggregate for products and completed operations coverage
 2. Owner's and Contractor's Protective Liability Coverage (OC&P): Minimum policy limits of \$1,000,000
 3. XCU: XCU exclusions must be removed from the policy.
 4. Contractual Liability Insurance: If surplus lines policy, any non-standard exclusions must be attached to Certificate of Insurance.
 5. Policy Exclusions: Certificate of Insurance must identify all policy exclusions (*i.e.*, pollution, punitive damages, subcontractors).
- D. Comprehensive Auto and Truck Liability Insurance - Minimum CLS policy limits for bodily injury and property damage
1. \$500,000 per occurrence

2. \$1,000,000 aggregate for vehicles with gross weight of 26,000 lbs. or more.
3. Coverage shall be afforded for hired and non-owned autos.

E. Workers' Compensation

1. Authority to do Business in Texas: Insurance carrier must be authorized to conduct business in the State of Texas or must obtain a Texas endorsement.
2. Policy Limits: Maintain minimum statutory policy limits \$100,000/\$100,000/ \$500,000
3. Waiver of Subrogation: Policy must include a waiver of subrogation in favor of the Owner.
4. Certificate Holder: The Owner must be listed as a certificate holder.
5. Staff Leasing Agreement:
In the event of a staff leasing agreement:
 - a. Staff leasing company must furnish a Certificate of Insurance.
 - b. Staff leasing company must be licensed.
 - c. Staff services agreement must meet the requirements of Section 91.032 of the Texas Labor Code.
 - d. The Contractor must represent in writing that only employees covered under the staff services agreement will work on the project.
 - e. Contractor and staff leasing company must furnish the Owner with 30 days advance written notice of either parties' intent to terminate the staff services agreement.

F. Performance, Payment and Maintenance Bonds:

1. A surety company shall be listed on Treasury Circular 570. In determining whether the surety on the bond holds a certificate of authority from the United States Secretary of the Treasury, a party may conclusively rely on the list of companies holding certificates of authority as acceptable sureties on federal bonds published in the Federal Register by the United States Department of the Treasury covering the date on which the bond was executed.
2. A bond that is made, given, tendered, or filed may be executed only by a surety company that is authorized and admitted to write surety bonds in the State of Texas.
3. The bonds shall be effective for at least two years from the date final payment is made.
4. Signatories on Certificates of Insurance and Bond Power of Attorney or Attorney-In-Fact – Only agents licensed by the Texas Department of Insurance (TDI) to conduct business in the State of Texas, and appointed by TDI to the company affording coverage may be a signatory on the Bond (verification with TDI will be required).
5. Bonding company shall maintain an A.M. Best rating of A+V or better.

VERIFICATION OF COVERAGE

Contractor shall provide the City with certificates of insurance indication coverages required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City of Forney reserves the right to require complete, certified copies of all required insurance policies at any time.

1. Exhibit B – Proposal Document Check List

Submittal Checklist: *(To determine validity of proposal each of the following must be included in the proposal submittal.)*

- ☒ Exhibit B – Checklist / Bid Form / Vendor Acknowledgement
- ☒ Acknowledge Addenda *(If applicable)*
- ☒ Exhibit C - Bidders Qualification Statement
- ☒ Exhibit D - Client Work/Reference History
- ☒ Exhibit E - Contractor's Safety Record
- ☒ Exhibit G - Bid Bond or Cashier's Check *(If submitting bid and are electing to provide a cashier's check in lieu of a bid bond, the cashier's check must be physically dropped off in a sealed envelope referencing the RFP No. before the due date of this bid at the address provided on the City of Forney Bid Cover Sheet.)*
- ☒ Exhibit J - Conflict of Interest (CIQ) Form
- ☒ Exhibit K - Suspension of Debarment Certificate
- ☒ Exhibit L - Minority and /or Woman Owned Business
- ☒ Form 1295 Certificate of Interested Party must be submitted with the Texas Ethics Commission
- ☒ Confidentiality/Non-Disclosure Agreement
- ☒ Cooperative Governmental Purchasing Notice

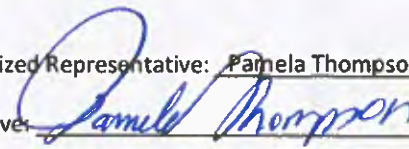
All proposals submitted to the City of Forney shall include this page with the submitted Proposal.			
RFQ Number:	2021-004		
Project Title:	Annual Price Agreement Asphalt Maintenance and Repair		
Submittal Deadline:	April 12, 2021, 2:00 p.m. CST		
Proposer(s)'s Legal Name:	Anderson Asphalt & Concrete Paving, LLC		
Address:	11343 Mathis Avenue		
City, State & Zip	Dallas, Texas 75229		
Federal Employers Identification Number #	26-3494724		
Phone Number:	(214) 352-3400	Fax Number:	(214) 352-3402
E-Mail Address:	coryh@aacpaving.com		
Proposer(s) Authorization			
I, the undersigned, have the authority to execute this Proposal in its entirety as submitted and enter into a contract on behalf of the Proposer(s).			
Printed Name and Position of Authorized Representative: Pamela Thompson			
Signature of Authorized Representative: 			
Signed this 08 (day) of April (month), 2021 (year)			

EXHIBIT "B":

BID FORM AND VENDOR ACKNOWLEDGEMENT

**CITY OF FORNEY ANNUAL PRICE AGREEMENT CONTRACT for
ASPHALT MAINTENANCE & MATERIALS**

PAY ITEMS

Any and all work specifically called for in the Contract Documents or which is required for the proper construction of items called for in the Contract Documents is to be performed by the Contractor unless specifically indicated otherwise. The cost of all work for which there is no separate pay item in the proposal shall be included in the price for a related pay item such that work called for or required by the Contract Documents will be constructed for the Contract Price.

The following descriptions are intended to clarify the nature of the work required for this project. The provisions of the standard technical specifications shall apply, except as otherwise specified herein: Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item. The contract shall be awarded based on the "TOTAL BASE BID FOR ALL ITEMS".

Pay Item 1: Saw-Cut and Remove Existing Asphalt

This item shall consist of the work, labor and materials necessary to saw cut and remove existing pavement of various thickness and for all types of pavement under the visible pavement. This pay item includes the proper disposal and haul off of the material. Measurement for payment shall be on a square yard basis.

Pay Item 2: 6" HMAC (2" Type D on 4" Type B)

This item shall consist of the work, labor and materials necessary to install (2" Type D HMA on 4" Type B HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 2" Type D and 4" Type B. Measurement for payment shall be on a per square yard basis.

Pay Item 3 and 4: 4" and 2" Type D HMA

This item shall consist of the work, labor and materials necessary to install 4" Type D HMA or 2" Type D HMA. Construction methods shall be in accordance with NCTCOG Item 302.9. The contract price per square yard shall include both the 4" Type D and 2" Type D. Measurement for payment shall be on a per square yard basis. This work includes all testing, surface prep, seal coats, and tack coats.

Pay Item 5: 6" Flexbase

This item shall consist of all the work, labor, materials and equipment associated with providing and installing flexbase at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 301.5. Dust control is part of this item. Measurement shall be on a square yard basis.

Pay Item 6: Crack Sealing

This item shall consist of all the work, labor, materials and equipment associated with providing and installing crack sealing at the discretion of the Owner. Construction methods and materials shall be per NCTCOG Item 302. Material specifications shall be provided at the request of the City prior to installing the crack sealing. Measurement shall be on a linear foot basis.

Pay Item 7: Pulverize, Cement Treat/Stabilize

Pulverize, Cement Treat/Stabilize: This item shall consist of all the work, labor and materials associated with pulverizing existing asphalt into the existing base (6") and treat with 22lb/SY of cement. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 8: Milling Work

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement (2") at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 9 - 11: Wedge Mill

This item shall consist of all the work, labor and materials necessary to mill the existing asphalt pavement at the locations directed by the City. All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a square yard basis.

Pay Item 19 & 20: Material to be Delivered

This item shall consist of all the labor, hauling of the materials per bid item to location directed by the City (location site is Public Works at 2011 E Buffalo Street, Forney, TX 75126). All materials and construction methods shall follow NCTCOG requirements. Measurement for payment shall be on a tonnage basis.

*All pay items not listed is describe in description in bid form.

RAP is not allowed in the HMA – Material specs must meet North Central Texas COG Public Works Construction Standards.

*Clarification
accepted*

City of Forney Bid Form RFP 2021-004

Item	Description	Unit	Bid Price
1	Saw-Cut and Remove Existing Asphalt	SY	\$ 67.75
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY	\$ 282.00
3	4" Type D HMAC (48 Ton Minimum)	SY	\$ 45.00
4	2" Type D HMAC (48 Ton Minimum)	SY	\$ 31.50
5	6" Flexbase	SY	\$ 40.00
6	Crack Sealing	LF	\$ 3.50
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY	\$ 51.55
8	Milling Work (2")	SY	\$ 3.75
9	Wedge Mill (1-2")	SY	\$ 3.75
10	Wedge Mill (2-4")	SY	\$ 4.00
11	Wedge Mill (4-6")	SY	\$ 4.60
12	Petromat 4598 Paving Fabric	SY	\$ 35.60
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF	\$ 6.00
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF	\$ 7.00
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF	\$ 7.00
16	12" White Crosswalk Lines (Traffic Paint)	LF	\$ 25.00
17	Install 24" Stop Bar (Traffic Paint)	LF	\$ 25.00
18	Removal of Existing Markings	LF	\$ 25.00
19	Type B Material Delivered (6 Ton Minimum)	TON	\$ 190.00
20	Type D Material Delivered (6 Ton Minimum)	TON	\$ 230.00
21	Asphalt Rejuvenation	SY	\$ 13.00

*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.

City of Forney Bid Form RFP 2021-004

Item	Description	Unit	Bid Price
1	Saw-Cut and Remove Existing Asphalt	SY	\$67.75
2	6" HMAC (2" Type D on 4" Type B) (48 Ton Minimum)	SY	\$282.00
3	4" Type D HMAC (48 Ton Minimum)	SY	\$5.00
4	2" Type D HMAC (48 Ton Minimum)	SY	\$3.50
5	6" Flexbase	SY	\$40.00
6	Crack Sealing	LF	\$3.50
7	Pulverize, Cement Treat/Stabilize (6", 22 lb/SY)	SY	\$51.55
8	Milling Work (2")	SY	\$3.75
9	Wedge Mill (1-2")	SY	\$3.75
10	Wedge Mill (2-4")	SY	\$4.00
11	Wedge Mill (4-6")	SY	\$4.60
12	Petromat 4598 Paving Fabric	SY	\$35.60
13	Striping (Traffic Paint) 4" White Lines on Edges of Road	LF	\$6.00
14	Striping (Traffic Paint) 4" Yellow Dashed Center Line	LF	\$7.00
15	Striping (Traffic Paint) 4" Yellow Solid Center Line	LF	\$7.00
16	12" White Crosswalk Lines (Traffic Paint)	LF	\$25.00
17	Install 24" Stop Bar (Traffic Paint)	LF	\$25.00
18	Removal of Existing Markings	LF	\$25.00
19	Type B Material Delivered (6 Ton Minimum)	TON	\$190.00
20	Type D Material Delivered (6 Ton Minimum)	TON	\$230.00
21	Asphalt Rejuvenation	SY	\$13.00

*Note: All items include traffic control and mobilization costs.

ACCEPTANCE: "Subcontractor's bid and its agreement to perform the work set forth herein are explicitly contingent upon Subcontractor and Owner negotiating mutually-acceptable contract terms.

This budget may vary from fiscal year to fiscal year and is subject to annual budgetary approval by City Council. The City will also have the option to decrease or increase the amount of work during the contract period, as needed, based on funding. Some of the pay items may not be used.

The purpose of the Contract Documents is to provide the City of Forney with an "annual" contract that the City may utilize for the rehabilitation of existing city streets, and sidewalks. The rehabilitation will removal and installation of asphalt pavement, flexbase and crack sealing where directed by the City. Upon written notification of award of the contract, the unit prices shall be valid for a period of one year. The contract will serve as an "annual" contract from which the City can have individual street and sidewalk rehabilitation projects performed throughout the period defined above. The City intends to release work incrementally through work orders.

Refer to the specific terms outlined for an "Automatic Option to Extend" in the Standard Form of Agreement.

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

Company Name: Anderson Asphalt & Concrete Paving, LLC

Principal Place of Business Address: 11343 Mathis Street, Dallas Texas 75229

Principal Place of Business Phone: (214) 352-3400

Authorized Representative Signature: 

Printed Name: Pamela Thompson

E-mail Address of Representative: coryh@aacpaving.com

Title: President

Date: 04/09/2021

Acknowledgement of Addenda: #1 #2 #3 #4 #5

EXHIBIT "C":

BIDDERS QUALIFICATION STATEMENT

Project: Bid No. **RFP 2021-004 Annual Price Agreement Contract - Asphalt**

Contractor: Anderson Asphalt & Concrete Paving, LLC

Indicate One: Sole Proprietor _____ Partnership X _____
Corporation _____ Joint Venture _____ Other _____

Name: Pamela Thompson Partner: Ronald Adnerson

Title: President Title: Vice President

Address: 11343 Mathis Street Address: 11343 Mathis Street

City: Dallas City: Dallas

State & Zip: Texas, 75229 State & Zip: Texas, 75229

Phone: (214) 352-3400 Phone: (214) 352-3400

Email: coryh@aacpaving.com Email: coryh@aacpaving.com

State and Date of Incorporation, Partnership, Ownership, Etc. Texas

Location of Principal Office: 11343 Mathis, Dallas, Texas 75229

Contact and Phone at Principal Office: Cory Henneberg (972) 310-2259

Number of Years in Business as a Contractor on Above Types of Work: 12

Liability Insurance Provider and Limits of Coverage: USI Southwest Dallas /CL 1,000,000.00

Workers Compensation Insurance Provider: USI Southwest Dallas /CL

Address: 2711 N Haskell Ave Suite 2000, Dallas, TX 75204

Contact and Phone: _____

Contact's Email Address: _____

EXHIBIT "D":

CLIENT WORK HISTORY/REFERENCES

Bidder: See Attached

List all experience/awarded contracts of similar size and the scope of work during the past (5) years.

1. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

2. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

3. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

4. Project: _____

Owner/Agency: _____

Contract Price: \$ _____ Dates of Service: _____

Contact Name: _____

Phone Number: _____

Email Address: _____

Project Description: _____

PROJECT 1 MISCELLANEOUS ASPHALT PATCHING BID NO. 2019-55-B

Project Name: Town of Prosper

Project Location: Asphalt Patching

Project Description: _____

Project Start Date: 07/01/2019 Original Completion Date: _____ Actual Completion Date: _____

Reason for Final Completion Date Adjustment (if applicable): _____

Original Project Award Amount: 119,530.00 Change Order(s) Amount: NONE

Reason for Change Order(s): _____

Owner Name: TOWN OF PROSPER

Owner Address: 601 W. FIFTH ST.

PROSPER, TX 75078

Owner Contact Name: Frank Owner Contact Phone: _____

Owner Contact Email Address: _____

PROJECT 2

Project Name: Mill & Overlay Pavement Resurfacing Project – Bid # RFP 2019-007

Project Location: City of Forney

Project Description: Mill & Overlay existing streets

Project Start Date: 07/22/2019 Original Completion Date: _____ Actual Completion Date: _____

Reason for Final Completion Date Adjustment (if applicable): _____

REFERENCE 1 City of GrandviewCompany Name: 304 E. CrinerAddress: Grandview, Texas 76050Contact Name: David Henley Phone: (817)866-3399 ext 228

Contact Email Address: _____

Project Name/Description: Main Street - From FM 4 to 32' from Railroad Tracks

Project Completion Date: _____ Final Project Amount: _____

REFERENCE 2Company Name: IRON MIKE CONSTRUCTIONAddress: 6950 S. Tucson Way, Suite LCentennial, CO 80112Contact Name: Michael Yaggi Phone: (720) 474-4653Contact Email Address: myaggi@ironmikeconstruction.comProject Name/Description: Cowboy Club Entrance and Dam RepairProject Completion Date: 09/19 Final Project Amount: 125,000.00**REFERENCE 3**Company Name: Town of Shady ShoresAddress: 101 S. Shady Shores RoadShady Shores, TX 76208Contact Name: Richard A. Arvizu, PE Phone: 972.644.2800Contact Email Address: RAA@binkleybarfield.comProject Name/Description: "Pothole" Repairs - W Shady and S ShadyProject Completion Date: _____ Final Project Amount: 35,000.00

EXHIBIT "E":

CONTRACTOR'S SAFETY RECORD

- I. Complete the matrix below for the last five years, as obtained from OSHA required logs:

OSHA Log # _____ (contractor to indicate the OSHA reporting form used to report the numbers below)

Description	2016	2017	2018	2019	2020
Number of injuries & illnesses					
Number of lost time accidents					
Number of recordable cases					
Number of fatalities					

- II. Please answer the following questions regarding your safety program

- a. Are regular project safety meetings held for Field Supervisor(s)?

☒ yes
☐ no

If yes, frequency:

☒ weekly
☐ bi-monthly
☐ monthly
☐ as needed

- b. Are project safety inspections conducted?

☒ yes
☐ no

If yes, who performs inspections? safety officer

How often? weekly

Who is required to attend? all field employees

- c. Does your organization have a written safety program?

☒ yes
☐ no

If yes, provide a copy. It will become a compliance document upon contract award.

- d. Does your organization have a safety orientation program for new employees?

☒ yes
☐ no

For employees promoted to Field Supervisor?

☒ yes
☐ no

If yes, does your Supervisor Safety Program include instructions on the following:

Safety work practices	☒ yes	☐ no
Tool box safety meetings	☒ yes	☐ no
First aid procedures	☐ yes	☒ no
Accident investigation	☒ yes	☐ no
Fire protection	☐ yes	☒ no
New worker's orientation	☒ yes	☐ no

CITY OF FORNEY, TEXAS

RESOLUTION NO. 21-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS
AWARDING A CONTRACT FOR SERVICES TO ANDERSON ASPHALT &
CONCRETE PAVING, LLC FOR ASPHALT MAINTENANCE SERVICES AND
MATERIALS SERVICES WITHIN THE CITY OF FORNEY; AUTHORIZING THE
CITY MANAGER TO TAKE ALL ACTION NECESSARY TO COMPLY WITH THIS
RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Forney, Texas (the "City") desires to award a contract for services and execute an agreement between the City of Forney and Anderson Asphalt & Concrete Paving, LLC for asphalt maintenance services and materials within the City of Forney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS:

Section 1. The above and foregoing premises are true and correct and are incorporated herein and made part hereof for all purposes.

Section 2. The bid for asphalt maintenance services and materials within the City of Forney is hereby awarded to Anderson Asphalt & Concrete Paving, LLC and the City Manager is authorized to enter into an Agreement for the services.

Section 3. This Resolution shall take effect immediately from and after its passage.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FORNEY, TEXAS, this 4 day of May, 2021.

ATTEST:

Dorothy Brooks
Dorothy Brooks, City Secretary

Mary Penn
Mary Penn, Mayor



CITY OF FORNEY
ENGINEERING DEPARTMENT



May 6, 2021

Cory Henneberg
Anderson Asphalt & Concrete Paving, LLC
11343 Mathis Street
Dallas, TX 75229

Capital Improvement Program

P.O. Box 826
402 N. Bois d'Arc St.
Forney, TX 75126

972.552.6561 P
469.689.0719 F

cmcquiston@forneytx.gov
cityofforney.org

Reference: 2021 Annual Price Agreement Contract - Asphalt
Bid # RFP 2021-004 - Notice to Award Contract

Dear Mr. Henneberg:

On May 4, 2021, the City Council awarded the contract to Anderson Asphalt & Concrete Paving, LLC for the above-referenced project.

Please execute the following enclosed documents and return them to our office:

1. Standard Form of Agreement
2. Performance Bond (as needed with each approved Work Order)
3. Payment Bond (as needed with each approved Work Order)
4. Insurance Information
5. Vendor Information Sheet
6. W-9 Form
7. Complete Form 1295

Please print two sets of the contract documents and return two executed original sets to our office. The City also requires documentation for the proof of the insurance coverage, a copy of the minimum insurance and bonding requirements is attached for your convenience. Please make sure to include two (2) copies of the Certificates of Insurance.

Upon receiving the contract documents from you, we will obtain the City Manager's signature and return two executed copies to you.

Should you have any questions, please contact my office at 972-552-6561.

Sincerely,

Candy McQuiston,
Manager of Capital Improvement Program

EXHIBIT "F":

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF KAUFMAN }

THIS AGREEMENT, made and entered into this the 4th day of May, A.D. 2021, by and between the City of Forney, of the County of Kaufman and State of Texas acting through its Mayor, thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and Anderson Asphalt & Concrete Paving, LLC of the City of Dallas, County of Dallas and State of Texas, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Request for Proposals, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by City of Forney, herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same in accordance with the terms of the individual work orders, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year

and day first above written.

City of Forney

Anderson Asphalt & Concrete Paving, LLC

Party of the First Part (Owner)

Party of the Second Part (Contractor)

By:



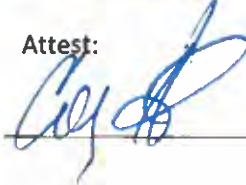
By:



Attest:



Attest:



END OF STANDARD FORM OF AGREEMENT

RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street
Maintenance & Materials

EXHIBIT "G":

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we the undersigned, Anderson Asphalt & Concrete Paving, LLC
as PRINCIPAL, and SureTec Insurance Company, as SURETY are held and firmly bound unto the City
of Forney hereinafter called the "Local Public Agency", in the penal sum of five percent of the Gross Amount
of Bid, lawful money of the United States, for the payment of which sum well and truly to be made, we bind
ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these
presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the Accompanying
Bid, dated April 12th, 2021, for RFP 2021-004 - Annual Price Agreement Contract for Asphalt
Street Maintenance & Materials (Project Description)

NOW, THEREFOR, if the Principal shall not withdraw said Bid within the period specified therein after
the opening of the same, or, if no period be specified, within thirty (30) days after the said opening, and
shall within the period specified therefor, or if no period be specified, within ten (10) days after the
prescribed forms are presented to him for signature, enter into a written contract with the Local
Public Agency in accordance with the Bid as accepted, and give bond with good and sufficient surety or
sureties, as may be required, for the faithful performance and proper fulfillment of such contract; or
in the event of the withdrawal of said Bid within the period specified, or the failure to enter into such
Contract and give such bond within the time specified, if the Principal shall pay the Local Public Agency the
difference between the amount specified in said Bid and the amount for which the local Public Agency
may procure the required work or supplies or both, if the latter be in excess of the former, then the above
obligation shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS THEREOF, the above-bounded parties have executed this instrument under their several
seals this 12th day of April, 2021, the name and corporate seal of each corporate party being hereto
affixed and these presents signed by its undersigned representative, pursuant to authority of its governing
body.

Anderson Asphalt & Concrete Paving, LLC (SEAL)



(SEAL)

Attest By: _____



SureTec Insurance Company

IMPORTANT NOTICE Statutory Complaint Notice/Filing of Claims

To obtain information or make a complaint: You may call the Surety's toll-free telephone number for information or to make a complaint or file a claim at: 1-866-732-0099. You may also write to the Surety at:

SureTec Insurance Company
9737 Great Hills Trail, Suite 320
Austin, TX 78759

You may contact the Texas Department of Insurance to obtain information on companies, coverage, rights or complaints at 1-800-252-3439. You may write the Texas Department of Insurance at:

PO Box 149104
Austin, TX 78714-9104
Fax#: 512-490-1007
Web: <http://www.tdi.texas.gov>
Email: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIMS DISPUTES: Should you have a dispute concerning your premium or about a claim, you should contact the Surety first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

Obligee: City of Forney
Project: RFP 2021-004 - Annual Price Agreement Contract for Asphalt Street Maintenance & Materials
Principal: Anderson Asphalt & Concrete Paving, LLC
Bid Bond

POA #: 4221029

SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Clem F. Lesch, Eric Lesch, Melissa Lesch, Felix Navejar

its true and lawful Attorney-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety for, providing the bond penalty does not exceed

Five Million and 00/100 Dollars (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bond were signed by the CEO, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its CEO, and its corporate seal to be hereto affixed this 25th day of November, A.D. 2019.



SURETEC INSURANCE COMPANY

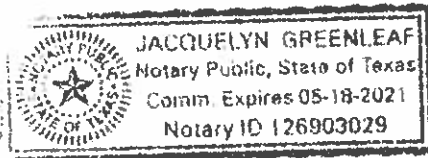
By:

John Knox Jr., CEO

State of Texas
County of Harris

ss:

On this 25th day of November, A.D. 2019 before me personally came John Knox Jr., to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is CEO of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



Jacquelyn Greenleaf, Notary Public
My commission expires May 18, 2021

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 12th day of April, 2021, A.D.

M. Brent Beaty, Assistant Secretary

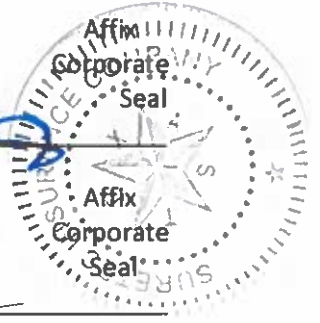
Any instrument issued in excess of the penalty stated above is totally void and without any validity. 4221029
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:30 am and 5:00 pm CST.

SureTec Insurance Company

Felix Navejar, Attorney-in-Fact

Attest By:

Eric Lesch, Witness



Countersigned

By N/A

*Attorney-in Fact, State of N/A

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, Pamela Thompson ^{President} ~~Secretary~~ of the LLC. Corporation named as Principal in the within bond: that _____, who signed the said bond on behalf of the Principal was then PRESIDENT of said corporation; that I know his signature, and his signature thereto is genuine; that said bond was duly signed, sealed, and attested to, for in behalf of said corporation by authority of this governing body.

EXHIBIT "H":

PERFORMANCE BOND

Bond No. _____

STATE OF TEXAS §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: That _____ ("Principal") of the City of _____, County of _____, and State of Texas, as principal, and _____ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of _____ Dollars and Zero Cents (\$_____.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the ____ day of _____, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is hereby referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the ____ of _____, A.D. _____ 20____, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

WORK ORDER # _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal shall fully and faithfully perform all the terms, covenants and conditions of the Contract, and shall fully indemnify and save harmless Owner from all costs and damages which Owner may suffer by reason of any Principal default, and reimburse and repay Owner all outlay and expense which Owner may incur in making good such default, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the provisions of said statute to the same extent as if it were copied at length herein.

PROVIDED FURTHER, that Surety, for value received, stipulates and agrees that no change, extension of

time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way 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, covenants and conditions of the Contractor to the work performed thereunder.

PROVIDED FURTHER, that the penal sum of this bond shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price, but in no event shall a change order or supplemental agreement which reduces the Contract price decrease the penal sum of this bond.

PROVIDED FURTHER, that Surety agrees that the bond provides for the repairs and/or replacement of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of completion and acceptance of the improvements by the Owner.

The undersigned agent of Surety is hereby designated by Surety as the Resident Agent in _____ County to whom any requisite notices may be delivered and upon whom service of process may be had in matters arising out of this bond.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day ____ of, 2021.

PRINCIPAL

SURETY

By: _____ By: _____

Printed or Typed Name

Printed or Typed Name

Title

Title

Address:

Mailing Address:

Physical Address (if not same as mailing address):

Telephone Number (including area code):

Email Address:

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):
1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

EXHIBIT "I":

PAYMENT BOND

Bond No. _____

STATE OF TEXAS §

COUNTY OF KAUFMAN §

KNOWN ALL MEN BY THESE PRESENTS: _____ ("Principal") of the City of _____, County of _____, and State of Texas, as principal, and _____ ("Surety"), authorized and licensed under the laws of the State of Texas to act as surety on bonds for principals, as surety, are held and firmly bound unto the City of Forney, Texas ("Owner"), in the penal sum of _____ Dollars and Zero Cents (\$_____.00), for the payment whereof said Principal and Surety bind themselves and their heirs, administrators, executors, successors and assigns, jointly and severally:

WHEREAS, Principal has entered into that certain written contract with Owner dated the ____ day of _____, 2021, including all documents referred to and/or made a part thereof, such as the plans, general and special conditions, specifications and drawings (collectively, the "Contract"), which Contract is referred to herein and made a part hereof as fully and to the same extent as if copied at length herein, for the following public works project. This Bond shall automatically be increased by the amount of any Change Order or Supplemental Agreement which increases the Contract price, but in no event shall a Change Order or Supplemental Agreement which reduces the Contract price decrease the penal sum of this Bond.

THE OBLIGATION TO PAY SAME is conditioned as follows: Whereas, the Principal entered into a certain Contract with the City of Forney, dated the ____ of _____, A.D. 20____, which is made part hereof by reference, for the construction of certain public improvements that are generally described as follows:

ANNUAL PRICE AGREEMENT CONTRACT for ASPHALT MAINTENANCE and MATERIALS

CITY OF FORNEY, TX (Various Locations)

AGREEMENT# RFP 2021-004

WORK ORDER # _____

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal and its subcontractors shall well and faithfully make payment to each and every claimant, as defined in Chapter 2253 of the Texas Government Code, as amended, supplying labor or materials in the prosecution of the work under the Contract, then this obligation shall be null and void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code, as amended, and all liabilities on this bond shall be determined in accordance with the

provisions of said statute to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms, covenants and conditions of the Contract, or to the work performed thereunder, shall in any way 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, covenants and conditions of the Contractor to the work performed thereunder.

IN WITNESS WHEREOF, Principal and Surety have signed and sealed this instrument this day ____ of, 2021.

PRINCIPAL

SURETY

By: _____

Printed or Typed Name

Printed or Typed Name

Title

Title

Address:

Mailing Address:

Physical Address (if not same as mailing address):

Telephone Number (including area code):

Email Address:

Texas Department of Insurance Toll-Free Telephone Number (address of Surety to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling this number):

1-800-252-3439

The name and address of the Resident Agent of Surety in Texas is:

Exhibit "J":

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

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

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

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

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

OFFICE USE ONLY

Date Received _____

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

2 ☐ Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

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

N/A

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes☒ No

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

☐ Yes☒ No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

☐ Yes☒ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

4

Signature of vendor doing business with the governmental entity

04/09/2021

Date _____

EXHIBIT "K":

SUSPENSION OR DEBARMENT CERTIFICATE

Non-Federal entities are prohibited from contracting with or making subcontract awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement for goods or services equal to or in excess of \$100,000.00. Contractors receiving individual awards for \$100,000.00 or more and all subcontract recipients must certify that the organization and its principals are not suspended or debarred.

By submitting this offer and signing this certificate, Proposer certifies that no suspension or disbarment is in place, which would preclude receiving a federally funded contract under the Federal OMB, A-102, Common Rule.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

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

City of Forney
Forney, TX United States

Certificate Number:
2021-754844

Date Filed:
05/20/2021

Date Acknowledged:

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

City of Forney

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

2021-004
Annual Road Maintenance Contract

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



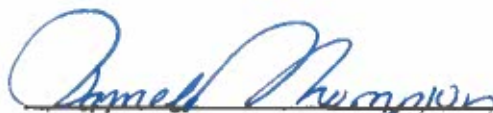
6 UNSWORN DECLARATION

My name is Pamela Thompson, and my date of birth is 10/08/1961.

My address is 9829 Stonehearth Lane, Forney, TX, 75126, Kaufman.
(street) (city) (state) (zip code) (country)

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

Executed in Kaufman County, State of Texas, on the 21st day of May, 20 21.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)

EXHIBIT "L":

FOR MINORITY

AND/OR

WOMAN OWNED BUSINESS ENTERPRISES

(To be completed only if applicable)

Minority and/or Woman-Owned Business Enterprises are encouraged to participate in City of Forney's procurement process. In order to be identified as a Qualified Minority and/or Woman-Owned Business Enterprise in the City of Forney, this form, along with a copy of your certification, must be returned to the City of Forney Purchasing Division. You should return these documents with this response, or if you have already submitted this form and a copy of your certification to the Purchasing Division, it is not necessary to re-send certification.

COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

REPRESENTATIVE: Cory Henneberg

DATE: 04/09/2021

ADDRESS: 11343 Mathis Street

CITY, STATE, ZIP: Dallas, Texas 75229

EMAIL: coryh@aacpaving.com

TELEPHONE NO.: (972) 310-2259

FAX NO.: (214) 352-3402

INDICATE ALL THAT APPLY

 Minority Owned Business Enterprise

 X Woman Owned Business Enterprise

EXHIBIT "M":

PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

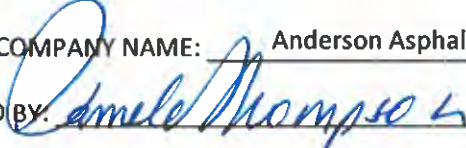
CERTIFICATION REQUIRED BY TEXAS GOVERNMENT CODE SECTION 2270.001

State law requires certification from a Company for contracts (which includes contracts formed through purchase orders) involving goods or services: (1) between a government entity and a Company with 10 or more full-time employees, and (2) has a value of \$100,000 or more that is to be paid wholly or partly from public fund of the governmental entity.

By signing below, Company hereby certifies the following:

1. Company does not boycott Israel; and
2. Company will not boycott Israel during the term of the contract.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

The following definitions apply to this state statute:

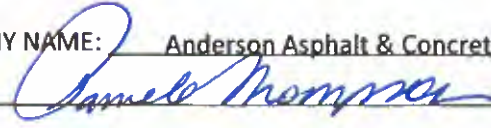
(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and

(2) "Company" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By signing below, Contractor hereby certifies that Section 2270.001 does not apply to this contract due to the following (check all that apply):

- ☐ Contractor is a sole proprietor; or
- ☐ Contractor has less than 10 full-time employees; or
- ☐ Contract value is for less than \$100,000.00.

PRINT COMPANY NAME: Anderson Asphalt & Concrete Paving, LLC

SIGNED BY: 

Print Name & Title: Pamela Thompson - President

Date Signed: 04/09/2021

SECTION VI:

GENERAL CONDITIONS OF THE CONTRACT

Non-Collusion Acknowledgment

The undersigned Proposer affirms that they are duly authorized to execute this Proposal, that this company, corporation, firm, partnership or individual has not prepared this Proposal in collusion with any other Proposer, and that the contents of this Proposal as to prices, terms and conditions thereof have not been communicated by the undersigned Proposer, nor by Proposer's employee, affiliate, representative, partner, subcontractor, or agent, to any other individual or entity engaged in this type of business prior to the official opening of this RFP.

Company Name: Anderson Asphalt & Concrete Paving, LLC

Signature of Company Officer: 

Company Officer Printed Name: Pamela Thompson

Title President



ACCOUNTS PAYABLE
P.O. BOX 826
FORNEY, TX 75126
972-564-7300 x106
FAX: 972-564-7350

COMPANY NAME Anderson Asphalt & Concrete Paving LLC

PAYMENT INFORMATION

CONTACT PERSON Pamela Thompson SECOND CONTACT Bonnie Bishop

TELEPHONE NUMBER 214 352-3400 FAX 214 352-3402 E-MAIL pthompson@aacpaving.com

PAYMENT ADDRESS 11343 Mathis Ave

CITY Dallas STATE Texas ZIP CODE 75229

FEDERAL ID NUMBER 26-3494724 TYPE OF BUSINESS

☐ SOLE PROPRIETORSHIP

☒ PARTNERSHIP LLC-P

☐ CORPORATION

PAYMENT TERMS Per Contract

CITY OF FORNEY
ACCOUNT NUMBER _____

ORDERING INFORMATION (IF DIFFERENT FROM PAYMENT INFORMATION)

CONTACT PERSON _____ SECOND CONTACT _____

TELEPHONE NUMBER _____ FAX _____ E-MAIL _____

PAYMENT ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

FEDERAL ID NUMBER _____ PAYMENT TERMS _____

CITY OF FORNEY
ACCOUNT NUMBER _____

PLEASE COMPLETE AND MAIL OR FAX BACK, ATTENTION ACCOUNTS PAYABLE

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

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

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2021-754844

Date Filed:
05/20/2021

Date Acknowledged:

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

City of Forney
Forney, TX United States

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

City of Forney

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

2021-004
Annual Road Maintenance Contract

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



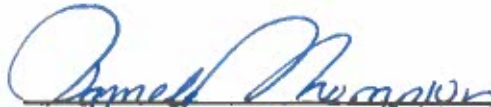
6 UNSWORN DECLARATION

My name is Pamela Thompson, and my date of birth is 10/08/1961.

My address is 9829 Stonehearth Lane, Forney, TX, 75126, Kaufman
(street) (city) (state) (zip code) (country)

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

Executed in Kaufman County, State of Texas, on the 21st day of May, 20 21.
(month) (year)



Signature of authorized agent of contracting business entity
(Declarant)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/20/2021

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

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

PRODUCER Independent Insurance Group, Inc. 3030 LBJ Freeway, Suite 1300 Dallas TX 75234-7004	CONTACT NAME: Connor Sparks	
	PHONE (A/C, No, Ext): 972-231-8277 FAX (A/C, No): 972-231-8291	
	E-MAIL ADDRESS: certs@indinsgrp.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Continental Casualty Company	20443
	INSURER B: Valley Forge Ins. Co	20508
	INSURER C: Great American Insurance Group	16691
	INSURER D:	
	INSURER E:	
	INSURER F:	

INSURED
Anderson Asphalt & Concrete Paving, LLC
11343 Mathis Ave
Dallas TX 75229

ANDEASP-01

COVERAGES**CERTIFICATE NUMBER:** 1487247421**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	Y	Y	7011840785	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	7011840799	1/1/2021	1/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000	Y	Y	TUU 3743274 00	1/1/2021	1/1/2022	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y	N/A	7011840804	1/1/2021	1/1/2022	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

The above checked ADDL INSR and SUBR WVD boxes refer to the following specific endorsements listed below and copies attached:

****General Liability**** CNA74705XX- 01-15 Contractors General Liability Extension Endorsement: Additional Insured with written contract or agreement, Additional Insured-Primary and Non-Contributory to Additional Insured's Insurance, General Aggregate Limits of Insurance-Per Project, Waiver of Subrogation with written contract, Additional Insured-Lessor of Equipment, Land, Premises CNA75079XX- 10-16 Blanket Additional Insured-Automatic Status if Required by Written Contract Completed operations which includes Primary and Noncontributory CNA74702XX 1-15 Notice of Cancellation or Material Restriction Endorsement

****Auto Liability**** CNA63359XX 04-2012 Contractors Extended Coverage Endorsement: includes automatic Additional Insured, Primary and Noncontributory and waiver of subrogation when required by in a written contract CNA68021XX 02-2013 Notice of Cancellation to Certificate Holders
See Attached...

CERTIFICATE HOLDER**CANCELLATION**

City of Forney
P.O. Box 826; 402 N. Bois d'Arc St.
Forney TX 75126

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

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Anderson Asphalt & Concrete Paving LLC	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☒ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► P Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ►	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
5 Address (number, street, and apt. or suite no.) See instructions. 11343 Mathis Ave	Requester's name and address (optional) City of Duncanville PO Box 380280 Duncanville, Texas 75138-0280
6 City, state, and ZIP code Dallas, Texas 75229	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
OR									
Employer identification number									
2	6			-	3	4	9	4	7
									2
									4

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person

Camela Thompson

Date ► 05/06/2021

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

SECTION VI:

GENERAL CONDITIONS OF THE CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Copyright© 2018

National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314-2794
(703) 684-2882
www.nspe.org

American Council of Engineering Companies
1015 15th Street N.W., Washington, DC 20005
(202) 347-7474
www.acec.org

American Society of Civil Engineers
1801 Alexander Bell Drive, Reston, VA 20191-4400
(800) 548-2723
www.asce.org

The copyright for this EJCDC document is owned jointly by the three sponsoring organizations listed above. The National Society of Professional Engineers is the Copyright Administrator for the EJCDC documents; please direct all inquiries regarding EJCDC copyrights to NSPE.

NOTE: EJCDC publications may be purchased at www.ejcdc.org, or from any of the sponsoring organizations above.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
Article 1—Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology	6
Article 2—Preliminary Matters	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	7
2.04 Preconstruction Conference; Designation of Authorized Representatives	8
2.05 Acceptance of Schedules	8
2.06 Electronic Transmittals	8
Article 3—Contract Documents: Intent, Requirements, Reuse.....	9
3.01 Intent.....	9
3.02 Reference Standards.....	9
3.03 Reporting and Resolving Discrepancies	10
3.04 Requirements of the Contract Documents.....	10
3.05 Reuse of Documents	11
Article 4—Commencement and Progress of the Work	11
4.01 Commencement of Contract Times; Notice to Proceed.....	11
4.02 Starting the Work.....	11
4.03 Reference Points	11
4.04 Progress Schedule	12
4.05 Delays in Contractor’s Progress	12
Article 5—Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions	13
5.01 Availability of Lands	13
5.02 Use of Site and Other Areas.....	14
5.03 Subsurface and Physical Conditions.....	15
5.04 Differing Subsurface or Physical Conditions	16

5.05	Underground Facilities	17
5.06	Hazardous Environmental Conditions at Site	19
Article 6—Bonds and Insurance.....		21
6.01	Performance, Payment, and Other Bonds	21
6.02	Insurance—General Provisions	22
6.03	Contractor’s Insurance.....	24
6.04	Builder’s Risk and Other Property Insurance	25
6.05	Property Losses; Subrogation	25
6.06	Receipt and Application of Property Insurance Proceeds	27
Article 7—Contractor’s Responsibilities		27
7.01	Contractor’s Means and Methods of Construction	27
7.02	Supervision and Superintendence	27
7.03	Labor; Working Hours	27
7.04	Services, Materials, and Equipment	28
7.05	“Or Equals”	28
7.06	Substitutes	29
7.07	Concerning Subcontractors and Suppliers.....	31
7.08	Patent Fees and Royalties.....	32
7.09	Permits	33
7.10	Taxes	33
7.11	Laws and Regulations.....	33
7.12	Record Documents.....	33
7.13	Safety and Protection	34
7.14	Hazard Communication Programs	35
7.15	Emergencies	35
7.16	Submittals	35
7.17	Contractor’s General Warranty and Guarantee	38
7.18	Indemnification	39
7.19	Delegation of Professional Design Services	39
Article 8—Other Work at the Site.....		40
8.01	Other Work	40
8.02	Coordination	41
8.03	Legal Relationships.....	41

Article 9—Owner’s Responsibilities	42
9.01 Communications to Contractor	42
9.02 Replacement of Engineer	42
9.03 Furnish Data	42
9.04 Pay When Due.....	42
9.05 Lands and Easements; Reports, Tests, and Drawings	43
9.06 Insurance.....	43
9.07 Change Orders	43
9.08 Inspections, Tests, and Approvals.....	43
9.09 Limitations on Owner’s Responsibilities	43
9.10 Undisclosed Hazardous Environmental Condition.....	43
9.11 Evidence of Financial Arrangements.....	43
9.12 Safety Programs	43
Article 10—Engineer’s Status During Construction	44
10.01 Owner’s Representative.....	44
10.02 Visits to Site.....	44
10.03 Resident Project Representative.....	44
10.04 Engineer’s Authority	44
10.05 Determinations for Unit Price Work	45
10.06 Decisions on Requirements of Contract Documents and Acceptability of Work	45
10.07 Limitations on Engineer’s Authority and Responsibilities	45
10.08 Compliance with Safety Program.....	45
Article 11—Changes to the Contract	46
11.01 Amending and Supplementing the Contract	46
11.02 Change Orders	46
11.03 Work Change Directives.....	46
11.04 Field Orders.....	47
11.05 Owner-Authorized Changes in the Work	47
11.06 Unauthorized Changes in the Work.....	47
11.07 Change of Contract Price	47
11.08 Change of Contract Times.....	49
11.09 Change Proposals.....	49
11.10 Notification to Surety.....	50

Article 12—Claims.....	50
12.01 Claims.....	50
Article 13—Cost of the Work; Allowances; Unit Price Work	51
13.01 Cost of the Work	51
13.02 Allowances	55
13.03 Unit Price Work.....	55
Article 14—Tests and Inspections; Correction, Removal, or Acceptance of Defective Work	56
14.01 Access to Work.....	56
14.02 Tests, Inspections, and Approvals.....	56
14.03 Defective Work	57
14.04 Acceptance of Defective Work.....	58
14.05 Uncovering Work	58
14.06 Owner May Stop the Work	58
14.07 Owner May Correct Defective Work.....	59
Article 15—Payments to Contractor; Set-Offs; Completion; Correction Period	59
15.01 Progress Payments.....	59
15.02 Contractor’s Warranty of Title	62
15.03 Substantial Completion.....	62
15.04 Partial Use or Occupancy	63
15.05 Final Inspection	64
15.06 Final Payment.....	64
15.07 Waiver of Claims	65
15.08 Correction Period	66
Article 16—Suspension of Work and Termination	67
16.01 Owner May Suspend Work	67
16.02 Owner May Terminate for Cause.....	67
16.03 Owner May Terminate for Convenience.....	68
16.04 Contractor May Stop Work or Terminate	68
Article 17—Final Resolution of Disputes	69
17.01 Methods and Procedures.....	69
Article 18—Miscellaneous	69
18.01 Giving Notice	69
18.02 Computation of Times.....	69

18.03	Cumulative Remedies	70
18.04	Limitation of Damages	70
18.05	No Waiver	70
18.06	Survival of Obligations	70
18.07	Controlling Law	70
18.08	Assignment of Contract.....	70
18.09	Successors and Assigns	70
18.10	Headings.....	70

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*
 - a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the

requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.

- b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
- 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
 - 12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
 - 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 - 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
 - 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 - 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 - 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 - 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 - 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 - 20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
 - 21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the

recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
 - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
 - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
50. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:* The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:* The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:* The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - 1. does not conform to the Contract Documents;
 - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work

into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 - 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility

inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the 30th day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

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

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the

established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.
- Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.

- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment

and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

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

5.03 *Subsurface and Physical Conditions*

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

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 2. is of such a nature as to require a change in the Drawings or Specifications;
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;

3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown

or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

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

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special

conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or

Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by

Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.

- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner's option, may purchase and maintain Owner's own liability insurance. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.
- H. Contractor shall require:
 - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
 - 1. include at least the specific coverages required;
 - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 - 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
 - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
 - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 - 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);

4. not seek contribution from insurance maintained by the additional insured; and
5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against

Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, 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, risks, 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 Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, 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 fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

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

- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

- 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.

3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.

- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 *Taxes*

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

7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 *Record Documents*

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

7.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.

- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

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

7.15 *Emergencies*

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

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will

document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. Resubmittal Procedures for Shop Drawings and Samples

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
 - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.

- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;
 - 5. Any review and approval of a Shop Drawing or Sample submittal;
 - 6. The issuance of a notice of acceptability by Engineer;
 - 7. The end of the correction period established in Paragraph 15.08;
 - 8. Any inspection, test, or approval by others; or

9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (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 from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.

- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 - 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

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

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

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

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

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

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.

E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

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

A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

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

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

D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.

E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
- 4. *Engineer's Full Review and Action on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change

Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

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

ARTICLE 12—CLAIMS

12.01 *Claims*

- A. *Claims Process*: The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. *Submittal of Claim*: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge

and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.

- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 - 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or

2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.
 5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are

consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

- 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.

c. *Construction Equipment Rental*

- 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 - 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 5. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 6. Expenses incurred in preparing and advancing Claims.
 - 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
- 1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 - 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change

Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision

thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

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

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.

- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs,

losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then 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 will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
 - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation

establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

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

E. *Reductions in Payment by Owner*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time

submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.

- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

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

significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:

1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.

- d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim,

appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, 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 complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects,

attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 7 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The

provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
 - 2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. 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.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION VII:

SUPPLEMENTARY CONDITIONS

SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT

Definitions – Add the following paragraphs:

SC-1.01

52. *Written Notice* - Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
53. *Extra Work* - The term "Extra Work" as used in this contract shall be understood to mean and include all work that may be required by the Engineer or Owner to be done by the Contractor to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under Section 3.04, herein.
54. *Working Day* - A "Working Day" is defined as any day not including Saturdays, Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.
55. *Calendar Day* - "Calendar Day" is any day of the week or month, no days being excepted.
56. *Substantially Complete* - By the term "substantially completed" is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

SC-3.03,B *Reporting and Resolving Discrepancies – Add the following paragraph:*

2. As provided in Article 3.03,A of the General Conditions, the Contractor is responsible for reporting discrepancies in the Contract Documents to the Engineer for interpretation and instructions. However, should the Contractor fail to report the discrepancy to the Engineer, the Contract Documents shall be interpreted in the following order with the first-listed elements having priority over subsequently listed elements:
 - a. Signed Agreement
 - b. Performance and Payment Bonds
 - c. Special Bonds (if any),
 - d. Proposal
 - e. Supplementary Conditions of the Construction Contract
 - f. Request for Proposals (Advertisement)
 - g. Technical Specifications
 - h. General Conditions of the Construction Contract
 - i. Plans

In the event differing degrees of performance are required by any of Contract Documents, the more stringent requirement, as determined by the Engineer, will be enforced. In cases of dimensional discrepancies, annotated and calculated dimensions shall govern over scaled dimensions.

SC-5.06 *Property Insurance* – Add the following paragraph:

- F. All losses or damage arising out of the nature of the work, or from the action of the elements, or from groundwater, or from any unusual obstruction or difficulty, or any other natural or existing circumstances either known or unforeseen, which may be encountered in the prosecution of the work, shall be sustained and borne by the Contractor at his own cost and expense.

SC-6.02 *Labor, Working Hours* – Add the following paragraph:

- C. The Contractor shall employ only competent, efficient workers and shall not use any unfit person on the work or one not skilled in the work assigned to him; and shall at all times maintain good order among his employees.

Whenever the Owner shall inform the Contractor in writing that, in his opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the Owner may orally require immediate removal of an employee for cause, to be followed by written confirmation.

SC-6.03 *Services, Materials, and Equipment* – Add the following paragraphs:

- D. Unless otherwise expressly provided in the contract drawings or specification, the work shall be performed according to the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The Owner shall judge and determine the Contractor's compliance with these requirements. All materials used in the construction of this project shall be new.
- E. All materials salvaged from the Owner's property shall remain the property of the Owner. The Contractor shall take reasonable care not to damage materials which are to be removed as a part of this construction. Should the Owner decline to accept the salvaged materials, the Contractor shall dispose of the materials as described herein for construction debris.

SC-6.09 *Laws and Regulations* – Add the following paragraphs:

- D. The contractor shall fully comply with all local, state and federal codes and ordinances applicable to this contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.
- E. Codes and ordinances having jurisdiction and specified codes shall serve as minimum requirements, but, if the contract documents indicate requirements which are in excess of those minimum requirements, then the requirements of the contract documents shall be followed. Should there be any conflicts between the contract documents and codes, or any ordinances, report these with the bid.

SC-6.10 *Taxes* – Add the following paragraph:

- B. This contract is issued by an organization that qualifies for exemption pursuant to the provisions of Section 151.309 of VTCA Tax Code. According to amended Section 151.311 of the VTCA Tax Code, the Contractor performing this separated contract is considered a seller of the materials that will remain as an improvement to the realty on this project. To be exempt from sales tax on these materials, the Contractor must issue a resale certificate to its supplier(s) and obtain an exemption certificate from the Owner.

SC- 6.19 Contractor's General Warranty and Guarantee – Add the following paragraph:

- D. All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner without the necessity of separate transfer or assignment thereof; provided, that if directed by the Engineer, the Contractor shall assign such warranties and guarantees in writing to the Owner.

SC-8 Owner's Responsibilities – Add the following section:

8.13 Collateral Contracts

The Owner agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such a manner as not to delay the progress of the work, or damage said Contractor, except where such delays are specifically mentioned elsewhere in the Contract Documents.

SC-9.04 Authorized Variations in Work – Add the following paragraph:

- C. No verbal conversation, understanding or agreement with any officer or employee or agent of the Owner, either before or after the execution of the contract, shall affect or modify any of the terms, conditions or obligations contained in the contract documents.

SC-10 Changes in the Work; Claims– Add the following section:

10.06 Extra Work

It is agreed that the basis to compensation to the Contractor for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method "A" - by agreed unit prices; or

Method "B" - by agreed lump sum; or

Method "C" - If neither Method "A" nor Method "B" is agreed upon before the Extra Work is commenced or afterward, at the Owner's choosing, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method "C", then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the Contractor of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Owner, or by them agreed to. The ENGINEER may direct the from in which accounts of the "actual field cost" shall be kept

and the records of these accounts shall be made available to the Engineer. The Engineer or Owner may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 per cent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) per cent of the "actual field cost" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by the Engineer. In case any orders or instructions, either oral or written, appear to the Contractor to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the Engineer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the Engineer insists upon its performance, the Contractor shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method "C".

SC-13.07 *Correction Period*

In this section, change the words "Substantial Completion" to read "Certificate of Completion and Acceptance".

SC-14.02 *Progress Payments*

Change paragraph A.3 to read:

3. When progress payments are made, the Owner shall then pay the Contractor the total amount for Work completed in the approved Application for Payment, less 5 percent of the amount thereof, which 10 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the Owner under the terms of this Agreement.

Change paragraph C.1 to read:

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

SC-14.06 *Final Inspection – Add the following paragraph:*

- B. If the work is found to be completed in accordance with the Contract Documents, the Engineer, when requested to do so by the Contractor, shall issue to the Owner and the Contractor the Certificate of Completion and Acceptance or to advise the Contractor in writing of the reason for non-acceptance. All project warranties and guarantees shall begin not before the date the Certificate of Completion and Acceptance is issued by the Engineer.

SC-14.07 Final Payment – Add the following paragraphs:

D. Payments Withheld

The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

1. Defective work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Failure of the Contractor to make payments properly to sub-contractors or for material or labor.
4. Damage to another contractor.
5. Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
6. Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

E. Delayed Payments

Should the Owner fail to make payment to the Contractor of the sum named in any partial or final statement, when payment is due, then the Owner shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) per cent per annum, unless otherwise specified, from date due as provided under "Progress Payments" and "Final Payment," until fully paid, which shall fully liquidate any injury to the Contractor growing out of such delay in payment, but the right is expressly reserved to the Contractor in the event payments be not promptly made, as provided under "Progress Payments," to at any time thereafter treat the contract as abandoned by the Owner and recover compensation, as provided under "Abandonment by Contractor" or "Abandonment by Owner," unless such payments are withheld in accordance with the provisions of "Payment Withheld."

F. Payment for Labor and Materials; No Liens

The Contractor for himself or any of his subcontractors shall pay all indebtedness that may become due to any person, firm or corporation having furnished labor, material or both in the performance of this contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this contract, to protect his or its interest in the manner prescribed by applicable laws of the State of Texas; provided, however that as this contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the Owner; and any subcontractor shall look solely to the Contractor and the payment bond surety, and not the Owner, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work.

SC-14 *Payments to Contractor and Completion – Add Sections 14.10 and 14.11 as follows:*

14.10 Delays; Extension of Time; Liquidated Damages

The Contractor shall be entitled to an extension of working time under this contract only when claim for such extension is submitted to the Owner in writing by the Contractor within seven days from and after the time when any alleged cause of delay shall occur; and then only when such time is approved by the Owner. In adjusting the contract working time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to inability to obtain supplies and materials, acts of God, or the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions or delays of subcontractors due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the contract should require work and materials in greater amounts or quantities than those set forth in the contract, requiring more time for completion than the anticipated time, then the contract working time shall be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the Contractor.

No adjustment to working time shall be made if, concurrently with the equitable cause for delay, there existed a cause for delay due to the fault or negligence of the Contractor, his agents, employees or subcontractors; and no adjustment shall be made to the contract price and the Contractor shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay resulting in adjustment to the working time hereunder, including delays caused by the acts or negligence of the Owner. Notwithstanding any other provision of the contract documents, all claims for extension of working time must be submitted in accordance with paragraph 12.03, and no act of the Owner shall be deemed a waiver or entitlement of such extension.

14.11 Liquidated damages for failure to complete on time:

The amount of liquidated damages for this project is \$ 500.00 per calendar day.

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per calendar day that the Contractor shall be in default after the time stipulated in the contract by and between Owner and Contractor because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner in such event would sustain; and said amounts are agreed to be the amounts of damages which the Owner would sustain and which shall be retained from the monies due, or that may become due, the Contractor under this contract; and if said monies are insufficient to cover the amount owing, then the Contractor or his surety shall pay any additional amounts due.

Where there are multiple items of work that each have a separate time of completion, liquidated damages shall be applied to each time of completion. Liquidated damages shall be applied for each day from the specified time of completion until the requirements for that item of work have been met.

SC-15 *Suspension of Work and Termination – Add the following sections:*

15.05 Termination of Contract in Case of National Emergency

Whenever, because of a national emergency, so declared by the President of the United States or other lawful authority, it becomes impossible for the Contractor to obtain all the

necessary labor, material and equipment for the prosecution of the work with reasonable continuity for a period of two months, the Contractor shall within seven (7) days notify the Owner in writing, giving a detailed statement of the efforts which have been made and listing all necessary items of labor, material and equipment not obtainable. If, after investigation, the Owner finds that such conditions exist and that the inability of the Contractor to proceed is not attributable in whole or in part to the fault or neglect of the Contractor, then if the Owner cannot after reasonable effort assist the Contractor in procuring and making available the necessary labor, materials and equipment within thirty (30) days, the Contractor may request the Owner to terminate the contract and the Owner shall within thirty (30) days comply with the request, and the termination shall be based on a final settlement, which shall include, but not be limited to, the payment for all work executed and any loss sustained upon any plant or materials and reasonable profit thereon, but not anticipated profits on work which has not been performed.

15.06 Abandonment by Contractor

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner, or the Engineer, or if the Contractor fails to comply with the orders of the Engineer, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the Contractor.

After receiving said notice of abandonment the Contractor shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the Owner or the Surety on the performance bond, or another contractor in completion of the work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Articles 10 and 12, it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after receipt of such notice, then the Owner may provide for completion of the work in either of the following elective manners:

B. The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said Contractor, then the Contractor and/or his Surety shall pay the amount of such excess to the Owner; or

C. The Owner under sealed bids, after give (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the Owner under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the Contractor and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract

prove to be less than what would have been the cost to complete under this contract, the Contractor and/or his Surety shall be credited therewith. When the work shall have been substantially completed the Contractor and his Surety shall be so notified and the Certificates of Completion and Acceptance shall be issued. A complete itemized statement of the contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and his Surety, whereupon the Contractor and/or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificates of Completion and Acceptance.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the Contractor under the terms of this contract; or when the Contractor and/or his Surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the Contractor and/or his Surety. Should the cost to complete the work exceed the contract price, and the Contractor and/or his Surety fail to pay the amount due the Owner within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and his Surety at the respective addresses designated in this contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the Contractor and his Surety subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the Owner may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and his Surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the Contractor or his Surety, to their proper owners. The books on all operations provided herein shall be open to the Contractor and his Surety.

15.07 Abandonment by Owner

In case the Owner shall fail to comply with the terms of this contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the Contractor and have not been wrought into the work. And thereupon the Engineer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Agreement and shall certify same to the OWNER who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor the balance shown by said final statement as due the Contractor, under the terms of this Agreement.

SC-17 *Miscellaneous – Add the following sections:*

17.7 Assignments

The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the Owner.

17.8 Unlawful Provisions Deemed Stricken

If this contract contains any unlawful provisions not an essential part of the contract and which shall not appear to have been a controlling or material inducement to the making thereof, such unlawful provisions shall be of no effect. Upon the application of either party, the unlawful part shall be considered stricken from the contract without affecting the remainder of the contract.

17.9 Service of Notices

The Owner and the Contractor shall each designate addresses where all notices, directions or other communication may be delivered, or to which they may be mailed.

Notices to the surety or sureties on contract bonds shall be directed or delivered to the home office, or to the agent or agents who executed the bonds on behalf of the surety or sureties, or to their designated agent for delivery of notices.

Actual delivery of any such notice, direction or communication to the aforesaid places, or depositing it in a postpaid wrapper addressed thereto in any post office regularly maintained by the United States Postal Service shall be conclusively deemed to be sufficient service thereof upon the above persons as of the date of such delivery or deposit.

The designated addresses may be changed at any time by an instrument in writing executed by the party changing the addresses and delivered to the other party.

Nothing herein contained shall, however, be deemed to preclude or tender inoperative the service of any notice, direction or communication upon the above parties personally, or, if the Contractor be a corporation, upon any officer or director thereof.

17.10 All Legal Provisions Included

It is the intent and agreement of the parties of this contract that all legal provisions of law required to be inserted herein, shall be and are inserted herein. If through mistake or oversight, however, any such provision is not herein inserted, or is not inserted in proper form, then upon application of either party, the contract shall be amended so as to strictly comply with the law and without prejudice to the rights of either party hereunder.

17.11 No Waiver of Legal Rights

Inspection by the Engineer, any order, measurement, quantity or certificate by the Engineer, any order by the Owner for payment of money, any payment for or acceptance of any work, any extension of time or possession taken by the Owner, shall not operate as a waiver of any provisions of the contract or any power therein reserved to the Owner of any rights or damages therein provided. Any waiver of any breach of contract shall not be held to be a waiver of any other or subsequent breach. The Owner reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the contract documents. The Owner reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the Contractor or his agents

and the Engineer or his assistants, discovered in the work after the final payment has been made.

Neither final acceptance of the work, nor final payment, shall relieve the Contractor of the responsibility for faulty materials or workmanship, and the Contractor shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the Owner shall constitute acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

17.12 Obligation to Perform Functions

Any failure or neglect on the part of Owner, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve Contractor from full compliance with the contract documents nor render Owner liable to Contractor for money damages, extensions of time or increased compensation of any kind.

SECTION VIII
GENERAL REQUIREMENTS

SUMMARY OF WORK

PART 1: GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS

The City of Forney is accepting sealed bids for a fixed price, Price Agreement to establish a qualified listing of contractors to furnish all necessary materials, machinery, equipment, fuel, superintendence, insurance, and bonds; and for performing all work required for the maintenance and repair of asphalt streets, parking lots, driveways, driveway aprons, flumes, sidewalks, curbs, and gutters. Price agreements are used to establish a qualified contractor listing for items/services that are purchased repetitively over a period of time that cannot be quantified.

The Public Works/Engineering Department will contact contractors who have been awarded an agreement on an as – needed basis to perform general asphalt maintenance and/or repair as described in the bid specification. Note: This agreement does not cover “new” construction.

1.02 CONTRACTS

A. Contract Documents

1. The Contract Documents under which this project is to be constructed include the following:
 - a. Request for Proposals
 - b. Instructions to Bidders.
 - c. Proposal.
 - d. Contract including the General Conditions and Supplementary Conditions of the Construction Contract.
 - e. Bond Forms
 - f. Specifications – Technical Specifications Divisions 1 through Division 2, the North Central Texas Council of Governments Standard Specifications for Public Works Construction – 4th Edition and the City of Forney Addendum thereto, and the Texas Department of Transportation “Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges”, dated June 1, 2004.
2. Contract Drawings and Specifications if applicable

The Owner shall furnish the Contractor, without charge, four (4) copies of the contract and any supplemental drawings and specifications. At least one copy of all drawings and specifications shall be accessible at all times to the Owner at the job site.

3. Supplemental Drawings and Specifications

In order to carry out the intent of the contract documents and to assist the Contractor in performing his work, the Owner, after the execution of the contract, may, by supplemental

drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the contract documents and reasonably inferable therefrom. Therefore, no extra costs shall be allowed by the Owner on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the contract documents, incurring extra costs, unless the Contractor has first brought the matter, in writing, to the Owner's attention for adjustment before proceeding with the work covered by such.

If the Owner shall decide that there is no departure from the requirements of the contract documents, the Contractor shall then proceed with the work as shown, specified or directed. If the Owner shall decide that extra work is involved, he shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued.

4. Errors and Corrections in Drawings and Specifications

The Contractor shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications; and the Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the contract documents. In case of any errors, omissions or discrepancies in the drawings or specifications, the Contractor shall promptly submit the matter to the Owner who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the Contractor without this determination and instructions shall be at the Contractor's own risk and expense. The work is to be made complete as intended by the contract documents.

B. Alteration of Plans and Specifications

The Owner reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the contract and bonds. Such changes shall be issued by the Engineer.

1.03 CONTRACTOR USE OF PREMISES

A. Land for Construction Purposes

1. The Contractor shall confine his operations within the Owner's easements and property. The Owner reserves the right to limit the Contractor's access to certain portions of his property to limit interference with the Owner's operations. The Owner will designate areas that may be used by the Contractor for storage of materials and equipment, employee parking and for other construction uses.
2. Contractor shall be solely responsible for obtaining and shall pay all costs in connection with any additional work area, or storage site access to the site. The Contractor shall submit to the Owner, written agreements with private property owners for the use of their land for construction purposes.
3. It shall be understood that the responsibility for protection and safekeeping of equipment and materials on or near the site will be entirely that of the Contractor and that no claim shall be made against the Owner by reason of any act of an employee or trespasser. It shall be further understood that should any occasion arise necessitating access to the sites occupied by these stored materials and equipment, the Contractor owning or responsible for the

stored material, or equipment, shall immediately move same. No materials or equipment may be placed upon the property until Owner has agreed to the location contemplated by the Contractor to be used for storage.

B. Damage to Existing Property

1. The Contractor will be held responsible for any damage to existing structures, work, plantings, materials, equipment or other improvements because of his operations and shall repair or replace any damaged structures, work, plantings, materials, equipment or other improvements to the satisfaction of, and at no additional cost to the Owner.
2. The Contractor shall protect all existing structures, work, plantings, materials, equipment or other improvements and property from damage and shall provide bracing, shoring or other work necessary for such protection at no additional cost to the Owners.
3. The Contractor shall be responsible for all damage to streets, roads, curbs, sidewalks, highways, shoulders, ditches, embankments, culverts, bridges or other public or private property that may be caused by transporting equipment, materials or men to or from work. Contractor shall make satisfactory and acceptable arrangements with the agency having jurisdiction over the damaged property concerning its repair or replacement.

C. Protection of Persons and Property

The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any are adjacent to said work site. No separate compensation shall be paid to the Contractor for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property.

The Contractor shall assume all duties owed by the Owner to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the Contractor shall at his own cost and expense provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, lights, signs and other precautionary measures for the protection of persons or property as may be prudent or necessary, or as are required by law. The Contractor's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs and lights and other precautionary measures shall not cease until the project shall have been completed and accepted by the Owner, and shall cease when the certificate of acceptance is issued by the Owner.

If the Owner discovers that the Contractor has failed to comply with the applicable federal and state law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the Owner may order the Contractor to take such additional precautionary measures as required by law to be taken to protect persons and property.

In addition, the Contractor shall be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights or other precautionary measures in protecting said property; and whenever evidence is found of such

damage, the Owner may order the damaged portion immediately removed and replaced by and at the cost and expense of the Contractor.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the "Manual of Uniform Traffic Control Devices," Federal Highway Administration of the U.S. Department of Transportation, and the "Texas Manual of Uniform Traffic Control Devices," Texas State Department of Transportation.

D. Protection of Work

During performance and up to date of final acceptance, the Contractor shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the Contractor shall promptly replace or repair such work, whichever the Owner shall determine to be preferable. The obligation to deliver finished work in strict accordance with the contract prior to final acceptance shall be absolute and shall not be affected by the Owner's approval of or failure to prohibit means and methods of construction used by the Contractor. All risk of loss or damage to the work shall be borne solely by the Contractor until final completion and acceptance of all work by the Owner, as evidenced by the Owner's issuance of a certificate of acceptance.

**PAYMENT
PROCEDURES**

PART 1:GENERAL

1.1 MEASUREMENT

A. General

1. This is a unit price project. The unit bid price(s) shall cover all work described in the proposal. All other work shown on the contract drawings, or required by the specifications or other contract documents shall be subsidiary to the bid items described in the proposal. All costs in connection with the work, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction plant equipment, and tools; and performing all labor and supervision necessary to complete the work shall be included in the bid price(s) named in the proposal.
2. No item required by the Contract Documents for the proper and successful completion of the work will be paid for outside of or in addition to the price submitted in the proposal. Work done solely for the convenience of the Contractor shall not be measured and paid for unless such work has been authorized in writing by the Owner or his representative. Work done of a temporary nature will not be measured or paid for.

1.2 PAYMENT

Payment for all work performed under the proposed Contract will be made by the Owner in the manner set forth in the General Contract Conditions for Construction and the Supplementary Conditions of the Construction Contract.

PROJECT MANAGEMENT AND COORDINATION

PART 1: GENERAL

1.01 INDEPENDENT CONTRACTOR

The relation of the Contractor to the Owner shall be that of an independent Contractor.

1.02 RELATIONS WITH OTHER CONTRACTORS

A. Working Area, Coordination with other Contractors, Final Cleanup

The Contractor shall confine his equipment, storage of materials and construction operations to the area shown on the contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the Owner, and shall not unreasonably encumber the site or public right-of-way with his construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the Contractor. Other Contractors of the Owner may enter upon and use such portions of the area and for such times as determined by the Owner are necessary for all purposes required by their contracts. The Contractor shall give to such other Contractors all reasonable facilities and assistance to the end that the work on this and the other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the Contractor for his use shall be provided by him at his own cost and expense.

Upon completion of the work and before final acceptance and final payment shall be made, the Contractor shall completely clean and remove from the site of the work surplus and discarded materials, temporary structures and debris of every kind. He shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at Contractor's sole cost.

B. Other Contractors, Obligation to Cooperate

The Owner may award other contracts for additional work on this project, and the Contractor shall fully cooperate with such other contractors and shall coordinate and fit his work to be done hereunder to such additional work as may be contracted by the Owner. At the time of bidding, prospective bidders shall be advised of other planned contract work that is expected to affect the work area. The Contractor shall not commit or permit any acts that shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the Contractor that another contractor is failing to coordinate his work with the work under this contract as directed by the Owner, the Owner will investigate the charge and take such necessary action as the situation may require. However, the Owner shall not be liable to the Contractor for damages suffered by the Contractor due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the Owner. Should any interference occur between contractors, the Engineer may furnish the Contractor with written instructions designating priority of effort or change in methods; whereupon the Contractor shall immediately comply with such direction. In such event, Contractor shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the contract price shall be due the Contractor.

1.03 PROJECT COORDINATION

No attempt has been made in the contract documents to segregate work to be performed by any trade or subcontract. Any segregation between trades and crafts will be solely a matter for agreement between the Contractor and his subcontractors. The Contractor will be responsible for the coordination of all trades and work under the various divisions and sections of the specifications. All transactions of the Engineer will be with the Contractor. Subcontractors will be considered only in the capacity of employees or workers, and shall be subject to the same requirements as to character and competency as the Contractor.

1.04 METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the contract drawings, specifications or bulletins, the means and methods of construction shall be such as the Contractor may choose; subject, however, to the Owner's right to prohibit means and methods proposed by the Contractor that in the Owner's judgment:

- A. shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
- B. shall cause unnecessary or unreasonable inconvenience to the public; or
- C. shall not produce finished work in accordance with the requirements of the contract documents; or
- D. shall not assure the work to be completed within the time allowed by the contract.

The Owner's approval of the Contractor's means or methods of construction, or the Owner's failure to exercise his right to prohibit such means or methods, shall not relieve the Contractor of his responsibility for the work or of his obligation to accomplish the result intended by the contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the Contractor against the Owner. Where the contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, the Contractor shall submit his proposed plan of procedure to the Owner sufficiently in advance to permit a reasonable time for determining the adequacy and safety of the proposed plan. Failure to submit the proposed plan within a reasonable time shall not create a cause of action for damages for resulting delay in the work or be a cause for extension of working time for completion of the work.

1.05 TRAFFIC CONTROL

- A. The Contractor shall provide, to the Owner, a Traffic Control Plan for each street at least five (5) days before beginning work on the project. The Traffic Control Plan shall include, but is not limited to, estimated volume of traffic, traffic patterns during each construction phase and locations of any required temporary roadways. The Contractor shall not begin work on any street until receiving, in writing, an approved Traffic Control Plan.

PROJECT MEETINGS

1.01 PRECONSTRUCTION CONFERENCE

Before any construction begins on the project a preconstruction conference may be held at the direction of the Engineer. The date, time and location of meeting will be selected by the Engineer or CIP Manager. The Contractor or his Contract Coordinator, the Contractor's superintendent and any key foreman shall be present at this conference. The Engineer, his field representative and the Owner or his representatives may also be present. At this conference, the Contractor shall present the following submittals as required in Section 01 33 00– Submittal Procedures:

- A. Construction Schedule
- B. Schedule of Monthly Payments
- C. Schedule of Values

1.02 PROGRESS MEETINGS

At the direction of the City, the Contractor and his superintendent shall attend job progress meetings to discuss critical aspects in the prosecution of the work. The Owner or his representatives may also attend these meetings. The meetings will be held at a place and time selected by the Engineer.

CODES

PART 1: GENERAL

1.01 REFERENCE SPECIFICATIONS

Whenever reference is made to the furnishing of materials or testing thereof to conform to the Standards of any technical society, organization, or body, it shall be construed to mean the latest standard, code, specification or tentative specification adopted and published at the time of advertisement for bids, even though reference has been made to an earlier standard. Such standards are made a part hereof to the extent that is indicated or intended.

The following are names and abbreviations of such groups:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
ALSC	American Lumber Standards Committee
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASA	American Standards Association
ASTM	American Society for Testing Materials
AWSC	American Welding Society Code
AWWA	American Water Works Association
Fed. Spec.	Federal Specification
Navy Spec.	Navy Department Specification
NEC	National Electric Code
NEMA	National Electrical Manufacturers Association
NCTCOG	North Central Texas Council of Governments Standard Specifications for Public Works Construction
U.L. Inc.	Underwriter's Laboratories, Incorporated

Where no reference is made to a code, standard, or specification, the Standard Specifications of the agencies listed above, as appropriate, shall govern.

1.02 COORDINATION OF SPECIFICATIONS AND CODES

If the Specifications and Drawings show requirements that are in excess of codes and ordinances, then the Specifications and Drawings shall be followed. Should there be any conflicts between the Specifications and Drawings and the codes and ordinances having jurisdiction, the Contractor shall report these in his bid.

**ABBREVIATIONS AND
ACRONYMS**

PART 1: GENERAL

1.01 ABBREVIATIONS AND SYMBOLS

The following abbreviations and symbols are used in the Specifications and Drawings. The Contractor shall notify the Engineer if the meaning of any abbreviation or symbol is unclear.

Asph.	Asphalt
Assy.	Assembly
@	At
Ave.	Avenue
BL or $\perp$	Base Line
Bot or Btm.	Bottom
Cl	Clear
CL or $\oplus$	Center Line
CO	Clean Out
Cond.	Conduit
Corr.	Corrugated
Cu.	Cubic
CF	Cubic Feet
CY or C.Y.	Cubic Yard
Culv.	Culvert
Dia. or $\varnothing$	Diameter
Dr.	Driveway
Dwls	Dowels
°	Degree
EA.	Each
EF	Each Face
Elev. or EL.	Elevation

EW	Each way
F.	Fahrenheit
Ft. or '	Foot or Feet
Gal.	Gallon
Galv.	Galvanized
HDG	Hot-dip galvanized
Hor.	Horizontal
In. or "	Inches
ID	Inner Diameter
Lin.	Linear
L.F.	Linear Foot
Lb.	Pound
MH	Manhole
Max.	Maximum
'	Minutes
Min.	Minimum
Mono.	Monolithic
NCTCOG	North Central Texas Council of Governments
NCTCOG Specs	Standard Specifications for Public Works Construction as published by the North Central Texas Council of Governments
No. or #	Number
OC	On Center
OCEW	On Center Each Way
OD	Outer Diameter
/	Per
%	Per Cent
Ø	Phase or Diameter
PE	Plain End
PSI or psi	Pounds per square inch

PV or P.V.	Plug Valve
PVC	Polyvinylchloride
R.	Radius
RCP	Reinforced Concrete Pipe
Reinf.	Reinforced
Rem.	Remove
Rep.	Replace
R/W or ROW	Right-of-way
Sani.	Sanitary
"	Seconds
Sim.	Similar
Spa.	Spaces or Spacing
Sq.	Square
SF or S.F.	Square Feet
SY or S.Y.	Square Yard
Std.	Standard
St.	Street or Storm
Str.	Strength or Structure
SL or §	Survey Line
Sym.	Symmetrical
Typ.	Typical
T.C.E.Q.	Texas Commission on Environmental Quality
TxDOT	Texas Department of Transportation
Vert.	Vertical
Vol.	Volume
w/	With
WWF	Welded Wire Fabric
Yd.	Yard

DEFINITIONS

PART 1: GENERAL

1.01 DEFINITIONS

Supplementing the Definition of Terms contained in the General Provisions, words, phrases or other expressions used in these Contract Documents shall have the meanings as follows:

- A. "Contract Documents" shall be synonymous with the term "Contract."
- B. "Owner" shall be synonymous with the term "City" and shall mean the City of Forney.
- C. "Consulting Engineer" shall mean the City of Forney City Engineer, or its duly authorized agents acting within the scope of the particular duties entrusted them in each case.
- D. "Drawings" or "plans" shall mean all (a) drawings furnished by the Owner or a basis for Proposals, (b) supplementary drawings furnished by the Owner to clarify and to define in greater detail the intent of the contract drawings and specifications, (c) drawings submitted by the successful bidder with his Proposal, provided such drawings are acceptable to the Owner, (d) drawings furnished by the Owner to the Contractor during the progress of the work, and (e) engineering data and drawings submitted by the Contractor during the progress of the work, provided such drawings are acceptable to the Consulting Engineer.
- E. Whenever in these Contract Documents the words "as ordered," "as directed," "as required," "as allowed" or words or phrases of like importance are used, it shall be understood that the order, direction, requirement, permission or allowance of the Owner or Consulting Engineer is intended only to the extent of judging compliance with the terms of the contract. None of these terms shall imply the Owner or the Consulting Engineer has any authority or responsibility for supervision of the Contractor's forces or construction operations. Such supervision and the sole responsibility therefor are strictly reserved for the Contractor.
- F. Similarly the words "approved," "reasonable," "suitable," "acceptable," "proper," "satisfactory," or words of like effect and import are used, it shall be understood that such work, materials and methods shall be approved, reasonable, suitable, acceptable, proper, or satisfactory in the judgment of the Owner or Consulting Engineer to the extent provided in "E" above.
- G. Whenever in these Contract Documents the expression "it is understood and agreed," or an expression of like import is used, such expression means the mutual understanding and agreement of the parties executing the Contract.
- H. Whenever in these Contract Documents the words "Provide, "Furnish and Install," "Install" or words of like effect and import, unless otherwise particularly specified, shall mean that the Contractor is to both purchase all materials and provide all labor and equipment required to perform the work described. The Owner will not furnish any material, labor or equipment unless specifically provided for in the Contract Documents.
- I. Whenever in these Contract Documents, the word "Proposed" or words of like effect and import are used, it shall be understood that the work described as being "proposed" is to be constructed as a part of this contract.

- J. Whenever in these Contract Documents, the word "New" or words of like effect and import are used, it shall be understood that the work described as being "new" is to be constructed as a part of this contract.
- K. Whenever in these contract documents, the word "Future" or words of like effect and import are used, it shall be understood that the work described as being "future" is not to be constructed as a part of this contract but is contemplated in the future and is referenced in these documents only for the information of the Owner and Contractor.

QUALITY CONTROL

1.01 TESTING LABORATORY SERVICES

- A. Material testing shall be performed by an independent testing laboratory that is paid for by the City. Any retests and additional testing required by the city inspector will be paid for by the Contractor. The city will choose testing locations. The testing laboratory shall be acceptable to the city.
- B. Testing Laboratory Services to be Paid for by Contractor
 - 1. All material tests including retests and additional testing required by the city inspector.
- C. The Owner reserves the right to initiate any other tests of materials and workmanship.
- D. When the Engineer or the Owner's representative does initiate any test which reveals a condition that does not meet the requirements of the specifications, then the Contractor shall reimburse the Owner for the cost of such failing tests, as well as for subsequent tests made at the direction of the Engineer until it is found that the deficiency so revealed has been corrected. Nothing in this paragraph shall be construed to relieve the Contractor of the cost of testing any material in which technical specifications require the Contractor to pay such costs.

1.02 ENGINEERING OBSERVATION SERVICES

- A. The Owner may appoint (either directly or through the Engineer) such observers as the Owner deems proper to review the material furnished and the work performed for compliance with the drawings and specifications. The Contractor shall furnish all reasonable assistance required by the Engineer, or observers, for the proper observation of the work. Should the Contractor object to any interpretation of the contract by an observer, the Contractor may make written appeal to the Engineer for a decision.
- B. Observers shall have the authority to reject work that is unsatisfactory, faulty, or defective or does not conform to the requirements of the drawings and specifications. Observation shall not relieve the Contractor from any obligation to construct the work strictly in accordance with the drawings and specifications. Work not so constructed shall be removed and replaced by the Contractor at his own expense.

1.03 REMOVAL OF DEFECTIVE AND UNAUTHORIZED WORK

- A. All work that has been rejected or condemned shall be repaired or if it cannot be repaired satisfactorily, it shall be removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given (save as herein provided), work done without proper inspection, or any extra or unclassified work done without written authority and prior agreement in writing as to prices, may be ordered removed at the Contractor's expense. Upon failure to repair satisfactorily or to remove and replace (if so directed) rejected, unauthorized or condemned work or materials immediately after receiving notice from the Engineer, the Engineer will (after giving written notice to the Contractor) have the authority to cause defective work to be remedied, removed, replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due (or to become due) to the Contractor.
- B. In the event defective work or unauthorized work cannot be satisfactorily removed from the work as determined by the Owner and the Engineer, the Owner may deduct from any monies due (or to become due) the Contractor such amount as would be required, as determined by the Engi-

neer, to remove and replace such defective work or unauthorized work even though such work may remain in place.

- C. Neither the observation by the Owner or Consulting Engineer or any of their officials, employees, or agents nor any order by the Owner or Consulting Engineer for payment of money, or any payment for, or acceptance of, the whole or any part of the work by the Owner or Consulting Engineer, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of provision of this Contract, or of any power herein reserved to the Owner, or any right to damages herein provided, nor shall waiver of any breach in this Contract be held to be a waiver of any other subsequent breach.

1.04 UNFAVORABLE CONSTRUCTION CONDITIONS

During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to work which will not be affected adversely thereby. No portions of the work shall be constructed under conditions that would affect adversely the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the work in a proper and satisfactory manner.

TEMPORARY FACILITIES AND CONTROLS

1.01 TEMPORARY CONSTRUCTION ELECTRICITY

All power for lighting, operation of the Contractor's plant or equipment, or for any other use by the Contractor shall be provided by the Contractor, at his sole cost and expense.

1.02 TEMPORARY WATER

All water required for and in connection with the work to be performed and for any specified tests of piping, equipment, devices, etc., for compacting backfill material or for any other use as may be required for proper completion of the work, shall be provided by the Contractor at his expense. No separate payment for water used or required will be made and all costs in connection therewith shall be included in the proposal.

1.03 TEMPORARY SANITARY FACILITIES

Enforce strict observance of sanitary and health regulations by employees on the plant site. Furnish an adequate number of chemical toilets. The chemical toilets and their maintenance shall meet requirements of the Texas Commission on Environmental Quality. Immediately correct facilities or maintenance methods failing to meet these requirements.

1.04 PROTECTION AND RESTORATION OF PROPERTY

The Contractor shall be responsible for all damage or injury to property of any character by any act by the Contractor, or agents, or any time due to defective works or materials or due to his failure reasonably or properly to prosecute the work, and said responsibility shall not be released until the work shall have been completed or accepted. When and where any such damage or injury is done to public or private property by the Contractor, he shall restore or have restored at his own cost and expense such property to a condition similar or equal to that existing before such damage was done, by repairing, rebuilding, or otherwise restoring as may be directed, or he shall make good such damage or injury in a manner acceptable to the Owner or the Engineer. In case of failure by the Contractor to restore such property or make good such damage or injury, the Engineer may, upon forty-eight hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof will be deducted from any monies due the Contractor under his contract.

1.05 FENCES AND FENCE GAPS

- A. The Contractor shall construct and maintain all fence gaps required for the construction of these projects at his own expense as required by the Engineer. All fence gaps required shall be so constructed that they will be equal to the fence in which they are built. When requested by property owners, the Contractor shall maintain locks on all fence gaps.
- B. Before constructing a fence gap, the Contractor shall brace the fence on both sides of the cut to prevent sagging.
- C. Fences which must be removed completely during construction shall be replaced immediately with an equal or better quality fence.

1.06 CONSTRUCTION ACCESS

The Contractor's access to the construction site shall be from existing City streets and highways.

1.07 LAND FOR CONSTRUCTION PURPOSES

The Contractor shall confine his construction operations to stay within the limits of the property owned by the Owner or easements obtained by the Owner. Authority to enter private property outside these limits shall be obtained in writing from the owner of the property and a copy filed with the Owner.

1.08 CONTROL OF TRASH AND DEBRIS

Clean the working areas each day, remove all trash and waste materials, and maintain the site in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is waste material or rubbish and the manner and place of disposal. On or before the completion of the work, carefully clean out all pits, pipes, chambers or conduits; remove all temporary structures and remove all rubbish from the area, leaving them in first-class condition.

1.09 CROSSINGS, BARRICADES, LIGHTS AND FLAGMEN

- A. The Contractor, at his own expense, must maintain such crossings as designated by the Engineer, to prevent serious interruption of traffic on streets and highways.
- B. Where the work is carried on in or adjacent to any street or highway, the contractor shall, at his own expense, furnish, erect and maintain such barricades, fences, lights and danger signals, shall provide such flagmen, and shall take such other precautionary measures for the work, as are necessary. All barricades shall be painted in a color that will be visible at night and shall be illuminated by lights from sunset to sunrise. The term "lights," as used herein, shall mean flares, flashers or both. A sufficient number of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish flagmen in sufficient numbers to protect the work.
- C. The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and watchmen to protect it, and whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by the Contractor at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs and lights, and for providing watchmen, shall not cease until the project shall have been accepted by the Owner.

PRODUCT REQUIREMENTS

PART 1: GENERAL

1.01 MATERIALS AND CONSTRUCTION METHODS

- A. The detailed Specifications herein are divided into several sections, covering various materials and methods of construction, and the applicable parts of each section shall apply to the Contract work.
- B. Rejected or condemned materials shall be immediately removed from the site of the work.
- C. All materials to be used in this project must be new, except for the encasement pipe for highway bores. Do not incorporate materials which have been used for temporary purposes into the permanent construction unless written consent of the Engineer has been obtained.

1.02 ACCEPTANCE AND SUBSTITUTIONS

- A. Where materials or equipment are specified by the trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to establish an equal basis for the evaluation of bids. Where the words "equivalent," "proper," or "equal to" are used, they shall be understood to mean that the article or process is equal, in the opinion or judgment of the Engineer, to the article or process specified by name. Unless otherwise specified, all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved samples. Notwithstanding that the words "equal to" or other such expressions are not used in the Specifications, the material, manufactured article, or process specifically designated shall be used. A substitute shall be approved in writing by the Engineer, and the Engineer shall have the right to require the use of such specifically designated material, article or process.
- B. Substitutions after the award of Contract shall be made only within sixty (60) days after the notice to proceed. Furnish all required supporting data. The submittal of substitutions for review shall not be cause for time extensions.
- C. Where substitutions are offered, the substituted product shall meet the product performance as set forth in the specified manufacturer's current catalog literature, as well as meeting the details of the Contract Documents.
- D. The details on the drawings and the requirements of the Specifications are based on the first listed material or equipment. If any other than the first listed material or equipment is furnished, then assume responsibility for the correct function, operation, and accommodation of the substituted item. If there are misfits or changes in work required, either in this section or other sections of the Contract, or in both, bear all costs concerning all changes arising out of the use of other than the first listed item specified.

1.03 STORAGE OF MATERIALS

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground and shall be placed under cover when so directed. Stored materials shall be placed and located to facilitate prompt inspections.

1.04 STORAGE OF EQUIPMENT

- A. All equipment shall be boxed, crated, or otherwise completely enclosed and protected during shipment, handling, and storage. All equipment shall be protected from exposure to the elements and shall be kept thoroughly dry at all times.
- B. Equipment shall be stored according to the manufacturer's recommendations.
- C. Painted surfaces shall be protected against impact, abrasion, discoloration and other damage. All painted surfaces damaged before acceptance of equipment shall be repainted to the satisfaction of the Engineer.
- D. Electrical equipment, controls, and insulation shall be protected against moisture or water damage. All space heaters provided in the equipment shall be kept connected and operating at all times until equipment is placed in service.

FIELD
ENGINEERING

PART 1: GENERAL

1.01 LINE AND GRADES

1. Dimensions for lines and elevations for grades of structures, appurtenances, and utilities are indicated on Drawings, together with other pertinent information required for laying out work.
2. Basic horizontal and vertical control points will be established or designated by the Engineer. These points shall be used as datum for work under this contract. All additional survey, layout, and measurement work shall be performed by the Contractor as a part of the work under this contract. If conditions vary from those indicated, notify Engineer immediately, who will make minor adjustments required.
3. The Contractor shall provide an experienced instrument man, competent assistants, and such instruments, tools, stakes, and other materials as required to complete the survey, layout, and measurement work. In addition, the Contractor shall furnish, without charge, competent men from his force and such tools, stakes and other materials as the Engineer may require in establishing or designating control points, or in checking survey, layout, and measurement work performed by the Contractor.
4. The Contractor shall keep the Engineer informed, a reasonable time in advance, of the times and places at which he wishes to do work, so that horizontal and vertical control points may be established and any checking deemed necessary by the Engineer may be done with minimum inconvenience to the Engineer and minimum delay to the Contractor.
5. Engineer may perform checks to verify accuracy of Contractor's layout work and that completed Work complies with Contract Documents.
6. Any existing survey points or other control markers destroyed without proper authorization will be replaced by owner of the survey points or control markers at the Contractor's expense.

1.02 CONTRACTOR'S RESPONSIBILITIES

- A. Provide additional survey and layout required.
- B. Locate and protect reference points prior to starting site preparation.
- C. Check and establish exact location of existing facilities prior to construction
- D. In event of discrepancy in data or staking provided by Engineer, request clarification before proceeding with work.
- E. Preserve and leave undisturbed control staking until Engineer has completed checks it deems necessary.
- F. Re-establish reference points resulting from destruction by Contractor's operations.
- G. Maintain accurate log of survey work as it progresses as a Record Document.
- H. On request of Engineer, submit documentation.

- I. Provide competent employee(s), tools, stakes, and other equipment and materials as Engineer may require to:
 - 1. Establish control points, lines, and easement boundaries.
 - 2. Check layout, survey, and measurement work performed by others.
 - 3. Measure quantities for payment purposes.
- J. Cooperate with Engineer so that checking and measuring may be accomplished with least interference to Contractor's operations.
- K. Any work done without being properly located may be ordered removed and replaced at the Contractor's expense.

1.03 PRESERVATION OF MONUMENTS AND STAKES

The Contractor shall carefully preserve all monuments, bench marks, property markers, reference points, and stakes. In case of his destruction thereof, the Contractor will be charged with the expense of replacement and shall be responsible for any mistake or loss of time that may be caused. Permanent monuments or bench marks which must be removed or disturbed shall be protected until properly referenced for relocation. The Contractor shall furnish materials and assistance for the proper replacement of such monuments or bench marks.

CLEANING AND WASTE MANAGEMENT

PART 1: GENERAL

1.01 DESCRIPTION

- A. Throughout the construction period, maintain the project in a standard of cleanliness as described in this Section.
- B. Beyond the standards described in this Section, comply with requirements for cleaning up as described in various other Sections of these Specifications.

1.02 QUALITY ASSURANCE

- A. Conduct daily inspection to verify that requirements of cleanliness are being met.
- B. In addition to the standards described in this Section, comply with pertinent requirements of governmental agencies having jurisdiction.

PART 2: PRODUCTS

2.01 CLEANING MATERIALS AND EQUIPMENT

Provide personnel, equipment and materials needed to maintain the specified standard of cleanliness.

2.02 COMPATIBILITY

Use only cleaning materials and equipment that are compatible with the surface being cleaned, as recommended by the manufacturer of the material or as approved by the Engineer.

PART 3: EXECUTION

3.01 PROGRESS CLEANING

A. General

1. Retain stored items in an orderly arrangement allowing maximum access, not impeding drainage or traffic and providing protection of materials.
2. Do not allow the accumulation of scrap, debris and waste material.
3. Provide adequate storage for items awaiting removal from the job site, observing requirements for fire protection and protection of the ecology.

B. Site

1. Daily inspect the site and pick up scrap, debris and waste material. Remove such items to the place designated for their storage.
2. Weekly inspect arrangements of materials stored on the site; restack, tidy or otherwise service all arrangements to meet the requirements of paragraph above.

3. Maintain the site in a neat and orderly condition to the approval of the Engineer.

C. Graffiti

Promptly remove all evidence of graffiti.

3.02 FINAL CLEANING

A. Before completion of the Work, remove from the job site all tools, surplus materials, equipment, scrap, debris and waste. Conduct final progress cleaning as described in Article above.

B. Unless otherwise specifically directed by the Engineer, hose down all paved areas on the site and all sidewalks. Completely remove all resultant debris.

C. Exterior - Structures

Visually inspect all exterior surfaces and remove all traces of soil, waste material, smudges and other foreign matter. Remove all traces of splashed material from adjacent surfaces. If necessary to achieve a uniform degree of exterior cleanliness, hose down the exterior of the structure. Where there are stubborn stains not removable with water, the Engineer may require light sandblasting, repainting, or other cleaning at no additional cost to the Owner.

D. Schedule final cleaning as approved by the Engineer to enable the Owner to accept a completely clean project.

CLOSEOUT PROCEDURES

1.01 CLEANING

Upon completion of the work, the Contractor shall remove from the site all plant materials, tools, and equipment belonging to him and leave the site with an appearance acceptable to the Engineer. The Contractor shall thoroughly clean and polish all equipment and materials installed by him and deliver over such materials and equipment in a bright, clean, polished and new-appearing condition.

1.02 FINAL OBSERVATION

When the work has been substantially completed, and at a time mutually agreeable to the Owner, Consulting Engineer, and Contractor, the Consulting Engineer will make a final observation of the work and report to the Owner his findings as to the acceptability and completeness of the work.

1.03 PROJECT RECORD DOCUMENTS

Before final payment on the project is made, the Contractor will be furnished with two sets of Plans to record project data. Project data shall include but not be limited to the following:

A. Changes in construction not covered by a change order or field order including:

1. Changes in dimensions.
2. Changes in material.
3. Any variation in construction details.
4. Any critical dimensions not shown on the original Plans to include:
 - a. Location of electrical conduits.
 - b. Location of miscellaneous piping and utilities, including all utilities uncovered or otherwise located during the construction of the project

B. Mark both sets of prints and submit to Engineer for approval.

1.04 OPERATIONS AND MAINTENANCE DATA

A. The Contractor shall furnish, before initial testing, four (4) copies of an indexed Maintenance Manual, composed of suppliers' brochures on all equipment and materials with moving parts, including performance curves, with size, model, figure number, etc., indicated to identify the unit furnished. Maintenance Manuals are to be of a hard back, loose-leaf type and of a durable quality. Manuals shall be indexed and tabbed.

B. Each set to include the following:

1. Manufacturers' parts list identified with the make, model and serial number of the equipment furnished.
2. Control and wiring diagrams.
3. Installation, operation, lubrication and maintenance instructions.
4. Manufacturers' recommended spare parts lists.

- C. Provide schematic system flow and control diagrams identifying the location and function of all system components, valves and controls.
- D. Two (2) copies are to be supplied to the Owner and two (2) copies to the Engineer before the inspection and testing of the equipment. Following the testing phase, the Engineer's approval of the submitted documents shall be requested by the Contractor. Final Payment on the project will not be made until an approved manual (4 copies) has been delivered.

1.05 FINAL PAYMENT

- A. Before final payment will be made, the Contractor shall furnish the Owner a consent of surety issued by the regional or national office of the surety (not the local agent) and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment. Forney City Council will need to accept project before final release of retainage.
- B. Acceptance by the Contractor of the final payment shall be a release to the Owner, Engineer and every officer and agent thereof, from all claims and liability hereunder for anything done or furnished for, relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work.

1.06 GUARANTEE

A. Scope and Period of Guarantee

- 1. The Contractor shall guarantee the materials and workmanship furnished under this Contract to be as specified and to be free from defects for a period of two years after the date of completion and acceptance of the improvements.
- 2. The guarantee shall cover all work, equipment, and materials that are a part of this project, whether or not a warranty is specified in the specification section describing that particular aspect of the work. Where a warranty of duration greater than the guarantee period is specified for a particular aspect of the work, that warranty shall govern.
- 3. The cost of all materials, parts, labor, transportation, supervision, tools, and supplies required for replacement of parts or correction of defects shall be paid by the Contractor or the Surety. The guarantee shall be extended to cover all replacements and corrections furnished under the guarantee. If the date of completion of a replacement or correction is less than one year from the end of the guarantee period, the guarantee for each such replacement or correction shall be one year after completion of the replacement or correction.

B. Notification and Service under the Guarantee

- 1. Upon notification, the Contractor shall promptly make all adjustments, repairs, or replacements which, in the opinion of the Consulting Engineer or Owner, arose out of defects and became necessary during the guarantee period.
- 2. If within (10) ten days after the Owner has notified the Contractor of the defect, failure, or abnormality in the work, the Contractor has not started to make the necessary repairs or adjustments, the Owner is hereby authorized to make the repairs or adjustments, or to order the work done by a third party, and the cost of the work shall be paid by the Contractor or the Surety.
- 3. In the event of an emergency where, in the judgment of the Owner, delay would cause serious loss or damage, repairs or adjustments may be made by the Owner, or a third party

chosen by the Owner, without advance notice to the Contractor, and the cost of the work shall be paid by the Contractor or the Surety.

SECTION
AGGREGATE BASE COURSES

PART 1:GENERAL

1.1 DESCRIPTION

This section of the specifications includes the furnishing of all plant, labor, equipment, and materials, and the performance of all operations required to complete the flexible base. The flexible base shall be constructed in one or more courses in conformity with these specifications and the lines, grades, and sections shown on the drawings.

1.2 QUALITY ASSURANCE

A. Testing Agency

The Contractor shall employ the services of an independent testing laboratory, acceptable to the Owner, to test the degree of compaction of all completed flexible base and to test the thickness. The Owner or his representative will select the exact location of the tests. Furnish one test for each 500 square yards of roadway surface or fraction thereof.

The Owner will employ the services of an independent testing laboratory to test the degree of compaction of all completed flexible base and to test the thickness. The Owner will pay for the cost of each density test which meets the specified density. The Contractor will pay for the cost of each density test which does not meet the density requirement.

B. Reference Standards

Moisture - Density Relationships of Soils (ASTM D698)

1.3 SUBMITTALS

A. Submit the following data on flexible base furnished on this project:

1. Name and location of pit or quarry.
2. Name of supplier
3. Test data showing compliance with all provisions of this specification.

B. If requested, submit a 40 lb. representative sample of the base material to the Engineer for independent analysis.

1.4 PROTECTION

- A. Work on the sub-base or base course(s) shall not be accomplished during freezing temperatures nor when the subgrade is wet. When the aggregates contain frozen materials or when the underlying course is frozen, the construction shall be stopped.**
- B. Hauling equipment may be routed over completed portions of the course, provided no damage results and provided that such equipment is routed over the full width of the course to avoid rutting or uneven compaction. However, the Engineer in charge shall have full and specific authority to stop all hauling over completed or partially completed base course when, in his opinion, such hauling is causing damage. Any damage resulting to the course from routing equipment over the course shall be repaired by the Contractor at his own expense.**

PART 2:PRODUCTS

2.1 AGGREGATES

- A. The aggregate shall be crushed stone and the fine aggregate shall be screenings obtained from crushed stone.
- B. The crushed stone shall consist of hard, durable particles or fragments of stone, free from dirt or other objectionable matter, and shall contain not more than 8 percent of flat, elongated, soft or disintegrated pieces.
- C. The crushed aggregate shall have a percent of wear not more than 45 at 500 revolutions, as determined by AASHTO T 96 (Los Angeles Rattler Test).
- D. The crushed aggregate shall have a minimum soaked and re-molded laboratory CBR of 100 at 100 percent maximum density.
- E. The crushed aggregate shall not show evidence of disintegration nor show a total loss greater than 12 percent when subjected to five cycles of the sodium sulphate accelerated soundness test using AASHTO T 104.
- F. All material passing the No. 4 mesh sieve produced in the crushing operation of the stone shall be incorporated in the material unless there is an excessive amount that, if included, would not meet the gradation requirements.
- G. The crushed aggregate shall meet the requirements of the gradations given in the following table when tested by AASHTO T 11 and T 27.

TABLE 1. REQUIREMENTS FOR GRADATION OF AGGREGATE

Sieve Designation (square openings)	Percentage by Weight Passing Sieve
2 inch	100
1½ inch	100
1 inch	70-95
¾ inch	55-85
No. 4	30-60
No. 40	10-25
No. 200	3-20

- H. The gradations in the table represent the limits that shall determine suitability of aggregate for use from the sources of supply. The final gradations selected within the limits designated in the table shall be well graded from coarse to fine and shall not vary from the low limit on one sieve to the high limit on the adjacent sieves or vice versa.
- I. The amount of the fraction of material passing the No. 200 mesh sieve shall not exceed one half the fraction passing the No. 40 mesh sieve.
- J. The portion of the aggregate, including any blended material, passing the No. 40 mesh sieve shall have a liquid limit of not more than 35 and a plasticity index of not more than 10 when tested following AASHTO T 89 and T 90.

- K. The selection of any of the gradations shown in the table shall be such that the maximum size aggregate used in any course shall not be more than two thirds the thickness of the layer of course being constructed.

2.2 ADDITIONAL FINE MATERIAL

If additional fine material, more than that naturally present in the base course material, is necessary for correcting the gradation to the limitations of the specified gradation, or for the satisfactory bonding of the base material, or for changing the soil constants of the material passing the No. 40 mesh sieve, it shall be uniformly blended and mixed with the base course material at the crushing plant or by an approved plant. There shall be no reworking of the base course material in place to obtain the specified gradation. The additional fine material for this purpose shall be obtained from the crushing of stone, gravel or slag and when used, shall be of a gradation as necessary to accomplish the specified gradation in the final mixed base course material.

2.3 MATERIAL

- A. The material for the flexible base shall be composed of crusher-run broken stone, obtained from approved sources, and shall consist of hard durable particles of stone mixed with approved binding material. The material shall be screened or otherwise manipulated before crushing, in a manner satisfactory to the Engineer, so that all soil, clay, and other objectionable material will be removed. Crushed stone mined from the Austin Chalk formation will not be used.
- B. When properly slaked and tested by standard laboratory methods, the processed flexible base material shall meet the following requirements:

Retained on 1¾" sieve	0%
Retained on ¾" sieve	20-60%
Retained on No. 4 sieve	40-75%
Retained on No. 40 sieve	70-85%

- C. Material passing the No. 40 sieve shall be known as "Soil Binder" and shall meet the following requirements when tested by standard laboratory methods:

The liquid limit shall not exceed	40.0
The plasticity index shall not exceed	10.0

2.4 EQUIPMENT

- A. Sheepsfoot Rollers

Sheepsfoot rollers shall meet the applicable requirements of TxDOT Specification Item 212, except that the provisions relating to measurement and payment shall not be applicable.

- B. Pneumatic Tired Roller

Pneumatic tired rollers shall meet the applicable requirements of TxDOT Specification Item 214, except that the provisions relating to measurement and payment shall not be applicable.

- C. Flat Wheel Rollers

Flat wheel rollers shall be either self propelled two-axle tandem roller weighing not less than eight (8) tons, or a self propelled three-wheel roller weighing not less than ten (10) tons.

PART 3:EXECUTION

3.1 OPERATION AT SOURCES OF SUPPLY

All work involve in clearing and stripping of quarries and pits, including the handling of unsuitable material, shall be performed by the contractor at his own expense. The material shall be obtained from approved sources. Unless otherwise specified, all material shall be mined from full depth vertical sections of the pit or quarry. The material shall be handled in a manner that shall secure a uniform and satisfactory product.

3.2 EQUIPMENT

All equipment necessary for the proper construction of this work shall be on the project, in first-class working condition, and approved by the Engineer before construction is permitted to start.

3.3 SUBGRADE PREPARATION

- A. The subgrade shall be constructed in conformity with the lines, grades and sections shown on the drawings. All unstable or otherwise objectionable material shall be removed from the subgrade and replaced with approved material. All holes, ruts and depressions shall be filled with approved material, and if required, the subgrade shall be thoroughly wetted with water and reshaped and rolled to the extent directed by the Engineer to place the subgrade in an acceptable condition to receive the base material.
- B. The surface of the subgrade shall be finished to line and grade as established and in conformity with the typical section shown on the drawings. Any deviation in cross section greater than one-half (1/2") inch in a length of sixteen (16') feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping and re-compacting by sprinkling and rolling.
- C. Sufficient subgrade shall be prepared in advance to insure satisfactory prosecution of the work. Material excavated in the preparation of the subgrade that is not needed for the embankment shall be used in the construction of adjacent shoulders and slopes or otherwise disposed of as directed. Any additional material required for the completion of the shoulders and slopes shall be secured from sources shown on the drawings or as designated by the Engineer.

3.4 PLACING OF BASE MATERIAL

A. First Course

- 1. Immediately before placing the base material, the subgrade shall be checked as to conformity with grade and section. No material shall be placed in snow or on a soft, muddy, or frozen underlying course.
- 2. The material shall be delivered in approved vehicles of a uniform capacity and it shall be the responsibility of the Contractor that the required amount of specified material shall be delivered in each 100 - foot station. Hauling over the non-compacted base course shall not be permitted.
- 3. Material deposited upon the subgrade shall be spread and shaped the same day unless otherwise directed in writing by the Engineer. In the event inclement weather or other unforeseen circumstances render impractical the spreading of the material during the first twenty-four (24) hour period, material shall be scarified and spread as directed by the Engineer.
- 4. The material shall be deposited and spread in lanes in uniform layers and without segregation of size to such loose depth that, when compacted, the layers shall have the required thickness.

5. The base aggregate shall be spread by spreader boxes, motor graders or other approved devices or methods that shall spread the aggregate in the required amount to avoid or minimize the need for re-handling the material and to prevent the rutting of the underlying course. The devices shall be equipped with strike-off templates or screeds that can be adjusted or controlled to secure the required thickness of the material.
6. All areas and "nests" of segregated coarse or fine material shall be corrected or removed and replaced with well-graded material as directed by the Engineer. Such binder material shall be carefully and evenly incorporated with the material in place by scarifying, harrowing, brooming or by other approved methods.
7. The course shall be sprinkled as required and compacted to the extent necessary to provide not less than the percent density as hereinafter specified under "Density." In addition to the requirements specified for density, the full depth of flexible base shown on the plans shall be compacted to the extent necessary to remain firm and stable under construction equipment. Unless otherwise permitted by the Engineer, the aggregate shall not be spread more than 2,000 square yards in advance of the rolling. After each section of flexible base is completed, tests as necessary will be made by the Engineer. If the material fails to meet the density requirements, it shall be reworked as necessary to meet these requirements.
8. Throughout this entire operation, the shape of the course shall be maintained by blading, and the surface upon completion shall be smooth and in conformity with the typical section shown on the drawings, and to the established lines and grades. In those areas on which pavement is to be placed, any deviation greater than one-fourth ($\frac{1}{4}$ ") inch in cross section in a length of sixteen feet, measured longitudinally, shall be corrected by loosening, adding, or removing material, reshaping, and re-compacting by sprinkling and rolling. All irregularities, depressions, or weak spots that develop shall be corrected immediately by scarifying the areas affected, adding suitable material as required, reshaping and re-compacting by sprinkling and rolling. Should the base course, due to any reason or cause, lose the required stability, density and finish before the surfacing is complete, it shall be re-compacted and refinished at the sole expense of the Contractor.
9. When using sheepsfoot rollers, the layer of loose material shall not exceed eight (8") inches for 25 ton pneumatic rollers, or ten (10") inches if fully loaded 50 ton pneumatic rollers are used.

B. Succeeding Courses

1. Construction methods shall be the same as prescribed for the first course.
2. The surface of the final course shall be finished smooth by "slush rolling" with a satisfactory flat wheeled roller. Before placing the surfacing on the completed base, the final course of flexible base shall be dry cured to the extent directed by the Engineer.

C. Density

The flexible base shall have a uniform compacted density throughout of 95%.

3.5 SURFACE TEST

After the course has been completely compacted, the surface shall be tested for smoothness and accuracy of grade and crown. Any portion lacking the required smoothness or failing in accuracy of grade or crown shall be scarified, reshaped, re-compacted and otherwise manipulated as the Engineer may direct until the required smoothness and accuracy are obtained. The finished surface shall not vary more than $\frac{3}{8}$ inch from a 16-foot straightedge when applied to the surface parallel with and at right angles to, the centerline. For area to receive pavement, the finished surface shall not vary more than $\frac{1}{4}$ inch from a 16-foot straightedge.

3.6 THICKNESS

The thickness of the base course shall be determined by depth tests or cores taken at intervals in such a manner that each test shall represent no more than 300 square yards. When the base deficiency is more than 1/2 inch, the Contractor shall correct such areas by scarifying, adding satisfactory base mixture, rolling, sprinkling, reshaping, and finishing in accordance with these specifications. The Contractor shall replace, at his own expense, the base material where borings have been taken for test purposes.

3.7 MAINTENANCE

Following the completion of the base course, the Contractor shall perform all maintenance work necessary to keep the base course in a condition satisfactory for priming. After priming, the surface shall be kept clean and free from foreign material. The base course shall be properly drained at all times. If cleaning is necessary, or if the prime coat becomes disturbed, any work or restitution necessary shall be performed at the expense of the Contractor.

END OF SECTION

SECTION IX
ROAD-MIX ASPHALT PAVING

PART 1:GENERAL

1.1 DESCRIPTION

This section covers the design, mixing and placing of hot mix asphaltic concrete for pavement. The pavement shall consist of a binder course, a leveling-up course, a surface course, or any combination of these courses as shown on the plans. The courses are to be composed of a compacted mixture of mineral aggregate and asphaltic material. The pavement shall be constructed on the previously completed and approved subgrade, base, existing pavement, bituminous surface or prepared slab as herein specified and in accordance with the details shown on the plans.

1.2 QUALITY ASSURANCE

A. Asphalt Design Mix

1. Pay for the services of an independent laboratory approved by the Engineer to perform design tests using varying proportions of aggregates and asphaltic materials.
2. Pay for laboratory to submit a written report in duplicate to the Engineer with the following data for each mix tested:

a. AGGREGATES

- (1) Source and type
- (2) Gradation
- (3) Deleterious substance

b. ASPHALT MIX

- (1) Gradation
- (2) Asphalt content (% by weight)
- (3) Percent voids
- (4) Theoretical specific gravity
- (5) Laboratory specific gravity
- (6) Percent laboratory density
- (7) Unit weight
- (8) Hveem stability
- (9) Grade asphalt

3. All materials shall meet or exceed the specifications listed under "Materials" and be approved by the Engineer.

4. Each type of mix shall conform to the master grading for each type listed in "Paving Mixture".

B. Source Quality Control

1. The materials proposed to be used may be inspected and tested at any time during their preparation for the work.
2. If the sources of supply do not furnish a uniform product or if the product from any source proves unacceptable at any time, the Contractor shall furnish approved materials from other approved source.
3. Sources of supply may not be changed without prior approval from the Engineer.
4. Approval of both the materials and source of supply must be obtained from the Engineer prior to delivery of the material.
5. The mixing plant shall continuously produce a consistent mixture meeting all of the requirements of this specification.

1.3 SUBMITTALS

Submit copies of the design mix and results of tests for review.

1.4 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. Prior to stockpiling of aggregates, the area shall be cleaned of trash, weeds and grass and be relatively smooth. Aggregates shall be stockpiled in such a manner as to prevent mixing of one aggregate with another.
- B. The asphaltic mixture shall be hauled to the work site in tight vehicles previously cleaned of all foreign material. The inside of the truck body may be given a light coating of oil to prevent the mixture from adhering to the body. In cool weather or long hauls, canvas covers and insulating of the truck may be required.

1.5 JOB CONDITIONS

A. Illumination

Do not place asphaltic concrete before sunrise or later than will normally permit completion of all finishing operations during sufficient natural light.

B. Protection

Do not place asphaltic concrete during rain, sleet or snow or when such precipitation is imminent.

C. Cold Weather Placement

1. The tack coat or the asphaltic concrete mixture when placed with a spreading and finishing machine shall not be placed when the air temperature is below 45 F and falling, but may be placed when the air temperature is above 40 F and rising.
2. The asphaltic concrete mixture when placed by hand or with a motor grader shall not be placed when the air temperature is below 60 F and falling, but may be placed when the air temperature is 50 F and rising.

3. The prime coat, tack coat or asphaltic mixture shall be placed only when the humidity, general weather conditions and temperature and moisture condition of the base, in the opinion of the Engineer, are suitable.
4. The air temperature shall be taken in the shade away from artificial heat.
5. No asphaltic mixture will be accepted which has a temperature of 225 F or less when delivered.

PART 2: PRODUCTS

2.1 MATERIALS

A. Mineral Aggregate

Mineral aggregate shall consist of fine aggregate, coarse aggregate and mineral filler.

1. Fine Aggregate - Aggregate passing No. 10 Sieve

Sieve	Percent Passing
10	100
200	10-30

Fine aggregate shall consist of sand or stone screenings or a combination thereof. Fine aggregate shall be comprised of durable particles, free from injurious foreign matter. The plasticity index of that part of the fine aggregate, passing the No. 40 sieve, shall not be more than 6.

2. Coarse aggregate - aggregate retained on No. 10 sieve. The coarse aggregate shall consist of clean, durable fragments of stone, or gravel of uniform quality throughout. Coarse aggregate shall be free from clay, organic or other injurious foreign matter occurring either free or as a coating on the aggregate. Materials removed by standard laboratory decantation shall be not more than two (2%) percent except when the plasticity index of the removed material is less than 6, the amount shall not be more than four (4%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent. The coarse aggregate shall have an abrasion of not more than forty (40%) percent loss when subjected to the Los Angeles Abrasion Test.

3. Mineral Filler - The mineral filler shall consist of thoroughly dry stone dust, slate dust, portland cement or other mineral dust approved by the Engineer. The mineral filler shall be free from foreign and other injurious matter. When tested by TxDOT Bulletin 6-14, or equivalent, it shall meet the following grading requirements:

Passing a 30 mesh sieve	100%
Passing No. 80 sieve, not less than	90%
Passing a 200 mesh sieve, not less than	65%

B. Asphaltic Material

Asphalt for the paving mixture shall be of the type of oil asphalt as determined by the Engineer and shall meet the following requirements of asphalts. The grade of asphalt used shall be as

designated by the Engineer after design tests have been made using the mineral aggregates that are to be used in the project, and the various grades of asphalt. If more than one type of asphaltic concrete mixture is specified for the project only one grade of asphalt will be required for all types of mixture, unless otherwise shown on the plans.

1. Oil Asphalt

The materials shall be homogeneous, shall be free from water, shall not foam when heated at 347°F, and shall meet the following requirements:

Type-Grade	OA-90		OA-135		OA-230	
	Min.	Max.	Min.	Max.	Min.	Max.
Penetration at 32°F (0°C) 200g., 60 sec.	--	--	--	--	--	--
Penetration at 77°F (25°C) 100g., 5 sec.	85	100	120	150	210	250
Penetration at 115°F, 50g., 5 sec.	--	--	--	--	--	--
Ductility at 77°F (25°C), 5 cm/min., cms: Original	100	--	100	--	170	--
Flash Point C.O.C., °F (°C)	450 (230)	--	450 (230)	--	450 (230)	--
Softening point, R. & B., °F	113	140	104	140	86	122
Thin Film Oven Test, ½ in. Film, 50 g., 5 hours, 325°F (16°C)	--	0.8	--	1.3	--	1.5
Penetration of Residue, at 77°F (25°C), 100 g., 5 sec., % of Original Pen.	50	--	45	--	37	--
Solubility in Trichloroethylene, %	99.5	--	99.5	--	99.5	--

2. Cut Back Asphalt

The material shall be free from water and shall meet the requirements shown in the following table:

Type - Grade	RC-2		MC-1	
	Min.	Max.	Min.	Max.
Flash Point TOC °F	80	--	100	--
Furol Viscosity at 77°F, sec	--	--	110	150
Furol Viscosity at 122°F, sec	200	300	--	--
Furol Viscosity at 140°F, sec	--	--	--	--
Furol Viscosity at 180°F, sec	--	--	--	--
The distillate, expressed as percent by volume of total distillate to 680°F, shall be as follows:				

Off at 437°F	50	75	--	25
Off at 500°F	70	90	40	70
Off at 600°F	90	--	75	93
Off at 680°F	--	--	--	50
Off between 600°F and 680°F	--	--	--	--
Test on residue:				
Penetration at 77°F, 100 g., 5 sec.	110	150	150	200
Ductility at 77°F, 5 cm/min, cms.	100	--	100	--
Solubility in CCl ₄ %	99	--	99.5	--
Spot Test	Neg.		Neg.	

When tested in accordance with the AASHTO Standard Method of Test of Asphaltic Materials by Oliensis Spot Method T-102-38, oil asphalts, cut-back asphalts shall show a negative result unless it is definitely proved that the parent crude cannot be processed to yield asphaltic material which will give a negative result regardless of how carefully the crude is processed. When such proof is furnished, the use of the following modified solvent will be permitted, and no other clauses or requirements of the standard tests are waived or changed.

The modified solvent shall be distillate from the parent crude from which the asphaltic material under test was made, and shall have the following distillation characteristics:

Initial boiling point	Above 300°F
50 percent off at	335 to 355°F
End point	Below 410°F

3. Tack Coat

The material shall meet the requirements for Cut-Back Asphalt RC-2, diluted by the addition of not to exceed fifteen (15%) percent of an approved grade of gasoline and/or kerosene by volume, or a cut-back asphalt made by combining 50 to 70 percent of the asphaltic material as specified for the paving mixture with 30 to 50 percent gasoline and/or kerosene by volume.

2.2 ASPHALTIC CONCRETE MIXTURE

The paving mixture shall consist of a uniform mixture of coarse aggregate, fine aggregate, asphaltic material and mineral filler, if required.

A. Types

The grading of each constituent of the mineral aggregate shall be such as to produce, when properly proportioned, a mixture which when tested in accordance with standard laboratory methods will conform to the limitations for master grading given below for the type specified:

TYPE "A" (COARSE GRADED BINDER COARSE)

PASSING	RETAINED	PERCENT BY WEIGHT
2¼" screen		100%
2" screen		97-100%
2" screen	1" screen	15-40 %
1" screen	½" screen	15-40 %
½" screen	¼" screen	10-25 %
¼" screen	No. 10 mesh sieve	5-20 %
No. 10 mesh sieve (total)		65-80 %
No. 10 mesh sieve	No. 40 mesh sieve	5-20 %
No. 40 mesh sieve	No. 80 mesh sieve	3-15 %
No. 80 mesh sieve	No. 200 mesh sieve	1-8 %
No. 200 mesh sieve		1-10 %

Asphaltic material: 3% to 6% of the mixture by weight.

TYPE "B" (FINE GRADED BASE OR LEVELING UP COURSE)

PASSING	RETAINED	PERCENT BY WEIGHT
1¼" screen		100 %
1" screen		95-100 %
1" screen	½" screen	20-50 %
½" screen	¼" screen	10-40 %
¼" screen	No. 10 mesh sieve	5-25 %
No. 10 mesh sieve (total)		55-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-20 %
No. 80 mesh sieve	No. 200 mesh sieve	3-20 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 3.5% to 7% of the mixture by weight

TYPE "C" (COARSE GRADED SURFACE COURSE)

PASSING	RETAINED	PERCENT BY WEIGHT

1" screen		100 %
3/4" screen		95-100 %
3/4" screen	1/2" screen	15-40 %
1/2" screen	1/4" screen	10-35 %
1/4" screen	No. 10 mesh sieve	10-30 %
No. 10 mesh sieve (total)		50-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-25 %
No. 80 mesh sieve	No. 200 mesh sieve	3-25 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 3.5% to 7% of the mixture by weight.

TYPE "D"

PASSING	RETAINED	PERCENT BY WEIGHT
5/8" screen		100 %
1/2" screen		95-100 %
1/2" screen	1/4" screen	20-50 %
1/4" screen	No. 10 mesh sieve	10-30 %
No. 10 mesh sieve (total)		50-70 %
No. 10 mesh sieve	No. 40 mesh sieve	0-30 %
No. 40 mesh sieve	No. 80 mesh sieve	4-25 %
No. 80 mesh sieve	No. 200 mesh sieve	3-25 %
No. 200 mesh sieve		0-6 %

Asphaltic material: 4.0% to 8.0% of the mixture by weight.

B. Tolerances

The exact grading of the aggregate and the asphalt content to be used in the above mixture, within the limits specified, will be designated by the Engineer and the mixture produced shall conform to this designated grading and asphalt content within the following respective tolerances:

PASSING	RETAINED	PERCENT BY WEIGHT
2" screen	1" screen	5 %

1" screen	½" screen	5 %
¾" screen	½" screen	5 %
½" screen	¼" screen	5 %
⅜" screen	¼" screen	5 %
¼" screen	No. 10 mesh sieve	5 %
No. 10 mesh sieve (total)		5 %
No. 10 mesh sieve	No. 40 mesh sieve	3 %
No. 40 mesh sieve	No. 80 mesh sieve	3 %
No. 80 mesh sieve	No. 200 mesh sieve	3 %
No. 200 mesh sieve		3 %

Asphaltic material: 0-5%

C. Testing

1. An independent laboratory, as approved by the Engineer, shall be engaged by the Contractor. The laboratory shall make the following minimum number of daily tests:
 - a. One sample (three test specimens) for determination of density and stability.
 - b. One sample for determination of proportioning of materials.
2. The asphaltic concrete shall have the following laboratory density and stability:
 - a. Density - 94% to 98% (optimum 96%)
 - b. Stability - not less than 40% (Hveem or equivalent)

D. Equipment

1. Mixing Plants

- a. Mixing plants that will not continuously produce a mixture meeting all of the requirements of this specification will be condemned.
- b. Mixing plants may be either the weight-batching type or the continuous mixing type. Both types of plants shall be equipped with satisfactory conveyor, power units, aggregate handling equipment, hot aggregate screens and bins and dust collectors and shall consist of the following essential pieces of equipment:

2. Asphaltic Material Heating Equipment

Asphaltic material heating equipment shall be adequate to heat the amount of asphaltic material required to the desired temperature. Asphaltic material may be heated by steam coils which shall be absolutely tight. Direct fire heating of asphaltic materials will be permitted, provided the heater used is manufactured by a reputable concern and there is positive circulation of the asphalt throughout the heater. Agitation with steam or air will not be permitted. The heating apparatus shall be equipped with a recording thermometer with a

24 hour chart that will record the temperature of the asphaltic material at the highest temperature.

PART 3:EXECUTION

3.1 EQUIPMENT

All equipment necessary for the construction of the hot mix asphaltic concrete pavement shall be on the project and shall be approved by the Engineer as to condition before the Contractor will be permitted to begin construction operations on which the equipment is to be used.

A. Spreading and Finishing Machine

The spreading and finishing machine shall be of a type approved by the Engineer and shall be capable of producing a surface that will meet the requirements of the typical cross section and the surface test.

B. Motor Grader

The motor grader, if used, shall be a self-propelled power motor grader; it shall be equipped with pneumatic tired wheels, shall have a blade length of not less than twelve (12') feet, shall have a wheel base of not less than sixteen (16') feet and shall be tight and in good operating condition and approved by the Engineer.

C. Pneumatic Tire Rollers

The pneumatic tire roller shall be an acceptable self-propelled roller mounted on pneumatic tired wheels, with the weight capable of being varied uniformly from 225 to 365 pounds per inch width of tire tread, so constructed as to be capable of being operated in both a forward and a reverse direction and shall have suitable provisions for moistening the surface of the tires while operating. All tires of the same roller shall be smooth tread of equal size and diameter and shall be arranged in such a manner that the gap between the tires of one axle will be covered by the tires of the other. The tire pressure of each tire shall be adjusted as directed by the Engineer and this pressure shall not vary by more than 5 pounds per square inch.

D. Tandem Roller

This roller shall be an acceptable power driven tandem roller weighing not less than eight (8) tons.

E. Three Wheel Roller

This roller shall be acceptable power driven three wheel roller weighing not less than ten (10) tons.

Straightedges and Templates

The Contractor shall provide acceptable 16 foot straightedges for surface testing. Satisfactory templates shall be provided as required by the Engineer.

3.2 BASE PREPARATION

Immediately before the tack coat or asphaltic concrete mixture is place, the base, subgrade, existing pavement, or bituminous surface shall be thoroughly cleaned in an approved manner to the satisfaction of the Engineer. Base shall be approved by Engineer prior to placement of any asphalt material.

3.3 APPLICATION

A. Tack Coat

1. When a tack coat is shown on the plans or is required by the Engineer, the surface shall be given a uniform application of tack coat. This tack coat shall be applied as directed by the Engineer, with an approved sprayer at a rate of not to exceed 0.10 gallon per square yard of surface. Where the asphaltic concrete mixture will adhere to the surface on which it is to be placed without the use of a tack coat, the tack coat may be eliminated by the Engineer. If in the opinion of the Engineer, a tack coat is necessary between any of the asphaltic concrete courses, a tack coat shall be used. The rate of tack coat application shall be estimated by the Engineer.
2. Care shall be taken not to injure the tack coat. The tack coat shall be allowed to stand long enough for sufficient evaporation of its volatile parts.
3. All surfaces of gutter, headers, manholes, valve boxes, etc. that will be in contact with the asphaltic concrete mixture, and all joints shall be given a thin uniform coat of the asphaltic material used for the tack coat.

B. Prime Coat

When a prime coat is shown on the plans or is required by the Engineer, the surface shall receive a uniform application of prime coat. This prime coat shall be applied as directed by the Engineer, with an approved sprayer evenly and smoothly under a pressure necessary for proper distribution. The Contractor shall provide all necessary facilities for determining the temperature of the asphaltic material and the rate at which it is applied.

C. Asphaltic Concrete

1. Generally, the asphaltic mixture shall be dumped and spread on the approved prepared surface with a spreading and finishing machine in such manner that when properly compacted the finished pavement will be smooth, of uniform density and will meet the requirements of the typical cross sections and the surface tests. Unless otherwise indicated or specified, all asphaltic concrete material shall be placed and shall receive its initial rolling during daylight hours. The mixture shall be at a temperature between 225 F and 325 F when placed. During the application of asphaltic material, care shall be taken to prevent splattering of adjacent pavement, curb and gutter and structures.
2. In placing a level-up course with the spreading and finishing machine in the forms, binder twine or cord shall be set to line and grade established by the Engineer. When directed by the Engineer, level-up courses shall be spread with the motor grader.
3. When the asphaltic mixture is placed in a narrow strip along the edge of an existing pavement, or used to level up small areas of an existing pavement or placed in small irregular areas where the use of a finishing machine is not practical, the finishing machine may be eliminated when authorized by the Engineer, provided a satisfactory surface can be obtained by other approved methods. When hand spreading is authorized, the asphaltic material shall be dumped outside the area on which it is to be spread, and the entire load shall be distributed by shovels or satisfactory mechanical means in a uniform layer of such depth that after receiving its ultimate compaction by rolling, the requirements of the typical cross sections and surface tests will be met.
4. In places where the leveling-up course will be greater than two (2") inches compacted thickness, the material shall be placed and compacted in two or more courses.

5. Adjacent to gutters, headers, manholes, valve boxes, and structures, the surface shall be finished uniformly high so that when compacted it will be slightly above the edge of the flush structures.

3.4 COMPACTION

A. Rolling

1. Rolling with the pneumatic, three wheel and tandem rollers shall start longitudinally at the sides and proceed toward the center of the pavement, overlapping on successive trips by at least half the width of the rear wheels. Alternate trips of the roller shall be slightly different in length. Rolling shall be continued until no further compression can be obtained and all roller marks are eliminated. At least two rollers, as specified herein, shall be provided for each job, one of which shall be a pneumatic roller. Additional rollers shall be provided if needed. If required, the pavement shall be rolled diagonally in each direction with the tandem roller, the second diagonal rolling crossing the line of the first.
2. The motion of the roller shall be slow enough at all times to avoid displacement of the asphaltic concrete mixture. If any displacement occurs, it shall be corrected at once by the use of rakes and addition of fresh mixture where required. The roller shall not be allowed to stand on pavement which has not been fully compacted and which has not cooled to the normal atmospheric temperature. To prevent adhesion of the surface mixture to the roller, the wheels shall be kept thoroughly moistened with water, but an excess of water will not be permitted. All rollers must be in good mechanical condition. Necessary precautions shall be taken to prevent the dropping of gasoline, oil, grease or other foreign matter on the pavement, either when the rollers are in operation or when standing.
3. The edges of the pavement along curbs, headers, manholes, valve boxes, and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the roller, shall be thoroughly compacted with lightly oiled hand operated vibrating rollers or mechanical tamps.
4. Each course after final compaction shall have a density of not less than 95% laboratory density.

B. Hand Tamping

The edges of the pavement along curbs, headers and similar structures, and all places not accessible to the roller, or in such positions as will not allow thorough compaction with the rollers, shall be thoroughly compacted with lightly oiled tamps.

3.5 CONSTRUCTION JOINTS

The placing of the mixture shall be as nearly continuous as possible, and the roller shall pass over the unprotected edge of the freshly laid mixture only when the laying is discontinued for such length of time as will permit chilling or cooling the mixture. In every case when resuming the work, the material shall be cut back so as to produce a slightly beveled edge for the full depth of the course; the material cut away shall be immediately removed from the site of the work, and fresh mixture shall be laid against the fresh cut, or if desired, a stout rope may be placed across the pavement where the joint is made. When resuming the work, the material laid shall be cut back to the rope which will be removed, together with the surplus materials, and the fresh mixture shall be laid against the joint thus formed. Hot smoothing irons may be used for sealing joints, but extreme care shall be used to avoid burning the surface. Construction joints shall be either parallel to or at right angles to the longitudinal axis of the work.

3.6 SURFACE TEST

The surface of the pavement, after ultimate compaction, shall be smooth and true to the established line, grade and cross section, and when tested with a sixteen (16') foot straightedge placed parallel to the centerline of the roadway, it shall have no deviation in excess of $\frac{1}{8}$ " per foot from the nearest point of contact. The maximum ordinate measured from the face of the straightedge shall not exceed $\frac{1}{4}$ " at any point. All areas not conforming to this requirement shall be immediately corrected as directed by the Engineer.

3.7 THICKNESS TEST

The Engineer may cut cores from the pavement at selected locations in order to determine if the specified thickness of asphaltic concrete is being placed. If any core indicates a deficient thickness, the Contractor shall have the privilege of cutting additional cores at his own expense in order to define the area of deficient thickness. The Contractor shall overlay the areas of deficient thickness designated by the Engineer with a minimum of $1\frac{1}{2}$ " of additional hot mix asphaltic concrete.

END OF SECTION

ASPHALT WORK ORDER NO # 2024-003

City of Seagoville

Anderson Asphalt & Concrete Paving, LLC

Date: June 7, 2024

Description of work: Work is for McWhorter

Street:	McWhorter St.	SF	10,500		
Scope:	Cement Stabilize using 45LB/SY, Microcrack, Prime, 4" Type B and 2" Type D. Includes Traffic Control (CLOSED TO THROUGH TRAFFIC)				
Item	Description	Unit	Quantity	Unit Price	Total Price
1	Mobilization / Bond	LS	1	\$ 6,600.00	\$ 6,600.00
2	Cement Stabilize using 45LB/SY 10" (INCL. PRIME COAT)	SF	10,500	\$ 3.50	\$ 36,750.00
3	4" Type B WMA TXDOT 340	SF	10,500	\$ 3.95	\$ 41,475.00
4	2" Type D WMA TXDOT 340	SF	10,500	\$ 2.20	\$ 23,100.00
5	Backfill Edge of Pavement	SF	1,400	\$ 2.20	\$ 3,080.00
6	Traffic Control	LS	1	\$ 1,000.00	\$ 1,000.00
Sub-Total		McWhorter St.		\$	112,005.00
		Overall Total		\$	112,005.00
		Total Amount of Work Order		\$	112,005.00

*All items include traffic control, and mobilization. Quantities are based on estimated measurements. Payment will be based on final field verification.

Start Date: Completion Date:

Special Requirements:

Performance Bond No.: Payment Bond No.:

Before Photos Taken: Yes No

After Photos Taken: Yes No

Before Video Taken: Yes No

Approved by City of Seagoville:

Approved by Contractor:

Signature

Signature

Print Name

Print Name

Date

6/7/2024
Date



TO: Mayor and City Council

FROM: Chris Ryan, Director of Public Works

DATE: July 1, 2024

ITEM: 18

DESCRIPTION: Discuss and consider a Resolution ratifying emergency repairs of two (2) partially collapsed manholes; and authorizing the City Manager to make payment to RT&E rural water in an amount not to exceed fifty-four thousand nine hundred forty-seven dollars and zero cents (\$54,947.00); and execute any and all necessary documents.

INTRODUCTION

The purpose of this item is to ratify emergency repairs of 2 partially collapsed manholes.

BACKGROUND

Staff located a partially collapsed manholes at Highway 175 at Seagoville Road and the manhole located at 338 Lakey road partially collapsed, creating the necessity for emergency repairs to be performed immediately. Staff contacted RT&E rural water, to perform the emergency repairs. RT&E rural water., has submitted their invoices for the work performed in the amount of fifty-four thousand nine hundred forty-seven dollars and zero cents (\$54,947.00). This will authorize the City Manager to make payment to RT&E rural water in an amount not to exceed \$54,947.00.

FINANCIAL IMPACT

\$54,947.00- FY2024 Sewer Budget.

RECOMMENDATION

Staff recommends approval.

ATTACHMENTS

1. Resolution
2. RT&E rural water invoices

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. ____

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS, RATIFYING EMERGENCY REPAIRS OF (2) PARTIALLY COLLAPSED MANHOLES; AND AUTHORIZING THE CITY MANAGER TO MAKE PAYMENT TO RT&E RURAL WATER IN AN AMOUNT NOT TO EXCEED \$54,947.00; AND EXECUTE ANY AND ALL NECESSARY DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the manhole located at Hwy 175 at Seagoville Road partially collapsed and the manhole located at 338 Lakey road partially collapsed, creating the necessity for emergency repairs to be performed immediately; and

WHEREAS, staff contacted RT&E Rural Water to perform the emergency repairs; and

WHEREAS, RT&E Rural Water has submitted their invoices for the work performed in the amount of fifty four thousand nine hundred forty seven dollars and zero cents (\$54,947.00); and

WHEREAS, the City Council hereby approves the expenditures and authorizes the City Manager to make payment to RT&E Rural Water in an amount not to exceed \$54,947.00, for the emergency repairs of the partially collapsed manholes.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS:

SECTION 1. The City of Seagoville does hereby approve the expenditures and authorizes the City Manager to make payment to RT&E Rural Water in an amount not to exceed \$54,947.00, for the emergency repairs of the partially collapsed manholes.

SECTION 2. This resolution shall take effect immediately from and after its passage, and so it is accordingly resolved.

DULY PASSED by the City Council of the City of Seagoville, Texas, this the 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney



RTE Rural Water
6591 CR 4099
Kaufman Texas 75142
Phone(214) 542-0059
robert@rteruralwater.com
http://rteruralwater.com

Invoice

CS - 113

Balance Due
\$42,147.00

Bill To
City of Seagoville

Invoice Date : 07 Jun 2024
Terms : Due on Receipt
Due Date : 07 Jun 2024

Subject :
MH Hwy. 175 and Seagoville Rd.

#	Item & Description	Qty	Rate	Amount
1	Remove and dispose of existing 4' Dia. MH excavate and shore all sides for shielding, Install new Fiberglass 5'x22' MH reconnect all lines, 8" 12" and both 16" PVC Mains. Install new DW Culvert for cemetery, cover and C-U job site.	1.00	42,147.00	42,147.00
Sub Total				42,147.00
Total				\$42,147.00
Balance Due				\$42,147.00

Notes
Thanks for your business.



RTE Rural Water
6591 CR 4099
Kaufman Texas 75142
Phone(214) 542-0059
robert@rteruralwater.com
http://rteruralwater.com

Invoice

CS - 115

Balance Due
\$12,800.00

Bill To
City of Seagoville

Invoice Date : 18 Jun 2024
Terms : Due on Receipt
Due Date : 18 Jun 2024

Subject :
338 Lakey St.

#	Item & Description	Qty	Rate	Amount
1	Excavate remove and dispose of 2 existing concrete MH's, locate all existing piping and connect in new 5'Dia.x8' deep Fiberglass MH, install new R&C backfill and C-U job site	1.00	12,800.00	12,800.00
Sub Total				12,800.00
Total				\$12,800.00
Balance Due				\$12,800.00

Notes
Thanks for your business.



TO: Mayor and City Council

FROM: Bill Medina, Director of Community Development

DATE: July 1, 2024

ITEM: 19

DESCRIPTION: Discuss and consider an Ordinance amending Article 21.02 Technical and Construction Codes and Standards, and Article 19.10 Stormwater Protection, Section 19.10.009 Specific Prohibitions and Requirements.

INTRODUCTION

The proposed ordinance will create maintenance requirements for storm water drainage facilities.

BACKGROUND

The proposed ordinance creates a definition for "Drainage facility" as "Any natural or manmade facility or configuration or condition of land used or functioning to collect, convey, hold, divert or discharge stormwater, including but not limited to drains, pipes, drainage channels, flumes, swales, ditches, bar ditches, culverts, creeks, and detention and retention basins and ponds."

Additionally, each property owner will be responsible for the following:

1. All drainage facilities located on private property shall be maintained by the owner of the property to prevent blockage and obstruction of water flow and to ensure adequate drainage and control of stormwater and rainfall runoff passing in and through such facilities. Each property owner of land adjacent to a natural drainage channel or creek not maintained by the city shall maintain the free flow character by prompt removal of debris, overgrowth, downed trees and limbs, and unapproved structures.
2. Maintenance of drainage facilities shall include keeping drainage facilities free and clear of weeds, brush and vegetation, the removal of debris and waste material that might impede or hinder the flow of stormwater, erosion repair, the removal of silt, and the maintenance of structural facilities.
3. The city may require the owner of retention or detention basins and associated facilities to furnish certification by a professional engineer licensed in the State of Texas that the retention/detention basin has the storage capacity designated by the plan approving its construction and that all associated facilities including inlet and outlet structures are fully functional.
4. If the grading of a swale is required for the conveyance of the 100-year flow, plan approval and the dedication of necessary easements to the city will be required. The maintenance of swales along property lines shall be the responsibility of the property owner."



FINANCIAL IMPACT

N/A

RECOMMENDATION

Staff recommends approval of the ordinance amendment.

ATTACHMENTS

1. Proposed Ordinance

CITY OF SEAGOVILLE, TEXAS
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SEAGOVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES, CITY OF SEAGOVILLE, TEXAS, BY AMENDING CHAPTER 21 (BUILDING REGULATIONS) TO ADD DIVISION 12 TO ARTICLE 21.02 (TECHNICAL AND CONSTRUCTION CODES AND STANDARDS) ADOPTING TECHNICAL CONSTRUCTION STANDARDS AND SPECIFICATIONS FOR THE DESIGN OF STREET AND ALLEY PAVING, WATER AND SANITARY SEWER MAINS, AND STORM SEWER FACILITIES, AND BY AMENDING CHAPTER 19 (UTILITIES) TO AMEND SECTION 19.10.009 OF ARTICLE 19.10 (STORMWATER PROTECTION) TO REQUIRE MAINTENANCE OF CREEKS, CHANNELS AND DRAINAGE FACILITIES BY PROPERTY OWNERS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE IN ADDITION TO CIVIL AND ADMINISTRATIVE PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Seagoville, Texas, finds and determines that flood hazard areas exist throughout the City that are subject to periodic inundation, which can result in the loss of life and property, health and safety hazards, disruption of commerce and government services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect public health, safety and general welfare; and

WHEREAS, flood dangers and losses are created by the cumulative effect of obstructions in floodplains, floodways, and stormwater drainage channels which cause increases in flood heights and velocities; and

WHEREAS, the Council finds and determines that regulations adopted by this Ordinance are intended and designed to minimize flood losses, protect human life and health, minimize public expenditures for rescue and relief efforts and costly flood control projects, minimize prolonged business interruptions, and minimize damage to public and private property and facilities, and are in the best interest of the public health, safety and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:

SECTION 1. That the Code of Ordinances, City of Seagoville, Texas, be and is hereby amended by amending Article 21.02 (Technical and Construction Codes and Standards) of Chapter 21 (Building Regulations) to add a new Division 12, to be entitled "Technical Construction Standards and Specifications," which shall be applicable to the design, construction and maintenance of street and alley paving, water and sanitary sewer mains, and storm sewer facilities, such that Division 12 shall read in its entirety as follows:

**“CHAPTER 21
BUILDING REGULATIONS**

...

**ARTICLE 21.02
TECHNICAL AND CONSTRUCTION CODES AND STANDARDS**

...

Division 12 Technical Construction Standards and Specifications

§ 21.02.600 Adopted.

The Technical Construction Standards and Specifications for the Design of Street and Alley Paving, Water and Sanitary Sewer Mains, and Storm Sewer Facilities, a copy of which is on file in the office of the city secretary, is hereby adopted as the city’s technical standards for street and alley paving, water and sanitary sewer mains, and storm sewer facilities, and is made a part hereof by reference. Copies of the Technical Construction Standards and Specifications adopted herein shall be kept and maintained in the office of the City Secretary and Building Official.”

SECTION 2. That the Code of Ordinances, City of Seagoville, Texas, be and is hereby amended by amending Article 19.10 (Stormwater Protection) of Chapter 19 (Utilities) to add a new definition of “drainage facility” to section 19.10.001 following the definition of “Discharger,” and preceding the definition of “Environmental protection agency (EPA),” and to add a new subsection (j) to section 19.10.009, such that the definition of “drainage facility” in section 19.10.001 and subsection (j) of Section 19.10.009 shall read in their entirety as follows:

**“CHAPTER 19
UTILITIES**

...

**ARTICLE 19.10
STORMWATER PROTECTION**

§19.10.001 Definitions.

For the purposes of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning, and any words not herein defined shall be construed in context used and by ordinary interpretation and not as a word of art:

...

Drainage facility. Any natural or manmade facility or configuration or condition of land used or functioning to collect, convey, hold, divert or discharge stormwater, including but not limited to drains, pipes, drainage channels, flumes, swales, ditches, bar ditches, culverts, creeks, and detention and retention basins and ponds.

...

§19.10.009 Specific prohibitions and requirements.

...

(j) Property owner's responsibilities.

- (1) All drainage facilities located on private property shall be maintained by the owner of the property to prevent blockage and obstruction of water flow and to ensure adequate drainage and control of stormwater and rainfall runoff passing in and through such facilities. Each property owner of land adjacent to a natural drainage channel or creek not maintained by the city shall maintain the free flow character by prompt removal of debris, overgrowth, downed trees and limbs, and unapproved structures.
- (2) Maintenance of drainage facilities shall include keeping drainage facilities free and clear of weeds, brush and vegetation, the removal of debris and waste material that might impede or hinder the flow of stormwater, erosion repair, the removal of silt, and the maintenance of structural facilities.
- (3) The city may require the owner of retention or detention basins and associated facilities to furnish certification by a professional engineer licensed in the State of Texas that the retention/detention basin has the storage capacity designated by the plan approving its construction and that all associated facilities including inlet and outlet structures are fully functional.
- (4) If the grading of a swale is required for the conveyance of the 100-year flow, plan approval and the dedication of necessary easements to the city will be required. The maintenance of swales along property lines shall be the responsibility of the property owner."

SECTION 2. That any provisions of the ordinances of the City of Seagoville in conflict with the provisions of this ordinance be and same are hereby repealed and any provisions not so in conflict shall remain in force and effect.

SECTION 3. That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision hereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances as a whole.

SECTION 4. In addition to all civil and administrative penalties, sanctions and remedies provided for in Article 19.10 of the Code of Ordinances, City of Seagoville, Texas, all of which are nonexclusive, any person, firm, or corporation violating any of the provisions or terms of this

ordinance shall be subject to a penalty by fine not to exceed two thousand dollars (\$2,000.00) for each offense, and each and every day such violation continues or is allowed to exist shall constitute a separate offense.

SECTION 5. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provides.

DULY ADOPTED by the City Council of the City of Seagoville, Texas on the ____ day of _____, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney



TO: Mayor and City Council

FROM: Bill Medina, Director of Community Development

DATE: July 1, 2024

ITEM: 20

DESCRIPTION: Discuss and consider a Resolution approving the purchase of electrical upgrades to the City Hall power generator in the amount of forty-one thousand six hundred forty-four dollars and zero cents (\$41,644.00); authorizing the City Manager to execute appropriate agreements and provide for payment on the city's behalf.

INTRODUCTION

Staff is seeking approval of the purchase of upgrades to the power generator located at City Hall.

BACKGROUND

The purchase of the proposed upgrades will ensure City Hall can continue to operate at acceptable levels during power outages by running off the existing diesel power generator. Currently, during power outages, City Hall is only able to function at a very limited capacity. The improvements to the power system will increase the City's resiliency during major weather events or random power outages.

The proposed system upgrade will ensure that lighting, phones, internet, and computer systems can remain functional in the event there is no power to City Hall.

FINANCIAL IMPACT

The amount for the proposed upgrade is \$41,644.00. This amount was not included in the existing adopted 2024 Fiscal Year budget.

RECOMMENDATION

Staff recommends approval of the requested purchase.

ATTACHMENTS

1. Resolution
2. Pricing quote for power generator upgrades.
3. HUB Vendors

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, APPROVING THE PURCHASE OF ELECTRICAL UPGRADES TO THE CITY HALL POWER GENERATOR, RESULTING IN A COST TO THE CITY IN THE AMOUNT OF \$41,644.00; AUTHORIZING THE CITY MANAGER TO EXECUTE APPROPRIATE AGREEMENTS AND PROVIDE FOR PAYMENT ON THE CITY'S BEHALF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has been presented with a quote by H&H Electrical Contractors, Inc. (Quote) for the electrical upgrades to the power generator at City Hall to ensure that City facilities can continue to operate at acceptable levels during power outages (Project); and

WHEREAS, pursuant to the Quote, the City's costs for the Project are estimated to be in the amount of \$41,644.00; and

WHEREAS, the City Council of the City of Seagoville, Texas, upon full review and consideration of the proposed Project, the Quote, and all matters related thereto, is of the opinion and finds that the Quote should be accepted and that the City Manager should be authorized to accept and execute the Quote, which the Council finds and determines is in the best interests of the citizens of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THAT:

SECTION 1: The City Manager is hereby authorized to accept and approve the Quote by H&H Electrical Contractors, Inc., attached hereto as Exhibit "A," involving a City cost of \$41,644.00 for the electrical upgrades to the power generator at City Hall, and is further authorized to execute on the City's behalf any necessary or appropriate documents and accept and approve such contract amendments as the City Manager deems reasonable, necessary, in the public interest, in compliance with applicable law and City policy, and, in the case of an increase in contract price, subject to the availability of funds.

SECTION 2. This Resolution shall become effective immediately from and after its passage as the law and charter in such cases provide.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF SEAGOVILLE, TEXAS, THIS ____ DAY OF _____, 2024.

ATTEST:

Sara Egan, City Secretary

APPROVED:

Lackey Stepper Sebastian, Mayor

APPROVED AS TO FORM:

David M. Berman, City Attorney

H&H ELECTRICAL CONTRACTORS, INC.

8475 COUNTY ROAD 271, TERRELL, TX. 75160

Office: 972-524-0205 Fax # 972-524-1439

TDLR ELECTRICAL CONTRACTOR # 17190

Date: June 11, 2024
To: Waste Water Department
Attn: Chris Ryan
Project: Seagoville
RE: **City Hall Generator Connections REVISED**

Scope:

- Supply and Install one 21 circuit electrical panel and relocate 21- 277v circuits
- Supply and Install one 200a ATS, Nema 3r mounted outside of main panel adjacenet to exterior entry door
- Supply and Install one 200a Circuit breaker for main panelboard
- Supply and Install one appropriate sized generator breaker
- Conduit and wire for power and controls to and from generator
- Relocate 277v lighting circuits and transfer 120v panel and loads to generator
- Sluder emergency power assistance in generator integration
- Sluder emergency power retap genset to 480 Volt and Load Bank Test

Exclusions:

- Taxes or Bonding
- generator suitability, generator maintance
- Taxes or Bonding

Proposed Total: \$41,644.00

Pricing is valid for thirty (30) Days with letter of intent within ten (10) Days.
If you have any questions, Please do not hesitate to call.

Sincerely,

Stephen Hilborn II
(972) 524-0205
HHELECTRIC@MSM.COM



From: Chris Ryan
Sent: Tuesday, June 11, 2024 9:22 AM
To: repairs@etservice.tech
Subject: City of Seagoville generator work

I have a generator set at City Hall that is not wired in currently, I'm needing to get quotes on it all ASAP.

The following is a basic overview of what is needed:

- Supply and install one 21 circuit electrical panel and relocate 21- 277v circuits
- Supply and install one 200a ATS, Nema 3R mounted outside of main panel
- Supply and install one 200a Circuit breaker for main panelboard
- Supply and install one appropriate sized generator breaker
- Conduit and wire for power and controls to and from generator
- Relocate 277v lighting circuits and transfer 120v panel and load to generator
- Sluder emergency power assistance in generator integration
- Generator re-tapping, maintenance, suitability and load bank testing

If you would like to supply a quote please email or call 469-396-8892 me on or before Monday June 17, 2024, if not you will be considered a no bid.

NEW HOURS

Starting October 2, 2023

Mon-Thurs 7:30am- 5:30pm

Thank you,
Christopher Ryan
Director of Public Works
City of Seagoville
702 N. Highway 175
Seagoville, Texas 75159
Office: 972-287-6823
Cell: 469-396-8892
Secured Fax: 972-287-6832

From: Chris Ryan
Sent: Tuesday, June 11, 2024 9:23 AM
To: aacosta@carconindustries.com
Subject: City of Seagoville generator work

I have a generator set at City Hall that is not wired in currently, I'm needing to get quotes on it all ASAP.

The following is a basic overview of what is needed:

- Supply and install one 21 circuit electrical panel and relocate 21- 277v circuits
- Supply and install one 200a ATS, Nema 3R mounted outside of main panel
- Supply and install one 200a Circuit breaker for main panelboard
- Supply and install one appropriate sized generator breaker
- Conduit and wire for power and controls to and from generator
- Relocate 277v lighting circuits and transfer 120v panel and load to generator
- Sluder emergency power assistance in generator integration
- Generator re-tapping, maintenance, suitability and load bank testing

If you would like to supply a quote please email or call 469-396-8892 me on or before Monday June 17, 2024, if not you will be considered a no bid.

NEW HOURS

Starting October 2, 2023

Mon-Thurs 7:30am- 5:30pm

Thank you,
Christopher Ryan
Director of Public Works
City of Seagoville
702 N. Highway 175
Seagoville, Texas 75159
Office: 972-287-6823
Cell: 469-396-8892
Secured Fax: 972-287-6832

From: Tony Burton <tony.burton@carconindustries.com>
Sent: Tuesday, June 11, 2024 9:28 AM
To: Chris Ryan; Kim Delvo
Cc: Tony Carrillo
Subject: RE: City of Seagoville generator work

Chris,

Thank you for reaching out to us, but we are not electricians and will not be submitting a proposal for this work.

Thank you,

Tony Burton

Vice President of Operations

CARCON Industries & Construction

Office: (214) 352-8515 x205 | Cell: (469) 918-1597 | Email: tony.burton@carconindustries.com

Website: www.carconindustries.com | Follow Us On: [Facebook](#) | [Instagram](#)

535 Regal Row Dallas, TX 75247

From: Chris Ryan <CRyan@seagoville.us>
Sent: Tuesday, June 11, 2024 9:25 AM
To: Kim Delvo <kdelvo@carconindustries.com>
Cc: Tony Burton <tony.burton@carconindustries.com>; Tony Carrillo <tony.carrillo@stlengineers.com>
Subject: FW: City of Seagoville generator work

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

From: Chris Ryan
Sent: Tuesday, June 11, 2024 9:23 AM
To: aacosta@carconindustries.com
Subject: City of Seagoville generator work

I have a generator set at City Hall that is not wired in currently, I'm needing to get quotes on it all ASAP.

The following is a basic overview of what is needed:

- Supply and install one 21 circuit electrical panel and relocate 21- 277v circuits
- Supply and install one 200a ATS, Nema 3R mounted outside of main panel
- Supply and install one 200a Circuit breaker for main panelboard
- Supply and install one appropriate sized generator breaker
- Conduit and wire for power and controls to and from generator
- Relocate 277v lighting circuits and transfer 120v panel and load to generator
- Sluder emergency power assistance in generator integration
- Generator re-tapping, maintenance, suitability and load bank testing



TO: Mayor and City Council

FROM: Kirk McDaniel, Director of Economic Development

DATE: July 1, 2024

ITEM: 21

DESCRIPTION: Discuss and consider a Resolution ratifying approval of a contract with Good Earth Services of Texas for mowing services around the Simonds Market Center Tract.

INTRODUCTION

The purpose of this item is for mowing services around the Simonds Market Tract.

BACKGROUND

Since attaining ownership of the Simonds Market Center Tract, ongoing mowing and maintenance of the property has been a significant burden on Staff. The City has an existing contract with Good Earth Services of Texas for mowing certain property around the City, and they have provided a quote for including the Simonds Market Center Tract, which is attached as **Exhibit A**. The Seagoville EDC recommended approval at the June 20th EDC Board meeting. The City Council is required to ratify any EDC approvals which exceed Three Thousand Dollars (\$3,000), as such this item is being brought before City Council for such approval.

FINANCIAL IMPACT

Six Thousand Five Hundred dollars (\$6,500) for the remainder of Fiscal Year 2024.

RECOMMENDATION

The Seagoville EDC recommended approval at the June 20th EDC Board meeting

ATTACHMENTS

1. Resolution
2. Quote

A RESOLUTION OF THE CITY OF SEAGOVILLE, TEXAS

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF SEAGOVILLE, TEXAS, RATIFYING
APPROVAL OF A CONTRACT WITH GOOD EARTH
SERVICES OF TEXAS FOR MOWING SERVICES
AROUND THE SIMONDS MARKET CENTER TRACT,
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City is required to ratify contractual actions taken by the Seagoville Economic Development Corporation that exceeds Three Thousand dollars (\$3,000); and

WHEREAS, the Seagoville Economic Development Corporation has previously recommended approval of a contract with Good Earth Mowing Services of Texas; and

WHEREAS, the City Council has determined that the contract with Good Earth Mowing Services of Texas is in the best interest of the City; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE
CITY OF SEAGOVILLE, TEXAS THAT:**

SECTION 1. The City of Seagoville ratifies the approval of a contract with Good Erath Mowing Services of Texas, in an amount not to exceed Six Thousand Five Hundred dollars (\$6,500) for the remainder of Fiscal Year 2024.

SECTION 2. This Resolution shall take effect immediately upon passage.

DULY PASSED by the City Council of the City of Seagoville, Texas, on 1st day of July, 2024.

APPROVED:

Lackey Stepper Sebastian, Mayor

ATTEST:

Sara Egan, City Secretary

APPROVED AS TO FORM:

David Berman, City Attorney



Proposal

11894

6/18/2024

Project Name :

City of Seagoville 2023-02
702 N Hwy 175
Seagoville Texas 75159

Description	Qty.	Unit	Total
Mow, Edge, Weedeat, and Litter Removal for requested lot on Simonds Road	1	650.00	650.00

GENERAL IRRIGATION SERVICE NOTES:

1. This estimate includes only those items identifiable at the time of inspection. Sometimes as repairs are made new problems are revealed requiring additional work.
2. This estimate is based on our regular labor rates for licensed irrigators or experienced technicians. Any significant increase in labor cost that arises due to extraordinary conditions such as solid rock, obstructive tree or plant roots, copper piping, will be brought to your attention for approval before proceeding.
3. Trouble shooting and diagnostic work such as valve locate/diagnosis or wiring problems sometimes requires additional repairs such as valve replacement or rewiring. This type of repair cannot be identified before the diagnostic work is performed and will be brought to your attention before proceeding.

	Sales Tax (0.0%)	\$0.00
	Total	\$650.00

I accept the above quoted price and authorize Landscape & Irrigation Services to proceed with this scope of work on these terms. This price is valid for 30 days from the date above.

SIGNATURE _____

Web Site

214-381-5899

214-381-9315

www.goodearth-inc.com