PLANS AND SPECIFICATIONS FOR
CITY OF LEON VALLEY
BID #2013-02
FY 2013 BITUMINOUS SLURRY SEAL PROJECT

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CITY OF LEON VALLEY

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SINGLE COURSE BITUMINOUS SLURRY SEAL

DELTA ISSA TYPE II MODIFIED (-5MM)

NOTES

SECTION 00100
BID ADVERTISEMENT

ADVERTISEMENT FOR BIDS FOR: BID #2013-01 - FY 2013 BITUMINOUS SLURRY SEAL PROJECT FOR THE CITY OF LEON VALLEY (~~150,462~~ 140,055 SY) - PROJECT ESTIMATE IS $335,259

The City of Leon Valley, Texas, will receive sealed bids until Tuesday, May 14, 2013, at 2:00 p.m., at the Office of the Purchasing Agent of the City of Leon Valley, TX, 6400 El Verde Road, Leon Valley, TX 78238, at which time bids will be publicly opened and read aloud.

Specifications are available online on the City of Leon Valley's website at www.leonvalleytexas.gov. There are NO printed specifications nor plans. For assistance, call (210) 684-1391 x 222.

Bids must be submitted on the bid form furnished within the specifications and submitted in a sealed envelope and clearly endorsed "Bid 2013-02 - FY 2013 Bituminous Slurry Seal Project". Each bid shall be accompanied by a bid guarantee in the form of a certified check, cashier's check, or bid bond in the amount of five percent (5%) of the total bid price. Any bid received after closing time will be returned unopened.

Attention is called to the fact that, pursuant to V.T.C.S. Art. 5159a, not less than the local prevailing wage rate derived from Leon Valley Ordinance #99-001, must be paid on this locally funded project.

The successful bidder will be required to furnish a one hundred percent (100%) Performance Bond and one hundred percent (100%) Payment Bond.

The City of Leon Valley reserves the right to reject any and all bids, to award the contract in what it deems its best interest and to waive any informality or technicality in the bid, and agrees to take action within sixty (60) days after the bid opening.

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SECTION 00200
INSTRUCTIONS TO BIDDERS

ARTICLE 1 - DEFINED TERMS

1.1 Terms used in these Instructions to Bidders will have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof:

A. *Bidder*--The individual or entity who submits a Bid directly to OWNER.

B. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

C. *Successful Bidder*--The lowest responsible Bidder submitting a responsive Bid to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.

D. *Owner* - City of Leon Valley

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.1 Complete sets of the Bidding Documents in the number and for the purchase sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office.

2.2 Complete sets of Bidding Documents must be used in preparing Bids; OWNER assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.3 OWNER, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.1 To demonstrate Bidder's qualifications to perform the Work, within five days of OWNER's request Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

A. *Name, address and telephone number of the bonding company, authorized to do business in the State of Texas, which would furnish Payment and Performance Bonds in the amount of your bid;*

B. *Name, address and telephone number of the insurance company, authorized to do business in the State of Texas, which would furnish Certificate(s) of Insurance per the requirements in the Supplemental Special Conditions and General Conditions.*

C. *If CONTRACTOR plans to utilize subcontractors for this project, also furnish all of the requested information on the subcontractor's firm(s).*

D. *CONTRACTOR shall complete and submit with his bid, CONTRACTOR'S disclosure Statement included in Section 00820 of these Specifications.*

E. *CONTRACTOR shall submit with his bid, a copy of his Worker's Compensation insurance certificate.*

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.1 *Subsurface and Physical Conditions*

A. There are no reports of explorations and test of subsurface conditions for this project.

4.2 *Underground Facilities*

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to OWNER by owners of such Underground Facilities, including OWNER, or others.

4.3 *Hazardous Environmental Condition*

A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that OWNER has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in paragraph 4.03.A will be made available by OWNER to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in paragraph 4.06 of the General Conditions has been identified and established in paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any "technical data" or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in paragraph 4.06 of the General Conditions.

4.5 On request, OWNER will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid.

Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.6 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by OWNER or others (such as utilities and other prime contractors) that relates to the Work for which a Bid is to be submitted. On request, OWNER will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.7 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, including any Addenda and the other related data identified in the Bidding Documents;

B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work;

D. carefully study all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and carefully study all reports and drawings of a Hazardous Environmental Condition, if any, at the Site which have been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions;

E. obtain and carefully study (or assume responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

I. promptly give OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by OWNER is acceptable to Bidder; and

J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.8 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given OWNER written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by OWNER are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work..

ARTICLE 5 - PRE-BID CONFERENCE

5.01 There will be no pre-bid conference for this project.

ARTICLE 6 - SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by OWNER unless otherwise provided in the Bidding Documents.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.1 All questions about the meaning or intent of the Bidding Documents are to be submitted to OWNER in writing. Interpretations or clarifications considered necessary by OWNER in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by OWNER as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.2 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by OWNER.

ARTICLE 8 - BID SECURITY

8.1 A Bid must be accompanied by Bid security made payable to OWNER in an amount of 5% of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond , on the form attached, issued by a surety meeting the requirements of paragraphs 5.01 and 5.02 of the General Conditions.

8.2 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, OWNER may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom OWNER believes to have a reasonable chance of receiving the award may be retained by OWNER until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.3 Bid security of other Bidders whom OWNER believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The number of days within which, or the dates by which, the Work is to be (a) Substantially Completed and (b) also completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

ARTICLE 11 - SUBSTITUTE AND “OR-EQUAL” ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by CONTRACTOR if acceptable to OWNER, application for such acceptance will not be considered by OWNER until after the Effective Date of the Agreement. The procedure for submission of any such application by CONTRACTOR and consideration by OWNER is set forth in the General Conditions and may be supplemented in the General Requirements.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.1 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to OWNER in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to OWNER a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by OWNER. If OWNER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, OWNER may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

12.2 If apparent Successful Bidder declines to make any such substitution, OWNER may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which OWNER makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to OWNER subject to revocation of such acceptance after the Effective Date of the Agreement as provided in paragraph 6.06 of the General Conditions.

12.3 CONTRACTOR shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom CONTRACTOR has reasonable objection.

ARTICLE 13 - PREPARATION OF BID

13.1 The Bid form is included with the Bidding Documents. Additional copies may be obtained from OWNER.

13.2 All blanks on the Bid form shall be completed by printing in ink or by typewriter and the Bid signed. A Bid price shall be indicated for each Bid item listed therein, or the words “No Bid,” “No Change,” or “Not Applicable” entered.

13.3 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.4 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

13.5 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm must be shown below the signature.

13.6 A Bid by an individual shall show the Bidder’s name and official address.

13.7 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid form. The official address of the joint venture must be shown below the signature.

13.8 All names shall be typed or printed in ink below the signatures.

13.9 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid form.

13.10 The address and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder’s state contractor license number for the state of the Project, if any, shall also be shown on the Bid form.

ARTICLE 14 - BASIS OF BID; EVALUATION OF BIDS

14.1 *Unit Price*

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be determined as the sum of the products of the estimated quantity of each item and the unit price Bid for the item. The final quantities and Contract Price will be determined in accordance with paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.2 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in paragraph 11.02 of the General Conditions.

ARTICLE 15 - SUBMITTAL OF BID

15.1 Each prospective Bidder will be furnished with one copy of the Bidding Documents.

15.2 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to

City of Leon Valley
Office of the Purchasing Agent
6400 El Verde Road
Leon Valley, Texas 78238
(210) 684-1391 ext. 222

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

16.1 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

16.2 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with OWNER and promptly thereafter demonstrates to the reasonable satisfaction of OWNER that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security

will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid form, but OWNER may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 - AWARD OF CONTRACT

19.1 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 be non-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.

19.2 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

19.3 In evaluating Bids, OWNER will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.

19.4 In evaluating Bidders, OWNER will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.5 OWNER may conduct such investigations as OWNER deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.6 If the Contract is to be awarded, OWNER will award the Contract to the Bidder whose Bid is in the best interests of the Project.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth OWNER's requirements as to performance and payment Bonds and insurance. When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds.

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When OWNER gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER. Within ten days thereafter, OWNER shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 - SALES AND USE TAXES

22.1 The City is an exempt entity for the purpose of sale tax.

A. The purchase of tangible personal property or a taxable service for this project is exempt from sales tax to the extent allowed by 34 Texas Administration Code 3.291 (See Instruction to Bidding).

B. Bidders must include all applicable taxes in their cost of their work.

C. Exemption notice to be provided upon request.

ARTICLE 23 - RETAINAGE

23.01 Provisions concerning CONTRACTOR's rights to deposit securities in lieu of retainage are set forth in the Agreement.

ARTICLE 24 - CONTRACTS TO BE ASSIGNED

24.01 Bidders may examine the documents for these contracts at the Issuing Office

ARTICLE 25 - PARTNERING

25.01 OWNER does not intend to participate in a partnering process with CONTRACTOR.

BID FORM

PROJECT IDENTIFICATION:

City of Leon Valley
FY 2013 Bituminous Slurry Seal Project
Bid No. 2013-02

THIS BID IS SUBMITTED TO:

City of Leon Valley
Office of the Purchasing Agent
6400 El Verde Road
Leon Valley, Texas 78238
(210) 684-1391 ext. 222

1.01 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2.01 Bidder accepts all of the terms and conditions of the Advertisement or Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of OWNER.

3.1 In submitting this Bid, Bidder represents, as set forth in the Agreement, that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all which is hereby acknowledged.

Addendum No.	Addendum Date
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and (2) reports and drawings of a Hazardous Environmental

Condition, if any, which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

E. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.

F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.

I. Bidder has given OWNER written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by OWNER is acceptable to Bidder.

J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

4.01 Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

ITEM #207.1			
QTY	DESCRIPTION		TOTAL PRICE
150,462	Single	mous Slurry	$

_____ dollars

and _____ cents

ITE	.2		
	DESCRIPTION	PRICE/LF	TOTAL PRIC
3	4 Inch Wide White Line	$	$

at _____

and _____ s

	BOTH ITEMS	$

at _____ **dollars**

_____ **cents**

6.1 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.2 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

7.1 The following documents are attached to and made a condition of this Bid:

A. Required Bid Bond;

B. Required bidder qualifications statement with supporting data.

C. Evidence of Workers Compensation Insurance

8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

SUBMITTED on_____, 2013.

State Contractor License No._____. (If

applicable) If Bidder is:

An Individual

Name (typed or printed): _____

By:_____(SEAL)

(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.:_____ FAX No.: _____

A Partnership

Partnership Name:_____(SEAL)

By: _____

(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.:_____ FAX No.: _____

A Corporation

Corporation Name:_____(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability):_____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____
(Signature of Corporate Secretary)

Business address: _____

Phone No.:_____ FAX No.: _____

Date of Qualification to do business is

_____.

A Joint Venture

Joint Venturer Name:_____(SEAL)

By: _____
(Signature of joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Business address: _____

Phone No.:_____ FAX No.: _____

Joint Venturer Name:_____(SEAL)

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____
Title: _____
Business address: _____

Phone No.:_____ FAX No.: _____

Phone and FAX Number, and Address for receipt of official communications:
_____

_____

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

SECTION 00410
BID BOND

BIDDER (Name and Address):

_____
_____
_____

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

_____
_____
_____

OWNER (Name and Address):

City of Leon Valley
6400 El Verde Road
Leon Valley, Texas 78238
(210) 684-1391 ext. 222

BID

BID DUE DATE: _____

PROJECT (Brief Description Including Location):

FY 2013 Bituminous Slurry Seal Project – Bid #2013-02

BOND

BOND AMOUNT: 5% Of the total bid price.

BOND NUMBER: _____

DATE (Not later than Bid due date): _____

PENAL SUM: _____ _____

(Words) (Figures)

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

BIDDER

_____ (Seal)
Bidder's Name and Corporate Seal

By:_____
Signature and Title

Attest:_____
Signature and Title

SURETY

_____(Seal)
Surety's Name and Corporate Seal

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Note: (1) Above addresses are to be used for giving required notice.

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

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to OWNER upon default of Bidder the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1. OWNER accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by OWNER) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents, or

3.2. All Bids are rejected by OWNER, or

3.3. OWNER fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from OWNER, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.

5. Surety waives notice of and any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by OWNER and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power or Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall

govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

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

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 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 knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

OFFICE USE ONLY

Date Received

1. Name of person doing business 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has employment or business relationship.

_____

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer 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 filer of the questionnaire?

☐ Yes ☐ No

B. Is the filer of the questionnaire 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 of 10 percent or more?

☐ Yes ☐ No

D. Describe each employment or business relationship with the local government officer named in this section.

4.

_____ _____

Signature of person doing business with governmental entity Date

EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between the *City of Leon Valley* (hereinafter called OWNER) and

_____

(hereinafter called CONTRACTOR).

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

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Bid No. 2013-02
FY 2013 Bituminous Slurry Seal

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Install approximately 150,462 square yards of Single Course Bituminous Slurry Seal as shown on the drawings included herein.

ARTICLE 3 - OWNER

3.01 The Project has been designed by OWNER.

ARTICLE 4 - CONTRACT TIMES

4.1 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.2 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed within 90 days after the date when the Contract Times commence to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 days after the date when the Contract Times commence to run.

4.3 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER $ $250.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER $ $250.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A, 5.01.B, and 5.1.C below:

A. For all Work, at the prices stated in CONTRACTOR's Bid, for the alternatives or base bid indicated in the Notice of Award.

B. As provided in paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by CONTRACTOR as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03 of the General Conditions.

C. STATEMENT OF MATERIALS AND OTHER CHARGES: For the purposes of complying with the Texas Tax Code, this contract shall be a separate contract. Separate prices for materials and services shall be

provided by the CONTRACTOR upon award as provided in Paragraph 5.01D. The OWNER shall pay the CONTRACTOR for the proper performance of the contract, subject to additions and deductions provided herein.

D. CONTRACTOR hereby acknowledges and understands that this is a "separate contract" pursuant to recently enacted legislation contained in Texas Administrative Code Title 34, I, 3, O, paragraph 3.291. The following amount of money represents that part of the total contract price representative of the value of tangible personal property to be physically incorporated into the project reality: $_____.

ARTICLE 6 - PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by OWNER as provided in the General Conditions.

6.2 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 20th day of each month during performance of the Work as provided in paragraphs 6.02.B thru 6.02.D below. Be advised that there is approximately a 2-week check preparation time upon receiving the CONTRACTOR's Applications for Payment. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

B. The amount of the payment due the CONTRACTOR shall be determined by adding the total value of work completed to date and deducting of

1. Ten percent (10%) of the total amount, to be retained by the OWNER until the final payment, and
2. The amount of all previous payments.

The total value of work completed to date shall be based on the estimated quantities of work completed and on the unit prices contained in the agreement. The estimate may include the value of materials delivered on the ground but not incorporated into the work.

C. Monthly or partial payments made by OWNER to CONTRACTOR are monies advanced for the purpose of assisting CONTRACTOR to expedite the work of construction. The CONTRACTOR shall be responsible for the care and protection of all material and work upon which payments have been made until final acceptance of such work and materials by the OWNER. Such payments shall not constitute a waiver of the right of the OWNER to require the fulfillment of all terms of the agreement and the delivery of all improvements embraced in the agreement, complete and satisfactory to the OWNER in all details.

D. No estimate except the final estimate will be made for a sum less than Five Hundred Dollars ($500.00). It is understood that all estimates are approximate only and payment shall be subject to correction in subsequent estimates if any error is discerned.

6.3 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of_____0__% per annum..

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in paragraph 4.06 of the General Conditions.

.

E. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including applying the specific means, methods, techniques, sequences, and procedures of construction, if any, expressly required by the Contract Documents to be employed by CONTRACTOR, and safety precautions and programs incident thereto.

F. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

H. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

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

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

K. For the purpose of complying with the Texas Tax Code, this contract shall be a separate contract. The OWNER shall pay the CONTRACTOR for the proper performance of the contract, subject to additions and deductions therein, the contract sum as provided on the Bid Form.

ARTICLE 9 - CONTRACT DOCUMENTS

9.1 *Contents*

A. The Contract Documents consist of the following:

1. Instruction to Bidders (page 00200-1 to 00200-7 , inclusive);

2. Bid Bonds (pages 00410-1 to 00410-2 , inclusive);

3. This Agreement (pages 00500-1 to 00500-7, inclusive);

4. Performance Bond (pages 00610-1 to 00610-2 , inclusive);

5. Payment Bond (pages 00620-1 to 00620-2 , inclusive);

6. General Conditions (pages 00700-1 to 00700-41, inclusive);

7. Supplementary Conditions (pages 00800-1 to 00800-8 , inclusive);

8. Special Supplementary Conditions (pages 00810-1 to 00810-7, inclusive);

9. Special Conditions (pages 00850-1 to 00850-4, inclusive);

10. Specifications as listed in the table of contents of the Project Manual;

11. Drawings consisting of sheets numbered 1 through 6, inclusive, with each sheet bearing the following general title: FY 2013 Bituminous Slurry Seal Project

12. Addenda (numbers____to___, inclusive);

13. Exhibits to this Agreement (enumerated as follows):

a. Notice to Proceed (page 00550-1);

b. CONTRACTOR's Bid (pages 00300-1 to 00300-14, inclusive);

c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages_____to , inclusive);

14. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

a. Written Amendments;

b. Work Change Directives;

c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.1 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.2 *Assignment of Contract*

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

10.3 *Successors and Assigns*

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

10.4 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall 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.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

This Agreement will be effective on_____,_____(which is the Effective Date of the Agreement).

OWNER: City of Leon Valley

_____

By:_____

[CORPORATE SEAL]

Attest_____

Address for giving notices:

City of Leon Valley

6400 El Verde

Leon Valley, Texas 78238

(If OWNER is a corporation , attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

Designated Representative:

Name:_____

Title: City Manager

Address: 6400 El Verde

Leon Valley, Texas 78238

Phone: (210) 684-1391

Facsimile: (210) 681-7886

CONTRACTOR:

_____

By:____

[CORPORATE SEAL]

Attest_____

Address for giving notices:

P.O. Box 682008, San Antonio, Texas 78268

_____

_____

License No._____
(Where applicable)

Agent for service of process: _____

_____

(If CONTRACTOR is a corporation or a partnership, attach evidence of authority to sign.)

Designated Representative:

Name:_____

Title:_____

Address:_____

_____

Phone:_____

Facsimile:_____

SECTION 00550
NOTICE TO PROCEED

Dated_____

TO: _____
(CONTRACTOR)

ADDRESS:_____

_____

Contract: FY 2013 Bituminous Slurry Seal Project
(Insert name of Contract as it appears in the Contract Documents)

Project: FY 2013 Bituminous Slurry Seal Project
OWNER'S CONTRACT NO. 2013-02

You are notified that the Contract Times under the above contract will commence to run on _____. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Substantial Completion is _____and the date of readiness for final payment is_____.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and Owner must each deliver to the other certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must
(add other requirements)

Attend Preconstruction Conference and give Owner actual notice of start. Provide new Insurance certificate prior to expiration.

_____

City of Leon Valley
(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

City Manager
(TITLE)

Performance Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

City of Leon Valley
6400 El Verde Road
Leon Valley, Texas
(210) 684-1391 ext. 222

CONTRACT
Date:
Amount:
Description (Name and Location):

FY 2013 Bituminous Slurry Seal Bid 2013-02

BOND
Bond Amount: 100%
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL (Corp. Seal)
Company:.

Signature:_____
Name and Title:

SURETY (Corp. Seal)
Company:

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL (Corp. Seal)
Company:

Signature:_____
Name and Title:

SURETY (Corp. Seal)
Company:

Signature: _____
Name and Title

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference.

2. If the CONTRACTOR performs the Contract, the Surety and the CONTRACTOR have no obligation under this Bond, except to participate in conferences as provided in paragraph 3.1.

3. If there is no OWNER Default, the Surety's obligation under this Bond shall arise after:

3.1. The OWNER has notified the CONTRACTOR and the Surety at the addresses described in paragraph 10 below, that the OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with the CONTRACTOR and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract. If the OWNER, the CONTRACTOR and the Surety agree, the CONTRACTOR shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive the OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

3.2. The OWNER has declared a CONTRACTOR Default and formally terminated the CONTRACTOR's right to complete the Contract. Such CONTRACTOR Default shall not be declared earlier than twenty days after the CONTRACTOR and the Surety have received notice as provided in paragraph 3.1; and

3.3. The OWNER has agreed to pay the Balance of the Contract Price to:

3.3.1. The Surety in accordance with the terms of the Contract;

3.3.2 Another contractor selected pursuant to paragraph 4.3 to perform the Contract.

4. When the OWNER has satisfied the conditions of paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1. Arrange for the CONTRACTOR, with consent of the OWNER, to perform and complete the Contract; or

4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or

4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the OWNER for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the OWNER and the contractor selected with the OWNER's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the Bonds issued on the Contract, and pay to the OWNER the amount of damages as described in paragraph 6 in excess of the Balance of the Contract Price incurred by the OWNER resulting from the CONTRACTOR Default; or

4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances;

4.4.1 After investigation, determine the amount for which it may be liable to the OWNER and, as soon as practicable after the amount is determined, tender payment therefor to the OWNER; or

4.4.2 Deny liability in whole or in part and notify the OWNER citing reasons therefor.

5. If the Surety does not proceed as provided in paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the OWNER to the Surety demanding that the Surety perform its obligations under this Bond, and the OWNER shall be entitled to enforce any remedy available to the OWNER. If the Surety proceeds as provided in paragraph 4.4, and the OWNER refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the OWNER shall be entitled to enforce any remedy available to the OWNER.

6. After the OWNER has terminated the CONTRACTOR's right to complete the Contract, and if the Surety elects to act under paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the OWNER shall not be greater than those of the CONTRACTOR under the Contract, and the responsibilities of the OWNER to the Surety shall not be greater than those of the OWNER under the Contract. To a limit of the amount of this Bond, but subject to commitment by the OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Contract, the Surety is obligated without duplication for:

6.1. The responsibilities of the CONTRACTOR for correction of defective Work and completion of the Contract;

6.2. Additional legal, design professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of the Surety under paragraph 4; and

6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the CONTRACTOR.

7. The Surety shall not be liable to the OWNER or others for obligations of the CONTRACTOR that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the OWNER or its heirs, executors, administrators, or successors.

8. The Surety hereby waives notice of any change, including changes of time, to the
Contract or to related subcontracts, purchase orders and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after CONTRACTOR Default or within two years after the CONTRACTOR ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12. Definitions.

12.1 Balance of the Contract Price: The total amount payable by the OWNER to the CONTRACTOR under the Contract after all proper adjustments have been made, including allowance to the CONTRACTOR of any amounts received or to be received by the OWNER in settlement of insurance or other Claims for damages to which the CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of the CONTRACTOR under the Contract.

12.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

12.3. CONTRACTOR Default: Failure of the CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.

12.4. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

Payment Bond

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

CONTRACTOR (Name and Address):

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

OWNER (Name and Address):

City of Leon Valley
Office of the Purchasing Agent
6400 El Verde Road
Leon Valley, Texas 78238
(210) 684-1391

CONTRACT
Date:
Amount: *$*
Description (Name and Location):

FY 2013 Bituminous Slurry Seal Bid 2013-02

BOND
Bond Amount: 100%
Date (Not earlier than Contract Date):
Amount:
Modifications to this Bond Form:

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

CONTRACTOR AS PRINCIPAL (Corp. Seal)
Company:

Signature:_____
Name and Title:

SURETY (Corp. Seal)
Company:

Signature: _____
Name and Title:
(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

CONTRACTOR AS PRINCIPAL (Corp. Seal)
Company:

Signature:_____
Name and Title:

SURETY (Corp. Seal)
Company:

Signature: _____
Name and Title:

1. The CONTRACTOR and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the OWNER to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to the OWNER, this obligation shall be null and void if the CONTRACTOR:

2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2. Defends, indemnifies and holds harmless the OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Contract, provided the OWNER has promptly notified the CONTRACTOR and the Surety (at the addresses described in paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and the Surety, and provided there is no OWNER Default.

3. With respect to Claimants, this obligation shall be null and void if the CONTRACTOR promptly makes payment, directly or indirectly, for all sums due.

4. The Surety shall have no obligation to Claimants under this Bond until:

4.1. Claimants who are employed by or have a direct contract with the CONTRACTOR have given notice to the Surety (at the addresses described in paragraph 12) and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2. Claimants who do not have a direct contract with the CONTRACTOR:

1. Have furnished written notice to the CONTRACTOR and sent a copy, or notice thereof, to the OWNER, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

2. Have either received a rejection in whole or in part from the CONTRACTOR, or not received within 30 days of furnishing the above notice any communication from the CONTRACTOR by which the CONTRACTOR had indicated the claim will be paid directly or indirectly; and

3. Not having been paid within the above 30 days, have sent a written notice to the Surety and sent a copy, or notice thereof, to the OWNER, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the CONTRACTOR.

5. If a notice required by paragraph 4 is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.

6. When the Claimant has satisfied the conditions of paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1. Send an answer to the Claimant, with a copy to the OWNER, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2. Pay or arrange for payment of any undisputed amounts.

7. The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

6. Amounts owed by the OWNER to the CONTRACTOR under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any Performance Bond. By the CONTRACTOR furnishing and the OWNER accepting this Bond, they agree that all funds earned by the CONTRACTOR in the performance of the Contract are dedicated to satisfy obligations of the CONTRACTOR and the Surety under this Bond, subject to the OWNER's priority to use the funds for the completion of the Work.

9. The Surety shall not be liable to the OWNER, Claimants or others for obligations of the CONTRACTOR that are unrelated to the Contract. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. The Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by paragraph 4.1 or paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the OWNER or the CONTRACTOR shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, the OWNER or the CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, the CONTRACTOR shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

15.1. Claimant: An individual or entity having a direct contract with the CONTRACTOR or with a Subcontractor of the CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of the CONTRACTOR and the CONTRACTOR's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2. Contract: The agreement between the OWNER and the CONTRACTOR identified on the signature page, including all Contract Documents and changes thereto.

15.3. OWNER Default: Failure of the OWNER, which has neither been remedied nor waived, to pay the CONTRACTOR as required by the Contract or to perform and complete or comply with the other terms thereof.

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.1 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

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

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

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

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

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

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

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

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

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

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and OWNER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

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

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

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

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

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

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

19. *OWNER's Consultant*--An individual or entity having a contract with OWNER to furnish services as OWNER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

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

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

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

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

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

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

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

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

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

29. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

30. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs*--Polychlorinated biphenyls.

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

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

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

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

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

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

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

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

40. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

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

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

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

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

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

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

47. *Work*--The entire completed construction or the various separately identifiable parts thereof required to

be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

48. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

49. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.2 *Terminology*

A. *Intent of Certain Terms or Adjectives*

1. Whenever in the Contract Documents the terms “as allowed,” “as approved,” or terms of like effect or import are used, or the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of OWNER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to OWNER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. *Day*

1. The word “day” shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to OWNER’s approval of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

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

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

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

intended use.

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.1 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.2 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to two copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.3 *Commencement of Contract Times; Notice to Proceed*

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

2.4 *Starting the Work*

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

2.5 Before Starting Construction

A. *CONTRACTOR’s Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to OWNER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from OWNER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to OWNER for its timely review**:**

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

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; 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.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each

deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

D. The CONTRACTOR shall be responsible for the notifying all property owners within and adjacent to the project twenty-for (24) hours prior to commencing construction operations. Said notice shall be in writing and in a form acceptable to the OWNER.

E. Prior to the start of the project, the CONTRACTOR shall identify to the OWNER, any tree limbs which overly and interfere with the work. Said limbs to be removed by the OWNER.

2.6 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, OWNER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.7 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, OWNER, and others as appropriate will be held to review for acceptability to OWNER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to OWNER.

1. The progress schedule will be acceptable to OWNER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on OWNER 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 Shop Drawing and Sample submittals will be acceptable to OWNER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to OWNER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.1 *Intent*

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

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

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

3.2 *Reference Standards*

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

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

specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER or CONTRACTOR, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, or any of OWNER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.3 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to OWNER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or the provisions of the Contract Documents and:

a. the provisions of any Laws or Regulations
b. the provisions of any standard, specification, 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).

3.1 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) OWNER's approval of a Shop Drawing or Sample; or (iii) OWNER's written interpretation or clarification.

3.2 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of OWNER or OWNER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and specific written verification or adaption by OWNER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

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

4.1 *Availability of Lands*

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

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

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

D. The CONTRACTOR shall not, except after written consent from proper parties, enter or occupy with men, tools, materials or equipment, any privately owned land except on easements provided herein.

4.1 *Subsurface and Physical Conditions*

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

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that OWNER has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that OWNER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, or any of OWNER's Consultants with respect to:

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

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

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

4.2 *Differing Subsurface or Physical Conditions*

A. In the preparation of Drawings and Specifications, Owner relied upon the following report of explorations and tests of the subsurface conditions at the site:

None

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

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

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

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

4. is of an unusual nature, and differs materially

from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

B. *OWNER's Review:* After receipt of written notice as required by paragraph 4.03.A, OWNER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise CONTRACTOR in writing of OWNER's findings and conclusions.

C. *Possible Price and Times Adjustments*

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

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

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

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

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

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

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

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

4.3 *Underground Facilities*

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

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

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

a. reviewing and checking all such information and data,

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

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

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

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER. OWNER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

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

4.4 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in OWNER'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 OWNER 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.

4.5 *Hazardous Environmental Condition at Site*

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

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER or any of OWNER's Consultants with respect to:

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

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

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

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

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

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

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

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

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

entity from and against the consequences of that individual's or entity's own negligence.

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

4.07 *Damage to Existing Streets*

A. The asphalt pavement, curbs and existing sidewalks in the work area are considered to be in good to excellent condition prior to the start of the project.

B. Any scars, nicks, gasoline, oil, etc., or other defacement or damage to the existing streets, curbs, or sidewalks will be the responsibility of the CONTRACTOR to repair.

Before beginning the job, the CONTRACTOR may point out and note to the inspector any specific areas that are already damaged. Thereafter, the CONTRACTOR will not be held responsible for repairs to these areas.

ARTICLE 5 - BONDS AND INSURANCE

5.1 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

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

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.2 *Licensed Sureties and Insurers*

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

5.3 *Certificates of Insurance*

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

5.4 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to

perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

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

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

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

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

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

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

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

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.5 *OWNER's Liability Insurance*

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

5.6 *Property Insurance*

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

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

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

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

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

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

6. include testing and startup; and

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

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, OWNER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

been procured by OWNER.

5.7 *Waiver of Rights*

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

B. OWNER waives all rights against CONTRACTOR, Subcontractors, OWNER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

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

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

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, or OWNER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.8 *Receipt and Application of Insurance Proceeds*

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

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

~~the insurers and, if required in writing by any party~~ in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

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

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.1 *Supervision and Superintendence*

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

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

6.2 *Labor; Working Hours*

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

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

6.3 *Services, Materials, and Equipment*

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by OWNER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.4 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to OWNER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.5 *Substitutes and "Or-Equals"*

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

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

a. in the exercise of reasonable judgment OWNER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

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

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

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

d. CONTRACTOR shall first make written application to OWNER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by OWNER in evaluating the proposed substitute item. OWNER may require CONTRACTOR to furnish additional data about the proposed substitute item.

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

C. *Owner's Evaluation:* OWNER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. OWNER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until OWNER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." OWNER will advise CONTRACTOR in writing of any negative determination.

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

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

6.6 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any

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

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

C. CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

6.7 *Patent Fees and Royalties*

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, OWNER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.8 *Permits*

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.9 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, OWNER shall not be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

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

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas

with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

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

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

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

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

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

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

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property

and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or OWNER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and OWNER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

A. CONTRACTOR shall submit Shop Drawings to OWNER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as OWNER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show OWNER the services, materials, and equipment CONTRACTOR proposes to provide and to enable OWNER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to OWNER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as OWNER may require to enable OWNER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to OWNER as required by paragraph 2.07, any related Work performed prior to OWNER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. *Submittal Procedures*

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

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

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

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

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

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give OWNER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to OWNER for review and approval of each such variation.

E. *OWNER's Review*

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

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

3. OWNER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called OWNER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and OWNER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by OWNER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by OWNER 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 OWNER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, and OWNER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective for a 12 month period beginning on the date of the final payment. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

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

2. normal wear and tear under normal usage.

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

1. observations by OWNER;

2. recommendation by OWNER or payment by OWNER of any progress or final payment;

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

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

5. any acceptance by OWNER or any failure to do so;

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

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

8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS OWNER, OWNER'S EMPLOYEES AND GOVERNING OFFICIALS, OWNER'S CONSULTANTS, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, 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, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor,

any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of OWNER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.1 *Related Work at Site*

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

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

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

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of OWNER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

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

7.2 *Coordination*

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such

authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR directly.

8.2 *Furnish Data*

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

8.3 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.4 *Lands and Easements; Reports and Tests*

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

8.5 *Insurance*

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

8.6 *Change Orders*

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.7 *Inspections, Tests, and Approvals*

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

8.8 *Undisclosed Hazardous Environmental Condition*

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

8.9 *Evidence of Financial Arrangements*

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

ARTICLE 9 - OWNER'S STATUS DURING CONSTRUCTION

Visits to Site

A. OWNER will make visits to the Site at intervals appropriate to the various stages of construction as OWNER deems necessary in order to observe 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, OWNER will determine, in general, if the Work is proceeding in accordance with the Contract Documents. OWNER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. OWNER's efforts will be directed toward providing a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, OWNER will keep informed of the progress of the Work and will endeavor to guard themself against defective Work.

B. OWNER's visits and observations are subject to all the limitations on OWNER's authority and responsibility set forth in paragraph 9.9, and particularly, but without limitation, during or as a result of OWNER's visits or observations of CONTRACTOR's Work OWNER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.2 *Project Representative*

A. OWNER will furnish a Resident Project Representative to assist OWNER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the Site who is not OWNER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.3 *Clarifications and Interpretations*

A. OWNER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as OWNER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.4 *Authorized Variations in Work*

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

9.5 *Rejecting Defective Work*

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

9.6 *Shop Drawings, Change Orders and Payments*

A. In connection with OWNER's authority as to Shop Drawings and Samples, see paragraph 6.17.

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

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

9.7 *Determinations for Unit Price Work*

A. OWNER will determine the approximate quantities and classifications of Unit Price Work performed by CONTRACTOR. OWNER will review with CONTRACTOR the OWNER's preliminary determinations on such matter. It will be CONTRACTOR's responsibility to visit the sites and become familiar with the existing conditions and the scope of the project work; verify quantities and become familiar with the surrounding conditions that may affect the cost.

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

A. OWNER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to OWNER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, OWNER or OWNER's Consultant will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by OWNER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.9 *Limitations on OWNER's Authority and Responsibilities*

A. Neither OWNER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by OWNER 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 OWNER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by OWNER 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. OWNER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, 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.

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

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to OWNER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.1 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.2 *Unauthorized Changes in the Work*

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

10.3 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders (or Written Amendments) covering:

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

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

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

10.4 *Notification to Surety*

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

10.5 *Claims and Disputes*

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

B. *OWNER's Consultant's Decision:* OWNER's Consultant will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. OWNER's Consultant's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from OWNER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from OWNER's written decision is delivered by OWNER or CONTRACTOR to the other and to Owner's Consultant within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If Owner's Consultant does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

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

11.1 *Cost of the Work*

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

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall

be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

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

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of

them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

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

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

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

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

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

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

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

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

11.2 *Cash 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 as may be acceptable to OWNER. CONTRACTOR agrees that:

1. the 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 costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

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

11.3 *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. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by CONTRACTOR subject to the provisions of paragraph 9.08.

B. 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.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

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

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

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

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

12.1 *Change of Contract Price*

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

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

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

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the

Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or

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

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

12.2 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the OWNER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

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

12.3 *Delays Beyond CONTRACTOR's Control*

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

12.4 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.5 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.6 *Delay Damages*

A. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible

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

13.1 *Notice of Defects*

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

13.2 *Access to Work*

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

13.3 *Tests and Inspections*

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

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER.

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

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

13.4 *Uncovering Work*

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

B. If OWNER considers it necessary or advisable that covered Work be observed by OWNER or inspected or tested by others, CONTRACTOR, at OWNER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as OWNER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and

damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.5 *OWNER May Stop the Work*

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

13.6 *Correction or Removal of Defective Work*

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

13.7 *Correction Period*

If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. 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 or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period

hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.7 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

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

13.9 *OWNER May Correct Defective Work*

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

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

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

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.1 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to OWNER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.2 *Progress Payments*

A. *Applications for Payments*

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

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

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

B. *Review of Applications*

1. OWNER will, within 10 days after receipt of each Application for Payment, either indicate in writing an approval of payment or return the Application to CONTRACTOR indicating in writing OWNER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. OWNER's approval of any payment requested in an Application for Payment will be based on OWNER's observations on the Site of the executed Work and on OWNER's review of the Application for Payment and the accompanying data and schedules, that to the best of OWNER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

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

3. By recommending any such payment OWNER will not thereby be deemed to have represented that: (i) 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 OWNER in the Contract

Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither OWNER's review of CONTRACTOR's Work for the purposes of approving payments nor OWNER's approval of any payment, including final payment, will impose responsibility on OWNER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on OWNER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. OWNER may refuse to recommend the whole or any part of any payment if, in OWNER's opinion, it would be incorrect to make the representations referred to in paragraph 14.2.B.2. OWNER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in OWNER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with OWNER's approval, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount, OWNER must give CONTRACTOR immediate written notice stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the

reasons for such action.

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

14.3 *CONTRACTOR's Warranty of Title*

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

14.4 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that OWNER issue a certificate of Substantial Completion. Promptly thereafter, OWNER and CONTRACTOR shall make an inspection of the Work to determine the status of completion. If OWNER does not consider the Work substantially complete, OWNER will notify CONTRACTOR in writing giving the reasons therefor. If OWNER considers the Work substantially complete, OWNER will prepare a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. If OWNER concludes that the Work is not substantially complete, OWNER will notify CONTRACTOR in writing, stating the reasons therefore. At the time of delivery of the tentative certificate of Substantial Completion OWNER will deliver to CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing, aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.5 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

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

writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request OWNER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER and CONTRACTOR shall make an inspection of that part of the Work to determine its status of completion. If OWNER does not consider that part of the Work to be substantially complete, OWNER will notify CONTRACTOR in writing giving the reasons therefor. If OWNER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.6 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, OWNER will promptly make a final inspection WITH CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.7 *Final Payment*

A. *Application for Payment*

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

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

B. *Review of Application and Acceptance*

1. If, on the basis of OWNER's observation of the Work during construction and final inspection, and OWNER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, OWNER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, OWNER will, within ten days after receipt of the final Application for Payment, process payment. At

the same time OWNER will also give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, OWNER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the approved Application for Payment and accompanying documentation, the final payment amount will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.8 *Final Completion Delayed*

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

14.9 *Waiver of Claims*

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

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

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.1 *OWNER May Suspend Work*

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

15.2 *OWNER May Terminate for Cause*

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

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

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

3. CONTRACTOR's disregard of the authority of OWNER; or

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

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed as to their reasonableness and, when so approved, 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.

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

15.3 *OWNER May Terminate For Convenience*

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

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

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

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

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.4 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or OWNER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER, and provided OWNER does not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if OWNER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to

OWNER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.1 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if 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 or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.2 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.3 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.4 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.5 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

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

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

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

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

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

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SECTION 00800 - SUPPLEMENTARY CONDITIONS

ARTICLE 1- DEFINITIONS & TERMINOLOGY

SC-1.01 *Defined terms*

A. Whenever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *OWNER's Representative* – The OWNER's Representative shall be the OWNER as described in paragraph 1.010A.30 of the General Conditions.

SC-1.02 *Terminology*

No modifications to General Conditions

ARTICLE 2 - PRELIMINARY MATTERS

SC-2.01 *Delivery of Bonds*

No modifications to General Conditions SC-

2.02 *Copies of Documents*

OWNER shall furnish to CONTRACTOR up to two (2) copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

SC-2.03 *Commencement of Contract Times; Notice to Proceed*

No modifications to General Conditions. SC-

2.04 *Starting the Work*

No modifications to General Conditions SC-

2.05 *Before Starting Construction*

D. The CONTRACTOR shall be responsible for the notifying all property owners within and adjacent to the project twenty-for (24) hours prior to commencing construction operations. Said notice shall be in writing and in a form acceptable to the OWNER.

E. Prior to the start of the project, the CONTRACTOR shall identify to the OWNER, any tree limbs which overly and interfere with the work. Said limbs to be removed by the OWNER.

SC-2.06 *Preconstruction Conference*

The proposed project foreman must attend the Preconstruction Conference.

SC-2.07 Initial Acceptance of Schedules

No modifications to General Conditions

ARTICLE 3 - CONSTRUCTION DOCUMENTS; INTENT, AMENDING, REUSE

SC-3.01 *Intent*

No modifications to General Conditions

SC-3.02 *Reference Standards*

No modifications to General Conditions

SC-3-03 *Reporting & Resolving Discrepancies*

No modifications to General Conditions

SC-3.04 *Amending and Supplementing Contract Documents*

No modifications to General Conditions

SC-3.05 *Reuse of Documents*

No modifications to General Conditions

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

SC-4.01 *Availability of Lands*

D. The CONTRACTOR shall not, except after written consent from proper parties, enter or occupy with men, tools, materials or equipment, any privately owned land except on easements provided herein.

SC-4.02 *Subsurface and Physical Conditions*

B. In the preparation of Drawings and Specifications, OWNER relied upon the following report of explorations and tests of the subsurface conditions at the site:

None

SC-4.03 *Differing Subsurface or Physical Conditions*

No modifications to General Conditions SC-

4.04 *Underground Facilities*

No modifications to General Conditions SC-

4.04 *Reference Points*

No modifications to General Conditions
SC-4.06 *Hazardous Environmental Conditions*

No modifications to General Conditions SC-

4.07 *Damage to Existing Streets*

A. The asphalt pavement, curbs and existing sidewalks in the work area are considered to be in good to excellent condition prior to the start of the project.

B. Any scars, nicks, gasoline, oil, etc., or other defacement or damage to the existing streets, curbs, or sidewalks will be the responsibility of the CONTRACTOR to repair.

C. Before beginning the job, the CONTRACTOR may point out and note to the inspector any specific areas that are already damaged. Thereafter, the CONTRACTOR will not be held responsible for repairs to these areas.

ARTICLE 5 - BONDS AND INSURANCE

SC-5.01 *Performance, Payment and Other Bonds*

No modifications to General Conditions SC-

5.02 *Licensed Sureties and Insurers*

No modifications to General Conditions.

SC-5.03 *Certificates of Insurance*

The following types of insurance shall be furnished for the duration of the project and Certificates of Insurance extending the provisions listed below shall be furnished to OWNER prior to or at the time the contract is executed by CONTRACTOR and before a Notice to Proceed is issued:

A. Worker's Compensation

1. Definitions:

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

b. Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

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

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

3. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

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

5. The contractor shall 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 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.

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

7. The contractor shall notify the 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.

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

9. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;

b. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided services on the project for the duration of the project;

c. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

d. obtain from each other person with whom it contracts, and provide to the contractor:

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

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

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

f. notify the 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

g. contractually require each person with whom it contracts, to performs as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

10. By signing this contract or providing or causing to be a provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting or classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate

insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or civil actions.

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

B. Automobile Liability Insurance with limits of:

1. Bodily Injury $250,000 per person

$500,000 per accident

2. Property Damage $300,000 per accident

3. The Insurance company must have as a minimum a current A.M. Best rating of A.

4. General Requirements for Insurance Coverage

a. The Certificate of Insurance furnished by the Contractor shall show by specific reference that each of the foregoing items have been provided for;

b. Certificates of Insurance required for each copy of the agreement which specifically set forth evidence of all required coverage will be filed with the City prior to the City's execution of the contract. Worker's Compensation Insurance coverage must be provided to the City prior to the City's award of the contract.

c. The Certificates of Insurance furnished by the contractor as evidence of the Insurance maintained by the contractor will include a clause obligating the Insurer to give the City of Leon Valley thirty (30) days prior written notice of cancellation or any material change in the insurance coverage.

d. Waiver of Subrogation: The City of Leon Valley and the Contractor waive all rights and the rights of their respective insurance companies against each other for damages caused by fire or other perils to the extent such damages are covered by property insurance purchased by either party.

C. Comprehensive General Liability endorsed to include blanket contractual coverage:

1. Bodily Injury - $1,000,000 each occurrence.

2. Property Damage Liability - $250,000 each occurrence; $250,000 aggregate.

3. This insurance shall:

a. Include completed operation coverage which is to be kept in force by the Contractor for a period of not less than one year after the completion of the work provided for or performed under these specifications;

b. Not be subject to any of the special property damage liability exclusions commonly referred to as the XCU exclusions pertaining to blasting or explosion, collapse, or structural damage and underground property;

c. Not be subject to any exclusion of property used by the insured or property in the case, custody or control of the insured or property as to which the insured for any purpose is exercising physical control;

d. The OWNER shall be named as an additional insured for the insurance coverage. In naming the OWNER as an additional insured on our comprehensive General Liability Insurance, the following words apply:

"Contractor shall defend, indemnify and hold harmless the City of Leon Valley from and against any liability, loss, cost and expense ("Liability") claimed by a third party (including reasonable attorney's fees and cost of defense) resulting from Contractor's performance of the Work to the extent that such Liability:

1) is attributable to bodily injury, sickness, disease or death, or to the injury to or destruction of tangible personal property; and,

2) is caused or contributed to by any neglect or fault of Contractor, its subcontractors, or their respective employees.

e. The Insurance company must have as a minimum a current A.M. Best rating of

A.

f. Manufacturer's and Contractors' Liability insurance is not an acceptable substitute for Commercial Liability insurance.

D. When explosives are used, Comprehensive General Liability on an occurrence basis endorsed to include blanket contractual coverage:

1. In unpopulated areas:

a. Bodily Injury - $1,000,000 each accident

b. Property Damage Liability - $250,000 each accident; $250,000 aggregate.

2. In populated areas: to be negotiated.

E. The OWNER shall be listed as the Certificate Holder, and the OWNER shall be named as Additional Insured in all coverage described in the above paragraphs except Worker's compensation.

F. Insurance and additional Insured requirements shall apply to and be enforced equally upon authorized subcontractors as well as the CONTRACTOR.

G. In the submission of the Certificate of Insurance, the insurance company in every case must agree to provide notice of cancellation of any insurance to the OWNER ten (10) days prior to such cancellation of policies covered by certificates.

SC-5.04 *CONTRACTOR's Liability Insurance*

See SC-5.03

SC-5.05 *OWNER's Liability Insurance*

No modifications to General Conditions.

SC-5.06 *Property Insurance*

A. All references to Owner furnished insurance shall be deleted from this item.

B. All references to Owner furnished insurance shall be deleted from this item.

SC-5.07 *Waiver of Rights*

A. All references to Owner furnished insurance shall be deleted from this item.

B. All references to Owner furnished insurance shall be deleted from this item

SC-5.08 *Receipt and Application of Proceeds*

No modifications to General Conditions.

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

No modifications to General Conditions.

SC-5.10 *Partial Utilization Acknowledgment of Property Insurer*

No modifications to General Conditions.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

SC-6.01 *Supervision and Superintendence*

No modifications to General Conditions. SC-

6.02 *Labor; Working Hours*

Work will be allowed by the CONTRACTOR during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday. No work will be allowed before or after these hours, on Saturday, Sunday or OWNER holidays, unless approved by OWNER.

SC-6.03 *Services, Materials, and Equipment*

No modifications to General Conditions. SC-

6.04 *Progress Schedule*

No modifications to General Conditions. SC-

6.05 *Substitutes and "Or-Equals"*

No modifications to General Conditions.

SC-6.06 *Concerning Subcontractors, Suppliers, and Others*

No modifications to General Conditions.

SC6.07 *Patent fees and Royalties*

No modifications to General Conditions. SC-

6.08 *Permits*

No modifications to General Conditions.

SC-6.09 *Laws and Regulations*

No modifications to General Conditions.
.

SC-6.10 *Taxes*

No modifications to General Conditions. SC-

6.11 *Use of Site and Other Areas*

E. Street and Driveway Closing

1. After the CONTRACTOR has given the property owners not less than 24 nor more than 72 hours advance notice, he may close ½ of the driveway necessary for the day's operations. The CONTRACTOR will advise the Fire Marshall (684-3219) in advance of each closing. Suitable detour routes must be in place. At the end of each day, the closed driveway areas shall be reopened. All driveways must be accessible during the course of the work except for minimum periods and only after the CONTRACTOR has given property owners 24 hours notice. CONTRACTOR shall not start work that would keep driveways blocked during the weekends. In the event of inclement weather, the CONTRACTOR must maintain possible access to the owners.

F. Barricades and Flagmen

1. The CONTRACTOR is to provide himself with necessary temporary barricades and traffic cones sufficient to alert the traffic in advance. Where lanes of traffic are to be closed, suitable barricades, warning signs and markers are to be provided by the CONTRACTOR.

2. Barricades and traffic control devices shall follow the Texas Uniform Municipal Control Devices standards to the satisfaction of the OWNER.

3. The OWNER has the right to prevent work from starting until suitable traffic control devices are provided, in the opinion of the OWNER.

4. The OWNER may direct the CONTRACTOR to provide additional traffic control devices and/or flagmen as they deem necessary to protect the public. All barricades will have one flashing light at night. All costs for traffic management and barricades will be included in the cost of the work.

SC-6.12 *Record Documents*

No modifications to General Conditions. SC-

6.13 *Safety and Protection*

No modifications to General Conditions. SC-

6.14 *Safety Representative*

No modifications to General Conditions. SC-

6.15 *Hazard Communication Programs*

B. In compliance with Article 5182b, Texas Revised Civil Statutes, all employees are required to train and educate employees on the safe use and handling of hazardous materials that employees may be exposed to in the work place. The OWNER's Fire Chief is designated as the OWNER's HazComm Officer. Subcontractors of the CONTRACTOR are also required to comply with the requirements of the act

1. CONTRACTORs are entitled to a copy of the OWNER's workplace chemical list to which the CONTRACTOR, its employees and agents may be exposed to in the workplace.

2. CONTRACTORS are also entitled to a copy of the MSDS sheets for any hazardous chemicals which the OWNER may have in the work place. CONTRACTORs have the obligation to inform their employees and agents of all these requirements. Prior to the commencement of any work, the CONTRACTOR shall furnish the OWNER's HazComm Officer with the MSDS sheets for any hazardous chemicals brought into the OWNER's work-site that OWNER's employees will have exposure to. The CONTRACTOR shall sign the Attachment, (hazard Communications Contractor Acknowledgment) certifying receipt of this information.

SC-6.16 *Emergencies*

No modifications to General Conditions. SC-

6.17 *Shop Drawings and Samples*

CONTRACTOR shall submit to OWNER six (6) copies of all required shop drawings, layout drawings, manufacturer's data sheets and samples, as described herein.

SC-6.18 *Continuing the Work*

No modifications to General Conditions.

SC-6.19 *CONTRACTOR's General Warranty and Guarantee*

No modifications to General Conditions.

SC-6.20 *Indemnification*

No modifications to General Conditions..

ARTICLE 7 - OTHER WORK

SC-7.01 Related Work at Site
No modifications to General Conditions.

SC-7.02 Coordination

No modifications to General Conditions.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

SC-8.01 *Communications to CONTRACTOR*

No modifications to General Conditions. SC-8.

SC-8.04 *Furnish Material*

No modifications to General Conditions. SC-

8.05 *Pay Promptly When Due*

No modifications to General Conditions.

SC-8.06 *Lands and Easements; reports and Tests*

No modifications to General Conditions. SC-

8.07 *Insurance*

No modifications to General Conditions.

SC-8.08 *Change Orders*

No modifications to General Conditions.

SC-8.09 *Inspections*

No modifications to General Conditions.

SC-8.10 *Limitations on OWNER's Responsibilities*

No modifications to General Conditions.

SC-8.11 *Undisclosed Hazardous Environmental Condition*

No modifications to General Conditions. SC-

8.12 *Evidence of Financial Arrangements*

No modifications to General Conditions.

ARTICLE 9 - OWNER'S STATUS DURING CONSTRUCTION

SC-9.01 *Visits to Site*
No modifications to General Conditions. SC-

9.02 *Project Representative*

No modifications to General Conditions. SC-

9.03 *Clarifications and Interpretations*

No modifications to General Conditions. SC-

9.04 *Authorized Variations in Work*

No modifications to General Conditions. SC-

9.05 *Rejecting Defective Work*

No modifications to General Conditions.

SC-9.06 *Shop Drawings, Change Orders and Payments*

No modifications to General Conditions.

SC-9.07 *Determinations for Unit Price Work*

No modifications to General Conditions.

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

No modifications to General Conditions.

SC-9.09 *Limitations on OWNER's Authority and Responsibilities*

No modifications to General Conditions.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

SC-10.01 *Authorized Changes in the Work*

No modifications to General Conditions.

SC-10.02 *Unauthorized Changes in the Work*

No modifications to General Conditions. SC-

10.03 *Execution of Change Orders*

No modifications to General Conditions. SC-

10.04 *Notifications to Surety*

No modifications to General Conditions. SC-
10.05 *Claims and Disputes*

No modifications to General Conditions.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICES

SC-11.01 *Cost of the Work*

No modifications to General Conditions. SC-

11.02 *Cash Allowances*

No modifications to General Conditions. SC-

11.03 *Unit Price Work*

No modifications to General Conditions.

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

SC-12.01 *Change of Contract Price*

No modifications to General Conditions. SC-

12.02 *Change of Contract Times.*

No modifications to General Conditions. SC-

12.03 *Tests and Inspections*

No modifications to General Conditions.
SC12-12.05 *Delays Within CONTRACTOR's Control*

No modifications to General Conditions.

SC12.06 *Delay Damages*

No modifications to General Conditions.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTIONS, REMOVAL OR ACCEPANCE OR DEFLECTIVE WORK

SC-13.01 *Notice of Defects*

No modifications to General Conditions. SC-

13.02 *Access to Work*

No modifications to General Conditions. SC-

13.03

G. This work will be inspected by the City of Leon Valley. All change orders or communications concerning the work should be directed to Director of Public Works.

SC-13.04 *Uncovering Work*

No modifications to General Conditions. SC-

13.05 *OWNER May Stop Work*

No modifications to General Conditions.
SC-13.06 *Correction or Removal of Defective Work*

No modifications to General Conditions.

SC-13.07 *Correction Period*

No modifications to General Conditions. SC-

13.08 *Acceptance of Defective Work*

No modifications to General Conditions.

SC-13.09 *OWNER May Correct Defective Work*

No modifications to General Conditions.

ARTICLE 14 - PAYMENT TO CONTRACTOR AND COMPLETION

SC-14.01 *Schedule of Values*

No modifications to General Conditions. SC-

14.02 *Progress Payments*

No modifications to General Conditions. SC-14-

03 *CONTRACOR's Warranty of Tile*

No modifications to General Conditions. SC-

14.04 *Substantial Completion*

No modifications to General Conditions. SC-

14.05

No modifications to General Conditions. SC-

14.06 *Controlling Law*

No modifications to General Conditions. SC-

14.07 *Final Payment*

No modifications to General Conditions. SC-

14.08 *Final Completion Delayed*

No modifications to General Conditions.

SC-14.09 *Waiver of Claims*

No modifications to General Conditions.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

SC-15.01 *OWNER May Suspend Work*

No modifications to General Conditions.

SC-15.02 *OWNER May Terminate for Cause*
No modifications to General Conditions.

SC-15.03 *OWNER May Terminate for Convenience*

No modifications to General Conditions.

SC-15.04 *CONTRACTOR May Stop Work or Terminate*

No modifications to General Conditions.

ARTICLE 16 - DISPUTE RESOLUTION

SC-16.01 *Methods and Procedure*s

No modifications to General Conditions.

ARTICLE 17 - MISCELLANEOUS

SC-17.01 *Giving Notice*

No modifications to General Conditions. SC-

17.02 *Computation of Times*

No modifications to General Conditions. SC-

17.03 *Cumulative Remedies*

No modifications to General Conditions.

SC-17.04 *Survival of Obligations*

No modifications to General Conditions. SC-

17.05 *Controlling Law*

No modifications to General Conditions.

SC17.06 *Water for Construction*

A. All water required by the CONTRACTOR for his operations will be furnished without charge by OWNER

at a point designated by the OWNER. The CONTRACTOR shall make all necessary connections, including valves and shall transport all water at his expense. If needed, the CONTRACTOR will be required to pay a deposit for a fire hydrant meter, which deposit will be returned when the fire hydrant meter is returned in good condition.

B. All water furnished by the City shall be subject to the regulations of the City regarding prevention of waste and water conservation.

SC-17.07 *Power for Construction*

A. The CONTRACTOR shall make his own arrangements for electric service and shall purchase all power required for his operation.

SC-17.08 *Telephone*

A. The CONTRACTOR may make his own arrangements for temporary telephone service during construction.

SC-17.09 *Sanitary Provisions*

A. The CONTRACTOR shall establish and enforce among his employee such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private; and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such a manner and at such points as shall be approved by the OWNER; and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER's jurisdiction shall be strictly complied with.

SECTION 00810

ARTICLE 1 - GENERAL STATEMENT

A. This is a 100% locally funded and competitively bid Public Works Contract and Article 5159a, Revised Civil Statutes of Texas, as amended, requires that not less than the general prevailing wage rates (minimum hourly base pay and minimum hourly fringe benefits contribution) for work of similar character be paid to CONTRACTOR and subcontractor employees. These local prevailing and adopted wage rates are derived from the most current applicable federal prevailing wage rates as published by the United States Department of Labor, Dallas, Texas pursuant to the original intent and authority of the City of Leon Valley Ordinance passed by the City Council of the City of Leon Valley. Copies of both the current Ordinance and the wage rates are contained in the Special Conditions, and are included instruments of this Contract and full compliance with same shall be required.

1. Any deviation from Wage and Labor Standard Provisions compliance may be cause for City's withholding either interim or final payment to the CONTRACTOR until such deviations are properly corrected.

ARTICLE 2 - WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES

A. The City of Leon Valley Wage & Hour Monitor is primarily responsible for all Wage and Labor Standard Provisions investigation and enforcement and will monitor CONTRACTOR/subcontractors practices to assure the City Manager that:

1. Appropriate weekly compliance statements and payroll records are submitted to the City by the CONTRACTOR/subcontractors and that such are reviewed for compliance with Wage and Labor Standard Provisions.

2. Apprentices/trainees working on the project are properly identified by CONTRACTOR/subcontractor on payroll records and documented as being included in programs currently sanctioned by appropriate federal or state regulatory agencies.

3. Applicable Wage Determination Decisions, including any applicable modifications, and related statements are posted at the work-site by the CONTRACTOR and that proper job classifications and commensurate minimum hourly base and fringe wage rates are paid.

4. Employees are periodically interviewed (at random) on each project as required.

5. That no person employed by CONTRACTOR or subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

6. That any and all periodic administrative directives to the Wage & Hour Monitor from the City Manager are being implemented.

ARTICLE 3 - CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the CONTRACTOR/subcontractor and employees pertaining to wage rates, or to job classifications of labor employed upon the work covered by the Contract, shall be reported by the employee in writing, within 60 calendar days of employee's receipt of any allegedly incorrect classification, wage or benefit report, to the Wage & Hour Monitor, City of Leon Valley, for further investigation. Claims and disputes not reported by the employee to the City's Wage & Hour Monitor in writing within 60 calendar day period shall be deemed waived by the employee for the purposes of the City administering and enforcing the City's Contract rights against the CONTRACTOR on behalf of the employee. Waivers by the employee of this City intervention shall not constitute waivers by the City or employee to independently pursue contractual rights it has against the CONTRACTOR/subcontractor for breach of Contract and other sanctions available to enforce the Wage and Labor Standard Provisions.

ARTICLE 4 - BREACH OF WAGE & LABOR STANDARDS PROVISIONS

A. The City of Leon Valley reserves the right to terminate this Contract for cause if the CONTRACTOR/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the CONTRACTOR/subcontractor from future City of Leon Valley contracts for lack of responsibility, as determined by the City of Leon Valley. Recurrent violations, whether remedied or not, will be considered by the City Manager when assessing the responsibility history of potential CONTRACTOR/subcontractor prior to a competitive award of future Public Work projects. The general remedies stated in this paragraph 4. above are not exhaustive and not cumulative, for the City reserves legal and contractual rights to others specific remedies outlined herein below and in other parts of this Contract and as are allowed by applicable City of Leon Valley Ordinances, State and Federal statutes.

ARTICLE 5 - EMPLOYMENT OF LABORERS/MECHANICS NOT LISTED IN WAGE DETERMINATION DECISION

In the event that a Contractor/subcontractor discovers that construction of a particular work element requires a certain employee classification and skill that is not listed in the wage determination decision contained in the original Contract Documents, Contractor/subcontractors will make prompt inquiry (before bidding, if possible) to the Wage and Hour Monitor identifying that class of laborers/mechanics not listed in the wage determination decision who are intended to be employed, or who are being employed, under the contract Using his best judgment and information resources available to him at the time, and any similar prior decisions, the City Manager, City of Leon Valley, shall classify said laborers/mechanics by issuing a special local wage determination decision to the Contractor or subcontractor, which shall be enforced by the Wage and Hour Monitor.

ARTICLE 6 - MINIMUM WAGE

A. All laborers/mechanics employed to construct the work governed by this Contract shall be paid not less than weekly the full amount of wages due (minimum hourly base pay and any applicable minimum hourly fringe benefit contribution for all hours worked, including overtime) for the immediately preceding pay period, computed at wage and fringe rates not less than those contained in the wage determination decision included in this Contract. Only payroll deductions as are mandated by state or federal law and those legal deductions previously approved in writing by the employee, or as are otherwise permitted by state or federal law, may be withheld by the CONTRACTOR/subcontractor.

B. Should the CONTRACTOR/subcontractor subscribe to fringe benefit programs for employees, such programs shall be fully approved by the City in adopting a previous United States Department of Labor decision on such fringe benefit programs or by applying DOL criteria, in rendering a local decision on the adequacy of the fringe benefit programs. The approved programs shall be in place at the time of City Contract execution and provisions thereof disclosed to the Wage and Hour Monitor, City of Leon Valley, for legal review prior to project commencement.

C. Regular CONTRACTOR/subcontractor contributions made to, or costs incurred for, approved fringe benefit plans, funds or other benefit programs that cover periods of time greater than the one week payroll period (e.g., monthly or quarterly, etc.) Shall be prorated by the CONTRACTOR/subcontractor on weekly payroll records to reflect the equivalent value of the hourly and weekly summary of fringe benefits per employee.

ARTICLE 7 - OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No CONTRACTOR/subcontractor contracting for any part of the non-federally funded Contract Work (except for work site related security guard services), which may require or involve the employment of laborers/mechanics, shall require or permit any laborer/mechanic in any seven (7) calendar day work period in which he/she is employed on such work, to work in excess of 40 hours in such work period, unless said laborer/mechanic receives compensation at a rate not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of 40 hours in a seven (7) calendar day work period. Any applicable fringe benefits must be paid for straight time and overtime; however, fringe benefits are not included when computing the overtime rate.

ARTICLE 8 - PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

A. The CONTRACTOR/subcontractor is allowed to pay a minimum hourly cash equivalent of any applicable minimum hourly fringe benefits listed in the wage determination decision, in lieu of the contribution of benefits to a permissible fringe benefit plan, for all hours worked, including overtime, as described in paragraph 6. above. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

ARTICLE 9 - WORK CONDUCTED ON HOLIDAYS – NON-FEDERALLY FUNDED PROJECTS

If a laborer/mechanic is employed in the normal course and scope of his or her work on the job site on New Year's Day, Martin Luther King Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, or the calendar days observed as such in any given year, work shall be paid for at a no less than one and one half times the regular minimum hourly base pay regardless of the total number of hours the laborer/mechanic has accumulated during the pay period.

ARTICLE 10 - UNDERPAYMENT OF WAGES OR SALARIES

A. When a "full investigation" (as called for in and as construed under Article 5159a, Section 2, and as further generally described in an administrative directive to the City's Wage & Hour Monitor from the City Manager entitled "Conducting Wage and Labor Standards Investigations on 100% Locally-funded City Construction Project", as may be

amended) evidences' underpayment of wages by CONTRACTOR or subcontractor to laborers/mechanics employed upon the work covered by the Contract, the City of Leon Valley, in addition to such other rights as may be afforded it under State and/or Federal law and/or this Contract, shall withhold from the CONTRACTOR, out of any payments (interim progress and/or final) due the CONTRACTOR, so much thereof as the City of Leon Valley may consider necessary to secure ultimate payment by the appropriate party to such laborers/mechanics, of full wages required by the Contract, plus a possible penalty (See B. below). The amount so withheld, excluding any possible penalty to be retained by the City, may be disbursed at an appropriate time after "full investigation" by the City of Leon Valley, for and on behalf of the CONTRACTOR/subcontractor (as may be appropriate), to the respective laborers/mechanics to whom the same is due, or on their behalf to fringe benefit plans, funds, or programs for any type of minimum fringe benefits prescribed in the applicable wage determination decision.

B. Article 5159a, Revised Civil Statutes of Texas, as amended, states that CONTRACTOR shall forfeit as a penalty to the City of Leon Valley the sum of sixty dollars ($60.00) for each calendar day, or portion thereof, for each laborer, workman, or mechanic, who is paid less than the said stipulated rate for any work done under this Contract whether by the CONTRACTOR himself, or by any subcontractor working under him. Pursuant to and supplemental of this statutory authority, the City of Leon Valley and the CONTRACTOR/subcontractor contractually acknowledges and agrees that said sixty dollars ($60.00) a statutory penalty shall be construed by and between the City of Leon Valley and the CONTRACTOR/subcontractor as liquidated damages, and not as a penalty, and will apply to any violations of paragraph 6, 7 or 9 herein, resulting from CONTRACTOR/subcontractor underpayment violations.

C. If unpaid or underpaid workers cannot be located by the CONTRACTOR or the City after diligent efforts to accomplish same, unpaid or underpaid wages shall be reserved by the City in a special "unfound worker's account" established by the City of Leon Valley, for such employees. If after one (1) year from the final acceptance of the project by the City, workers still cannot be located, in order that the City can make effective interim re-use of the money, such wages, and any associated liquidated damages may be used to defray actual costs incurred by the City in attempting to locate said workers, and any remaining monies may then revert back to the City's original funding source for the project. However, unpaid or underpaid workers for whom money was originally reserved are eligible to claim recovery from the City for a period of not to exceed three (3) years from the final acceptance of the project by the City. Recovery after expiration of the three (3) year period is prohibited.

ARTICLE 11 - POSTING WAGE DETERMINATION DECISIONS AND NOTICE TO LABORERS'/ MECHANICS' STATEMENTS

A. The applicable wage determination decision as described in the "General Statement" (and as specifically included in each project contract), outlining the various workers' classifications and mandatory minimum wages and minimum hourly fringe benefits deductions, if any, of laborers/mechanics employed and to be employed upon the work covered by this Contract, shall be displayed by the CONTRACTOR/subcontractor at the site of work a conspicuous and prominent public place, readily and routinely accessible to workmen for the duration of the project. In addition, the CONTRACTOR/subcontractor agrees with the contents of the following statement, and shall display same, in English and Spanish, near the display of the wage determination decision at the site of work:

NOTICE TO LABORERS/MECHANICS

Both the City of Leon Valley and the CONTRACTOR/subcontractor agree that you must be compensated with not less than the minimum hourly base pay and minimum hourly fringe benefit contribution in accordance with the wage rates publicly posted at this job site, and as are applicable to the classification of work you perform.

Additionally, you must be paid not less than one and one-half times your basic hourly rate of pay for any hours worked over 40 in any seven (7) calendar day work period, and for any work conducted on New Year's Day, Martin Luther King Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or the calendar days observed as such in any given year.

Apprentice and trainee hourly wage rates and ratios apply only to apprentices and trainees recognized under approved Federal, or State, apprenticeship training programs registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

If you believe that your employer is not paying the posted minimum wage for the type of work you do, you must make direct inquiry to the employer and inquire in writing, within 60 days calendar days of your receipt of any allegedly incorrect wage or

benefit check or report, to the City of Leon Valley Wage & Hour Monitor, 6400 El Verde Road, San Antonio, Texas 78238.

It is mandatory that you promptly file written inquiry of any allegedly incorrect wage or benefit checks or reports with the City of Leon Valley Wage & Hour Monitor within the 60 calendar day period, so that you do not waive your potential right of recovery under the provisions of the City of Leon Valley Public Works Contract that governs this project.

Both the City of Leon Valley and the CONTRACTOR/subcontractor agree that no laborer/mechanic who files a complaint or inquiry concerning alleged underpayment of wages or benefits, shall be discharged by the employer, or in other manner be discriminated against by the employer, for filing such complaint or inquiry.

ARTICLE 12 - PAYROLLS & BASIC PAYROLL RECORDS

A. The CONTRACTOR and each subcontractor shall prepare payroll reports in accordance with the "General Guideline" instructions furnished by the Wage & Hour Monitor of the City of Leon Valley. Such payroll submittals shall contain the name and address of each such employee, his correct labor classification, rate of pay, daily and weekly number of hours worked, any deductions made, and actual basic hourly and fringe benefits paid. The CONTRACTOR shall submit payroll records each week and no later than seven (7) working days following completion of the work week being processed to the Wage & Hour Monitor, City of Leon Valley. These payroll records shall include certified copies of all payrolls of the CONTRACTOR and of his subcontractors, it being understood that the CONTRACTOR shall be responsible for the submission and general mathematical accuracy of payroll from all of his subcontractors. Each such payroll submittal shall be on forms deemed satisfactory to the City's Wage & Hour Monitor and shall contain a "Weekly Statement of Compliance", as called for by the Contract Documents. Such payrolls will be forwarded to Public Works, Wage & Hour Monitor, City of Leon Valley, 6400 El Verde Road, San Antonio, Texas 78238.

B. Copies of payroll submittals and basic supporting payroll records of the CONTRACTOR/subcontractors accounting for all laborers/mechanics employed under the work covered by this Contract, shall be maintained by CONTRACTOR/subcontractor during the course of the work, and preserved for a period of three (3) years after completion of the project. The CONTRACTOR/subcontractor shall maintain records which demonstrate: any CONTRACTOR commitment to provide fringe benefits to employees as may be mandated by the applicable wage determination decision; that the plan or program is adjudged financially responsible by the appropriate approving authority, (i.e. United States Department of Labor, United States Department of Treasury, etc.); and that the provisions, policies, certificates, and description of benefits of the plan or program as may be periodically amended, have been clearly communicated in a timely manner and in writing, to the laborers/mechanics affected prior to their performing work on the project.

C. The CONTRACTOR/subcontractor shall make the above records available for inspection, copying, or transcribing by authorized representatives of the City of Leon Valley at reasonable times and locations for purposes of monitoring compliance with this Contract.

ARTICLE 13 - LABOR DISPUTES

A. The CONTRACTOR/subcontractor shall immediately notify the City Manager or his designated representative of any actual or impending CONTRACTOR/subcontractor labor dispute which may affect, or is affecting, the schedule of the CONTRACTOR's or any other CONTRACTOR's or subcontractor's work. In addition, the CONTRACTOR/subcontractor shall consider all appropriate measures to eliminate or minimize the effect of such labor disputes on the schedule, including but not limited to such measures as: promptly seeking injunctive relief if appropriate; seeking appropriate legator equitable actions or remedies; taking such measures as establishing a reserved gate, as appropriate; if reasonable feasible, seeking other sources of supply or service; and any other measures that may be appropriately utilized to mitigate or eliminate the job site and scheduling effects of the labor dispute.

ARTICLE 14 - COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

A. No laborers/mechanics to whom the wage, salary, or other labor standard provisions of this Contract are applicable shall be discharged, or in any other manner discriminated against by the CONTRACTOR/subcontractors, because such an employee has filed any formal inquiry or complaint or instituted or caused to be instituted, any legal or equitable proceeding, or has testified, or is about to testify, in any

such proceeding under or relating to the wage and labor standards applicable under this Contract.

ARTICLE 15 - EMPLOYEE INTERVIEWS TO ASSURE WAGE & LABOR STANDARD COMPLIANCE

A. CONTRACTOR/subcontractors shall allow expeditious job site entry of the City of Leon Valley Wage & Hour Monitor displaying and presenting proper identification credentials to the job site, the Wage & Hour Monitor shall observe all job site rules and regulations concerning safety, internal security and fire prevention. CONTRACTOR/subcontractors shall allow project employees to be separately and confidentially interviewed at random for a reasonable duration by the Wage & Hour Monitor to facilitate compliance determinations regarding adherence by the CONTRACTOR/subcontractor to these Wage and Labor Standard Provisions.

ARTICLE 16 - "ANTI-KICKBACK" PROVISION

A. No person employed in the construction or repair of any City of Leon Valley Public Works Project shall be induced, by any means, to give up to any CONTRACTOR/subcontractor or public official or employee, any part of the hourly and/or fringe benefit compensation to which he or she is otherwise entitled.

ARTICLE 17 - "FALSE INFORMATION"

A. Any person employed by the CONTRACTOR/subcontractor in the construction or repair of any City of Leon Valley Public Works Project, who is proven to have knowingly and willfully falsified, concealed or covered up by any deceptive trick, scheme, or device a material fact, or made any false, fictitious or fraudulent statement or representation, or made or used any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be permanently removed from the job site by CONTRACTOR/subcontractor. The City of Leon Valley reserves the right to terminate this Contract for cause as a result of serious and uncured violations of this provision.

ARTICLE 18 - EMPLOYMENT OF APPRENTICES /TRAINEES

A. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship & Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days or probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeyman in any craft classification shall not be greater than the ratio under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in (b) below, or is not registered or otherwise employed as stated above, shall be paid the wage rate for the classification of work he actually performs. The CONTRACTOR/subcontractor is required to furnish to the Wage & Hour Monitor of the City of Leon Valley, a copy of the certification, along with the payroll record that the employee is first listed on. The wage rate paid apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination decision.

B. Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to an individually registered program which has received prior approval, evidenced by formal certification by the United States Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress. Any employee listed on the payroll at a trainee wage rate, who is not registered and participating in a training plan approved by the Employment and Training Administration, shall be paid not less than the wage rate determined by the classification of the work he actually performs. The CONTRACTOR/subcontractor is required to furnish a copy of the trainee program certification, registration of employee-trainees, ratios and wage rates prescribed in the program, along with the payroll record that the employee if first listed on, to the Wage & Hour Monitor of the City of Leon Valley. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR/subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved by the Employment and Training Administration.

C. Paragraphs 18.a. and b. above shall not operate to exclude training programs approved by the OFCCP, United States Department of Labor and as adopted by the

Associated General CONTRACTORs (AGC) of Texas, Highway, Heavy, Utilities and Industrial Branch. Guidelines for these training programs shall be the same as those established for federally funded projects. This sub-paragraph 18.c. shall not apply to those portions of a project deemed to be building construction.

D. Ratios, Apprentice to Journeyman:

The ratio of Apprentice to Journeyman for this project shall be the same as the Ratio permitted under the plan approved by the Employment and Training Administration, Bureau of Apprenticeship and Training, United States Department of Labor, by craft. A copy of the allowable Ratios is included with the applicable Wage Determination Decision in the specifications for this project.

E. When a "full investigation" (as called for in, and construed under Article 5159a, Section 2, and as further generally described in an administrative directive to the City's Wage & Hour Monitor from the City Manager entitled "Conducting Wage and Labor Standard Investigations on 100% Locally Funded City Construction Projects", as may be amended) evidences a violation of the Apprentice or Trainee to Journeyman ratios effective for CONTRACTOR/subcontractor employees working on this Contract, the City of Leon Valley, in addition to such other right as may be afforded it under State and/or Federal law and/or other sections of this Contract (especially paragraph 10 "Underpayment of Wages"), shall withhold from the CONTRACTOR, out of any payments (interim progress and/or final) due the CONTRACTOR, the liquidated damages (not a penalty) sum of seventy-five dollars ($75.00) for each calendar day or portion thereof, for each certified Apprentice or Trainee employee assigned to a Journeyman that exceeds the maximum allowable Apprentice/Trainee to Journeyman ratio stipulated for any work done under this Contract, whether by the CONTRACTOR himself, or by any subcontractor working under him.

ARTICLE 19 - JOB SITE CONDITIONS

A. CONTRACTORs/subcontractors will not allow any person employed for the project to work in surroundings or under construction conditions which are unsanitary, unhealthy, hazardous, or dangerous as governed by industry standards and appropriate local, state and federal statutes, ordinances, and regulatory guidelines.

ARTICLE 20 - EMPLOYMENT OF CERTAIN PERSONS PROHIBITED

A. The CONTRACTOR/subcontractor shall knowingly only employ persons of appropriate ages commensurate with the degree of required skill, strength, maturity and judgment associated with the activity to be engaged in, but not in less than the age of 14 years, as governed by Chapter 51 "Employment of Children", Texas Labor code, (Vernon's Texas Code Annotated) (as may be amended), and Texas Department of Labor and Standards rulings and interpretations associated with that statute. It is hereby noted that in some circumstances generally governed by this section, a federal statute (see: Fair Labor Standards Act, 29 USCS Section 212; Volume 6A of the Bureau of National Affairs Wages Hour Manual at Paragraph 96:1; "Child Labor Requirements in Non-agricultural Occupations" WH Publication 1330, July 1978 as may be amended), could pre-empt the Texas Statute and therefore be the controlling law on this subject. The CONTRACTOR/subcontractor should seek classification from state and federal agencies and legal counsel when hiring adolescent employees for particular job classifications.

B. Prohibited persons not to be employed are also those persons who, at the time of employment for this Contract, are serving sentence in a penal or correctional institution, except that prior approval by the City Manager is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state and federal correctional agencies.

C. The CONTRACTOR/subcontractors shall be responsible for compliance with the provisions of the "Immigration Reform and Control Act of 1986" Public Law 99-603, and any related State enabling or implementing statutes, especially as they in combination apply to the unlawful employment of aliens and unfair immigration-related employment practices affecting this Contract.

ARTICLE 21 - PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

A. The CONTRACTOR shall cause these Wage and Labor Standard Provisions, or reasonably similar contextual adaptations hereof, and any other appropriate state and federal labor provisions, to be inserted in all subcontracts relative to the work to bind subcontractors to the same Wage and Labor Standards as contained in these terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors or sub-tier subcontractors, and to give the CONTRACTOR similar, if not greater, general contractual authority over the subcontractor, or sub-tier subcontractors, as the City of Leon Valley may exercise over the CONTRACTOR.

ARTICLE 22 - GENERAL INDEPENDENT CONTRACTOR CLAUSE

A. This agreement does not create an employer relationship between parties. It is parties' intention that the CONTRACTOR will be an independent CONTRACTOR and not the City of Leon Valley employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Texas workers compensation law and Texas unemployment insurance law. The CONTRACTOR will retain sole and absolute discretion in the judgment of the manner and means of carrying out the CONTRACTOR's activities and responsibilities hereunder. The CONTRACTOR agrees that it is a separate and independent enterprise from the City of Leon Valley, that it has a full opportunity to find other business, that is has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the CONTRACTOR and the City of Leon Valley and the City of Leon Valley will not be liable for any obligation incurred by the CONTRACTOR, including, but not limited to unpaid minimum wages, and/or overtime premiums.

ARTICLE 23 - HOT GOODS CLAUSE

The CONTRACTOR hereby certifies that the execution of the work he will perform, that he will comply with all applicable provisions of Sections 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended, and that there will be no violations of the "hot goods" or "hot cargo" provisions of the Act involving restrictions on the use of the underage employees.

ARTICLE 24 - PROTECTION OF LIVES AND HEALTH

The CONTRACTOR shall comply with the U.S. Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-596 and all subsequent amendments) and under Section 107 of the Contract Work Hours and Safety Standards Act (Public Law 91-54 and all subsequent amendments).

The CONTRACTOR shall have a competent person or persons, as required under the Occupational Safety and Health Act, on the site to inspect the work and to supervise the conformance of the CONTRACTOR's operations with the regulations of the Act.

This project is subject to all of the Safety and Health Regulations CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974, and CFR 29, Part 1910 and all subsequent amendments of General Industry Safety and Health Regulations identified as applicable to construction. CONTRACTORs are urged to become familiar with the requirements of these regulations.

ARTICLE 25 - ANTI-DISCRIMINATION IN EMPLOYMENT

A. The CONTRACTOR and/or any subcontractor(s), if permitted, certifies complete compliance with the Federal Civil Rights Law and the Americans with Disabilities Act, agreeing to nondiscrimination based on race, age, color, religion, disability, gender, ancestry, national origin, or place of birth in employment practices, programs and services shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other compensation; and selection for training, including apprenticeship.

B. The CONTRACTOR shall in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, disability, gender, ancestry, national origin, or place of birth.

SECTION 00820
CONTRACTOR'S
DISCLOSURE STATEMENT

All questions must be answered or your bid will be deemed non-responsive and subject to rejection. The data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The bidder may submit any additional information he desires.

1. The Bidders Disclosure Statement is submitted to the City of Leon Valley, Texas by: _____

   __ a Corporation__a Partnership_____a Texas Joint Venture_____an Individual

   Address: _____

   City:_____State:_____Zip Code: _____

2. Years in business under present business name: _____

3. Years of experience in construction work of type called for in this contract is:

   A General Contractor_____ A Subcontractor _____

4. What projects has your organization completed? List most recent FIRST.

Contract Amount	Type of Work	Date Completed	Owner's Name and Address	Contact Telephone No.

5. What projects does your organization have underway as of this date?

Contract Amount	Type of Work	% Completed	Owner's Name and Address

6. Have you ever failed to complete any work awarded to you?_____Yes___No. If "Yes", state where and why.

_____

_____

_____

7. Are you at present in any lawsuits involving construction work of any type?
____Yes_____No. If "Yes", explain:

_____
_____
_____
_____

8. If this contract is awarded to you, your company's office administrative manager for the work will be Mr. (Ms.)_____, and your resident construction superintendent will be Mr. (Ms.)_____.

9. What experience in this type in this type of work does the individual designated above as resident superintendent have?_____

_____
_____
_____

10. What portion of the work do you intend to subcontract? _____

_____
_____
_____
_____

11. What equipment do you own that is available for the proposed work?

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

12. Have you received firm offers from suppliers or manufacturers for all major items of material and/or equipment within the price totals used in preparing your proposal?

____Yes_____No.

Credit Available: $_____ Bank Reference: _____

Bonding capacity available: $ _____

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Bidders Disclosure Statement.

The signatory of this questionnaire guarantees the truth and accuracy of all statements herein made and all answers herein expressed.

Date this_____day of_____, 20____.

By: _____

Title: _____

STATE OF _____
COUNTY OF _____

Subscribed and sworn to before me this_____day of_____, 20 ___

_____
Notary Public

My commission expires: _____

SECTION 00830
HAZARD COMMUNICATIONS
CONTRACTOR ACKNOWLEDGEMENT

IT IS HEREBY UNDERSTOOD AND AGREED THAT_____,

a Contractor under contract dated the_____day of_____, 20___, with the City of

Leon Valley has received from the City notice of the Contractor's rights under the Texas Hazards

Communications Act, the chemical list and material safety data sheets for hazardous chemicals that will

be present in the City work area._____Contractor with the City of

Leon Valley understands our obligation to inform our employees and agents of the information provided.

Material safety data sheets have been received for the following chemicals.

_____

_____

_____

_____

_____

_____

CONTRACTOR NAME: _____

NAME OF AUTHORIZED AGENT: _____

TITLE OF AUTHORIZED AGENT: _____

SIGNATURE OF AUTHORIZED AGENT: _____

DATE: _____

SECTION 00840
PREVAILING WAGE RATE DETERMINATION

The following statute requires state agencies, cities, counties, independent school districts, and all other political subdivisions that engage in construction projects using public funds to include prevailing wage rates in the project bid documents and the construction contract.

Article 5159a, Texas Civil Statutes, as amended by H.B. 560, Ch. 606, Acts, 73rd Legislature, Regular Session (1993)

Pursuant to the requirements of this statute, the General Services Commission, Facilities Construction, has ascertained the following rates of wages are paid to various classifications of workers in the locality of this project.

Building construction wage rates shall be paid to all workers except those workers engaged in site work and construction beyond five feet of buildings.

Not less than the following hourly rates shall be paid for the various classifications of work required by this project. Workers in classifications where rates are not identified shall be paid not less than the general prevailing rate of “laborer” for the various classifications of work listed therein.

The hourly rate for legal holiday and overtime work shall not be less than one and one-half (1 & ½) times the base hourly rate.

The rates specified are journeyman rates. Apprentices may be used on the project and may be compensated at a rate determined mutually by the worker and employer, commensurate with the experience and skill of the worker but not at a rate not less than 60% of the journeyman’s wage as shown. At no time shall a journeyman supervise more than one (1) apprentice. All apprentices shall be under the direct supervision of a journeyman working as a crew.

Welders shall receive the rate prescribed for the craft performing the operation to which the welding is incidental.

ORD. NO. 99-001

AN ORDINANCE

ADOPTING A PREVAILING WAGE RATE FOR PUBLIC WORKS CONSTRUCTION IN THE CITY OF LEON VALLEY IN ACCORDANCE WITH CHAPTER 2258 OF THE TEXAS GOVERNMENT CODE AND ESTABLISHING PENALTIES FOR VIOLATION THEREOF

WHEREAS, Chapter 2258 of the Texas Government Code requires that a municipality awarding a contract for a public work within the geographical limits of the municipality determine the general prevailing rate of per diem wages to be paid to workers on the public work, and;

WHEREAS, the City of Leon Valley has public works contracts which require the adoption of a prevailing wage rate.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, THAT :

1. The City of Leon Valley hereby adopts as the prevailing wage rate of per diem wages to be paid workers on its public works projects the following prevailing wage rates, terms and conditions:

Section 1

Definitions:

A. Public Work - A contract for a Public Work located within the geographical limits of the City of Leon Valley awarded by the City for construction of an improvement including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under public supervision or direction.

B. Worker - includes a laborer or mechanic.

C. Per Diem - The daily hourly rate wages and benefits paid to a worker.

D. Legal Holiday - The holidays established by the City of Leon Valley.

E. Maintenance - Work not involving substantial replacement or reconstruction. Maintenance is intended to extend the life of or protect an asset. The City of Leon Valley solely shall determine if the work performed is maintenance.

F. Overtime - As defined in the Copeland Act.

Section 2

Applicability to Public Works.

A. This ordinance applies only to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or part from public funds, without regard to whether the work is done under public supervision or direction.

B. This ordinance does not apply to work done directly by a public utility company under an order of a public authority or to maintenance.

Section 3

Right to be paid Prevailing Wage Rates

A. A worker employed on a public work by or on behalf of the City of Leon Valley shall be paid:

(1) not less than the general prevailing rate of per diem wages for work of a similar character in the City of Leon Valley 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 purpose of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for a public work with the City of Leon Valley.

Section 4

Determination of Prevailing Wage Rates.

A. The City of Leon Valley shall determine the general prevailing rate of per diem wages in the locality in which the public work to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work in accordance with the following:

(1) For 100% locally funded City Public Works Construction projects see Attachment A for building construction trades or Attachment B for heavy highway construction.

(2) For Public Works projects funded in whole or part with Federal or State funds see Attachment B.

B. The City of Leon Valley shall specify in the call for bids for the contract and in the contract itself that wage rates determined under this ordinance shall be paid and are contained in the contract documents.

C. The City of Leon Valley's determination of the general prevailing rate of per diem wages is final.

Section 5

Prevailing Wage Rates to be Paid By Contractor and Subcontractor, Penalty.

A. The contractor who is awarded a contract by the City of Leon Valley or a subcontractor of the contractor shall pay not less than the rates determined under Section 4 to a worker employed by it in the execution of the contract.

B. This ordinance does not apply to work done directly by a public utility company under an order of a public authority or to maintenance.

Section 3

Right to be paid Prevailing Wage Rates

A. A worker employed on a public work by or on behalf of the City of Leon Valley shall be paid:

(1) not less than the general prevailing rate of per diem wages for work of a similar character in the City of Leon Valley 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 purpose of this section if the worker is employed by a contractor or subcontractor in the execution of a contract for a public work with the City of Leon Valley.

Section 4

Determination of Prevailing Wage Rates.

A. The City of Leon Valley shall determine the general prevailing rate of per diem wages in the **locality in which the** public work to be performed for each craft or type of worker needed to execute the contract and the prevailing rate for legal holiday and overtime work in accordance with the following:

(1) For 100% locally funded City Public Works Construction projects see Attachment A for building construction trades or Attachment B for heavy highway construction.

(2) For Public Works projects funded in whole or part with Federal or State funds see Attachment B.

B. The City of Leon Valley shall specify in the call for bids for the contract and in the contract itself that wage rates determined under this ordinance shall be paid and are contained in the contract documents.

C. The City of Leon Valley's determination of the general prevailing rate of per diem wages is final.

Section 5

Prevailing Wage Rates to be Paid By Contractor and Subcontractor, Penalty.

A. The contractor who is awarded a contract by the City of Leon Valley or a subcontractor of the contractor shall pay not less than the rates determined under Section 4 to a worker employed by it in the execution of the contract.

B. A contractor or subcontractor who violates this section shall pay penalties in accordance with state law.

Section 6

Records.

A. A contractor and subcontractor shall keep a record showing:

(1) the name and occupation of each worker employed by the contractor or subcontractor in the construction of the public work; and

(2) the actual per diem wages paid to each worker.

B. The record shall be open at all reasonable hours to inspection by the officers and agents of the City of Leon Valley.

Section 7

Payment greater than Prevailing Rate Not Prohibited.

This ordinance does not prohibit the payment to a worker employed on a public work an amount greater than the general prevailing rate of per diem wage.

Section 8

Reliance on Certificate of Subcontractor.

A contractor is entitled to rely on a certificate by a subcontractor regarding the payment of all sums due those working for the subcontractor until the contrary has been determined.

2. Nothing in this ordinance is intended to conflict with any state or federal laws and contractor remains bound by same.

3. This ordinance shall take effect upon passage, approval, and publication as required by law.

PASSED and **APPROVED** this the 5th day of January, 1999.

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

PREVAILING WAGE RATE DETERMINATION
BUILDING CONSTRUCTION TRADES

COUNTY NAME : BEXAR

Date Printed : April 15, 1997

CLASSIFICATION	Rate	Health	Pension	Vacation	Total Wage
ASBESTOS WORKER	$10.36	$0.89	$0.00	$0.00	**$11.25**
CARPENTER	$13.28	$1.17	$0.70	$0.38	**$15.54**
CARPET LAYER/FLOORING INSTALLER	$8.00	$0.00	$0.00	$0.00	**$8.00**
CONCRETE FINISHER	$9.46	$0.05	$0.01	$0.01	**$9.53**
DATA COMMUNICATION/TELECOM INSTALLER	$0.00	$0.00	$0.00	$0.00	**$0.00**
DRYWALL INSTALLER/CEILING INSTALLER	$11.16	$1.18	$0.03	$0.02	**$12.39**
ELECTRICIAN	$15.95	$2.15	$1.00	$0.08	**$19.18**
ELEVATOR MECHANIC	$17.20	$3.85	$2.19	$1.50	**$24.74**
FIRE PROOFING INSTALLER	$8.00	$0.00	$0.00	$0.00	**$8.00**
GLAZIER	$9.77	$0.58	$0.15	$0.38	**$10.88**
HEAVY EQUIPMENT OPERATOR	$9.06	$0.05	$0.00	$0.00	**$9.12**
INSULATOR	$16.28	$2.64	$2.15	$0.00	**$21.07**
IRON WORKER	$10.90	$0.66	$0.60	$0.33	**$12.50**
LABORER/HELPER	$7.58	$0.42	$0.03	$0.07	**$8.10**
LATHER/PLASTERER	$15.50	$0.00	$0.00	$0.00	**$15.50**
LIGHT EQUIPMENT OPERATOR	$6.96	$0.05	$0.00	$0.00	**$7.02**
MASON	$15.55	$0.00	$0.00	$0.00	**$15.55**
METAL BUILDING ASSEMBLER	$10.42	$0.00	$0.00	$0.00	**$10.42**
MILLWRIGHT	$16.01	$1.63	$1.00	$0.00	**$18.64**
PAINTER/WALL COVERING INSTALLER	$10.00	$0.00	$0.00	$0.00	**$10.00**
PIPEFITTER	$17.07	$1.48	$1.47	$0.37	**$20.39**
PLUMBER	$19.31	$2.17	$1.90	$0.76	**$24.14**
ROOFER	$9.05	$0.00	$0.00	$0.00	**$9.05**
SHEET METAL WORKER	$18.54	$1.62	$1.56	$0.24	**$21.96**
SPRINKLER FITTER	$19.75	$3.40	$2.20	$0.00	**$25.35**
TERRAZZO WORKER	$0.00	$0.00	$0.00	$0.00	**$0.00**
TILE SETTER	$14.77	$1.77	$0.00	$0.00	**$16.54**
WATERPROOFER/CAULKER	$10.92	$0.00	$0.00	$0.00	**$10.92**

* $0.00 in the rate field indicates insufficient data was received to determine a prevailing wage rate for this classification. Government Code Title 10, Section 2258.023, paragraph C states: "A contractor or subcontractor does not violate this section if a public body awarding a contract does not determine the prevailing wage rates and specify the rates in the contract as provided in Section 2258.022."

Property of General Services Commission
Based on 1996 Survey Results

Attachment A
page 1

Worker Classification Definition Sheet

Asbestos Worker	Worker who removes and disposes of asbestos materials.
Carpenter	Worker who builds wood structures, or structures of any material which has replaced wood. Includes rough and finish carpentry, hardware and trim.
Carpet Layer/Flooring Installer	Worker who installs carpet and/or floor coverings - vinyl tile.
Concrete Finisher	Worker who floats, trowels, and finishes concrete.
Data Communication/Telecom Installer	Worker who installs data/telephone and television cable and associated equipment and accessories.
Drywall Installer/Ceiling Installer	Worker who installs metal framed walls and ceilings, drywall coverings, ceiling grids and ceilings.
Electrician	Skilled craftsman who installs or repairs electrical wiring and devices. Includes fire alarm systems, and HVAC electrical controls.
Elevator Mechanic	Craftsman skilled in the installation and maintenance of elevators.
Fire Proofing Installer	Worker who sprays or applies fire proofing materials.
Glazier	Worker who installs glass, glazing and glass framing.
Heavy Equipment Operator	Includes but not limited to all Cat tractors, all derrick-powered, all power operated cranes, back hoe, back filler, power operated shovel, winch truck, all trenching machines.
Insulator	Worker who applies, sprays, or installs insulation.
Iron Worker	Skilled craftsman who erects structural steel framing and installs structural concrete Rebar.
Laborer/Helper	Worker qualified for only unskilled or semi-skilled work. Lifting, carrying materials and tools, hauling, digging, clean-up.
Lather/Plasterer	Worker who installs metal framing and lath. Worker who applies plaster to lathing and installs associated accessories.
Light Equipment Operator	Includes but not limited to air compressors, truck crane driver, flex plane, building elevator, form grader, concrete mixer (less than 14 cf), conveyer.
Mason	Craftsman who works with masonry products, stone, brick, block, or any material substituting for those materials and accessories.
Metal Building Assembler	Worker who assembles pre-made metal buildings.
Millwright	Mechanic specializing in the installation of heavy machinery, conveyance, wrenches, dock levelers, hydraulic lifts and align pumps.
Painter/Wall Covering Installer	Worker who prepares wall surfaces and applies paint and/or wall coverings, tape and bedding.
Pipefitter	Trained worker who installs piping systems, chilled water piping and hot water (boiler) piping, pneumatic tubing controls, chillers, boilers, and associated mechanical equipment.
Plumber	Skilled craftsman who installs domestic hot and cold water piping, waste piping, storm system piping, water closets, sinks, urinals and related work.
Roofer	Worker who installs roofing materials, Bitumen (asphalt and cold tar), felts, flashings, all types roofing membranes and associated products.
Sheet Metal Worker	Worker who installs sheet metal products. Roof metal, flashings, and curbs, ductwork, mechanical equipment, and associated metals.
Sprinkler Fitter	Worker who installs fire sprinkler systems and fire protection equipment.
Terrazzo Worker	Craftsman who places and finishes Terrazzo.
Tile Setter	Worker who prepares wall and/or floor surfaces and applies ceramic tiles to these surfaces.
Waterproofer/Caulker	Worker who applies water proofing material to buildings. Products include sealant, caulk, sheet membrane, liquid membranes, sprayed, rolled, or brushed on.

Attachment A
page 2

General Decision Number TX980043

Superseded General Decision No. TX970043

State: TEXAS

Construction Type:
HEAVY
HIGHWAY

County(ies):

BELL	CORYELL	TRAVIS
BEXAR	GUADALUPE	WILLIAMSON
BRAZOS	HAYS	
COMAL	MCLENNAN	

Heavy (excluding tunnels and dams) and Highway Construction Projects (does not include building structures in restaurant projects). *NOT TO BE USED FOR WORK ON SEWAGE OR WATER TREATMENT PLANTS OR LIFT/PUMP STATIONS IN BELL, CORYELL, McLENNAN AND WILLIAMSON COUNTIES.

Modification Number	Publication Date
0	02/13/1998
1	05/22/1998

Attachment B
page 1

COUNTY(ies):

BELL	CORYELL	TRAVIS
BEXAR	GUADALUPE	WILLIAMSON
BRAZOS	HAYS	
COMAL	MCLENNAN	

* SUTX2042A 03/26/1998

	Rates	Fringes
AIR TOOL OPERATOR	8.58	
ASPHALT HEATER OPERATOR	11.00	
ASPHALT RAKER	8.00	
ASPHALT SHOVELER	7.97	
BATCHING PLANT WEIGHER	11.00	
CARPENTER	10.80	
CONCRETE FINISHER-PAVING	9.57	
CONCRETE FINISHER-STRUCTURES	8.83	
CONCRETE RUBBER	8.52	
ELECTRICIAN	16.25	
FLAGGER	6.86	
FORM BUILDER-STRUCTURES	8.77	
FORM LINER-PAVING & CURB	8.00	
FORM SETTER-PAVING & CURB	8.68	
FORM SETTER-STRUCTURES	8.73	
LABORER-COMMON	7.12	
LABORER-UTILITY	7.99	
MECHANIC	12.15	
OILER	11.40	
SERVICER	8.44	
PAINTER-STRUCTURES	10.00	
PIPE LAYER	8.27	
ASPHALT DISTRIBUTOR OPERATOR	9.70	
ASPHALT PAVING MACHINE	9.26	
BROOM OR SWEEPER OPERATOR	7.12	
BULLDOZER	9.28	
CONCRETE CURING MACHINE	7.79	
CONCRETE FINISHING MACHINE	11.00	
CONCRETE PAVING SAW	9.79	
SLIPFORM MACHINE OPERATOR	11.15	
CRANE, CLAMSHELL, BACKHOE, DERRICK, DRAGLINE, SHOVEL	10.12	
FOUNDATION DRILL OPERATOR TRUCK MOUNTED	15.00	
FRONT END LOADER	8.66	
HOIST - DOUBLE DRUM & LESS	10.81	
MIXER	7.12	
MIXER - CONCRETE PAVING	11.00	
MOTOR GRADER FINE GRADE	12.37	
MOTOR GRADER	11.14	
PAVEMENT MARKING MACHINE	8.31	
PLANER OPERATOR	15.75	
ROLLER, STEEL WHEEL PLANT-MIX PAVEMENTS	7.73	

Attachment B
Page 2

ROLLER, STEEL WHEEL OTHER FLATWHEEL OR TAMPING	7.33
ROLLER, PNEUMATIC, SELF PROPELLED	7.17
SCRAPERS	8.38
TRACTOR-CRAWLER TYPE	9.40
TRAVELING MIXER	7.92
TRENCHING MACHINE, HEAVY	9.92
WAGON-DRILL/BORING MACHINE	8.00
REINFORCING STEEL SETTER PAVING	14.50
REINFORCING STEEL SETTER STRUCTURES	10.61
STEEL WORKER-STRUCTURAL	11.73
SPREADER BOX OPERATOR	8.55
WORK ZONE BARRICADE	8.29
SIGN INSTALLER	7.97
TRUCK DRIVER-SINGLE AXLE LIGHT	8.32
TRUCK DRIVER-SINGLE AXLE HEAVY	7.954
TRUCK DRIVER-TANDEM AXLE SEMI-TRAILER	8.02
TRUCK DRIVER-LOWBOY/FLOAT	10.12
WELDER	11.02

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

In the listing above, the "SU" designation means that rates listed under that identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.)

Attachment B
page 3

and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

END OF GENERAL DECISION

Attachment B
page 4

WORK TO BE DONE

Install approximately 150,462 square yards of Single Course Bituminous Slurry Seal as shown on the enclosed map of Leon Valley.

The Contractor will be required to vacuum sweep and otherwise clean all streets areas to receive the slurry seal.

The City of Leon Valley will crack seal and Contractor will repair pavements failures, apply herbicide to vegetation, and rough broom all areas to which slurry seal is to be applied. Contractor shall notify City as to when herbicide is to be applied. Herbicide shall be applied per the manufacture's specifications and the recommended two week waiting period will be observed.

STATE SALES TAX

The City is an exempt entity for the purposes of sales tax.

The purchase of tangible personal property or a taxable service for this project is exempt from sales tax to the extent allowed by 34 Texas Administration Code 3.291 (See Instruction to Bidding).

Bidders must include all applicable taxes in the cost of his work.

WARRANTY

The Contractor shall warrant the work performed against defect in materials and workmanship for a period of one year after acceptance by the Owner. Warranty work will be performed by the Contractor within a reasonable time of notice given by the Owner reserves the right to make repairs at the Contractor's expense upon the failure of the Contractor to respond promptly. Repairs under the warranty will carry an additional 90-day warranty period. The Warranty period shall commence at the time the City has made final acceptance of the work done by the Contractor. The City will assume responsibilities for damage to the facility caused by misuse and vandalism after final acceptance.

MATERIAL SUBMITTAL

The Contractor will supply six copies of submittal data for approval prior to ordering any material for the project.

SANITARY FACILITIES

The Contractor shall provide on-site restroom facilities for the workers.

PRECONSTRUCTION CONFERENCE

The Contractor will be required to attend a preconstruction conference prior to initiation of the work. The proposed project foreman must be in attendance at this conference.

PAYMENT SCHEDULE

Payment of this work will be made in partial payments for completed work in accordance with the General Conditions if Performance/Payment bonds are furnished. In the absence of bonding, the Contractor will receive one payment only 30 days after the City has accepted the project. If partial payments are made, the Contractor will furnish a schedule of the cost breakdown for prior approval.

STAKING FOR CONSTRUCTION

The Contractor will layout the facility using the information shown on the drawings.

PRIORITY

Where conflicts are found between the Special Conditions or the General Conditions, the Special Conditions shall govern.

MATERIALS ON HAND

Materials on hand but not in place will not be paid for separately.

DELAYS CAUSED BY UTILITY ADJUSTMENTS

The Contractor is required to notify each utility company which has poles or underground facilities in conflict with the work. Delays caused by utility work shall be justification for time extensions, but not for extra compensation.

SCHEDULE OF WORK

At the Preconstruction Conference, the sequence of work will be proposed by the Contractor to the City and is subject to City approval. Work will be allowed from 7:30 a.m. to 6:00 p.m., Monday through Friday. No work on Saturday, Sunday, or City Holidays will

be permitted. The contractor will not receive a notice to proceed with the work until utility and City preparation work is complete. This is anticipated to be after Month, Day, Year.

SEQUENCE OF WORK

The Contractor shall proceed with work in a manner which completes the work in one area before advancing to another area.

The Contractor may have under construction several sites so as to be efficient, however, the sequence must proceed in an orderly manner to completion.

The Contractor's sequence must also include traffic flow consideration.

Sequences of work which do not include orderly progression through these stages before advancing to additional work areas will not be approved.

NOTIFICATION

It shall be the Contractor's responsibility to notify all property owners adjacent to the project 24 hours prior to the starting of construction operations. This notice shall be in writing in a form acceptable to the City. Additionly 48 hours prior to beginning work, notify the following departments: U.S. Post Office (210) 641-0248, N.I.S.D. Transportation (210) 695-3800, Waste Management Co. (210) 368-5005, Leon Valley Dispatch (210) 681-3215.

STREET CLOSING

The contractor is to properly barricade each segment of street to be worked on after giving property owners 24 hours notice. Barricades will not be set before 7:30 a.m. Each street shall be opened at the end of day.

BARRICADES AND FLAGMEN

The Contractor is to provide himself with necessary temporary barricades and traffic cones sufficient to alert the traffic in advance. If the present lanes of traffic are to be closed, suitable barricades, warning signs and markers are to be provided by the Contractor. Unless otherwise approved by the City, barricades for this work shall be provided by a barricade company familiar with the requirements of TMUTCD.

Barricades and traffic control devices including advance warning signs etc, shall follow the Texas Uniform Municipal Control Devices standards to the satisfaction of the City.
The City has the right to prevent work from starting until suitable traffic control devices are provided, in the opinion of the City. Included advance warning signs.

The City may direct the Contractor to provide additional traffic control devices and/or flagmen as they deem necessary to protect the public. All barricades will have one flashing light at night. All cost for traffic management and barricades will be included in the cost of the work.

WATER FOR CONSTRUCTION

All water required by the Contractor for his operations will be available without charge at the City Public Works yard. The Contractor shall make all necessary connections and shall transport all water at his own expense. If needed, the Contractor will be required to pay a deposit for a fire hydrant meter, which deposit will be returned when the fire hydrant meter is returned in good condition.

POWER FOR CONSTRUCTION

The Contractor shall make his own arrangements for electric service and shall purchase all power required for his operation.

BID QUANTITIES

The Owner may elect to increase or decrease the amount of work units authorized to be completed as much as 25% without affecting the unit price of the project. The Contractor agrees that the final contract amount will be computed by extension of these unit prices and the quantity of work authorized and accepted by the Owner.

UTILITY AND SIGN ADJUSTMENT

The Contractor is required to make all arrangements and coordinate with the various utility companies for preserving and adjusting the various valves and manholes on the project. The City of Leon Valley shall adjust all water valves and sewer manholes. Those valves and manholes which do not belong to the City of Leon Valley will be adjusted by the utility owner. In every case, the contractor shall protect these utilities from being damaged.

The City of Leon Valley shall remove and relocate all street and traffic signs as needed. The contractor shall request this service in advance of his need.

WATER VALVE COVERS AND MAHOLES

The Contractor shall protect existing water valve covers and manhole lids from being coated by the slurry seal. Before completion of the work, the contractor shall remove slurry placed over these facilities.

INSPECTION

This work will be inspected by the City and all change orders or communication concerning the work shall be directed to the City.

CONTRACT TIME

The contract time will commence to run on the 15th day after the Notice of Award is issued and the contract documents are made available to the Contractor for execution.

DATE OF AGREEMENT

The date of the award of the contract will be the date of the agreement.

DAMAGE TO EXISTING STREETS

The asphalt pavement, curbs and existing sidewalks in the work area are considered to be in good to excellent condition prior to start of the project.

Any scars, nicks, gasoline, oil, etc., or other defacement or damage to the existing streets, curbs or sidewalks will be a responsibility of the contractor to repair.

Before beginning the job, the contractor may point out and note to the inspector any specific areas that are already damaged. Thereafter, the contractor will not be held responsible for repairs to these areas.

CONDITION OF THE SITE

Site of the proposed work will be pointed out to the prospective bidders by the City Public Works Director. The Contractor shall provide his own material and equipment yard at his cost. Upon completion of the work, all excess materials shall be removed from the site by the Contractor and the area around the work shall be returned to its original condition. Disposal sites will be a responsibility of the Contractor.

PROTECTION OF WORK, PROPERTY AND PERSONS

The Contractor shall, at all times, safely guard the Owner's property from injury or loss in connection with this Contract. He shall at all times safely guard and protect his own work and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury unless such is caused directly by errors contained in the Contract, or by the Owner or his duly authorized representatives.

The Contractor shall take all necessary precautions for the safety of employees on the work and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. He shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, trenches and other excavations, and falling materials, and he shall designate a responsible member of his organization on the work site whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Owner by the Contractor. The person so designated shall be available by phone during non-working hours.

In case of an emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act without previous instructions from the Owner in a diligent manner. He shall notify the Owner immediately thereafter.

CARE AND PROTECTION OF PROPERTY

The Contractor expressly undertakes at his own expense: To assume full responsibility for the preservation of all public and private property and use every precaution necessary to prevent damage thereto. If any direct or indirect damage is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the work on the part of the Contractor, such property shall be restored by the Contractor, at his expense, to a condition similar to or equal to that existing before the damage was done, or he shall make good the damage in another manner acceptable to the Owner. No representations are

made concerning the conditions, locations or state of repair of existing sewers, drains, water mains and other underground structures;

To store his apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his work or the work of any other contractor;

To provide suitable storage facilities for all materials which are liable to injury by exposure to weather, theft, breakage or otherwise;

To place upon the work, or any part thereof, only such loads as are consistent with safety of that portion of the work;

To clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;

To remove all surplus material, false work, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and to put the site in a neat, orderly condition before final payment; to effect all cutting, fitting or patching of his work required to make the same conform to the plans and specifications and, except with the consent of the Owner, not to cut or otherwise alter the work of any other contractor.

The Contractor shall not, except after written consent from proper parties, enter or occupy with men, tools, materials or equipment, any privately owned land except on easements provided herein.

PROTECTION OF LIVES AND HEALTH

The Contractor shall comply with the U.S. Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91 - 596 and all subsequent amendments) and under Section 107 of the Contract Work Hours and Safety Standards Act (Public Law 91-54 and all subsequent amendments).

The Contractor shall have a competent person or persons, as required under the Occupational Safety and Health Act, on the site to inspect the work and to supervise the conformance of the Contractor's operations with the regulations of the Act.

This project is subject to all of the Safety and Health Regulations (CFR 29, Part 1926 and all subsequent amendments) as promulgated by the U.S. Department of Labor on June 24, 1974, and CFR 29, Part 1910 and all subsequent amendments of General Industry Safety and Health Regulations identified as applicable to construction. Contractors are urged to become familiar with the requirements of these regulations.

PROJECT CONSTRUCTION SITE

The contractor shall provide his own temporary yard for stock pile of materials and storage of vehicle. City property is not available for this purpose.

TERMS & CONDITIONS

THE CONTRACTOR SHALL MAINTAIN THE FOLLOWING INSURANCE:

1. Workers' Compensation Insurance Coverage.

The insurance carrier shall be an admitted carrier in the State of Texas.

A. Definitions:

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

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Person's providing services on the project ("subcontractor" in section 406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project.

"Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

C. The contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of

the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

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

(2) 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.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall 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.

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

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided services on the project for the duration of the project;

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

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

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

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current 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 person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to performs as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

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

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of the notice of breach from the governmental entity.

2. Comprehensive General Liability Insurance

This insurance shall:

A. Be in an amount not less than $1,000,000 per occurrence, with a deductible of not more than $2,500;

B. Include coverage for the liability assumed by the Contractor under Item F. (Indemnity);

C. Include completed operation coverage which is to be kept in force by the Contractor for a period of not less than one year after the completion of the work provided for or performed under these specifications;

D. Not be subject to any of the special property damage liability exclusions commonly referred to as the XCU exclusions pertaining to blasting or explosion, collapse, or structural damage and underground property;

E. Not be subject to any exclusion of property used by the insured or property in the case, custody or control of the insured or property as to which the insured for any purpose is exercising physical control;

F. In naming the City of Leon Valley as an additional insured on your comprehensive General Liability Insurance, the following words apply:

"Contractor shall defend, indemnify and hold harmless the City of Leon Valley, its agents and employees from and against any liability, loss, cost and expense ("Liability") claimed by a third party (including reasonable attorney's fees and cost of defense) resulting from Contractor's performance of the Work to the extent that such Liability:

(1) is attributable to bodily injury, sickness, disease or death, or to the injury to or destruction of tangible personal property; and,

(2) is caused or contributed to by any neglect or fault of Contractor, its subcontractors, or their respective employees.

Where liability is attributable to the joint negligence or fault of Contractor and any other person (including Owner), Contractor's duty of indemnification shall be limited to Contractor's allocable share of such joint negligence or fault."

G. The Insurance company must have as a minimum a current A.M. Best rating of A.

3. Comprehensive Automobile Liability in the following amounts:

Bodily Injury	$1,000,000 per person $3,000,000 per accident
Property Damage	$300,000 per accident

4. General Requirements for Insurance Coverage

A. The Certificate of Insurance furnished by the Contractor shall show by specific reference that each of the foregoing items have been provided for;

B. Certificates of Insurance required for each copy of the agreement which specifically set forth evidence of all required coverage will be filed with the City

prior to the City's execution of the contract. Worker's Compensation Insurance coverage must be provided to the City prior to the City's award of the contract.

C. The Certificates of Insurance furnished by the contractor as evidence of the Insurance maintained by the contractor will include a clause obligating the Insurer to give the City of Leon Valley ten (10) days prior written notice of cancellation or any material change in the insurance coverage.

D. Waiver of Subrogation: The City of Leon Valley and the Contractor waive all rights and the rights of their respective insurance companies against each other for damages caused by fire or other perils to the extent such damages are covered by property insurance purchased by either party.

5. Anti-Discrimination in Employment

A. The contractor (successful bidder) and/or any subcontractor(s), if permitted, certifies complete compliance with the Federal Civil Rights Law and the Americans with Disabilities Act, agreeing to non-discrimination based on race, age, color, religion, disability, gender, ancestry, national origin, or place of birth in employment practices, programs and services shall include but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other compensation; and selection for training, including apprenticeship.

B. The contractor shall in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, age, color, religion, disability, gender, ancestry, national origin, or place of birth.

C. Upon request by the City of Leon Valley, the contractor shall furnish all information or reports required to investigate his/her payrolls and personnel records which pertain to current contract(s) with the City for purposes of ascertaining compliance with this non-discrimination certification.

6. General Independent Contractor Clause

This agreement does not create an employer relationship between the parties. It is the parties' intention that the contractor will be an independent contractor and not the City of Leon Valley employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Texas workers' compensation law and Texas unemployment insurance law. The contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the contractor's activities and responsibilities hereunder. The contractor agrees that it is a separate and independent enterprise from the City of Leon Valley, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a

high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the contractor and the City of Leon Valley and the City of Leon Valley will not be liable for any obligation incurred by the contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

7. Hot Goods Clause

The bidder hereby agrees that in the execution of the work he or she will comply with all applicable provisions of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and that there will be no violations of the “hot goods” or “hot cargo” provisions of the Act involving restrictions on the use of underage employees.

8. Fire Safety

The contractor shall comply with all City regulations including those regarding Fire Safety. In this regard he shall comply with all instructions of the City Fire Marshall during the course of the work.

9. Hazard Communications Act

In compliance with Article 5182b, Texas Revised Civil Statutes, all employers are required to train and educate employees on the safe use and handling of hazardous materials that employees may be exposed to in the work place. The City of Leon Valley's Fire Chief is designated as the City's HazComm Officer. Contractors of the City are also required to comply with the requirements of this Act.

Contractors are entitled to a copy of the City's workplace chemical list to which the contractor, its employees and agents may be exposed to in the workplace. Contractors are also entitled to a copy of all MSDS sheets for any hazardous chemicals which the City may have in the work place. Contractors have the obligation to inform its employees and agents of all of these requirements. Contractor shall furnish the City with the MSDS sheets for any hazardous chemical brought into the City workplace that City employees will have exposure to. Contractors shall sign the Attachment 5, "Hazard Communications Contractor Acknowledgment" certifying receipt of this information.

10. FIRE SAFETY

The contractor shall comply with all City regulations including those regarding Fire Safety. In this regard, he shall comply with all instructions of the City Fire Marshall during the course of the work.

TECHNICAL SPECIFICATIONS

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

THE CITY OF LEON VALLEY
SINGLE COURSE BITUMINOUS
SLURRY SEAL

Technical Specifications

DESCRIPTION

The bituminous slurry surface shall consist of properly proportioned and mixed mineral aggregate, asphalt emulsion and water, spread evenly on a pavement surface, as specified herein and as directed by the Owner. The slurry, when cured, adhere firmly to the adjacent surface, and have skid resistant texture.

APPLICABLE SPECIFIATIONS

The following specifications as to methods and materials form a part of this overall specification to the extent indicated by specific references thereto:

AASHTO - American Association of State Highway and Transportation Official
ASTM - American Society of Testing Materials

Test Methods for Aggregate and Mineral Filler:

AASHTO T2	ASTM D75	Sampling stone, slag, gravel, sand stone block for use as Highway materials
AASHTO T27	ASTM C136	Sieve analysis of fine or coarse aggregate.
AASHTO T11	ASTM C117	Amount of material finer than No. 200 sieve in aggregate.
AASHTO T176	ASTM D2419	Plastic fines in graded aggregates and soils by use of the Sand Equivalent Test.
AASHTO T84	ASTM C128	Specific gravity and absorption of fine aggregate.
AASHTO T196	ASTM C131	Abrasion of coarse aggregate, by use of the Los Angeles Machine.
AASHTO T127	ASTM C183	Sampling Hydraulic Cement.
AASHTO T137	ASTM C546	Sieve Analysis of Mineral Filler.

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

Test Methods of Asphalt Emulsions:

AASHTO T40 ASTM D140 Sampling Bituminous Materials.

AASHTO T59 ASTM D244 Testing Emulsified Asphalt.

Test Methods for Bituminous Slurry Surfaces:

AASHTO T164 ASTM D2172 Bitumen Content of Paving Mixture by Centrifuge.

AASHTO T30 Mechanical Analysis of Extracted.

Specifications for Mineral Fillers:

AASHTO M17 ASTM D977 Specifications for Anionic Emulsified Asphalt

AASHTO M208 ASTM D2397 Specifications for Cationic Emulsified Asphalt.

MATERIALS

A. Asphalt Emulsion: The emulsified asphalt shall conform to the requirement of AASHTO M140. The emulsion shall be SS – 1h with a four percent Latex additive milled into the emulsion by the emulsion manufacturer. All shipments of latex modified emulsion shall by accompanied by a shipping ticket and a certificate of compliance which shall be given to the Owner. Specification for type SS – 1h with the residual asphalt having a penetration of 40-90 shall constitute at least 60% of the emulsion by weight, and the Saybolt Furol viscosity of the emulsion at 77 degrees Fahrenheit shall not exceed 50 seconds.

B. Aggregate: The mineral aggregate shall consist of sound and durable 100% crushed slag, and shall be free from dirt, organic matter, clay balls, adherent films of clay, dust or other objectionable matter. The aggregate shall contain no free water. When tested in accordance with AASHTO T176 or ASTM D2419, the aggregate shall have a sand equivalent of not less than 45. Mineral fillers such as Portland cement, limestone dust, lime, and others shall be considered as part of the blended aggregate, and shall be used in the minimum amount required. The use of fly ash will not be permitted. They shall meet the gradation requirements of AASHTO M17 or ASTM D242. Mineral fillers shall be used for one or more of the following reasons only: to improve gradation of the aggregate; to control the time of break of the emulsions; to provide improved stability and workability of the slurry; or to increase the durability of the cured slurry. The total aggregate, including mineral filler, shall conform to the following gradation when tested by AASHTO T127 or ASTM C136:

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

SIEVESIZE	PERCENTPASSING
3/8"	100
No.4	90-98
No.8	65-90
No.16	45-70
No.30	30-50
No.50	18-30
No.100	10-21
No.200	5-15

Pure Asphalt Required, % of day weight of aggregate: 10.0-13.3

C. Water: All water used in making the slurry shall be potable and free of dissolved ingredients that may prove harmful. The effect of moisture content on the specific weights of the aggregate, and the moisture content of the aggregate being used, shall be taken into proper account in setting the machine to deliver asphalt in the correct proportion.

D. Laboratory Testing: From sources selected in advance, representative samples of essential materials, taken as indicated under Applicable Specifications, shall be evaluated in a qualified laboratory (at no cost to the City) as to their suitability for use in slurries. Laboratory results, including evidence that the materials are acceptable, the quantitative effects of moisture content on the specific weight of the aggregate *bulking effect), a determination if mineral filler is required and in what proportion, the optimum proportions of aggregate, asphalt and prewetting water, and durability tests on cured specimens shall be reported through the contractor to the Owner. This report shall be a written document from the laboratory to the Contractor.

A. Stockpiling of Aggregate: Precautions shall be taken to insure that stockpiles are carefully mixed just prior to use to insure uniform distribution of the moisture, and that they do not become contaminated with a over-sized rock, clay, silt or excessive amounts of moisture. The stockpile shall be kept in areas that drain readily. Segregation of the aggregate will not be permitted.

F. Storage: The Contractor shall provide suitable storage facilities for the modified asphalt emulsion using containers equipped to prevent water from entering the modified emulsion. If necessary, suitable heat shall be provided to prevent freezing.

G. Sampling: Samples of materials and of the finished slurry surface shall be furnished by the Contractor during progress of the work and as directed by the Owner. Test reports should be obtained from the Contractor as additional materials arrive.

EQUIPMENT AND TOOLS:

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

All methods employed in performing the work and all equipment, tools, and machinery used for handling the material and executing any part of the work shall be subject to the approval of the Owner before the work is started, and whenever found unsatisfactory they shall be changed and improved as required . All equipment, tools, machinery and containers used must be kept clean and maintained in a satisfactory condition.

A. Slurry Mixing Equipment: The slurry mixing machine shall be continuous flow mixing unit, capable of delivering accurately predetermined proportions of aggregate, water and asphalt emulsion to a revolving spiraled multi-blade mixer tank, and of discharging the thoroughly mixed product on a continuous basis.The aggregate shall be prewetted immediately prior to mixing with the emulsion. The mixing unit shall be capable of thoroughly blending all ingredients together without violent action. The mixing machine shall be equipped with an approved fines feeder that provides an accurate metering device or method of introducing a predetermined proportion of mineral filler into the mixer as the aggregate is fed in. The fines feeder shall be used when mineral filler is part of the aggregate blend. The mixing machine shall be equipped with a water pressure system and fog type spraybar adequate for completely fogging the surface with up to 0.05 gallons per square yard, immediately ahead of the spreading equipment. The machine shall be capable of mixing materials at preset proportions regardless of speed of machine engine and without changing machine settings.

B. Slurry Spreading Equipment: Attached to the mixer machine shall be mechanical-type squeegee distributor equipped with flexible material in contact with the surface to prevent loss of slurry from the distributor. It shall be maintained to prevent loss of slurry on varying grades and crown by adjustments to assure uniform spread. There shall be a lateral control device and a flexible strike-off capable of being adjust to lay the slurry at the specified rates of application. The spreader box shall have an adjustable width. The box shall be kept clean, and built-up asphalt and aggregate on the box shall not be permitted. The use of burlap drags or other drags shall be approved by the Owner.

C. Cleaning Equipment: Power brooms and blowers, air compressors, vacuum sweepers, water flushing equipment, and hand brooms shall be suitable for cleaning the pavement surface and cracks therein.

D. Auxiliary Equipment: Hand squeegees, shovels and other equipment shall be provided as necessary to perform the work.

PREPARATION OF SURFACE

Prior to placing the slurry seal coat, the surface of the pavement shall be cleaned and free from dust, dirt or other loose foreign matter, grease, oil, or any type of objectionable surface film. All vegetation must be completely destroyed by a **chemical weed killer** before the slurry is applied. The existing surface shall be swept with hand brooms or power sweepers or cleaned with a power blower. When required, the pavement shall be flushed with pressure streams of water.

Water flushing will not be permitted in areas when considerable cracks are present in the pavement surface. Application of the slurry should not be started until all puddles of water have either evaporated to dryness or removed. It may be necessary to clean the pavement with a strong caustic solution, in which case the residue from this treatment shall be flushed and washed with pressure streams of water taking extreme care that all caustic is removed from the surface. The Owner shall give final approval that the surface has been prepared properly.

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

The contractor shall cover all raised pavement markers in a manner to protect and insure the integrity of the markers prior to placing the slurry seal and shall remove such covers after the completion of slurry sealing so that the markers will remain fully functional. Any markers damaged by the Contractor's operation shall be repaired or replaced at no cost to the City.

Prior to application of slurry seal, the Contractor shall mark the locations of all existing utility covers and lids within the streets to be slurry sealed. The surface of all manhole covers and miscellaneous utility covers and lids within the limits of work shall be protected from the slurry seal. All materials used to protect lids and covers shall be removed and disposed of properly after slurry sealing operations. All lids and covers shall have a clean surface after slurry sealing.

COMPOSITION AND RATE OF APPLICATION OF THE SLURRY MIX

The amount of modified asphalt emulsion to be blended with the aggregate shall be that as determined by the laboratory and subject to final adjustment in the field to allow for absorption by the existing surface. The amount of water added must be controlled accurately to insure production of a readily spreadable, yet completely stable slurry.

Proper water content shall be determined by an appropriate consistency test on freshly made slurry.

The slurry shall be a homogenous mixture, sufficiently stable during the entire mixing-spreadable period. During this period, the emulsion shall not break, no segregation of the fines from the coarser aggregate shall occur, and the liquid portion of the mix shall not float to the surface. Total time of mixing from introduction of emulsion of spreading shall be two minutes or less. The weight of dry aggregate applied per unit area shall be between 10 and 15 pounds per square yard. The Owner shall give final approval of the mixture proportions and of the thickness of application.

WEATHER LIMITATIONS

The modified asphalt emulsion slurry treatment shall be placed only when the temperature of the pavement surface is 80 degrees Fahrenheit or above. No slurry shall be applied under the following conditions:

1. While puddles of water remains on the pavement surface to be sealed.
2. When the weather is foggy.
3. If there is a chance of rain before it can be cured properly.

Slurries that cure by evaporation should not be laid during periods of abnormally high humidity.

Any cured slurry that is washed away from the roadway by rain or other water sources into:

1. yards, driveways, sidewalks, parkways etc., shall be removed and cleaned by the Contractor at his expense.
2. open or underground drainage system shall be removed and cleaned as directed by the Texas Water Quality Division (226-3297) and/or Bexar County Water Pollution (299-8752) at the Contractor's expense.

TECHNIAL SPECIFICATIONS

SINGLE COURSE BITUMINOUS SLURRY SEAL

TRAFFIC CONTROL

It shall be the Contractor's responsibility to provide adequate traffic control measures, such as barricades, flagman, cones, etc., to protect the uncured slurry surface from all types of traffic and provide traffic safety in the construction area. Advance warning signs and barricades will be necessary. These measures shall be in accordance with the "Texas Manual on Uniform Traffic Control Devices for Streets and Highways." All setting of barricades shall be accomplished by a barricade subcontractor trained in this activity. **All driveways in the area closed shall have a cone blocking the driveway.**

APPLICATION OF THE SLURRY SEAL

A. General: The surface shall be fogged with water directly preceding the spreader. The slurry mixture shall be of the desired consistency as it leaves the mixer and no additional elements shall be added. No lumping, balling, or unmixed emulsion and aggregate fines from the coarse aggregate will be permitted.

If the coarse aggregate settles to the bottom of the mix, the slurry will be removed from the pavement. Care shall be taken not to overload the spreader box, which shall be towed at a slow uniform rater not to exceed five miles per hour. The action of the squeegee in the spreader box shall permit free flow of the slurry into all surface voids and cracks. A sufficient amount of slurry seal shall be fed to the box to keep a full supply against the full width of the squeegee. The mixture shall not be permitted to overflow the front sides of the spreader box. Adjacent lanes shall be lapped at the edges a minimum dimension which will provide complete sealing at the overlap.

The fresh mix shall be protected by barricades and markers to permit drying.

In areas where the spreader box cannot be used, the slurry shall be applied by means of hand squeegees. Any joints or cracks that are not filled by the slurry mixture shall be corrected by use of hand squeegees. Upon completion of work, the slurry seal shall have no holes, bare spots, or cracks through which liquids or foreign matter could penetrate to the underlying pavement. The finished surface shall present a uniform and skid resistant appearance satisfactory to the Owner. All wasted and unused material and all debris shall be removed from the site prior to final acceptance.

B. Joints: No excessive build-up nor unsightly appearance shall be permitted on longitudinal or transverse joints. The use of burlap drags shall be at the discretion of the Owner. When drags are used, they must be kept relatively clean and free of excessive build-up.

C. Inlet Grates: Before slurry seal is applied, all inlet grates or any grate opening must be covered with removed plywood.

D. Hand Work: Approved squeegees shall be used to spread slurry in areas not accessible to the slurry mixer. Care shall be exercised in leaving no unsightly appearance from hand work.

E. Curing: All traffic shall be kept off the slurry seal until is has cured to a firm condition that will prevent pick-up of the mixture. If any uncured slurry is damaged or marked by a motorized vehicle, person, animal, bicycle, etc., that area will be repaired satisfactory to the Owner at the Contractor's expense. The Contractor must plan the application of

slurry so that it is cured, barricades removed and all streets open to traffic every day by 6:00 p.m.

F. Line: Material laid at all beginning and ending locations as shown on the plans shall be laid in a straight uniform appearing line.

G. Curbing: The material must be placed against the curb and the thickness as specified. This is to provide a water tight seal at the gutter. All excess material in the gutters shall be removed or squeegee back onto the roadway surface. Material lapped or splashed onto any part of the curb must be removed as soon as the material on the road has cured. **Care shall be taken to prevent covering curb lettered addresses.**

TEST STRIP

After the successful bidder has the slurry seal ingredients approved by the Owner, a test strip will be laid (location to be determined by the Owner) before the designated job can begin. The Owner will observe the test strip according to the specifications for a time period of 2 to 4 hours. The job may proceed after his approval. The square yards of the test strip if approved will be measured and paid for at the contract unit price per square yard. Additional test strips without payment shall be conducted where the owner determines that the slurry is not performing in accordance with the specifications.

NOTIFICATION

It shall be the **Contractor's responsibility** to notify all residents adjacent to the project of slurry seal operations and schedules. The City will provide printed notification material to the Contractor for his distribution to the effected citizens at least 24 hours in advance.

MEASUREMENT AND PAYMENT

The work performed as prescribed by this item shall be measured and paid for at the contract unit price bid per square yard complete in place of accepted slurry seal which price shall be full compensation for furnishing and placing all materials, surface preparation, and all labor, tools, equipment and incidentals necessary to complete the work. Barricades and traffic control activities shall be measured as a lump sum job activity.

PAYMENT WILL BE MADE UNDER

Single Course Bituminous Slurry Seal – per square yard of acceptable product authorized.

Barricades and traffic control shall be paid for as a lump sum value with payment in relation to the value of slurry seal work accomplished.

NOTES

CITY OF LEON VALLEY
SINGLE COURSE BITUMINOUS SLURRY SEAL

Traffic Notes and Special Conditions

1. It is the Contractor's sole responsibility to see that all traffic control devices are properly installed and maintained at the job site in accordance with the plans, specifications and related industry standards and regulations. The Contractor shall submit for review a sign and barricade plan conforming to the requirements of the Texas Manual on Uniform Traffic Control Devices. OWNER will only be responsible to inspect the traffic control devices being deployed. If in the opinion of the traffic engineering representative and the construction inspector, the traffic control devices do not conform to established standards or are incorrectly placed or are insufficient to quantity to protect the general public, the construction inspector shall have the option to stop construction operations at no expense to the City until such time as the conditions are corrected by the Contractor.

2. Prior to removing any traffic signs or traffic signals, the Contractor shall contact the Public Works Office (PH: (210) 681-1232). Prior to completion of the contract and removal of the barricades, the Contractor shall again contact the Traffic Operations section. The barricades shall not be removed until all applicable permanent traffic signs and signals are in place.

3. It is the Contractor's responsibility to obtain and maintain temporary stop signs and all other traffic control devices required to protect the general public. If the City has removed permanent stop signs, the Contractor shall request that the signs be returned to the construction site so that they can be reinstalled by him. All permanent signs or traffic control devices missing or damaged upon completion of construction shall be replaced at the Contractor's expense.

4. The Contractor must contact the Public Works Office at (PH: (210) 681-1232) 48 hours in advance (not including weekends) of any minor street closure. It will be the Contractor's responsibility to advise the City 10 days in advance of any arterial total street closure. This much time is necessary to install advisory signs and give the public a minimum of seven days notice of the street closure.

5. As work progresses, the location of temporary traffic control devices will be adjusted and modified, as necessary by the Contractor.

6. If the need arises, additional temporary traffic control devices, special directional devices, and/or business name signs may be ordered by the traffic engineering representative at the Contractor's expense.

7. Temporary traffic control devices shall conform to the City's "Typical Sign and Barricade Standard" sheets and to the Texas Manual on Uniform Traffic Control Devices.

8. The Contractor shall be responsible for providing suitable access accommodations for school children and pedestrians.

9. Except for Slurry Seal operations, the Contractor shall provide access for delivery of mail by the U.S. Postal Service.

10. Except as provided for otherwise, the Contractor shall provide for access to residence and all

businesses at all times within all the phases of the work.

11. When construction work necessitates the utilization of vehicle paths other than the lanes normally used, traffic control markings no longer applicable shall be removed and approved temporary pavement markings and signs installed in accordance with Part VI-D of the Texas Manual On Uniform Traffic Control Devices.

12. All temporary traffic control devices, etc., shall be provided by the Contractor without direct payment, unless otherwise noted or stated.

13. The Contractor shall be required to notify all medical facilities and local businesses prior to construction.

14. Emergency vehicles shall have access to the roadway at all times.

SECTION 02580
PAVEMENT MARKINGS

PART 1 – GENERAL

This specification describes the minimum optical and physical properties required for a thermoplastic road marking compound that is to be applied in a molten state, onto a pavement surface, to provide traffic stripes and/or markings.

The appearance of the finished markings shall have a uniform surface, crisp edges with a minimum over-spray, clean cut-off, meet straightness requirements and conform to the design drawings and/or engineer instructions.

RELATED DOCUMENTS

Sheet Drawings, Details, and General Provisions of the contract.

Part 2 – MATERIALS

Thermoplastic pavement marking material shall be a product especially compounded for traffic markings for use on either asphaltic or portland cement concrete surfaces. The following composition requirements shall be met:

	White	Yellow
Binder	18% Min.	18% Min.
Ti02 (Type 2 Rutile)	12% Min.	N/A
Glass Spheres	48% Min.	48% Min.
Yellow Pigment	N/A	10% Min.

BINDERS: The alkyd binder shall consist of maleic modified rosin ester and other plasticizers.

PIGMENT: The yellow pigment used shall be an encapsulated type of heat stabilized medium lead chromate pigment with a minimum of 50 lead content or other approved heat resistant pigment.

PHYSICAL REQUIREMENTS: The Meltdown Procedure for Thermoplastic, available from the Engineer, shall be used when conducting laboratory tests to verify the following property requirements.

COLOR: The white thermoplastic shall be pure white and free from any tint. Using a Colorimeter, such as a Gardner color Difference Meter, the material shall not show deviations from a magnesium oxide color standard that are greater than the following:

The color of the yellow thermoplastic shall visually match that of FHWA PR Color #1. The daytime reflectance values and chromaticity coordinates, shall fall within the following limits:

Scale Definition	Magnesium Oxide Standard	Sample
RD	100	75%
Reflectance		
a Red-Green	0	-5 to +5
b Yellow-Blue	0	-10 to +10

Reflectance	45% Min.			
Chromaticity Coordinates x and y	Shall fall in an area border by these Coordinates:			
x	0.470	0.510	0.490	0.537
y	0.455	0.489	0.432	0.462

COLOR RETENTION: The thermoplastic materials shall maintain the color values specified in the above section for white and yellow after 72 hours of exposure to the following test: Samples shall be prepared and subjected to an ultraviolet light source as described in ASTM test method D-795.

Note: A General Electric 275 watt sun lamp (Type RS) with a built-in reflector, may be substituted for the light source.
WATER ABSORPTION: When tested in accordance with test method ASTM D570, the thermoplastic compound shall have no more than 0.5 by weight, of retained water.

SOFTENING POINT: When tested in accordance with test method ASTM E28, the compound shall have a softening point of not less than 90°F

LOW TEMPERATURE STRESS RESISTANCE: A test sample shall not crack or fail to adhere to a concrete substrate when subjected to the following low temperatures test:
A concrete substrate coated with a minimum of 32 square inches of thermoplastic material shall be immersed in cold water for one hour; then immediately placed in an insulated cold compartment and maintained at a temperature of minus 10°C for a period of 24 hours. When removed and allowed to come to room temperature, the sample shall show no cracking or flaking from the concrete substrate.

SAFETY: At the recommended application temperature, the material shall not give off fumes that are toxic or otherwise injurious to persons or property.

SPECIFIC GRAVITY: The specific gravity of the compound shall be between 1.9 and 2.3. The water displacement method shall be used to determine specific gravity.

DRYING TIME: When the material is applied at 400°F, the line shall be completely solid and show no effect of tracking after 15 minutes or at an ambient temperature of 75°F

INDENTATION RESISTANCE: The hardness shall be measured by a Shore Durometer, Type A2, as described in test method ASTM D 2240. The durometer and the panel shall be at 45°C ± 2°C with a two kilogram load applied, the scale reading shall be between 40 and 75 units after 15 seconds.
ABRASION RESISTANCE: When tested by the abrasive blasting method, the sample shall show a maximum material loss of eight grams.

IMPACT RESISTANCE: When tested according to Method A of ASTM Test Method D 256-71a, the average impact resistance of 4 separate samples shall not be less than 10 inch-pounds.

REHEATING: The thermoplastic compound shall maintain the proper physical properties outlined above, when heated to 425°F for up to six hours. After heating to 425°F for 6 hours while continually stirring at 50 to 100 RPM, the Brookfield viscosity shall not exceed 18,000 centipose at 12 RPM.

GLASS SPHERES: REFRACTIVE INDEX: The reflective glass spheres, premixed into the compound and the reflective glass spheres used for surface application shall have a refractive index of not less than 1.50 when tested by the liquid immersion method at 25°C.

ROUNDNESS: When tested according to ASTM Method D-155, a minimum of 75 percent of the glass spheres premixed into the compound and the reflective glass spheres used for surface application shall be true spheres.

GRADATION: The glass spheres both premixed into the compound and used for surface applications shall meet the gradation requirements of AASHTO M-247, Type 1, as follows:

ASHTO M-245 GRADATION

Sieve Size	Percent Passing
20	100%
30	75 to 95%
50	15 to 35%
100	5 to 5%

INTER-MIX BEAD COATING: The glass spheres premixed into the compound shall have an adhesion promoting coating which is specific for the thermoplastic system. The presence of a coating specific to Thermoplastic system shall be determined by testing for the detection of a silane adhesion coating on intermix glass spheres.

DROP-ON BEAD COATING: Moisture Resistance: The glass spheres for surface application shall be resistant to clumping caused by moisture and shall pass the moisture resistance test described in a subsequent section of this document.

The glass spheres must pass this moisture resistance test before being tested for the following anti-wicking and adhesion properties.

Anti-wicking (Flotation): The glass spheres for surface application, which have passed the moisture resistance test shall be tested for anti-wicking by the attached Test Method for flotation and anti-wicking.

The anti-wicking properties of the glass spheres shall be demonstrated if the spheres exhibit retroreflection on the surface of the thermoplastic material.

Adhesion: The glass spheres for surface application that have passed both the moisture resistance test and the Anti-wicking test shall be capable of adhering to the surface of the plastic as determined by the attached Test Method for bead adhesion.

When tested by this procedure, a minimum of the 75 of the beads shall remain bonded to the surface of the thermoplastic.

PART 3 – APPLICATION

SURFACE PREPARATION: MOISTURE: All surfaces shall be inspected for moisture content prior to application of thermoplastic. Approximately two square feet of a clear plastic or tar paper shall be laid on the road surface and held in place for 15 to 20 minutes. The underside of the plastic or tar paper shall then be inspected for a build up of condensed moisture from the road surface. If the amount of condensed moisture is of a sufficient amount to result in water dripping from the plastic or tar paper when held in a vertical position, thermoplastic shall not be applied. This moisture test shall be repeated until the moisture in the road surface has been allowed to evaporate to a level whereby there is not excessive build up of condensed moisture on the underside of the plastic or tar paper.

CLEANING: All surfaces shall be clean and dry before thermoplastic can be applied. Loose dirt and debris shall be removed by blowing compressed air over the area to be striped. If the thermoplastic is to be applied over existing

paint lines, the paint line shall be swept with a mechanical sweeper or wire brush to remove poorly adhered paint and dirt that would interfere with the proper bonding or the thermoplastic. Latence and curing compound shall be removed from all new Portland cement concrete surfaces by loose grain abrasive pressure blasting or wire brushing.

LAYOUT: The pavement markings shall be placed in proper alignment with guidelines established on the roadway. Deviation from the alignment established shall not exceed 2-inches and, in addition, the deviation in alignment of the marking being placed shall not exceed 1-inch per 200 feet of roadway nor shall any deviation be abrupt.

Longitudinal markings shall be offset at least 2-inches from construction joints of portland cement concrete surfaces and joints and shoulder breaks of asphalt surfaces.

PRIMER AND SEALER: Primer sealer shall be used on all portland cement concrete surfaces. A primer sealer shall be used on asphalt surfaces that are over two years old and/or on asphalt surfaces that are worn or oxidized to a condition where 50 percent or more of the wearing surface is exposed aggregate.

PRIMER SEALER APPLICATION: When required as described, the primer-sealer shall be applied to the road surface in a continuous film at a minimum thickness of 3 to 5 mils. Before the Thermoplastic is applied, the primer-sealer shall be allowed to dry to a tacky state. The thermoplastic shall be applied with 4 hours after the primer application.

TEMPERATUREREQUIREMENTS:
AMBIENT CONDITIONS: The ambient air and road surface shall be 55°F and rising before application of thermoplastic can begin.

MATERIAL REQUIREMENTS: The thermoplastic compound shall be heated from 400°F to 450°F and shall be a minimum of 400°F as it makes contact with road surface during application. An infrared temperature gun shall be used to determine the temperature of the thermoplastic as it is being applied to the road surface.

DROP-ON GLASS SPHERE APPLICATION: APPLICATION RATE: Retroreflective glass spheres shall be applied at the rate of 10 pounds per 100 square feet of applied markings. This application rate shall be determined by confirming the following consumption rates:

200 pounds of drop on glass spheres per ton of applied thermoplastic when the thermoplastic is being applied at 0.090 inch film thickness.

150 pounds of drop on glass spheres per ton of applied thermoplastic when the thermoplastic is being applied at 0.125 inch thickness.

APPLICATION METHOD: Retroreflective glass spheres shall be applied by a mechanical dispenser property calibrated and adjusted to provide proper application rates and uniform distribution of the spheres across the cross section of the entire width of the line. To enable the spheres to embed themselves into the sphere dispenser shall be positioned immediately behind the thermoplastic application device. This insures that the spheres are applied to the thermoplastic material while it is still in the molten state.

APPLICATION FILM THICKNESS: HIGH WEAR LONGITUDINAL AND TRANSVERSE MARKING: All lane lines, center lines, transverse markings and pavement markings in high traffic areas shall have a minimum film thickness of 0.125 inch at the edges and a maximum of 0.188 inch at the center. A minimum average film thickness of 0.125 inch shall be maintained.

PACKAGING: CONTAINERS: The thermoplastic material shall be delivered in 50 pound [23 kilogram] cardboard containers or 50 pound [23 kilogram] bags of sufficient strength to permit normal handling during shipment and handling on the job without loss of material.

LABELING: Each container shall be clearly marked to indicate the color of the material, the process batch number and/or manufacturer’s formulation number, the manufacturer's name and address and the date of manufacture.

SAMPLING AND TESTING: SAMPLING PROCEDURE: Random check samples may be taken at the job site at the discretion of the City Engineer. The City reserves the right to conduct whatever tests are deemed necessary to identify component materials and verify results of specific tests indicated in conjunction with the specification requirements.

The sample(s) shall be labeled as to the shipment number, lot number, date, quantity, and any other pertinent information. At least three randomly selected bags shall be obtained from each lot. A 10 pound sample from the three bags shall be submitted for testing and acceptance. The lot size shall be approximately 44,000 pounds unless the total order is less than this amount.

End Section 02580