



**CITY OF LEON VALLEY**

**BID #2020-02**

# **Grass Hill Elevated Storage Tank Painting and Rehabilitation Project**



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# GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

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**CHECK LIST OF ITEMS TO SUBMIT WITH BID**

- Addenda (if any)
- Bid Bond
- Bid Form
- Performance Bond
- Payment Bond
- Contractor's Disclosure Statement
- Conflict of Interest Questionnaire
- Proof of Insurance including WC

## **SECTION 1 - BID ADVERTISEMENT**

ADVERTISEMENT FOR **Bid #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION** for the City of Leon Valley. The construction estimate is \$326,000.00.

Sealed bids will be received until **Thursday, February 20, 2020, at 10:00 a.m.** by the Purchasing Agent of the City of Leon Valley, Texas, 6400 El Verde, Leon Valley, TX 78238. Bids will be publicly opened and read aloud at 10:00 a.m. in the Council Chamber of the Leon Valley City Hall located at 6400 El Verde Road, Leon Valley, TX 78238.

Specifications are free and only available electronically. Please visit the City of Leon Valley website at [www.leonvalleytexas.gov/government/finance/purchasing.php](http://www.leonvalleytexas.gov/government/finance/purchasing.php) or Public Purchase at [www.publicpurchase.com](http://www.publicpurchase.com). There will be a non-mandatory pre-bid meeting held at the Leon Valley City Hall located at 6400 El Verde on **Tuesday, February 11, 2020 at 2:30 p.m.**

Bidders must use the bid form provided in the specifications and submit bid in a sealed envelope. The outside of the envelope must be clearly endorsed "**Bid #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION**". 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 rejected and 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 #2016-005 included herein, must be paid on this locally funded project.

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

The City of Leon Valley reserves the right to reject any and all bids, to award the bid to the lowest responsible bidder or to the bidder who provides the best value to the City, and to waive any informality or technicality in the bid. The City agrees to take action within sixty (60) days after the bid opening.

## SECTION 2 - INSTRUCTIONS TO BIDDERS

### 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

### 2 - BIDDING DOCUMENTS REQUIRED

2.1 Complete Bidding Documents are available electronically only and may be downloaded online at [www.leonvalleytexas.gov/government/finance/purchasing.php](http://www.leonvalleytexas.gov/government/finance/purchasing.php) or Public Purchase at [www.publicpurchase.com](http://www.publicpurchase.com).

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.

### 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 Other 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, which form is included in this document.
- E. CONTRACTOR shall submit with his bid, a copy of his Worker's Compensation insurance certificate.

## 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. There are no reports or drawings relating to a Hazardous Environmental Condition identified at the Site.

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. 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.

4.5 Reference is made to 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.

4.6 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. 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;

E. 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;

F. 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;

G. 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;

H. 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

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

4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement, 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.

## 5 - PRE-BID CONFERENCE

5.1 There will be a non-mandatory pre-bid meeting held at the City of Leon Valley City Hall located at 6400 El Verde on **Tuesday, February 11, 2020 at 2:30 p.m.**

## 6 - SITE AND OTHER AREAS

6.1 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.

## 7 - INTERPRETATIONS AND ADDENDA

7.1 All questions about the meaning or intent of the Bidding Documents are to be submitted to OWNER via email with "**Bid #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION**" placed in the subject line to Byron Sanderfer, P.E., City Engineer at [BSANDERFER@LNVINC.COM](mailto:BSANDERFER@LNVINC.COM). Once an email is received by LNV, Inc., a received response will be emailed back to the sender. It is the sender's responsibility to verify receipt of email. Interpretations or clarifications

considered necessary by OWNER in response to such questions will be issued as an Addendum and posted on the City of Leon Valley website at

[www.leonvalleytexas.gov/government/finance/purchasing.php](http://www.leonvalleytexas.gov/government/finance/purchasing.php) and on Public Purchase at [www.publicpurchase.com](http://www.publicpurchase.com). 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. For questions unrelated to meaning or intent, you may call Byron Sanderfer, P.E. at (210) 822-2232.

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

## 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 check, a cashier's check, or a Bid Bond issued by a surety meeting the requirements set forth herewith.

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 Within seven days from the date the bid is awarded by City Council, bid securities in the form of a Certified Check or a Cashier's Check of non-successful Bidders will be returned.

## 9 - CONTRACT TIMES

9.1 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.

## 10 - LIQUIDATED DAMAGES

10.1 Provisions for liquidated damages are set forth in the Agreement (Section 6.3 of Performance Bond).

## 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

11.1 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.

## 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.

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

## 13 - PREPARATION OF BID

13.1 The Bid form is included with the Bidding Documents.

13.2 All blanks on the Bid form shall be completed by clearly printing in ink or by typewriter and the Bid signed.

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 venture 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 clearly 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, telephone number, and email address 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.

#### 14 - BASIS OF BID; EVALUATION OF BIDS

##### 14.1 Lump Sum

A. Bidders shall submit a Lump Sum price for the total project per plans and specifications.

B. 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.

#### 15 - SUBMITTAL OF BID

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

15.2 For consideration, a Bid shall be submitted no later than the date and time prescribed and at the place indicated in the bid advertisement and shall be enclosed in an opaque sealed envelope plainly marked with "**Bid #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION**", 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  
Leon Valley, TX 78238

#### 16 - MODIFICATION AND WITHDRAWAL OF BID

16.1 Once a Bid is submitted, it may be withdrawn or retrieved for the purpose of modification prior to the deadline date and time. If a Bid is retrieved for modification,

it is the Bidders responsibility to make sure the bid is properly sealed and labeled and resubmitted prior to the deadline.

16.2 If within 24 hours after Bids are opened any Bidder provides 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.

## 17 - OPENING OF BIDS

17.1 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.

## 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.1 All Bids will remain subject to acceptance for the period of time stated in the Bid form.

## 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 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.

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 City Council will either reject any or all bid or award the contract to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

## 20 - CONTRACT SECURITY AND INSURANCE

20.1 When the Successful Bidder delivers the executed Agreement to OWNER, it must be accompanied by such Bonds and certificates of insurance.

## 21 - SIGNING OF AGREEMENT

21.1 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.

## 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 Title 34 Texas Administrative Code §3.291.

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

C. Exemption notice will be provided upon request.

## 23 - RETAINAGE

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

## 24 - CONTRACTS TO BE ASSIGNED

24.1 Bidders may examine the documents for these contracts at the Issuing Office.

## 25 - PARTNERING

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

## SECTION 3 SCOPE OF WORK

### 1. Description of Work

#### 1.1. BID #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

#### 1.2. **Base Bid:**

GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION  
Conduct interior cleaning, coating, and general upgrades to the Grass Hill Elevated Storage Tank for the City of Leon Valley:

1. Furnish all materials, equipment, labor, superintendence and incidental work to abrasive blast per SSPC-SP6, clean, prime and coat with Containment and Dust Collection the **Exterior** of the existing 150,000-gallon EST, all appendages, ladder, vent, hatch, railing, tank piping, valves, etc., as indicated on the drawings and specifications **part 2.04.A** and **part 3.07** except where specifically covered by other bid items.
2. Furnish all materials, equipment, labor, superintendence and incidental work to spot blast for inspection and identification of repairs, abrasive blast per SSPC-SP10, clean, prime, stripe coat and coat with Dehumidification the **Interior** of the existing 150,000-gallon EST, all appendages, ladder, vent, hatch, weir box, etc., as indicated on the drawings and specifications **part 2.04.B** and **part 3.06**, except where specifically covered by other bid items.
3. Furnish all materials, equipment, labor, superintendence and incidental work to **Dehumidify** the interior of the existing 150,000-gallon EST, during surface preparation and coating, including hoses, filters, etc., as indicated on the drawings and specifications **part 3.06**, except where specifically covered by other bid items.
4. Furnish all materials, equipment, labor, superintendence and incidental work to provide **Containment and Dust Collection** as indicated on the drawings and specifications **part 3.07**, except where specifically covered by other bid items.
5. Furnish all materials, equipment, labor, superintendence and incidental work to perform **General Repairs**; grinding, welding and general work to repair corrosion related surfaces, exterior ladder replacement, balcony mid-railing modifications and repositioning electrical conduit and obstacles preventing safe use and rendering all OSHA Compliant as indicated on the drawings and specifications, except where specifically covered by other bid items.
6. Furnish all materials, equipment, labor, superintendence and incidental work to install a 20"Ø AWWA approved aluminum **Roof Vent**, including a new weld-on C.S. flanged neck to accommodate the bolt on installation of the new aluminum vent, as indicated on the drawings and specifications except where specifically covered by other bid items. **Provide drawing with P.E. seal for submittal.**
7. Furnish all materials, equipment, labor, superintendence and incidental work to perform **Interior and Exterior ladder replacement**, balcony mid-railing modifications and rendering all OSHA Compliant as indicated on the drawings and specifications, except where specifically covered by other bid items.

8. Furnish all materials, equipment, labor, superintendence and incidental work to install a **New Riser Manway** 18"x24" oval or 24" diameter AWWA D100 approved and TCEQ compliant as indicated on the drawings and specifications, except where specifically covered by other bid items.
9. Furnish all materials, equipment, labor, superintendence and incidental work to perform **Caulking** and or **Seam Sealing** work to seams and areas as deemed necessary, as indicated on the drawings and specifications **part 3.01.A.2**, except where specifically covered by other bid items.
10. Furnish all materials, equipment, labor, superintendence and incidental work to perform **removing and reinstalling electrical conduit and antennas** as needed for the tank rehabilitation.

## SECTION 4 PROJECT SPECIFICATIONS AND SPECIAL PROVISIONS

1. Unless otherwise noted, modified by this section, or directed by the ENGINEER, all materials and methods of construction shall be in accordance with City of San Antonio and TxDOT Standard Specifications for Construction (most current edition) and associated special provisions.
2. City of San Antonio San Antonio Water System and TxDOT Standard Specifications for Construction and associated Special Provisions are made a part of this section by reference. It is the responsibility of all bidders to be familiar with these documents prior to submitting a bid. All items are available online at:

[http://www.sanantonio.gov/TCI/CurrentVendorResources/Standard SpecificationsandDetails.aspx](http://www.sanantonio.gov/TCI/CurrentVendorResources/StandardSpecificationsandDetails.aspx)

<http://saws.org/>

<https://www.dot.state.tx.us/business/specifications.htm>

### 2.1.1 Special Specification

Add Item **Technical Specification, Section TS** included in **ATTACHMENT L**

3. All spoil materials salvaged by operations shall become the property of the contractor. Reuse for subsequent items in this contract will require the prior approval of the Engineer.
4. Unless specifically identified with a pay item, excavation and the removal of existing materials shall be considered unclassified excavation and subsidiary to completion of the project.
5. The contractor shall secure TPDES permits prior to mobilization. In additions to measures provided for in the permit, the Contractor also shall provide silt fence, sediment traps and other Sediment Control measures as directed by the ENGINEER. All sediment control measures and cleaning of existing streets impacted by the contractor's work shall be subsidiary to completion of the project.
6. Temporary Traffic Control shall conform to Part 6, Texas Manual on Uniform Traffic Control Devices (TMUTCD), current edition. (No Separate Pay).
7. All questions received in accordance with the email provisions (Instructions to Bidders, 7.1) by 12:00 pm the day prior to the Pre-Bid Conference will be addressed at the conference. An addendum will be issued subsequent to the Pre-Bid Conference that will address these and other questions that arise at the conference.

## **SECTION 5 GENERAL CONDITIONS**

### **1 - DEFINITIONS**

Defined Terms – 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.

- A. Addenda--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.
- B. Agreement--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.
- C. 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.
- D. 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.
- E. Bid--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- F. Bidding Documents--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- G. Bidding Requirements--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.
- H. Bonds--Performance and payment bonds and other instruments of security.
- I. 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.
- J. 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.
- K. 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.
- L. 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.

M. 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.

N. 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.

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

P. 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.

Q. 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.

R. 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.

S. 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.

T. Hazardous Environmental Condition--The presence at the Site of Asbestos, PCBs, Petroleum,

U. 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.

V. 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.

- W. 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.
- X. Liens--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
- Y. 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.
- Z. 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.
- AA. 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.
- BB. 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.
- CC. 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.
- DD. PCBs--Polychlorinated biphenyls.
- EE. 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.
- FF. 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.
- GG. 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.
- HH. 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.
- II. Resident Project Representative--The authorized representative of OWNER who may be assigned to the Site or any part thereof.
- JJ. 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.

KK. 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.

LL. 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.

MM. 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.

NN. 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.

OO. 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.

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

QQ. 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.

RR. 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.

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

TT. 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.

UU. 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.

VV. 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.

## 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 the Contract Documents.

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

C. Defective -- 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).

### 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.

### 3 - PRELIMINARY MATTERS

#### 3.1 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.

#### 3.2 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.

#### 3.3 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.

#### 3.4 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.

#### 3.5 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.

D. The CONTRACTOR shall be responsible for the notifying all property owners within and adjacent to the project twenty-four (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 are to be removed by the OWNER.

### 3.6 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, procedures, processing Applications for Payment, and maintaining required records.

### 3.7 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. 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 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.

#### 4 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

##### 4.1 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.

##### 4.2 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.

##### 4.3 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) until an amendment or supplement to the Contract Documents has been issued; 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 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).

#### 4.4 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.

#### 4.5 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:

1. 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

2. shall not reuse any of such Drawings, Specifications, manual, code, or instruction (whether or not specifically incorporated by reference in the

Contract Documents); 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.

## 5 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS

### 5.1 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.

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

C. 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.

### 5.2 Subsurface and 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 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), 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.

C. OWNER's Review: After receipt of written notice, 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.

D. 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.

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 required time.

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. 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.

#### 5.4 Hazardous Environmental Conditions at Site

A. 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.

B. 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); 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.

C. 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.

D. 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. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others.

E. 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 shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

F. 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 shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

#### 5.5 Damage to Existing Streets

A. The asphalt pavement, curbs and existing sidewalks adjacent to the work area are 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.

### 6 - BONDS AND INSURANCE

#### 6.1 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, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements.

#### 6.2 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.

### 6.3 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.

### 6.4 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 to be purchased and maintained shall:

1. with respect to insurance required, include as additional insured (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 insured, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any

of all such additional insured, and the insurance afforded to these additional insured 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;

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 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; 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).

#### 6.5 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR, 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.

#### 6.6 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 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 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.
- D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified 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, 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.

## 6.7 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased will protect OWNER, CONTRACTOR, Subcontractors, OWNER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insured or additional insured (and the officers, directors, partners, employees, agents, 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 insured or additional insured 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 insured or additional insured (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, after Substantial Completion, or after final payment.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss 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.

## 6.8 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required will be adjusted with OWNER and made payable to OWNER as fiduciary for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause. 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.

#### 6.9 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 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). 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.

#### 6.10 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, no such use or occupancy shall commence before the insurers providing the property insurance 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.

#### 6.11 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. 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.

## 7 - CONTRACTOR'S RESPONSIBILITIES

### 7.1 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.

### 7.2 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.

### 7.3 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.

#### 7.4 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to OWNER for acceptance 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. Such adjustments may only be made by a Change Order or Written Amendment.

#### 7.5 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. 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, 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 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.

C. Owner's Evaluation: OWNER will be allowed a reasonable time within which to evaluate each proposal or submittal made. 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.

#### 7.6 Concerning Subcontractors, Suppliers, and Others

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER), 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, 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.

## 7.7 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.

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.

## 7.8 Taxes

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

## 7.9 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.

## 7.10 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.

#### 7.11 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.

A. 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 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 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

#### 7.12 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.

#### 7.13 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.

#### 7.14 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.

#### 7.15 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 or as OWNER and CONTRACTOR may otherwise agree in writing.

#### 7.16 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.

#### 7.17 Indemnification

To the fullest extent permitted by law the contractor shall indemnify and hold harmless the owner, and agents and employees of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), but only to the extent caused by the negligent acts or omissions of the contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person.

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

### 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 within thirty (30) days of receipt of an application for payment.

#### 8.4 Insurance

- A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance.

#### 8.5 Change Orders

- A. OWNER is obligated to execute Change Orders.

#### 8.6 Inspections, Tests, and Approvals

- A. OWNER's responsibility in respect to certain inspections, tests, and approvals.

#### 8.7 Undisclosed Hazardous Environmental Condition

- A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition.

#### 8.8 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.

### 9 - OWNER'S STATUS DURING CONSTRUCTION

#### 9.1 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 themselves against defective Work.

- B. OWNER's visits and observations are subject to all the limitations on OWNER's authority and responsibility, 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 Project Manager to assist OWNER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Project Manager and assistants will be 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.

## 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.

## 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, whether or not the Work is fabricated, installed, or completed.

## 9.6 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.

## 9.7 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, a request for a formal decision.

B. When functioning as interpreter and judge, 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 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) 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.

## 9.8 Limitations on OWNER's Authority and Responsibilities

A. Neither OWNER's authority or responsibility under this 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 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 shall also apply to OWNER's Consultants, Resident Project Representative, and assistants.

## 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.

### 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, except in the case of an emergency or in the case of uncovering Work.

### 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, (ii) required because of acceptance of defective Work or OWNER's correction of defective Work, 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; 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.

### 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 Consultant 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. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions. 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 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 on the 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, a written notice of intent 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, 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.

## 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.

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.

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, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications, 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.

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.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined, 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 significantly deviate from the estimated quantity of such item indicated in the Agreement; and

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

2. 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.

### 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.

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.

12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES reflects actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

#### 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.

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); 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; 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, on the basis of the Cost of the Work (determined as provided) plus a CONTRACTOR's fee for overhead and profit (determined as provided).

#### 12.2 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. 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, fires, floods, epidemics, abnormal weather conditions, or acts of God.

### 12.3 Delays Within CONTRACTOR's Control

A. The Contract Times 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.

### 12.4 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.

### 12.5 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.

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

## 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.

### 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;
2. that costs incurred in connection with tests or inspections conducted shall be paid as provided; 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 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. 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.

### 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

A. 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 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 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 are in addition to any other obligation or warranty. The provisions 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. 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, 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 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. 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.

## 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

### 14.1 Schedule of Values

A. The schedule of values established as provided 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 seven (7) 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 five (5) 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, 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. 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; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated.

C. Payment Becomes Due

1. Within thirty days (30) after presentation of the Application for Payment to OWNER with OWNER's approval, the amount recommended will (subject to the provisions) 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.

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.

#### 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 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 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, 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; (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 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. 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 (30) 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, 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.

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.

## 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 as adjusted from time to time;
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 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 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 are not intended to preclude CONTRACTOR from making a Claim 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.

### 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, 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.

### 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, 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 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 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;

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.

## SECTION 6 SUPPLEMENTARY CONDITIONS

### 1 - DEFINITIONS & TERMINOLOGY

#### 1.1 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 the General Conditions.

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

C. 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 – AVAILABILITY OF LANDS

A. 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.

### 3 – SUBSURFACE AND 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. 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.

C. 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.

D. 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.

### 4 – CERTIFICATES OF INSURANCE

4.1 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") - 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:
    - i. certificate of coverage, prior to the other person beginning work on the project; and
    - ii. 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 perform as required, 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 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 \$1,000,000 per person \$3,000,000 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 - \$ 2,000,000 each occurrence with a deductible of not more than \$ 2,500.

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:

a. Bodily Injury - \$ 2,000,000 each accident

b. Property Damage Liability - \$ 300,000 each accident; \$ 3,000,000 aggregate.

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.

## 5 – STREET AND DRIVEWAY CLOSING

5.1 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.

### 5.2 Barricades and Flagmen

A. 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.

1. Barricades and traffic control devices shall follow the Texas Uniform Municipal Control Devices standards to the satisfaction of the OWNER.

2. The OWNER has the right to prevent work from starting until suitable traffic control devices are provided, in the opinion of the OWNER.

3. 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.

## 6 – HAZARD COMMUNICATIONS PROGRAM

A. 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.

## 7 – 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.

## 8 - POWER FOR CONSTRUCTION

A. The CONTRACTOR shall make his own arrangements for electric service and shall purchase all power required for his operation.

## 9 - 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 7 WAGES AND COMPENSATION**

### **1 - GENERAL STATEMENT**

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 and are included instruments of this Contract and full compliance with same shall be required.

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.

### **2 - WAGE & HOUR OFFICE, PUBLIC WORKS, RESPONSIBILITIES**

A. The City of Leon Valley's Project Manager 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 Project Manager from the City Manager are being implemented.

### 3 - CLAIMS & DISPUTES PERTAINING TO WAGE RATES

Claims and disputes not promptly and routinely settled by the CONTRACTOR and/or 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 Public Works Department, City of Leon Valley, for further investigation. Claims and disputes not reported by the employee to the Project Manager in writing within sixty (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.

### 4 - BREACH OF WAGE & LABOR STANDARDS PROVISIONS

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 un-remedied 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 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.

### 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.

## 6 - 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.

## 7 - PAYMENT OF CASH EQUIVALENT FRINGE BENEFITS

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

C. 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. An employee is not allowed to receive less than the minimum hourly basic rate of pay specified in the wage determination decision.

## 8 - 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.

## 9 - 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 Project Manager 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 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.

## 10 - POSTING WAGE DETERMINATION DECISIONS AND NOTICE TO LABORERS'/ MECHANICS' STATEMENTS

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, Leon Valley, TX 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 Project Manager within the sixty (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.

## 11 - 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 Project Manager, 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 Project Manager and shall contain a "Weekly Statement of Compliance", as called for by the Contract Documents. Such payrolls will be forwarded to Public Works, Project Manager, City of Leon Valley, 6400 El Verde Road, Leon Valley, TX 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.

## 12 - LABOR DISPUTES

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 legal 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.

### 13 - COMPLAINTS, PROCEEDINGS, OR TESTIMONY BY EMPLOYEES

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.

### 14 - "ANTI-KICKBACK" PROVISION

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.

### 15 - "FALSE INFORMATION"

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.

### 16 - JOB SITE CONDITIONS

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.

### 17 - 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.

#### 18 - PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

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.

#### 19 - GENERAL INDEPENDENT CONTRACTOR CLAUSE

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 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.

#### 20 - 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.

## 21 - 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.

## 22 - 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 8 OTHER CONDITIONS**

### **1 - MATERIAL SUBMITTAL**

The Contractor will supply three copies of submittal data for approval prior to ordering any material for the project.

### **2 - 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, unless approved by the Director of Public Works. The contractor will not receive a notice to proceed with the work until utility and City preparation work is complete.

### **3 - 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.

### **4 - 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. Additionally, 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) 684-3215.

### **5 - STREET CLOSING**

The contractor is to properly barricade each segment of street to be worked on after giving property owners 24-hour notice. Barricades will not be set before 7:30 a.m. Each street shall be opened at the end of day.

### **6 - 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 must be utilized. 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.

## 7 - 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.

## 8 - 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.

## 9 - 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.

## 10 - WATER VALVE COVERS, MANHOLES, AND STREET REFLECTORS

The Contractor shall protect existing water valve covers, manhole lids, and street reflectors from being coated by work. Before completion of the work, the contractor shall remove any material placed over these facilities.

## 11 - INSPECTION

This work will be inspected by the City and all change orders or communication concerning the work shall be directed to the City.

## 12 - 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.

## 13 - 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.

#### 14 - 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.

#### 15 - 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, and 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.

## 16 - 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.

## 17 - PROJECT CONSTRUCTION SITE

The contractor shall provide his own temporary yard for stock pile of materials and storage of vehicle. City property may not be available for this purpose.

**ORDINANCE No. 16-005**

**AN ORDINANCE REPEALING AND REPLACING ORDINANCE NUMBER 2014-02-10-02 PROVIDING FOR A MINIMUM PREVAILING WAGE BY ADOPTING PREVAILING WAGE RATES FOR PUBLIC WORKS CONSTRUCTION AS DETERMINED BY THE U.S. DEPARTMENT OF LABOR, AND OTHER MATTERS IN CONNECTION THEREWITH.**

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**WHEREAS**, the City of Leon Valley (the "City") is required by Chapter 2258 of the Texas Government Code to determine the prevailing rate of per diem, and a prevailing rate for legal holiday and overtime work, in the locality for each craft and type of worker needed to perform a contract for public works construction; and

**WHEREAS**, Chapter 2258 allow municipalities to use prevailing wage rates as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C. Section 276a, et seq.), and its subsequent amendments, in lieu of conducting wage rate surveys and compiling wage rate schedules;

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS THAT:**

Section 1. The City Council hereby elects to use the prevailing wage rates as determined by the U.S. Department of Labor in accordance with the Davis-Bacon Act (40 U.S.C Section 276a, et seq.), and its subsequent amendments, in lieu of conducting wage rate surveys and compiling wage rate schedules.

Section 2. If and when the U.S. Department of Labor's wages rate schedule may be revised, updated, or amended, such revisions, updates and amendments shall automatically apply for the construction of public works in the City, but shall not be applied or enforced retroactively to any public works project for which a formal agreement has been executed prior to the revision, update or amendment.

Section 3. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 4. All Ordinances or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance is hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 5. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 6. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

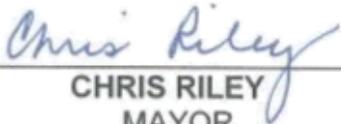
Section 7. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, Texas Government Code, as amended.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:**

That Ordinance Number 2014-02-10-02 is hereby amended by Ordinance No. 16-005 repealing the replacing the existing ordinance and exhibits.

**PASSED, ADOPTED AND APPROVED** by the City Council of the City of Leon Valley this the 16th day of February, 2016.

APPROVED

  
CHRIS RILEY  
MAYOR

Attest:

  
SAUNDRA PASSAILAIGUE, TRMC  
City Secretary

Approved as to Form:

  
ROXANN PAIS COTRONEO  
City Attorney





1/23/2020

beta.SAM.gov

Flagger.....	\$ 9.45
Laborer, Common.....	\$ 10.50
Laborer, Utility.....	\$ 12.27
Pipelayer.....	\$ 12.79
Work Zone Barricade Servicer.....	\$ 11.85
PAINTER (Structures).....	\$ 18.34
POWER EQUIPMENT OPERATOR:	
Agricultural Tractor.....	\$ 12.69
Asphalt Distributor.....	\$ 15.55
Asphalt Paving Machine.....	\$ 14.36
Boom Truck.....	\$ 18.36
Broom or Sweeper.....	\$ 11.04
Concrete Pavement Finishing Machine.....	\$ 15.48
Crane, Hydraulic 80 tons or less.....	\$ 18.36
Crane, Lattice Boom 80 tons or less.....	\$ 15.87
Crane, Lattice Boom over 80 tons.....	\$ 19.38
Crawler Tractor.....	\$ 15.67
Directional Drilling Locator.....	\$ 11.67
Directional Drilling Operator.....	\$ 17.24
Excavator 50,000 lbs or Less.....	\$ 12.88
Excavator over 50,000 lbs...\$	17.71
Foundation Drill, Truck Mounted.....	\$ 16.93
Front End Loader, 3 CY or Less.....	\$ 13.04
Front End Loader, Over 3 CY.\$	13.21
Loader/Backhoe.....	\$ 14.12
Mechanic.....	\$ 17.10
Milling Machine.....	\$ 14.18
Motor Grader, Fine Grade...\$	18.51
Motor Grader, Rough.....	\$ 14.63
Pavement Marking Machine...\$	19.17
Reclaimer/Pulverizer.....	\$ 12.88
Roller, Asphalt.....	\$ 12.78
Roller, Other.....	\$ 10.50
Scraper.....	\$ 12.27
Spreader Box.....	\$ 14.04
Trenching Machine, Heavy...\$	18.48
Servicer.....	\$ 14.51
Steel Worker	
Reinforcing.....	\$ 14.00
Structural.....	\$ 19.29
TRAFFIC SIGNAL INSTALLER	
Traffic Signal/Light Pole Worker.....	\$ 16.00
TRUCK DRIVER	
Lowboy-Float.....	\$ 15.66
Off Road Hauler.....	\$ 11.88
Single Axle.....	\$ 11.79
Single or Tandem Axle Dump Truck.....	\$ 11.68
Tandem Axle Tractor w/Semi Trailer.....	\$ 12.81

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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

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

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

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

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and

classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

#### Union Average Rate Identifiers

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

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

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#### 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.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator

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

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

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

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

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

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END OF GENERAL DECISION

"

**PROJECT IDENTIFICATION:**

**City of Leon Valley**

**Bid # 2020-02**

**“GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION”**

**THIS BID IS SUBMITTED TO:**

City of Leon Valley  
Purchasing Agent  
6400 El Verde  
Leon Valley, TX 78238

1.1 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the 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.

2.1 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 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 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.

4.1 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.

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

6.1 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with 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

8.1 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 \_\_\_\_\_, 2020.

State Contractor License No. \_\_\_\_\_. (If applicable) If Bidder is:

An Individual

Name (typed or clearly 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 clearly 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 clearly 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 Venture Name: \_\_\_\_\_ (SEAL)

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

Name (typed or clearly printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Joint Venture Name: \_\_\_\_\_ (SEAL)

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

Name (typed or clearly printed): \_\_\_\_\_

Title: \_\_\_\_\_

Business address: \_\_\_\_\_

Phone No.: \_\_\_\_\_ FAX No.: \_\_\_\_\_

Phone, Fax number, email, and mail address for receipt of official communications:

\_\_\_\_\_

\_\_\_\_\_

(Each joint venture 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.)

**UNIT PRICE BID ITEMS**

Bid #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

Amounts are to be shown in both words and numeric figures. In case of discrepancy, the amount shown in words will govern.

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
1	Furnish all materials, equipment, labor, superintendence and incidental work to abrasive blast per SSPC-SP6, clean, prime and coat with Containment and Dust Collection the <b>Exterior</b> of the existing 150,000-gallon EST, all appendages, ladder, vent, hatch, railing, tank piping, valves, etc., as indicated on the drawings and specifications <b>part 2.04.A</b> and <b>part 3.07</b> except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
2	Furnish all materials, equipment, labor, superintendence and incidental work to spot blast for inspection and identification of repairs, abrasive blast per SSPC-SP10, clean, prime, stripe coat and coat with Dehumidification the <b>Interior</b> of the existing 150,000-gallon EST, all appendages, ladder, vent, hatch, weir box, etc., as indicated on the drawings and specifications <b>part 2.04.B</b> and <b>part 3,06</b> , except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
3	Furnish all materials, equipment, labor, superintendence and incidental work to <b>Dehumidify</b> the interior of the existing 150,000-gallon EST, during surface preparation and coating, including hoses, filters, etc., as indicated on the drawings and specifications <b>part 3.06</b> , except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
4	Furnish all materials, equipment, labor, superintendence and incidental work to provide <b>Containment and Dust Collection</b> as indicated on the drawings and specifications <b>part 3.07</b> , except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
5	Furnish all materials, equipment, labor, superintendence and incidental work to perform <b>General Repairs</b> ; grinding, welding and general work to repair corrosion related surfaces, repositioning electrical conduit and obstacles preventing safe use and rendering all OSHA Compliant as indicated on the drawings and specifications, except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
6	Furnish all materials, equipment, labor, superintendence and incidental work to install a 20"Ø AWWA approved aluminum <b>Roof Vent</b> , including a new weld-on C.S. flanged neck to accommodate the bolt on installation of the new aluminum vent, as indicated on the drawings and specifications except where specifically covered by other bid items. <b>Provide drawing with P.E. seal for submittal.</b>	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
7	Furnish all materials, equipment, labor, superintendence and incidental work to perform <b>Interior and Exterior ladder replacement</b> , balcony mid-railing modifications and rendering all OSHA Compliant as indicated on the drawings and specifications, except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
8	Furnish all materials, equipment, labor, superintendence and incidental work to install a <b>New Riser Manway 18"x24" oval or 24" diameter AWWA D100 approved and TCEQ compliant</b> as indicated on the drawings and specifications, except where specifically covered by other bid items.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_  
dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
9	Furnish all materials, equipment, labor, superintendence and incidental work to perform <b>Caulking</b> and or <b>Seam Sealing</b> work to seams and areas as deemed necessary, as indicated on the drawings and specifications <b>part 3.01.A.2</b> , except where specifically covered by other bid items.	50	Per Tube	\$	\$

Price/Tube \_\_\_\_\_ dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_ dollars

and \_\_\_\_\_ cents

ITEM	DESCRIPTION	QTY	UNITS	UNIT PRICE	TOTAL PRICE
10	Furnish all materials, equipment, labor, superintendence & incidental work to perform <b>removal &amp; reinstalling electrical conduit and antennas</b> as needed for tank rehabilitation. Includes coordination with North Side Independent School.	1	L.S.	\$	\$

Price/LS \_\_\_\_\_ dollars

and \_\_\_\_\_ cents

Total Price \_\_\_\_\_ dollars

and \_\_\_\_\_ cents

Total Base Bid for **GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION** to be shown in both words and numeric figures.

In case of discrepancy, the amount shown in words will govern.

**Total Base Bid:** \_\_\_\_\_

\_\_\_\_\_ Dollars

and \_\_\_\_\_ cents

ATTACHMENT C 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  
Leon Valley, TX 78238

BID

BID DUE DATE: 10:00 a.m. February 20, 2020

City of Leon Valley

BID #2020-02

GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

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

SURETY

(SEAL)  
Bidder's Name and Corporate Seal

(SEAL)  
Surety's Name and Corporate Seal

By: \_\_\_\_\_  
Signature and Title

By: \_\_\_\_\_  
Signature and Title  
(Attach Power of Attorney)

Attest: \_\_\_\_\_  
Signature and Title

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).

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 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.

ATTACHMENT D 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:

1 - WORK

1.1 CONTRACTOR shall complete all work as specified or indicated in the Contract Documents. The Work is generally described as follows: BID #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION.

2 - THE PROJECT

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

**Base Bid:**

GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION  
Conduct exterior and interior cleaning, coating, and upgrades to the Grass Hill Elevated Storage Tank for the City of Leon Valley.

3 - OWNER

3.1 The Project has been designed by OWNER.

4 - CONTRACT TIMES

4.1 Time is of the Essence

All time limits for 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

The Work will be substantially completed within 90 days after issuance of a Notice to Proceed and completed and ready for final payment within 120 days after the issuance of a Notice to Proceed.

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

D. The OWNER shall pay the CONTRACTOR for the proper performance of the contract, subject to additions and deductions provided herein.

E. 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:

\$\_\_\_\_\_.

## 6 - PAYMENT PROCEDURES

### 6.1 Submittal and Processing of Payments

CONTRACTOR shall submit Applications for Payment in accordance with 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 below. All such payments will be measured by the schedule of values established in 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 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 payment application except the final request will be made for a sum less than Five Hundred Dollars (\$500). It is understood that all payment applications are approximate only and payment shall be subject to correction in subsequent payment applications if any error is discerned.

### 6.3 Final Payment

Upon final completion and acceptance of the Work, OWNER shall pay the remainder of the Contract Price as provided.

## 7 - INTEREST

7.1 All moneys not paid when due as provided in the General Conditions shall bear interest at the rate of 0 % per annum.

## 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 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 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.

## 9 - CONTRACT DOCUMENTS

### 9.1 Contents

A. The Contract Documents consist of the following:

1. Instruction to Bidders
2. Bid Bonds
3. This Agreement
4. Performance Bond
5. Payment Bond
6. General Conditions
7. Supplementary Conditions
8. Special Supplementary Conditions
9. Special Conditions

10. Specifications as listed in the table of contents of the Project Manual
11. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive)
12. Exhibits to this Agreement (enumerated as follows):
  - a. Notice to Proceed
  - b. CONTRACTOR's Bid;
  - c. Documentation submitted by CONTRACTOR prior to Notice of Award;
    - i. 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).
    - ii. The documents listed are attached to this Agreement (except as expressly noted otherwise above).
    - iii. There are no Contract Documents other than those listed above.
    - iv. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

## 10 - MISCELLANEOUS

10.1 *Terms* - Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.2 *Assignment of Contract* - 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:*

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*

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

CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

City of Leon Valley

\_\_\_\_\_

6400 El Verde

\_\_\_\_\_

Leon Valley, Texas 78238

\_\_\_\_\_

Designated Representative:

Designated Representative:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Address: 6400 El Verde

Address: \_\_\_\_\_

Leon Valley, Texas 78238

\_\_\_\_\_

Phone: (210) 684-1391

Phone: \_\_\_\_\_

Facsimile: (210) 684-4476

Facsimile: \_\_\_\_\_

ATTACHMENT E NOTICE TO PROCEED

Date: \_\_\_\_\_

TO: \_\_\_\_\_

(CONTRACTOR)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Contract: BID #2020-02 GRASS HILL ELEVATED STORAGE TANK PAINGING AND REHABILITATION

Project: BID # 2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

OWNER'S CONTRACT NO. 2020-02

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 the Agreement the date of Substantial Completion is \_\_\_\_\_ and the date of readiness for final payment is \_\_\_\_\_. Before starting any Work at the Site, 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:

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

City of Leon Valley

By: \_\_\_\_\_

(AUTHORIZED SIGNATURE)

Title: City Manager

ATTACHMENT F 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  
Leon Valley, Texas 78238  
(210) 684-1391 ext. 222*

**DESCRIPTION (Name and Location):**

**BID # 2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION CONTRACT**

Date:

Amount:

**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)

SURETY (Corp. Seal)

Company:

Company:

Signature:

Signature:

Name and Title:

Name and Title:

(Attach Power of Attorney)

(Attach Power of Attorney)

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

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.
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 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; 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 to perform the Contract.
4. When the OWNER has satisfied the conditions, 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 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 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 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 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; and

6.3. Liquidated damages will be \$ 500.00 PER DAY 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 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.

ATTACHMENT G 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  
Leon Valley, Texas 78238 (210) 684-1391*

**CONTRACT**

BID # 2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

**PROJECT**

BID # 2020-02 GRASS HILL ELEVATED STORAGE TANK PAINTING AND REHABILITATION

**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)**                      **SURETY**    **(Corp Seal)**  
Company:    Company:  
  
Signature:    Signature:  
Name and Title:    Name and Title:  
(Attach Power of Attorney)  
(Space is provided below for signatures of additional parties, if required.)

**CONTRACTOR AS PRINCIPAL (Corp. Seal)**                      **SURETY**    **(Corp Seal)**  
Company:    Company:  
  
Signature:    Signature:  
Name and Title:    Name and Title:  
(Attach Power of Attorney)

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) 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) 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:
    - A. 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
    - B. 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
    - C. 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.
    - D. If a notice required is given by the OWNER to the CONTRACTOR or to the Surety, that is sufficient compliance.
5. When the Claimant has satisfied the conditions, the Surety shall promptly and at the Surety's expense take the following actions:
  - 5.1. 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.
  - 5.2. Pay or arrange for payment of any undisputed amounts.
6. 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.
7. 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 satisfying 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.

8. 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.

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

10. 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, 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.

11. 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.

12. 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 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.

13. 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.

#### 14. DEFINITIONS

14.1. 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.

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

14.3. 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.



11. What equipment do you own that is available for the proposed work? (Description, Quantity, Capacity, Size, Years in Service, Present Condition, 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 the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public

My commission expires:

## ATTACHMENT I 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 perform 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 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.

ATTACHMENT J HAZARD COMMUNICATIONS

CONTRACTOR ACKNOWLEDGMENT

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: \_\_\_\_\_

ATTACHMENT K CONFLICT OF INTEREST QUESTIONNAIRE

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b> For vendor doing business with local governmental entity		<b>FORM CIQ</b>
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>	
<p><b>1</b> Name of vendor who has a business relationship with local governmental entity.</p>	Date Received	
<p><b>2</b> <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p><b>3</b> Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p><b>4</b> Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-left: 40px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes                      <input type="checkbox"/> No                 </p> <p style="margin-left: 40px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 80px;"> <input type="checkbox"/> Yes                      <input type="checkbox"/> No                 </p>		
<p><b>5</b> Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p><b>6</b> <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p><b>7</b></p> <p style="text-align: center;">                     _____                      Signature of vendor doing business with the governmental entity                 </p> <p style="text-align: right; margin-right: 100px;">                     _____                      Date                 </p>		

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a)**: "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B)**:

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## TECHNICAL SPECIFICATIONS

### Grass Hill Elevated Water Tank

#### Rehabilitation

#### PART 1 - GENERAL

##### 1.01 SCOPE

- A. This project is for the Coatings Rehabilitation of the existing tank known as the Grass Hill Elevated Tank located in Leon Valley, Texas. Constructed in 1930 by Pittsburg Des Moines Construction Company the tank is operated by the City of Leon Valley. This specification covers the minimum requirements for design, selection of materials, fabrication, repairs, inspection, testing, cleaning and coating of a carbon steel elevated tank. This contract involves some corrosion related repairs, installation of a new interior and exterior access ladders, bringing the balcony railing up to OSHA Standards, removing the liquid target level, installing a new roof vent and coatings rehabilitation on the 150,000-gallon steel elevated storage tank. The Contractor shall be responsible for all labor, materials and equipment necessary for the repairs, cleaning, painting of the interior and exterior tank surfaces and disinfection. The work of this section includes the sediment removal, cleaning, repairs, surface preparation and coating of all exterior and interior surfaces. It is the intent of these specifications that the Contractor shall perform the work on this tank in accordance with the following codes and specifications.

**See Part 3.12, for a more complete listing and description of work.**

- B. The term "interior surfaces" shall refer to the inside of the tank proper, and all appurtenances located inside the tank (i.e. ladders, etc.) to include the interior side of all manholes, hatches, connections, interface of spandrel rods to roof, etc.
- C. The term "exterior surfaces" shall refer to the outside of the tank proper and all appurtenances located outside of the tank including, valves, piping that are attached and next to the tank existing above grade.
- D. The paint and painting products used for this project shall be manufactured by the Tnemec Corporation only. No other painting manufacturers will be allowed for use on this project. The contractor shall make arrangements for the Tnemec representative to attend the pre-construction conference.

**\*\*SPECIAL NOTE: Full Containment of the tank during exterior surface preparation and painting operations is required and specified under Part 3.07. The contractor is advised that the existing exterior coating systems contain levels of lead and chromium and may contain other RCRA metals.**

##### 1.02 PRE-CONSTRUCTION CONFERENCE

- A. City of Leon Valley (owner) and LNV, Inc., (engineer) will arrange a meeting to be held before work begins. The meeting will be held on-site with the following representatives present: 1) General CONTRACTOR and the CONTRACTOR'S SUPERINTENDENT who will be on the job, 2) OWNER, including Project Managers, and Inspectors and 3) Paint manufacturer's representative. At this meeting the Specifications and CONTRACTORS work schedule will be reviewed in detail. It is the responsibility of the CONTRACTOR to notify his paint

representative, subcontractor, superintendent and other parties listed. Owner/Engineer will set up the meeting date and time.

### **1.03 SPECIFICATIONS AND STANDARDS**

- A. Without limiting the general aspects of other requirements of these specifications, all work on the water storage tank shall fully conform to the requirements of the latest published editions of the following Standard Specifications.
- AWWA D100 - Standard for Welded Carbon Steel Tanks for Water Storage
  - AWWA D102 - Standard for Painting Steel Water Storage Tanks
  - AWWA C652 - Standard for Disinfection of Water Storage Facilities
  - AWWA M42 – Manual of Steel Water Storage Tanks
  - AWS D1.1 - Structural Steel Welding Code
  - ASME Section IX - Boiler and Pressure Vessel Code
  - NACE International - National Association of Corrosion Engineers
  - SSPC - Steel Structures Painting Council
  - ASTM - American Society for Testing and Materials
  - NSF - National Sanitary Foundation
  - OSHA – Occupational Safety and Health Administration
  - TCEQ – Texas Commission on Environmental Quality
  - CFR – Code of Federal Regulations
  - TAC – Texas Administrative Code
  - EPA – U.S. Environmental Protection Agency
  - ANSI – American National Standards Institute
- B. The Engineer and Inspector’s decision shall be final as the interpretation and/or conflict between any of the referenced specifications and standards contained herein.

### **1.04 CONTRACTOR**

- A. The Contractor shall be a specialist in the painting and rehabilitation of elevated storage tanks and have a minimum of seven (7) years experience and successful history. The contractor shall have experience with full containment and coatings removal and the application of similar internal and external coatings. Such experience must have been on a minimum of five (5) projects in the State of Texas, completed during the existence of business under the current company name and original ownership. The Contractor must be able to demonstrate experience through the submittal of a project portfolio that successfully documents the completion of the coatings rehabilitation of at least five (5) Elevated Water Tanks on a minimum size of 100,000-gallons, as part of the bid submittal on the Bidder’s Qualification Statement Form. The Contractor shall not subcontract the coatings rehabilitation tasks but may hire a subcontractor to perform minor tank modification/repairs and or containment installation.
- B. The Contractor shall submit with his bid the following information. No bid will be considered unless this information is provided with the proposal.
- A list of five (5) Elevated Storage Tanks for potable water service that have been rehabilitated within the past five years, including the Owner’s name, tank storage capacity and name of the Project Engineer.
  - A Preliminary or Final Containment Drawing and a written plan explaining the contractor’s procedural steps for executing the work as specified in the contract documents.
  - A Preliminary Schedule that meets the City’s needs and timeline for the completion date based on the 120-day contract.
  - A Valid Contingency Plan if delays occur and the ability to execute the plan.

- A written statement by the coatings manufacturer stating that the Contractor is familiar with the materials specified and has workers capable of performing the work specified herein.
- C. The personnel performing the work shall be knowledgeable and have the required experience and skill to adequately perform the work for this project, in accordance with AWWA D100, AWWA D102 and SSPC-PA1, "Shop, Field and Maintenance Painting". The contractor shall meet the requirements of the Bidder Qualifications.
- D. The Contractor is responsible for all claims for welding and paint damage during the progress of the tank rehabilitation and is especially forewarned of this responsibility so that he may exert all possible precaution and care for protection of surrounding property, which includes the existing facility and tank while under rehabilitation.
- E. The Contractor shall protect the public from harm caused by the Contractor's actions and performance of the work. Prior to the start of work or mobilization on site, the Contractor shall submit a site-specific Public Safety Plan based on the Contractor's selected work methods. The plan shall include necessary plans and measures to protect the general public from harm. Safety signs, warning signs, protective barriers and safety warning devices for daylight and nighttime protection shall be installed.
- F. When not working on the tank or site (such as during the evening, weekends, holidays, or bad weather days), the Contractor shall secure all openings in the tank, the exterior ladder and access or rigging devices. The Contractor shall lock the site fencing, equipment and supply storage containers. The Contractor shall be solely responsible for the security of the site, tank, equipment and supplies during working and non-working hours.

#### 1.05 QUALITY ASSURANCE

- A. **General:** Quality assurance procedures and practices shall be utilized to monitor all phases of erection, welding surface preparation, application and inspection throughout the duration of the project. Procedures or practices not specifically defined herein may be utilized provided they meet recognized and accepted professional standards and are approved by the Engineer and City's Inspector.

A form for recording the daily activities of the contractor not limited to roof modifications, surface preparation and coatings application shall be provided by the contractor and submitted at the beginning of the job for approval by the City's Inspector. The information required on the form is listed under Part 3.10 of this specification.

Each day during the surface preparation and coatings activities the air temperature, steel surface temperature, humidity and dew point shall be measured, and recorded by the Contractor prior to beginning of blasting and prior to application of coating daily. Atmospheric conditions shall be measured and recorded at least every 3 hours and when climatic conditions begin to change. All environmental readings shall be recorded and placed in a file located on the job site and made available for daily owner review. This file shall be turned over to the Owner's Inspector at the end of the job.

Surface temperature shall be measured by using approved thermometers. Temperature of both the sunny side and shady side of the reservoir shall be recorded periodically each day. The dew point shall be measured and recorded at least every 3 hours by use of a digital or sling Psychrometer in conjunction with U.S. Department of Commerce Weather Bureau Psychrometric Tables. The reservoir surface temperatures, relative humidity, dry bulb, wet bulb and dew point temperatures both interior and exterior (as appropriate) are to be recorded.

- B. **Surface Preparation:** Surface preparation will be based upon comparison with: "Pictorial Surface Preparation Standards for Painting Steel Surfaces: SSPC-Vis 1-02, SSPC-Vis 3-04 and SSPC-Vis 4-01, ASTM Designation D2200-17, "Standard Methods of Evaluating Degree of

Rusting on Painted Surfaces”, ASTM D 4417-14, Method A and/or Method C, “Standard Test Method for Field Measurement of Surface Profile of Blast Cleaned Steel” or NACE SP0287-16, “Field Measurement of Surface Profile of Abrasive Blast-Cleaned Steel Surfaces Using Replica Tape”, NACE SP0178-07, “Design, Fabrication, and Surface Finish Practices for Tanks and Vessels to Be Lined for Immersion Service”, along with the Visual Comparator, shall be used to verify the surface preparation of welds. In all cases the written standard shall take precedence over the visual standard. In addition, see special section 3.03 Surface Preparation.

- C. **Application:** No coating or paint shall be applied when: 1) the surrounding air temperature or the temperature of the surface to be coated or painted is below the minimum surface temperature for the products specified herein, 2) rain, snow, fog or mist is present, 3) the temperature is less than 5°F above the dew point, 4) the air temperature is expected to drop below the minimum temperature for the products specified within six hours after application of coating, 5) the relative humidity is above 85% and/or surface temperature will exceed the recommended temperatures within six hours after application of coating. Dewpoint shall be measured by use of an instrument such as a Sling Psychrometer in conjunction with U.S. Department of Commerce Weather Bureau Psychrometric Tables. If any of the above conditions are prevalent, coating or painting shall be delayed or postponed until conditions are favorable. The day's coating or painting shall be completed in time to permit the film sufficient drying time prior to damage by atmospheric conditions.
- D. **Thickness Checking:** Thickness of coatings and paint shall be measured checked according to the procedures outlined in SSPC-PA 2 “Measurement of Dry Film Thickness with Magnetic Gages”, May 2012 Edition. Dry film thickness shall be a Level 2 as defined in Paragraph 9.2, excepting that no single gage reading shall be less than 80% of the specified dry film thickness. Areas that fail to meet these criteria shall be corrected at no expense to the Owner. Use of an instrument such as a Tooke Gauge, precision groove grinder, etc. is permitted if a destructive test is deemed necessary by the Engineer and the total DFT is less than 50 mils.
- E. **Inspection Devices:** The contractor shall furnish, until final acceptance of coating and painting is accepted, inspection devices in good working condition for detection of holidays and measurement of dry film thickness of coating and paint. The Contractor shall also furnish U.S. Department Commerce, National Bureau of Standards certified thickness calibration plates and/or plastic shims, depending upon the thickness gauge used, to test the accuracy of dry film thickness gauges and certified instrumentation to test the accuracy of holiday detectors. Dry film gauges and holiday detectors shall be made available for the Engineer's use at all times until final acceptance of application
- F. **3<sup>rd</sup> Party Inspection:** The Owner/Engineer will retain the services of an independent AWS Certified Welding Inspector and NACE Certified Coating Inspector for construction observations and quality conformance inspections during the project duration. The observation/inspection process of the welding techniques, preparation of steel, and coatings applications will help assure quality control and specification compliance. Contractor is responsible for providing access to tank, communicating work progress, and coordinating inspection services with Owner’s independent consultant. The inspection company shall report to the engineer. The inspector shall communicate directly with the CONTRACTOR’S SUPERINTENDENT. Final inspections shall be performed in the presence of the ENGINEER, OWNER and/or INSPECTOR and the CONTRACTORS SUPERINTENDENT. All materials and equipment used in the accomplishment of testing are subject to inspection at any time by the ENGINEER, OWNER and/or INSPECTOR.

The CONTRACTOR shall not move or remove scaffolding, ladders or other fixtures necessary to provide proper inspection until such work has been inspected and approved by the INSPECTOR and/or the ENGINEER/OWNER.

Inspection for this project shall consist of 'hold point' inspections. The owner's inspector shall inspect the surface prior to abrasive blasting, after abrasive blasting but prior to application of coating materials, and between subsequent coats of material. Final inspection shall take place after all coatings are applied. Contractor will ensure that sufficient rigging is in place so that the Engineer/OWNER or his representative shall be able to safely conduct the required inspections. Irregularities due to poor workmanship will be corrected by the CONTRACTOR at his expense. **Re-inspection fees charged by the INSPECTOR will be the responsibility of the CONTRACTOR.** The Owner and Engineer reserve the right to require this correction at any time during construction or at final inspection.

- G. **Warranty Inspection:** A warranty inspection shall be scheduled during the 24th month following acceptance of all coating and painting work. All defective work shall be repaired in accordance with this specification and to the satisfaction of the Engineer and/or Owner. The Contractor's Performance Bond or separate Maintenance Bond shall be in force until after remedial work is performed. The Contractor shall warranty all repair work for two-years.

The CONTRACTOR shall provide suitable and adequate equipment including: lighting, ventilation, rigging, cable climbers, mirrors, inspection equipment, and sufficient man-power to clean and move equipment and tools around the tank, etc., as may be necessary to facilitate complete inspection of all interior surfaces. The CONTRACTOR shall bear all costs of the anniversary inspection and shall incorporate such costs into his bid. This shall include the owner's 3<sup>rd</sup> party inspector's fees.

Any location, including but not limited to locations where a coating has peeled off, bubbled, blistered, chipped, or cracked, etc., or where pinholes and/or holidays are present and locations where rusting or corrosion is evident, will be considered a failure or defect of the coating system and shall be repaired as required. Repairs will be made at areas or locations where coating failures are found.

Methods of testing for coating failure which, may or may not be evident, shall include, but not be limited to, adhesion tests, film thickness measurement, holiday testing, etc. Testing may be non-destructive or destructive. The CONTRACTOR, at his expense, shall repair all areas where destructive tests are performed.

The OWNER and CONTRACTOR shall complete the anniversary repair work within an agreed time period as determined. All repairs shall be made as per the coating manufacturers written repair work instructions or that which is approved and acceptable to the OWNER and completed within ninety (90) calendar days of the anniversary inspection.

## 1.06 SAFETY AND HEALTH REQUIREMENTS

- A. **General:** In accordance with requirements set forth by regulatory agencies applicable to the construction industry and manufacturer's printed instructions and appropriate technical bulletins and manuals, the Contractor shall provide and require use of personal protective lifesaving equipment for persons working on or about the project site.
- B. **Head and Face Protection and Respiratory Devices:** Equipment shall include protective helmets, which shall be worn by all persons while in the vicinity of the work. In addition, workers engaged in or near the work during sandblasting shall wear eye and face protection devices and air purifying half mask or mouthpiece respirators with appropriate filters. Barrier creams shall be used on any exposed areas of skin.
- C. **Ventilation:** Where ventilation is used to control hazardous exposure, all equipment shall be explosion-proof. Ventilation shall reduce the concentration of air contaminants to a degree that a hazard does not exist. Air circulation and exhausting of solvent vapors shall be continued until coatings have fully cured for immersion service. From the beginning of interior coating and until interior coating is complete, the CONTRACTOR shall monitor the air for its lower explosion limit (LEL). CONTRACTOR shall submit to the ENGINEER, for

review and approval, the air monitors technical literature. The ENGINEER/OWNER and his representatives shall be allowed to check and inspect the monitor at any time.

- D. **Sound Levels:** Whenever the occupational noise exposure exceeds maximum allowable sound levels, the Contractor shall provide and require the use of approved ear protection devices. Noise control of equipment during working and non-working hours shall be submitted to the ENGINEER/OWNER for review and approval. If excessive noise is noted by the OWNER or neighboring residents, the CONTRACTOR shall modify or replace the existing equipment to reduce the noise to an OWNER acceptable level. CONTRACTOR shall bear all costs for noise reduction and incorporate this cost and any others into their bid.
- E. **Illumination:** Adequate illumination shall be provided while work is in progress, including explosion-proof lights and electrical equipment. Whenever required by the Engineer or Owner's Representative, the Contractor shall provide additional illumination and necessary supports to cover all areas to be inspected. The inspector shall determine the level of illumination for inspection purposes.
- F. **Temporary Ladders and Scaffolding:** All temporary ladders and scaffolding shall conform to applicable safety requirements. They shall be erected where requested by the Inspector or Engineer to facilitate inspection and be moved by the Contractor to locations requested by the Engineer or Owner's Representative.
- G. **The Contractor is required to submit the following upon selection:**
- a. Safety Program in writing and schedule of regularly scheduled safety orientation meetings complying with OSHA.
  - b. Detailed work schedule.
  - c. Quality Control Program.
  - d. Methodology for compliance with full containment of spent abrasive and proper disposal of waste not limited to lead or other RCRA metals.
  - e. TCEQ Notification that the Contractor shall satisfy the requirements as set forth in 30 TAC, Rule 111 prior to blasting.
  - f. Schedule of values in accordance with the contract scope of work.
  - g. Any sub-contractors to be employed on the project such as scaffolding contractor, containment contractor and or welding contractor.
  - h. Dehumidification and Dust Collection System Supplier/Manufacturer.
  - i. Detailed drawing of containment rigging, attachments and shroud. Statement of wind load resistance to be considered during bad weather days.
  - j. Tnemec coating system submittals in accordance with specifications.
  - k. Contact names and phone numbers.
  - l. List of inspection devices and equipment to be on site at all times.
  - m. Insurance Form that list the City of Pecos and each of their officers, agents and employees as additional insured on all insurance policies (except worker's compensation and employers' liability coverage which are required by the OWNER as specified in the Contract Documents.
- H. **Air Monitoring:** Ambient Air Quality – Visible Emissions: Visible emissions shall be used as criteria for project shut down until corrections to the containment are made. Visible emissions shall be determined in accordance with 40 CFR 60, Appendix A, Method 22. If required by the Texas Air Control Board, the Contractor shall provide additional monitoring as follows: Ambient Air Quality for Particulate Matter (40 CFR 50): Emissions in excess of 150  $\mu\text{g}/\text{m}^3$  of PM 10 over a 24-hour period shall be cause for shut down of the project until

corrections to the containment are made to comply with this level. Monitoring for this level shall be accomplished using high volume air samplers.

- I. **Environmental Regulations:** Compliance with local, state and federal regulations concerning emissions, transportation or disposal of solid, particulate, liquid, or gaseous matter as a result of the cleaning, painting, or other operations under this contract shall be the responsibility of the Contractor. Any fines or damages imposed on the Owner, Engineer, or Inspector/Field Observer by any regulatory agency or court as a result of the Contractor's noncompliance with environmental or nuisance regulations or any other applicable standard shall be paid for or reimbursed by the Contractor.
- J. **Notification to TCEQ:** If the lead concentrations are 1.0% (10,000ppm) or greater, the Contractor shall provide information needed by the Owner to notify the TCEQ of the ensuing cleaning and painting work on the tank as required by 30 TAC 111.135. The TCEQ shall be notified at least 10 days, but not more than 30 days prior to the start of the cleaning operations. If the lead concentrations are less than 1.0% (10,000ppm), the Contractor shall comply with 30 TAC 111.137.
- K. **Soil Sampling:** The Field Inspector and Contractor shall remove one soil sample per 10,000 sq./ft. within the limits of the tank site or as directed by the Field Inspector prior to the start of work at the site, identify the soil samples, and deliver to the soil samples to an approved testing lab to have atomic absorption or inductively coupled plasma testing (total lead) performed on the soil samples. For purposes of defining the tank site for soil sampling, the site shall consist of all land within 50 ft. of the tank or otherwise determined by the Field Inspector. Each set of solid samples shall consist of five ¾" dia. plugs by ½" deep taken from a 1 sq./ft. area. The location where the soil samples were taken shall also be documented. After substantial completion of the work, the Contractor and Field Inspector shall remove additional sets of soil samples from the same locations as before; identify the soil samples, and deliver to the approved testing lab for testing as described above. The cost of testing the initial and final soil samples shall be borne by the Contractor. Cost associated with testing shall be included in the Contractor's Bid Proposal. The Contractor shall be responsible for seeing that the Chain of Custody Form is used on the initial and final sampling of the soil. If the initial and final total lead levels in the soil fall in a category that requires action by the Contractor, then the Contractor shall perform action as stipulated below.

Initial Total Lead Levels in Soil, "Initial" (mg/kg)	Final Total Lead Levels in Soil, "Final" (mg/kg)	Required Action By Contractor
Initial < 2,000	Final < 2,000	None
Initial < 2,000	2,000 ≤ Final < 5,000	Interim Controls
2,000 ≤ Initial	Final < 5,000	None
Initial < 5,000	5,000 ≤ Final	Abatement of Soil
5,000 ≤ Initial	5,000 ≤ Final	None

- 1. Interim Controls: Interim Controls in accordance with EPA guidance document "Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil," include, but are not limited to the following:
  - a. Establish barriers between children and soil by planting ground cover and shrubbery, moving play equipment, restricting access through posting and fencing, and/or preventing further lead contamination of the area.
  - b. Monitor condition of interim controls.
  - c. Post public notice of contaminated common areas.
- 2. Abatement of Soil: Abatement of Soil techniques include, but are not limited to the following:

- a. Remove and legally dispose of the contaminated soil and place an Owner approved topsoil and ground cover over the abated area or pave the site with asphalt.
- b. Post public notice of contaminated common areas.

## **1.07 PRODUCT DELIVERY, STORAGE & HANDLING**

- A. All materials shall be brought to the jobsite and identifiable by MTR's, certification reports and or batch numbers. The coatings shall be in the original sealed containers from the Manufacturer. Within 48 hours of coating delivery to the job site, the CONTRACTOR shall record the delivered material and the batch number stamped on each coating container and maintains the record in the daily log for examination by the INSPECTOR AND ENGINEER. Minimum information required will include: date of delivery to job site, name and signature of superintendent recording the data, list of certification reports, MTR's and batch number including corresponding coating identification, date of manufacture and volume of each container. They shall not be used until the INSPECTOR OR ENGINEER has inspected the contents. Manufacturer's Material Safety Data Sheets (MSDS) for all coating products used on the jobsite shall be submitted to the OWNER at the preconstruction conference or prior to commencing work. Materials exceeding storage life recommended by the manufacturer shall be rejected.
- B. All coatings and paints shall be stored in enclosed structures to protect them from weather and excessive heat or cold. Flammable coatings and paints must be stored to conform to City, County, State and Federal safety codes for flammable coating or paint materials. At all times coatings and paints shall be protected from freezing.

## **PART 2 – COATING MATERIALS**

### **2.01 ACCEPTABLE MANUFACTURERS**

- A. The paint and paint products used for this project shall be manufactured by The Tnemec Corporation. No other paint manufacturer will be allowed for use on this project.

### **2.02 GENERAL REQUIREMENTS**

- A. All materials shall be lead-free as defined by the Consumer Product Safety Act, Part 1303. Additionally, all materials shall be free of other heavy metals such as chrome, mercury and cadmium.
- B. All materials for the interior wetted portion of the tank shall meet the requirements of ANSI/NSF Standard 61 for potable water contact.
- C. No coating submitted or used on this project shall have a VOC (Volatile Organic Content) in excess of 340 grams/liter or 2.8 lbs./gal.

### **2.03 MATERIAL PREPARATION**

- A. Mix and thin materials according to manufacturer's latest printed instructions.
- B. Do not use materials beyond manufacturer's recommended shelf life.
- C. Do not use mixed materials beyond manufacturer's recommended pot life.

### **2.04 COATING SYSTEM**

#### **A. Tank Exterior Coating System – Zinc/Epoxy/Urethane System**

1. **Weld Preparation:** Weld flux and spatter shall be removed by power tool cleaning. Sharp projections shall be ground to a smooth contour. All welds shall be ground to a smooth contour as per NACE Standard SP0178, Designation D.

2. **Surface Preparation:** SSPC-SP6/NACE 3 Commercial Blast Cleaning. An angular profile of 1.5 to 2.5 mils as per ASTM D 4417, Method C or NACE Standard SP0287 is required.
3. **Coating System:**
  - 1st Coat:** Tnemec Series 94-H20 Tnemec-Zinc applied at 2.5 to 3.5 dry mils.
  - 2nd Coat:** Tnemec Series 66 Hi-Build Epoxoline applied at 4.0 to 6.0 dry mils. (Two coats may be required if applied by roller.)
  - 3rd Coat:** Tnemec Series 1074U Endura Shield II (Color-TBD) applied at 2.0 to 3.0 dry mils.

**LOGO:** Tnemec Series 700 Hydroflon (Color-TBD) applied at 2.0 to 3.0 dry mils.

Total dry film thickness shall be a minimum of 8.5 mils and maximum 13.5 mils per SSPC-PA 2 dry film inspection standards, with exception as noted in this specification.

For cold weather applications, Series 44-710 Urethane Accelerator may be added to Series 94-H20 and Series 1074 at the rate specified on the Series 44-710 product data sheet. Series 44-710 Accelerator must be used with Series 94-H20 if the surface temperature is 35°F to 60°F and 20% to 40% relative humidity.

#### **B. Tank Interior Coating System – Zinc/Epoxy System**

1. **Weld Preparation:** Weld flux and spatter shall be removed by power tool cleaning. Sharp projections shall be ground to a smooth contour. All welds shall be ground to a smooth contour as per NACE Standard SP0178, Designation D.
2. **Surface Preparation:** SSPC-SP10 Near-White Metal Blast Cleaning. Anchor profile shall be 1.5 to 2.5 mils as per ASTM D 4417, Method C or NACE Standard SP0287 is required.
3. **Coating System:**

**1<sup>st</sup> Coat:** Tnemec Series 94-H20 Hydro-Zinc applied at 2.5 to 3.5 dry mils. Thin only as instructed in manufacturers data sheet.

**Stripe Coat:** Tnemec Series N140F – 15BL Tank White Pota-Pox Plus applied by brush and scrubbed into all weld seams. In addition to weld seams, all edges, corners, bolts, pits shall receive a stripe coat. This shall be a separate step. The 2<sup>nd</sup> coat or subsequent coat shall not be applied until the recoat time has been achieved.

**2nd Coat:** Tnemec Series N140F – 1255 Beige Pota-Pox Plus applied at 6.0 to 8.0 dry mils. Thin only as instructed in manufacturers data sheets.

**3rd Coat:** Tnemec Series N140F – 15BL Tank White Pota-Pox Plus applied at 6.0 to 8.0 dry mils. Thin only as instructed in manufacturers data sheets.

Total dry film thickness on all surfaces shall be a minimum of 14.5 mils and maximum 18.5 mils per SSPC-PA 2 dry film inspection standards, with exception as noted in this specification.

For cold weather applications, Series 44-710 Urethane Accelerator may be added to Series 94-H20 at the rate specified on the Series 44-710 product data sheet. Series 44-710 Accelerator must be used with Series 94-H20 if the surface temperature is 35°F to 60°F and 20% to 40% relative humidity.

## PART 3 - EXECUTION

### 3.01 TANK REPAIRS and MODIFICATIONS

- A. General Repairs - Field welding shall conform to the minimum requirements of AWS D1.1, AWWA D100, Section 8 and specifications here within. The contractor shall ensure welders or welding operators are qualified in accordance with ASME Section IX or ANSI/AWS B2.1. All fabrication and shop assembly shall conform to the minimum requirements of AWWA D100, Section 9 and specifications here within.
1. General Repairs of Roof, Shell, Bowl and Appendages – Plate shall be a minimum thickness 1/8" for roof repairs and 1/4" for shell and bowl repairs. Overlay (scarf plate) installation is acceptable on the shell and bowl. Seal weld all plate utilizing a welding sequence, which shall be adopted so that plates are assembled and welded together by a procedure that will result in a minimum of distortion from weld shrinkage.
  2. Seam Sealing and Epoxy Surfacing – Apply Tnemec Series 215, 100% solids epoxy surfacing compound over primer on areas deemed necessary for pit filling due to pitting corrosion. Apply a Sikaflex 1A, polyurethane elastomeric sealant on areas deemed necessary for sealing of gaps as directed by the Engineer. The color shall be determined depending on its application step being before or after the finish coat.

### 3.02 SURFACE PREPARATION

- A. The latest revision of the following surface preparation specifications of the Steel Structures Painting Council (SSPC) shall form a part of this specification. The summaries listed below are for informational purposes; consult the actual SSPC specification for full detail.
1. Solvent Cleaning (SSPC-SP1): Removal of oil, grease, soil and other contaminants by use of solvents, emulsions, cleaning compounds, steam cleaning or similar materials and methods, which involve a solvent, or cleaning action.
  2. Hand Tool Cleaning (SSPC-SP2): Removal of loose rust, loose mil scale and other detrimental foreign matter to a degree specified by hand chipping, scraping, sanding and wire brushing.
  3. Power Tool Cleaning (SSPC-SP3): Removal of loose rust, loose mil scale and other detrimental foreign matter by power wire brushing, power impact tools or power sanders.
  4. White Metal Blast Cleaning (SSPC-SP5/NACE No. 1): Air blast cleaning to a gray-white uniform metallic color until each element of surface area is free of all visible residues.
  5. Commercial Blast Cleaning (SSPC-SP6 NACE No. 3): Air blast cleaning until at least two-thirds of each element of surface area is free of all visible residues.
  6. Brush-Off Blast Cleaning (SSPC-SP7 NACE No. 4): Air blast cleaning to remove loose rust, loose mil scale and other detrimental foreign matter to a degree specified.
  7. Near-White Metal Blast Cleaning (SSPC-SP10 NACE No. 2): Air blast cleaning until at least 95% of each element of surface area is free of all visible residues.
  8. Power Tool Cleaning to Bare Metal (SSPC-SP11): Differs from SSPC-SP3 in that it requires more thorough cleaning and a surface profile not less than 1 mil.
- B. Slag, weld metal accumulation and spatters not removed by the Fabricator, Erector or Installer shall be removed by chipping and/or grinding. All sharp edges shall be peened, ground or otherwise blunted as required by the Engineer. All grinding and finishing of welds, edges, etc. shall be performed prior to solvent cleaning and abrasive blasting. Welds shall be prepared as per NACE Standard SP0178 designation D for all interior and exterior surfaces.

- C. Field blast cleaning for all surfaces shall be by dry method only using Steel Grit/Shot Abrasive and a Blast Media Recovery and Separation System. Blast nozzles shall be venturi-type nozzles with a minimum pressure at the nozzle of 90 psi.
- D. Particle size of abrasives used in blast cleaning shall be that which will produce a 1.5 – 3.5 mil surface profile or in accordance with recommendations of the manufacturer of the specified coating or paint system to be applied.
- E. **Blast Media Recovery and Separation System and the use of re-usable abrasive such as steel grit/shot used on this project will have to meet the following criteria:**

The steel grit shall meet the requirements of SSPC-AB 3, Newly Manufactured or Re-Manufactured Steel Abrasives, and be approved for use by the manufacturer of blasting, media recovery, and separation equipment. The initial quantity of grit shall consist of an artificial working mix determined by the CONTRACTOR to produce an acceptable profile in accordance with these specifications. Any used steel grit used on this Project shall be sampled before use by the FIELD OBSERVER and the CONTRACTOR and the CONTRACTOR shall have the samples sent to a laboratory for inductively coupled plasma-atomic emission spectrometry analyses for total lead. The steel grit shall not be used until the results of the inductively coupled plasma-atomic emission spectrometry analyses testing are submitted to the OWNER and indicate that the total lead levels are less than 250 ppm (<0.025%).

Blast Media Recovery and Separation System:

(1) Equipment Requirements: The equipment provided for the spent abrasive recovery and media separation shall be a portable commercial recycling abrasive blast machine. The re-used abrasive shall comply with the requirements of SSPC-AB 2, Specification for Cleanliness of Recycled Ferrous Metallic Abrasives. The system shall be capable of recovering the abrasive and returning the spent cleaning debris to a dust separator which shall be an integrated part of the machine. The waste material shall be placed in hazardous container drums in accordance with the Removal and Disposal of Cleaning Residue paragraph of this specification.

(2) Equipment Characteristics: As a minimum, the vacuum system used to recover the spent blasting material shall contain the following:

- i. A double-chambered ASME pressure vessel, which can effectively recycle blast media on a continuous basis, with no interruption, except for air filter back-flushing, media loading to the machine, and removal of collected dust and spent cleaning debris.
- ii. A dust filter back-flushing system.
- iii. An air drying system consisting of an air-cooled after cooler, sling

separator, and desiccant drier.

All abrasive media shall be removed from the facility and disposed of by the Contractor in accordance with the Local, State and Federal Regulations. The abrasive manufacturer, media type and grit size shall be submitted and approved by the Engineer/Owner.

- F. The Contractor shall keep the area of his work and the surrounding environment in a clean condition. He shall not permit blasting materials to accumulate as to constitute a nuisance or hazard to the accomplishment of the work, the operation of the existing facilities or to the surrounding environment. If blast abrasive is left on the tank floor while painting the ceilings and walls, no paint may be applied to walls within six feet of the floor.
- G. Blast cleaned surfaces shall be cleaned prior to application of specified coatings or paint. All surfaces shall be free of dust, dirt, and other residue resulting from the abrasive blasting operation. No coatings or paint shall be applied over damp or moist surfaces.

- H. All welds shall be neutralized with a suitable chemical compatible with the specified coating or paint.

### **3.03 COATINGS**

- A. All surface preparation, coating and painting shall conform to applicable standards of the Steel Structures Painting Council, NACE International and the manufacturer's printed instructions. Materials applied to the surface prior to the approval of the Engineer shall be removed and re-applied to the satisfaction of the Engineer at the expense of the contractor.
- B. All work shall be performed by skilled craftsmen qualified to perform the required work in a manner comparable with the best standards of practice. Continuity of personnel shall be coordinated with the Inspector.
- C. The Contractor shall provide a supervisor at the work site during cleaning and application operations. The supervisor shall have the authority to coordinate work and make decisions pertaining to the fulfillment of the contract.
- D. Dust, dirt, oil, grease or any foreign matter that will affect the adhesion or durability of the coating or paint must be removed by washing with clean rags dipped in an approved cleaning solvent and wiped dry with clean rags.
- E. Coating and painting systems include surface preparation, prime coating, stripe coating and finish coatings. Unless otherwise approved in writing by the Engineer, prime coating shall be field applied. The Contractor shall use repair procedures, which insure the complete protection of all adjacent primer. All repair procedures shall be in accordance with the coating manufacturer's written recommended methods. It is the responsibility of the CONTRACTOR to provide the ENGINEER, INSPECTOR and OWNER with the coating manufacturer's written recommended repair procedures. The specified repair method and equipment may include wire brushing, hand or power tool cleaning, or dry air blast cleaning. In order to prevent injury to surrounding painted surfaces, blast cleaning may require use of lower air pressure, smaller nozzle and/or abrasive blast particles, or shorter blast nozzle distances from surface shielding and masking. If damage is too extensive or uneconomical to touch-up, the entire item shall be blasted and then coated or painted as directed by the Engineer.
- F. The Contractor's coating and painting equipment shall be designed for application of materials specified and shall be maintained in first class working condition. Abrasive blast equipment shall be equipped with noise reducing devices, hose coupling safety devices, electrical grounding devices, fresh air hoods, and "Dead Man" switches on all blast hoses. Compressors shall have suitable traps and filters to remove water and oils from the air. Contractor's equipment shall be subject to approval of the Inspector. All equipment shall comply with current OSHA regulations.
- G. Application of the first (prime coat) coat on the exterior shall follow immediately after surface preparation and before rust bloom occurs or the same day, whichever is less. Application of the first (prime coat) coat on the interior shall follow within multiple days of surface preparation utilizing the dehumidification equipment designed to hold the blast from rust bloom. Dehumidification equipment shall be used for all interior wet and dry areas. Therefore, all blasting, and cleaning shall be completed prior to any coating application. Any cleaned areas not receiving first coat within this period shall be re-cleaned prior to application of first coat. All blasted surfaces shall be coated to within 6 inches of the edge of a blasted area.

### 3.04 APPLICATION, GENERAL

- A. Coating and paint application shall conform to the requirements of the Steel Structure Painting Council Paint Application Specification SSPC-PA1, latest revision, for "Shop, Field and Maintenance Painting".
- B. Thinning shall be permitted only as recommended by the manufacturer and approved by the Engineer.
- C. Each application of coating or paint shall be applied evenly, free of brush marks, sags, runs, bubbles, drips, waves, laps, unnecessary brush marks, over spray, environmental contaminants or other physical defects, including shadows, and be UNIFORM in color, texture and gloss. Thus, all coatings shall be applied in a professional manner to achieve the specified dry film thickness (DFT). Coatings and paints shall be sharply cut to lines. Finished surfaces shall be free from defects or blemishes. Cleaning and coating shall be scheduled such that dust and other materials from adjoining work will not contaminate wet or newly coated surfaces.

The CONTRACTOR shall submit written detailed procedures for all surface preparation and application of coating, including touch-up procedures. The ENGINEER and OWNER shall approve the procedures, with no exceptions, before any surface preparation, application, or touch-up begins.

- D. Protective coverings, masking or drop cloths shall be used to protect floors, fixtures, piping, and equipment. Care shall be taken to prevent debris or any other foreign matter from entering water mains. The covers and plugs shall remain in place until just prior to filling the tank for disinfection. Care shall be exercised to prevent coatings or paints from being splattered onto surfaces, which are not to be coated or painted. Report to the Inspector surfaces from which materials cannot be satisfactorily removed.
- E. When two coats of coating or paint are specified, where possible, the first coat shall contain sufficient approved color additive to act, as an indicator of coverage or the two coats must be of contrasting color. Should a third interior coating be used, it too shall be contrasting in color from the second coating.
- F. Steel surfaces that have rusted or changed color shall be re-blasted in accordance with these specifications. No visible rust shall be overcoated under any circumstances. Painting shall not take place when the atmospheric temperature is below or above the coating manufacturer's written instructions, or above 50°F or when the steel surface temperature is less than or equal to 5°F above the dew point, or when the relative humidity is above 85% unless approved by the Engineer/Owner. Painting shall not occur when the surface is damp due to rain, snow, fog or mist. Painting shall also not occur if the surface temperature is expected to drop below manufacturer's recommendations within 4 hours after coating application.

### 3.05 DISINFECTION

- A. Disinfection shall be performed after protective coatings have been applied to the interior surfaces and allowed to thoroughly cure as recommended by the Coating Manufacturer.
- B. Prior to disinfecting, the complete interior shall be washed down with clean water and thoroughly flushed out.
- C. Disinfection of interior surfaces shall be performed in the presence of the Inspector in accordance with AWWA C652 Method 2. All the requirements of applicable AWWA Standards and regulatory agencies shall apply. CONTRACTOR shall furnish all labor, materials, tools, equipment and related items to seal and disinfect the reservoir. CONTRACTOR shall submit, for ENGINEER/OWNER approval all gasket and sealer materials necessary to seal all vents and manways. All bolts, nuts and washers shall be of HDG (hot dipped galvanized) construction.

- D. After the chlorination procedure is completed by the CONTRACTOR, and before the storage facility is placed in service, water from the full facility shall be sampled by the OWNER and tested for coliform organisms in accordance with the latest edition of Standard Method for Examination of Water and Wastewater.
- E. If the CONTRACTOR wishes to have the samples collected and tested by an independent testing laboratory, the cost of such testing shall be paid by the CONTRACTOR and the laboratory shall be required to meet the testing qualifications and to have certifications to do this testing that are acceptable to the OWNER.
- F. The OWNER shall furnish the water used for cleaning and initial filling of the reservoir for disinfection. The CONTRACTOR shall bear the costs of any subsequent fillings of the reservoir necessary until the disinfection is complete and satisfactory results are obtained and approved by the OWNER.
- G. It is necessary that the CONTRACTOR schedule his activities such that the initial filling occurs entirely during a low use period as determined by the OWNER. Close coordination by the CONTRACTOR with the OWNER is mandatory prior to and during the filling of the reservoir and until the disinfection work is completed.
- H. The CONTRACTOR and the OWNER shall have at least one representative present at the job site at all times during the filling of the reservoir regardless of the time of day. If the CONTRACTOR'S representative leaves the job site during the filling process, the filling will be stopped and be rescheduled for a later date. The CONTRACTOR shall pay all refilling and re-disinfection costs due to this inconvenience.

### **3.06 SOLVENT VAPOR REMOVAL AND DEHUMIDIFICATION**

All solvent vapors will be exhausted both during and after coating application at a minimum rate of one air change every four hours to allow the proper curing of the coating material. High rates of production may require an increase in ventilation. Forced ventilation as noted above shall be continued for 7 days or until such time as the coating has reached "full cure to immersion" as specified by the coating manufacture. Dehumidification equipment will be used to control the environment in the space 24 hours a day during blast cleaning, coating application and coating cure. All interior surfaces must be complete, clean and accepted by the Inspector prior to the application of any coating. Desiccant dehumidifiers, as manufactured by Munters Corporation and D.H. Technologies or equal will be a solid desiccant design having a single rotary desiccant wheel capable of fully automatic continuous operation. No liquid, granular, or loose lithium chloride drying systems will be accepted.

The use of direct expansion (DX) refrigeration type dehumidifiers with reheat may be considered if the expected ambient temperature will remain above 60°F. Below that coils may not remove moisture and, as noted above, reheat alone will not change the dew point. Heating the space changes relative humidity only and does not change the dew point; therefore, not a substitute for dehumidification, unless substrate temperature is high enough to meet dew point differential. The dehumidification system may consist of a combination of desiccant and refrigerant equipment for year round use to maintain very low dew points in the space.

During the blasting operation, dehumidification equipment shall maintain a lower dew point than outside ambient. A differential of 20°F to 25°F between inside substrate surface temperature and inside space air dew point temperature shall be maintained. In addition, inside relative humidity shall not exceed 40% to 45%.

The air change rate for maintaining the above mentioned interior surface temperature and dew point temperature differential will depend upon the type of equipment to be used and the time of the year. Another consideration is length of time required to hold the blast. The volume of space is a major factor in determining equipment type and size. The rate of air changes per hour may be anywhere from 1 to 6 or more to hold the desired degree of cleanliness of the blast.

Auxiliary heat, cooling and/or insulation may be necessary to maintain the surface temperature at the acceptable level for the coating manufacturer's application parameters. This auxiliary equipment must be approved for use by the supplier of the dehumidification equipment and will meet the following requirements.

1. Heaters and refrigerant type systems must be installed in the process air supply duct between, and/or blended with, the dehumidifier as close to the space as possible.
2. Only electric, indirect fired combustion, or steam coil auxiliary heaters will be used. No direct-fired space heaters will be allowed during the blasting, coating, and curing phases.
3. Heaters will be equipped with controls that automatically turn the heater off if the airflow is interrupted or the internal temperature of the heater exceeds its design temperature or that of the supply duct.
4. The space to be controlled will be sealed off as well as possible, allowing air to escape the space away from the point where the dehumidified air is being introduced. Filter the air escaping the space; the filtration system must be designed so that it does not interfere with the dehumidification equipment's ability to control the dew point and relative humidity of space. Do not re-circulate the air from the space or from filtration equipment back through the dehumidifier during coating application or when solvent vapors are present.

### **3.07 CONTAINMENT AND DUST CONTROL EQUIPMENT**

Full containment of the entire structure shall be required during surface preparation and painting of exterior. The Contractor shall control emissions from abrasive blasting in accordance with 30 TAC, Rule 111.137. The Contractor shall ensure that no spent cleaning/blasting debris, dust, overspray, coating droplets, or emissions of any kind, escape to the atmosphere, the base of the tank, or adjacent buildings, private property, work sites and parking lots.

The containment system shall at a minimum meet the emissions control requirements of a Class 2 System as specified in Section 4.2.2.2 of SSPC-Guide 6 (CON), Guide for Containing Debris Generated During Paint Removal Operations, (Latest Edition). The ground surrounding the tank shall be protected from all debris, emissions, dust and other materials generated in the cleaning operations with a minimum of two layers of impervious membrane covered with plywood or the same material used for the perimeter containment system.

The Contractor shall be responsible for all materials that are used and for any apparatus used to contain dust emissions, debris, overspray, and coating droplets. The containment system attachments to the tank shall be designed not to impose excessive loading on the tank. The Contractor shall submit details of the containment system and the attachment details for review prior to installation of the containment system on the tank. The containment system will place additional loads on the tank that the tank was not originally designed for. The Contractor shall reinforce the tank as necessary to prevent permanent deformation and to assure that no damage occurs to the tank. Any damage to the tank as a direct or indirect result of the containment system shall be repaired or sections replaced by the Contractor at no additional costs to the Owner. Neither the Owner nor the Consultant assumes any responsibility for the structural ability of the tank to support the containment system.

Complete containment of the tank shall be utilized to contain all cleaning dust, debris, emissions, paint droplets, and paint overspray, the complete containment shall include a full bonnet. If tarps are used as part of the containment system, the tarps shall be an impervious, solid, flame-resistant material, reinforced with a fiber mesh and shall allow as much light as possible to pass through the material.

The OWNER reserves the right to stop work or require additional or different containment methods if the CONTRACTOR's operations create a nuisance beyond the tank site property line in the sole opinion of the OWNER, the Consultant, the OWNER's designated representative, any

regulatory agency, or neighbor. The CONTRACTOR in the Base Bid shall include all costs of providing an adequate containment system.

Review of the containment system for containing the spent cleaning dust, debris, emissions, overspray, and coating droplets shall not warrant the structural integrity of the containment system and shall not warrant the structural integrity of the tank to support the containment system. Nor shall review of the containment system warrant the ability of the system to contain spent cleaning dust, debris, emissions, and overspray.

All attachments to the tank shall include a "reinforcing" pad/plate designed to distribute the loads and to prevent damage to the tank. The reinforcing pad/plate may remain in the tank at the completion of the project as long as the pad/plate is completely seal welded. All edges ground to 1/8 in. minimum radius, and all submittals shall include, at a minimum, the following detail and descriptions.

1. Brackets/outriggers to be attached to tank including size, material, etc.
2. Bracket/outrigger attachments to the tank.
3. Number of brackets/outriggers and spacing on tank container.
4. Center roof "tree" and attachment details.
5. Reinforcing pad between structure and attachments.
6. Any additional roof support.
7. Size of cables to be used and locations.
8. Anchorage details of hoist and location
9. Ground Anchors.
10. Catalog cuts of tarp (screen) material.
11. Tarp/screen material connection and overlaps.
12. Design/operation parameters of containment, such as wind speed when containment shall be lowered or not used.
13. Ground Anchors.
14. Other dust collection and engineering controls.
15. Any item desired to be left on the tank structure at the completion of the Project (subject to approval by the OWNER).
16. Maximum wind velocity which the containment system can remain raised and the procedure for which the containment system will be utilized on forecasted high/gusty wind days.

Dust Collection: CONTRACTOR shall furnish, operate, and maintain adequate dust collection during the Project to achieve negative pressure within the containment or adequate airflow within the tank interior. The dust collection system shall at a minimum meet the requirements of a Type J1 Air Filtration system, as specified in Section 5.4.5.1 of the SSPC-Guide 6 (CON), Guide for containing Debris Generated During Paint Removal Operations. The dust collection shall be operated during all abrasive blast cleaning and until the area is clean enough for coating application. The CONTRACTOR shall be responsible for all sizing, design of ductwork, etc., based upon the CONTRACTOR's operations, number of blasters, duration of blasting, etc. The CONTRACTOR shall also take precautions to avoid a vacuum from developing inside the tank, as even slight vacuum inside of the tank may cause damage to the tank.

**3.08 CONFINED SPACE:** The Contractor shall acknowledge that confined space training has been issued to all persons who will be working on this project.

**3.09 CLEAN UP:** Upon completion of the work, all staging, scaffolding and containers shall be removed from the site or destroyed in a manner approved by the Engineer. Coating or paint spots or oil stains upon adjacent surfaces shall be removed and the jobsite cleaned. All damage to surfaces resulting from the work of this section shall be cleaned, repaired or refinished to the satisfaction of the Engineer at no cost to the Owner.

**3.10 REPORTING/RECORDS:** All work, including inspections, shall be recorded daily by the Contractor. A copy of each daily report shall be placed in a file kept on the job site. The reports shall include, but not necessarily limited to, the following information:

- Date
- CONTRACTOR and subcontractor name (where applicable)
- INSPECTOR name (where applicable)
- Work Identification including:
  - Type of work performed
  - Location of work performed
  - Weather conditions, including corresponding time of day, before during and after work begins including:
    - Temperature (air and surface)
    - Humidity/dew point
    - Wind velocity/direction,
- Remarks and results of work
- CONTRACTOR signature

**3.11 MAINTENANCE MATERIAL:** At the end of the project before final payment, the CONTRACTOR shall provide the OWNER (5) five one gallon cans of each type and color of coating, primer, thinner, and other coatings used in the field including multiple component materials. The material shall be delivered in unopened, typed-labeled cans, just as it comes from the factory. If the manufacturer does not package the material in one (1) gallon cans, and in the case of special colors, the materials may be delivered in new five (5) gallon containers, properly closed with typed, color, and batch numbers. The manufacturer's directions for use and literature describing the materials shall also be furnished to the OWNER in three bound copies and a typed inventory list shall be furnished at the time of delivery.

### **3.12 DESCRIPTION OF BID ITEMS**

No welding over coated steel. All areas that require welding are to be abrasive blasted or tool cleaned before any welding is started. All structural modifications and repairs are to be conducted and approved prior to the coatings portion of this contract. All welding to be seal welded.

All welders shall be qualified in accordance with the current ASME, Section IX or AWS D1.1 (tests as described in AWS B2.1) to the procedures and processes required to accomplish the work. Completed welds shall be detailed in accordance with NACE Standard RPO178 designation "C". Any full penetration welds on the primary structure of this tank shall be tested by X-ray (radiograph) at the expense of the contractor by an approved 3<sup>rd</sup> party laboratory in accordance with the governing code and standards. The owner's engineer/inspector will select the number and location of all testing.

**Bid Item 1:** Lump sum price for the Complete Cleaning and Repainting of the tank exterior surfaces with containment, shrouding and dust control. All this work shall be in accordance with this Section "Technical Specifications" Part 2.04.A, and Part 3.07.

**Bid Item 2:** Lump sum price for the Complete Cleaning and Repainting of the tank interior surfaces with Dehumidification. All this work shall be in accordance with this Section "Technical Specifications" Part 2.04.B, and Part 3.06.

**Bid Item 3:** Lump sum price for the Dehumidification Control to be furnished, installed and operated by the contractor in accordance with this Section "Technical Specifications" Part 3.06.

**Bid Item 4:** Lump sum price for Containment and Dust Collection System to be furnished and operated by the contractor in accordance with this Section "Technical Specifications" Part 3.07.

**Bid Item 5:** Lump sum price for General Repairs to include the following: Perform grinding, welding and general work to repair corrosion related surfaces and remove or make operable the liquid target as deemed necessary in accordance with this Section "Technical Specification" Part 3.01.A.

**Bid Item 6:** Lump sum price for Installing a New Roof Vent. A new 20" diameter aluminum AWWA D100 approved roof vent and carbon steel weld-on flanged neck to accommodate the bolt on installation of the new aluminum vent in accordance with this Section "Technical Specification" Part 3.01.A

**Bid Item 7:** Lump sum price for New Interior and Exterior Ladders with Balcony Rail Modifications to include removing the existing safety climb, removing the existing ladder and replacing with an OSHA approved ladders, cable type safety climbs, modifying the balcony railing rendering it OSHA Compliant.

**Bid Item 8:** Lump sum price for Installing a Riser Manway. A new 18"x24" oval or a 24" diameter AWWA D100 approved and TCEQ compliant manway in accordance with this Section "Technical Specification" Part 3.01.A

**Bid Item 9:** Unit cost per tube for Caulking Seam Sealing to include the following: Install Sika-Flex 1A or Tnemec Series 215 or equal NSF approved sealant/caulking at areas deemed necessary in accordance with this Section "Technical Specification" Part 3.01.A.2.

**Bid Item 10:** Lump sum price for removing and reinstalling electrical conduit and antennas as needed for tank rehabilitation.

**END OF SECTION**

ATTACHMENT M FORM 1295—TEXAS ETHICS COMMISSION

**This document is available on-line at the following link:**

<https://www.ethics.state.tx.us/forms/1295.pdf>

**NOTE:** The successful vendor, upon award of contract by City Council, shall file Form 1295 with the Texas Ethics Commission and supply a completed copy to the Purchasing Agent within one week. This form must be filed on-line at <https://www.ethics.state.tx.us/forms/1295.pdf>.



**GRASSHILL EST INSPECTION**

**For  
City of Leon Valley  
And  
LNV Engineering**

150,000-gallon Cone Roof Hemispherical Bottom EST

June 7, 2018

**HOT INSPECTION  
SERVICES**

**TANK CONSULTANTS & INSPECTION SPECIALISTS**

P.O. Box 1208  
ROUND ROCK, TX 78680  
WWW.HOTINSPECTION.COM  
(512) 244-2523



## **HOT Inspection Services, Inc.**

P.O. Box 1208 · Round Rock, TX 78680-1208

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### **PROJECT REPORT**

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**TO: Byron Sandefer, P.E.**  
**LNV, Inc.**  
**8918 Tesoro Drive, Ste 401**  
**San Antonio, Texas 78217**

**DATE: 6/12/18**  
**REPORT NO: 2669-2**

**PROJECT: Grass Hill EST**

**CUSTOMER Contract**  
**LOCATION: Leon Valley Tx**

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#### **INTRODUCTION:**

The subject of this report is the evaluation of a 150,000-gallon Elevated Storage Tank known as Grass Hill Elevated Storage Tank, located in Leon Valley, Texas. The cone roof, hemispherical bottom tank is of riveted and welded steel construction and was constructed in 1930 by Pittsburg-Des Moines Construction Company. The tank is operated by the City of Leon Valley and was made available for inspection by the City Personnel on 6/7/18. The tank was in service at the time of inspection and at 75% full capacity. John H. Konzen, CWI, NDE Level III and NACE Certified Coating Inspector and Justin Konzen of HOT Inspection Services Inc., performed the field evaluation.

The information contained herein is as accurate as could be obtained by HOT at the time of the inspection and from the history of the respective tank. No other assurance or warranty is expressed or implied. We assume no responsibility for any errors or omissions in this report, but will attempt to resolve concerns with the content of this report upon request. Any estimates or opinions with respect to tank rehabilitation provided by HOT in this report are based on HOT's experience and qualifications as a consultant and represent its best judgment as an experienced and qualified consultant familiar with the tank construction industry. Since we have no control over costs of labor, materials, equipment or services furnished by others or over competitive bidding or market conditions, it cannot guarantee that proposals, bids or actual project costs will not vary from any estimates or opinions of costs prepared by HOT.

The condition survey was conducted and generally follows the guidelines as described in Chapter 9 and Appendix C of the AWWA M42 Manual for Steel Water Storage Tanks. The inspection and evaluation meets and exceeds the requirements of the Texas Administration Code of TCEQ Chapter 290 subchapter D, Rule 290.46. The following report provides information that is valuable in the continued operation and maintenance of the tank.

#### **OBJECTIVE:**

The purpose of this evaluation was to determine the condition of the tank interior, exterior, exposed foundations and accessories and to make recommendations and cost estimates for recoating, repairing, corrosion protection and maintenance. Budget estimates for the work, anticipated life of the coating and the structure are included.

**SUMMARY:**

**Exterior Surfaces** – The tank was reported to have been re-coated in 2001 from a CIP memo dated on 9/10/14. There is no indication as to the extent of the re-coating and therefore it is not known if the original coating system was completely removed. The existing coating system has not been verified from analytical testing at the time of this report. The shell, bowl and roof thicknesses were verified by some spot ultrasonic testing. The coatings' esthetic appearance on the exterior is in fair to poor condition with rust rash, light corrosion and mildew build-up along the riser, legs, shell, balcony, roof, under-belly and some appurtenances. Corrosion to base metal substrate was present at random areas on the leg struts, diagonal tie rod turnbuckles, roof, balcony and appurtenances as seen in the attached photos. The top coat is chalked and is aged experiencing some brittleness noted during the inspection. The integrity of the exterior coating is in fair condition at the areas accessed during the inspection. The adhesion is fair, that indicates this tank is not an overcoat candidate.

**Interior surfaces** – The tank was reported to have been re-coated in 2001 from a CIP memo dated on 9/10/14. There is no indication as to the extent of the re-coating and therefore it is not known if the original coating system was completely removed. The existing coating system has not been verified from analytical testing at the time of this report. The coating appears to be fair to poor without any apparent delamination and adhesion loss. There is rust rash corrosion below and above the water level and is experiencing some edge and seam corrosion above the high water line at the shell to roof connection. The interior coating is aged and will exhibit brittleness when taken out of service and dried. The adhesion is fair, that indicates the coating is at the end of its life expectancy.

**DESCRIPTION OF TANK:**



**GRASS HILL EST**



## INSPECTION RESULTS:

### Exterior

1. **Foundation:** The tank foundation consists of concrete piers for the riser and each of the four column legs and base plate connections. The majority of the foundation appeared to be in good overall condition with some minor cracking.



2. **Exterior Coating Condition:** The coating on the exterior of the tower and container appeared to be in fair condition, providing adequate protection from corrosion to most of the underlying steel. The exterior exhibited poor to fair adhesion to the underlying coating. The coating is unknown but appeared to be an alkyd coating system. *See photos in the project report photo gallery.*

3. **Base Plates:** The column and riser base plates appeared to be in adequate condition as seen in the foundation photos above.

4. **Anchor Bolts:** Each of the columns was equipped with two anchor bolts and the riser was not anchored.

5. **Column Condition:** The columns were constructed from two channel members riveted together with lattice bars and backing plate. The columns appeared to be in their original structural condition at the time of inspection. Chalking and widespread cracking and checking of the topcoat were observed on the columns.

6. **Riser Condition:** *There was a TCEQ deficiency noted: the 12" x 16" riser manhole did not meet the required 24" diameter minimum in the vertical direction.* The riser was of welded and riveted construction and appeared to be in good structural condition at the time of inspection. Chalking and cracking of the riser topcoat was observed. A 4"Ø drain valve is at the base of the riser. There is a double-crab manhole and was secured with unistruts and two bolts. *See photos below.*



7. **Tower Bracing:** The coating on the diagonal bracing, rods, struts, clevises, wing plates and turnbuckles has failed and is exposing the bare steel at random areas observed. *See photos below.*



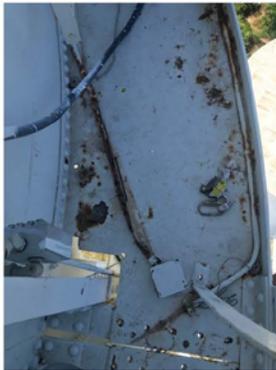
8. **Overflow Pipe:** The overflow pipe exited through the top shell ring and extended down the shell, through the balcony and down the column to within 3' of grade. The overflow was equipped with an above-ground air break and discharged onto a concrete splash pad. The discharge end is equipped with a flap valve. *See photos below.*



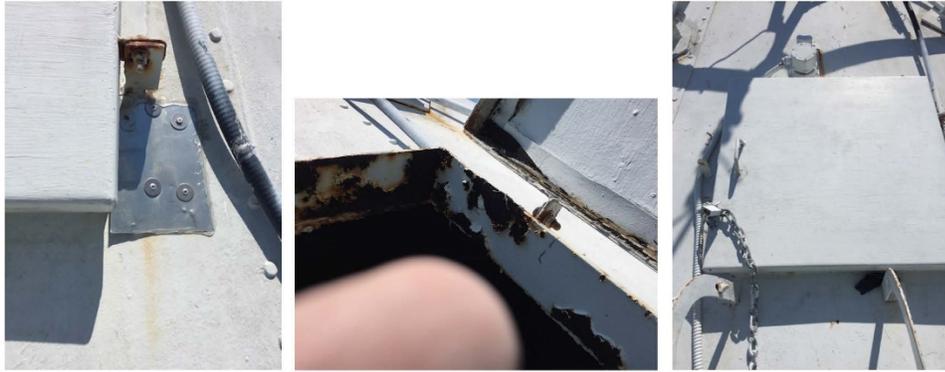
9. **Exterior Ladders:** *There were safety and OSHA deficiencies noted: (1) the width between the side rails of 14-7/8" to 15" did not meet the required 16" minimum. (2) the 5/8" diameter ladder rungs did not meet the 3/4" minimum ladder rung diameter. (3) the ladder rungs were not all spaced consistent to the 12" intervals required. (4) there was conduit and coaxial cable attached to the ladder which could interfere with the unrestricted use of the side rail by the climber. (5) the safety climb device was offset to one side and should be centered on the ladder rungs.* The ladder was equipped with a cable type safety climbing device. The ladder was approximately 8' from grade level and could be accessed without an extension ladder by climbing the lattice leg. No vandal deterrent was present. *See photo below.*



10. **Shell/Balcony/Bowl:** *There were safety and OSHA deficiencies noted: (1) the balcony handrail does not meet the OSHA standards. (2) there is cable and conduit extending across the balcony which creates a trip hazard.* The contour of the tank shell was good with no significant discontinuities observed at the time of the evaluation. The coating appeared to be in fair overall condition and exhibited poor adhesion to the underlying coating. Some corrosion to base metal, rust rash, checking of the coating, chalking from UV exposure and mildew were noted. There was exposed wires inside corroded conduit laying on the balcony floor. *See photos below.*



11. **Roof and Roof Hatch:** *There were TCEQ deficiencies noted: (1) The hatch was not locked. (2) There were holes along the roof to shell connection.* The roof hatch is of steel construction (30" x 30"). The hatch lid is in fair condition with some coating delamination around the weld seams and edges. The overall coating appeared to be in poor overall condition and exhibited poor adhesion to the underlying coating. Coating failures and rust were noted on the roof along riveted seams. *See photos below.*



12. **Roof Finial and Vent:** The vent is of steel construction (10"Ø) and fitted with a 16 mesh stainless screen that is banded with stainless clamps. *See photo below.*



**Interior** (the tank was in service and at 75% capacity)

1. **Interior Coating Condition:** The coating on the interior surfaces of the tank appeared to be in fair to good condition. The interior coatings exhibited fair adhesion to the steel. The coating appeared to be an epoxy coating system.
2. **Shell Condition:** The coating on the interior shell appeared to be in poor condition. The shell coating was discolored due to mineral staining, rust rash and corrosion. *See photos below.*



3. **Roof:** *There was a TCEQ deficiency noted: (1) a gap exceeding 1/16" in the shell to roof was observed.* There was surface rust observed on the interior roof. The roof was riveted together to steel brackets which were bolted to a top shell angle with J-bolts. *See photos below.*



4. **Overflow Weir Box:** The weir box is approximately 12"x18"x30" with the overflow pipe exiting the top shell of the tank. Some minor edge corrosion along the top and along the weld seam to shell.

5. **Interior Shell Ladder:** *There were safety and OSHA deficiencies noted: (1) There is no interior safety climb. (2) the width between the side rails of 14-7/8" to 15" did not meet the required 16" minimum. (3) the 5/8" diameter ladder rungs did not meet the 3/4" minimum ladder rung diameter.* The interior ladder was attached to the shell and contained some corrosion as seen in the report photo gallery.

6. **Bowl and Riser Condition:** The coating on the interior bowl appeared to be in fair condition. The bowl coating was discolored due to mineral staining, rust rash, corrosion and some sediment. The riser opening is equipped with a protective grating *See Video.*

**Adhesion test** - An adhesion test was conducted in accordance with ASTM D3359 Standard for measuring the adhesion rating of the current exterior coating system. This is a vital test to determine the options available for rehabilitating the coating system. Overcoating a tank requires adhesion ratings of 3 or greater on a scale of 0-5. The results are reported in the tank description table using the ASTM scale. The ASTM scale is a relative scale to rate adhesion from 0 to 5 with 5 being the best.

*5 (very good) - 4 (good) - 3 (fair) - 2 (poor) - 1 (very poor) - 0 (unacceptable and failing)*

**Ultrasonic thickness measurement** - The roof plate, bowl and shell were measured to verify material thickness as noted in the tank description above. Although access to the underbelly was in accessible, a thickness estimate was given based on the design thickness of tank alike.

## **DEFICIENCIES:**

TCEQ, AWWA, OSHA and Safety-Related Deficiencies. There were deficiencies and concerns with this tank. They included:

- The width between side rails, diameter of ladder rungs and size of the side rails of the interior and exterior ladders did not meet the required minimum.
- The balcony does not meet all of the requirement for the toe room, mid rail and height.
- Coaxial cable and exposed wires in conduit along the ladder and balcony floor.
- The riser manway does not meet the required minimum diameter.
- The roof hatch was not locked.
- Uncovered gaps were noted between the roof and shell.

## **RECOMMENDATIONS:**

HOT defines the life of an exterior coating as the amount of time before repainting becomes necessary due to coating failure and corrosion. During the exterior coating's life, the owner should expect the coating to lose its gloss, start to chalk, show signs of weathering, mildew and possibly some rust staining. The typical life of a properly applied exterior coating system is approximately 15-20 years. It is recommended that a complete exterior rehabilitation be performed.

HOT defines the life of an interior coating as the amount of time before repainting becomes necessary due to coating failure and corrosion. During the coating life the owner should expect some rust staining due to interface corrosion some checking, a few small holidays and minor blistering due to entrapment. The optimum long-life coating system presently available is a Zinc-epoxy coating system. A zinc and two-coat or single hi-build epoxy system is recommended for the interior of this tank. This coating system should meet the certification criteria of ANSI/NSF 61 and TCEQ regulations. The typical life of this properly formulated and applied coating system is approximately 12-15 years. Due to the appearance and age of the coating and brittleness, it is recommended that the interior be rehabilitated.

The recommended scope of work listed below applies to the Grass Hill EST for proper modification and rehabilitation to bring the tank into a serviceable condition in accordance with TCEQ, AWWA and Industry Standards. The budget and bidding process will have an effect on the project's end result. A set of specifications that has a detailed scope of work and itemizes the repair and modifications well enough to properly bring the tank into compliance is an essential requirement for a successful project. The City of Leon Valley is expected to contract with LNV, Inc., Engineers to provide a P.E. in the State of Texas for the specifications and bid document preparation. It is recommended that any surrounding instruments and equipment be protected during the project. Industry standards with recommended practices and procedures should be referenced in the specification as to give the contractor a quality standard for accomplishing the scope of work.

1. Properly protect the surrounding areas from any abrasive particulates and coating overspray/fallout. It is not known if the exterior or interior coatings system

contain lead or other heavy metals which would be hazardous and considered over the limits with local, state and federal regulations. Containment of the tank by shrouding or other means should be investigated.

2. Make any necessary interior/exterior welding repairs due to corrosion. This includes replacement of ladders, sealing the patched hole in the roof next to the roof hatch, sealing the gap between the roof and shell and structural modifications deemed necessary. The resident inspector and engineer should identify welding repairs necessary. A welder certified to ASME Section IX or AWS D1.1 (tests as described in AWS B2.1) code shall conduct all welding. Any small gaps that are not in a structural connection zone, may be seam sealed using an approved seam sealer.
3. Grind all sharp edges, weld splatter, arc strikes, uneven weld profiles, and any other fabrication defects that do not provide adequate anchor profile and causes a lack of coating adhesion. Once all these areas are addressed with a grinder, prepare the surface for painting as specified in the project specifications.
4. Install a 24"Ø Riser Manway with davit arm to comply with AWWA D100 and TCEQ.
5. Replace the existing 10"Ø roof vent with a 20"Ø AWWA D100 approved aluminum vent design and install a weld neck flange and bolt to the aluminum vent with a fiberglass 16 mesh screen banded tight to meet TCEQ.
6. Replace all of the ladders to comply with OSHA. Install a safety climb on the roof ladder and the interior ladder or a retractable fall device.
7. Modify the existing balcony handrail and toe plate dimensionally to comply with OSHA.
8. Remove all unused/damaged coaxial cable, conduit and wiring from the tank and balcony. Reposition all coaxial cable, conduit and wiring that is to remain in service to comply with all safety and OSHA regulations.
9. Apply an industrial coating system using trained and qualified coating applicators. The Tnemec Coating System is recommended utilizing the coatings available from Tnemec. Clean the exterior surfaces to a SSPC-SP 6, Commercial Blast Cleaning and have a Zinc/Epoxy/Urethane, 3-coat system applied. Clean the interior surfaces to a SSPC-SP 10, Near White Blast Cleaning and a Zinc/2-Coat Epoxy system applied. *(A detailed coating specification will be written under a separate cover upon review and discussion of this report. The system above may be changed depending on the existing coating system results and the time of year the tank will be rehabilitated).*
10. Provide a dust collector and dehumidification unit to control the interior environment while abrasive blasting and coatings application.
11. Seal caulk all interior penetrations, laps and other unsealed connections that cannot be protected from the moisture or corrosive environment.

12. Provide a knowledgeable and qualified welding/coating inspector to monitor all aspects of the scope of work to assure the customer that all industry standards, specifications and good workmanship practices are being followed.

**BUDGET COST:**

**Recommended Scope of Work**

<b>EXTERIOR (based on 9,500 sq./ft. @ \$12.00/sq./ft.)</b>	
Clean & Paint Exterior	\$ 114,000
SP-6 Clean, apply zinc/epoxy/urethane system	
Apply Ty-coat and urethane finish coat	
Containment (protection and shrouding)	50,000
<small>(**the containment cost is not considering Class 2 System of the SSPC-Guide 6**)</small>	
<b>INTERIOR (based on 5,000 sq./ft. @ 12.00/sq./ft.)</b>	
Clean and Paint Interior	60,000
SP-10 Clean, apply zinc/2-coat epoxy system	
Interior dehumidification and dust collection	25,000
Grinding, corrosion repairs and miscellaneous strip out work	8,000
Replace Roof Vent w/aluminum vent and weld neck flange	6,000
Exterior/Interior Ladders, safety climbs and balcony modification	25,000
Riser Manway	6,000
Seal caulk interior laps, penetrations and etc. (\$50/tube @ =24 tubes)	1,200
New Leon Valley Logo	5,000
Contingency @ 10% of \$300,200	30,020

*Total Cost to Budget should be \$330,220. This budget assumes that the results of the exterior paint testing is not hazardous per the limits of RCRA metals such as lead and chromium and will not require special consideration. It does not include the cost for Engineering Services to write the bid documents/specifications and administrate the project or the Third Party NACE Level III Inspection. The contractor should consider the accessibility to this project.*

**CONCLUSION OF OBSERVATION:**

The intent of this report is to convey the condition of the tank and make reasonable recommendations and cost estimates to the owner on rehabilitating the tank. The cost associated with a total rehabilitation will be substantial and should be considered sensitive to the time of bidding as it relates to our economy.

The recommendations and budget have been offered by HOT Inspection Services as a plan to consider this year. The CIP budget should be approved with a contingency for the economy and any local, state or federal regulations that may affect the pricing.

In conclusion to the inspection and evaluation of the above referenced tank, it is the opinion of HOT Inspection Services that the recommended repairs be conducted to maintain the integrity of the water storage tank. HOT Inspection Services, Inc., assumes no responsibility for losses of any kind due to our interpretation of the quality of the material submitted. All data and information will be held strictly confidential.

**HOT Inspection Services, Inc.**

  
John H. Konzen  
NACE Certified Coating Inspector #7841  
AWS Certified Welding Inspector #85040251  
AWS Certified Welding Educator #9612020E  
NDE Level III

 John H Konzen  
CWI 85040251  
QC1 EXP. 4/1/2018



**Grass Hill EST**



**Plaque**

**EXTERIOR PHOTOS**





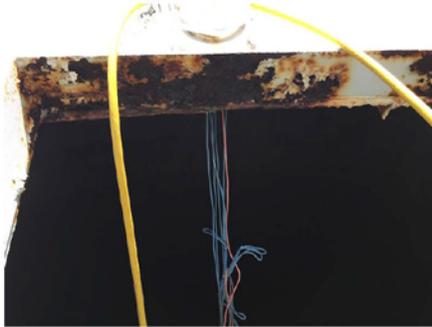






**INTERIOR PHOTOS**





ATTACHMENT O LABORATORY TEST RESULTS OF EST COATING



December 12, 2019

John Konzen  
Hot Inspection Services, Inc.  
15370 Spotted Horse Lane  
Salado, Texas 78680  
TEL: (512) 422-7655  
FAX

Order No.: 1912028

RE: Leon Valley

Dear John Konzen:

DHL Analytical, Inc. received 2 sample(s) on 12/4/2019 for the analyses presented in the following report.

There were no problems with the analyses and all data for associated QC met EPA or laboratory specifications except where noted in the Case Narrative and all estimated uncertainties of results are within method specifications.

If you have any questions regarding these tests results, please feel free to call.

Sincerely,

A handwritten signature in red ink, appearing to read 'John DuPont'.

John DuPont  
General Manager

This report was performed under the accreditation of the State of Texas Laboratory Certification Number: T104704211-19-24



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2300 Double Creek Drive • Round Rock, TX 78664 • Phone (512) 388-8222 • FAX (512) 388-8229  
www.dhlanalytical.com

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Sample Receipt Checklist

Client Name Hot Inspection Services, Inc.

Date Received: 12/4/2019

Work Order Number 1912028

Received by: EL

Checklist completed by: [Signature] 12/4/2019  
Signature Date

Reviewed by: [Initials] 12/4/2019  
Initials Date

Carrier name: Hand Delivered

- Shipping container/cooler in good condition? Yes  No  Not Present
- Custody seals intact on shipping container/cooler? Yes  No  Not Present
- Custody seals intact on sample bottles? Yes  No  Not Present
- Chain of custody present? Yes  No
- Chain of custody signed when relinquished and received? Yes  No
- Chain of custody agrees with sample labels? Yes  No
- Samples in proper container/bottle? Yes  No
- Sample containers intact? Yes  No
- Sufficient sample volume for indicated test? Yes  No
- All samples received within holding time? Yes  No
- Container/Temp Blank temperature in compliance? Yes  No  19.8 °C
- Water - VOA vials have zero headspace? Yes  No  No VOA vials submitted
- Water - pH<2 acceptable upon receipt? Yes  No  NA  LOT #  
Adjusted? \_\_\_\_\_ Checked by \_\_\_\_\_
- Water - pH>9 (S) or pH>10 (CN) acceptable upon receipt? Yes  No  NA  LOT #  
Adjusted? \_\_\_\_\_ Checked by \_\_\_\_\_

Any No response must be detailed in the comments section below.

Client contacted: \_\_\_\_\_ Date contacted: \_\_\_\_\_ Person contacted \_\_\_\_\_

Contacted by: \_\_\_\_\_ Regarding: \_\_\_\_\_

Comments: \_\_\_\_\_

Corrective Action \_\_\_\_\_

**DHL Analytical, Inc.**

**Sample Receipt Checklist**

Client Name **Hot Inspection Services, Inc.**

Date Received: **12/4/2019**

Work Order Number **1912028**

Received by: **EL**

Checklist completed by: \_\_\_\_\_ 12/12/2019  
Signature Date

Reviewed by \_\_\_\_\_ 12/12/2019  
Initials Date

Carrier name: Hand Delivered

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Adjusted? \_\_\_\_\_ Checked by \_\_\_\_\_

Any No response must be detailed in the comments section below.

Client contacted \_\_\_\_\_ Date contacted: \_\_\_\_\_ Person contacted \_\_\_\_\_

Contacted by: \_\_\_\_\_ Regarding: \_\_\_\_\_

Comments: \_\_\_\_\_

Corrective Action \_\_\_\_\_

**DHL Analytical, Inc.**

Date: 12-Dec-19

CLIENT: Hot Inspection Services, Inc.  
 Project: Leon Valley  
 Project No: 2799  
 Lab Order: 1912028

Client Sample ID: EXT Leg  
 Lab ID: 1912028-01  
 Collection Date: 12/04/19 11:30 AM  
 Matrix: PAINT

Analyses	Result	MDL	RL	Qual	Units	DF	Date Analyzed
TRACE METALS: ICP-MS - SOLID		SW6020B		Analyst: SP			
Chromium	2440	15.6	62.3		mg/Kg	50	12/06/19 10:52 AM
Lead	2780	3.12	9.35		mg/Kg	50	12/06/19 10:52 AM

<b>Qualifiers:</b>	* Value exceeds TCLP Maximum Concentration Level	C Sample Result or QC discussed in the Case Narrative
DF	Dilution Factor	E TPH pattern not Gas or Diesel Range Pattern
J	Analyte detected between MDL and RL	MDL Method Detection Limit
ND	Not Detected at the Method Detection Limit	RL Reporting Limit
S	Spike Recovery outside control limits	N Parameter not NELAP certified

**DHL Analytical, Inc.**

Date: 12-Dec-19

CLIENT: Hot Inspection Services, Inc.  
 Project: Leon Valley  
 Project No: 2799  
 Lab Order: 1912028

Client Sample ID: EXT Shell  
 Lab ID: 1912028-02  
 Collection Date: 12/04/19 11:30 AM  
 Matrix: PAINT

Analyses	Result	MDL	RL	Qual	Units	DF	Date Analyzed
<b>TRACE METALS: ICP-MS - SOLID</b>		<b>SW6020B</b>		Analyst: <b>SP</b>			
Chromium	335	14.5	57.9		mg/Kg	50	12/06/19 10:54 AM
Lead	3000	2.89	8.68		mg/Kg	50	12/06/19 10:54 AM

<b>Qualifiers:</b>	* Value exceeds TCLP Maximum Concentration Level	C Sample Result or QC discussed in the Case Narrative
DF	Dilution Factor	E TPH pattern not Gas or Diesel Range Pattern
J	Analyte detected between MDL and RL	MDL Method Detection Limit
ND	Not Detected at the Method Detection Limit	RL Reporting Limit
S	Spike Recovery outside control limits	N Parameter not NELAP certified

CLIENT: Hot Inspection Services, Inc.  
 Work Order: 1912028  
 Project: Leon Valley

**ANALYTICAL QC SUMMARY REPORT**

RunID: ICP-MS4\_191206A

The QC data in batch 93966 applies to the following samples: 1912028-01A, 1912028-02A

Sample ID: <b>MB-93966</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg</b>							
SampType: <b>MBLK</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 10:37:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	<0.500	2.00								
Lead	<0.100	0.300								

Sample ID: <b>LCS-93966</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg</b>							
SampType: <b>LCS</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 10:42:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	53.6	2.00	50.00	0	107	80	120			
Lead	51.6	0.300	50.00	0	103	80	120			

Sample ID: <b>LCSD-93966</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg</b>							
SampType: <b>LCSD</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 10:44:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	53.3	2.00	50.00	0	107	80	120	0.549	25	
Lead	51.5	0.300	50.00	0	103	80	120	0.234	25	

Sample ID: <b>1911260-54A SD</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg-dry</b>							
SampType: <b>SD</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 10:50:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	19.5	11.9	0	19.27				1.39	20	
Lead	7.91	1.79	0	8.009				1.26	20	

Sample ID: <b>1911260-54A PDS</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg-dry</b>							
SampType: <b>PDS</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 11:10:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	79.4	2.39	59.67	19.27	101	75	125			
Lead	68.4	0.358	59.67	8.009	101	75	125			

Sample ID: <b>1911260-54A MS</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg-dry</b>							
SampType: <b>MS</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 11:12:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	79.6	2.36	59.09	19.27	102	75	125			
Lead	70.7	0.355	59.09	8.009	106	75	125			

**Qualifiers:** B Analyte detected in the associated Method Blank  
 J Analyte detected between MDL and RL  
 ND Not Detected at the Method Detection Limit  
 RL Reporting Limit  
 J Analyte detected between SDL and RL  
 DF Dilution Factor  
 MDL Method Detection Limit  
 R RPD outside accepted control limits  
 S Spike Recovery outside control limits  
 N Parameter not NELAP certified

**CLIENT:** Hot Inspection Services, Inc.  
**Work Order:** 1912028  
**Project:** Leon Valley

## ANALYTICAL QC SUMMARY REPORT

**RunID:** ICP-MS4\_191206A

Sample ID: <b>1911260-54A MSD</b>	Batch ID: <b>93966</b>	TestNo: <b>SW6020B</b>	Units: <b>mg/Kg-dry</b>							
SampType: <b>MSD</b>	Run ID: <b>ICP-MS4_191206A</b>	Analysis Date: <b>12/6/2019 11:14:00 AM</b>	Prep Date: <b>12/5/2019</b>							
Analyte	Result	RL	SPK value	Ref Val	%REC	LowLimit	HighLimit	%RPD	RPDLimit	Qual
Chromium	79.9	2.26	56.38	19.27	108	75	125	0.449	25	
Lead	69.3	0.338	56.38	8.009	109	75	125	2.00	25	

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<b>Qualifiers:</b>	B Analyte detected in the associated Method Blank J Analyte detected between MDL and RL ND Not Detected at the Method Detection Limit RL Reporting Limit J Analyte detected between SDL and RL	DF Dilution Factor MDL Method Detection Limit R RPD outside accepted control limits S Spike Recovery outside control limits N Parameter not NELAP certified
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