

**SPECIFICATIONS  
AND  
CONTRACT DOCUMENTS  
2017 STREET IMPROVEMENT PROJECT  
FOR  
CITY OF WHARTON**

**2017**

**Prepared By:**

**CITY OF WHARTON  
120 E. CANEY STREET  
WHARTON, TX 77488**

**Phone: (979) 532-2491  
Fax: (979) 532-0181**

## TABLE OF CONTENTS

LEGAL NOTICE AND INVITATION TO BID.....	Page 3
INSTRUCTIONS TO BIDDERS .....	Page 4 - 13
BID PROPOSAL .....	Page 14 - 16
BID BOND .....	Page 17 - 18
CONTRACTOR’S PRE-BID DISCLOSURE STATEMENT .....	Page 19 - 21
SUBCONTRACTOR’S PRE-BID DISCLOSURE STATEMENT .....	Page 22 - 24
NOTICE OF AWARD .....	Page 25
AGREEMENT .....	Page 26 - 31
PERFORMANCE BOND .....	Page 32 - 33
PAYMENT BOND .....	Page 34 - 35
NOTICE TO PROCEED.....	Page 36
GENERAL CONDITIONS .....	Page 37 - 92
SUPPLEMENTARY GENERAL CONDITIONS.....	Page 93 - 105
MAP OF STREET IMPROVEMENTS .....	Page 106
ADDITIONAL CONDITION OF AWARD.....	Page 107
TITLE VI ASSURANCE.....	Page 108

**LEGAL NOTICE  
AND  
INVITATION TO BID**

Sealed bids will be received by the City of Wharton, Texas ("CITY"), at the City Hall; 120 E. Caney Street; Wharton, Texas 77488 until 2:00 P.M. on Monday, August 7, 2017 for the project described in the Contract Documents and Specifications entitled:

**2017 STREET IMPROVEMENT PROJECT**

Bids will be opened then and there, and publicly read aloud. Bids received after the time announced for opening will not be considered.

Copies of the Plans, Contract Documents and Specifications may be obtained at the City of Wharton's City Secretary; 120 E. Caney Street, Wharton, Texas 77488.

Each bid shall be enclosed in a sealed envelope and shall be plainly marked on the outside of the envelope: **"DO NOT OPEN – 2017 STREET IMPROVEMENT PROJECT"**. This envelope shall be addressed to the City Secretary; City of Wharton; 120 E. Caney Street; Wharton, Texas 77488.

Each bid shall constitute an offer to the CITY, as outlined therein, and shall be irrevocable for at least sixty (60) days after the time announced for the opening thereof.

Each bid shall be accompanied by a Certified or Cashier's check payable to the order of the City of Wharton, for a sum not less than five (5%) percent of the total amount bid. In lieu of a check, a Bid Bond may be submitted in an amount not less than five (5%) percent of the total amount bid with a Corporate Surety licensed to do business in the State of Texas, conditioned that the BIDDER will pay the CITY, as mutually agreed to liquidated damages, and not as a penalty, the amount specified in the Bond unless he enters into a contract in accordance with his bid. If the BIDDER fails to execute the contract and to furnish satisfactory Performance and Payment Bonds and Insurance Certificates within ten (10) days from the date on which he is notified that his proposal has been accepted, the amount of his check or bid bond shall be forfeited to the CITY as mutually agreed to liquidated damages, and not as a penalty.

The CITY specifically reserves the right to reject any or all bids, to waive irregularities or informalities in any or all bids and to accept any bid which is deemed to be in the best interest of the CITY.

By: /s/: Paula Favors  
Paula Favors  
City Secretary

Published in the Wharton Journal Spectator on Wednesday, July 19, 2017 and Wednesday, July 26, 2017.

## **INSTRUCTIONS TO BIDDERS**

### **1. RECEIPT AND OPENING OF BIDS:**

The City of Wharton, Texas (hereinafter called OWNER), invites bids on the form attached hereto, all blanks of which must be appropriately filled in, in ink.

The OWNER may consider informal and non-responsive, any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No BIDDER may withdraw a bid within at least sixty (60) days after the actual date of the opening thereof.

### **2. INSPECTION OF SITE:**

Each BIDDER shall visit the site of the proposed work and fully acquaint himself with the existing conditions there relating to construction and labor, and shall fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the Contract. The BIDDER should thoroughly examine and familiarize himself with the Drawings, Technical Specifications, and all other Contract Documents. The Contractor, by the execution of the Contract, shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal instrument, or to visit the site and acquaint himself with the conditions there existing and the OWNER will be justified in rejecting any claim for extra time, or compensation, or both, based on facts regarding which Contractor should have been on notice as a result thereof. Visits to the site shall be arranged by calling Jones & Carter Engineering at telephone no. (713) 777-5337.

### **3. PREPARATION OF BID AND USE OF SEPARATE BID FORMS:**

These contract documents include a complete set of bidding documents. The BIDDER shall copy all documents listed in the table of contents under the heading BIDDING DOCUMENTS and shall submit his bid on these forms. A bid shall be comprised of the BIDDING DOCUMENTS completed by the BIDDER plus supplemental information required by the specifications and documents or deemed necessary by the BIDDER to fully describe his offering.

If any of the information submitted as part of the bid is considered to be proprietary by the BIDDER, he shall identify such in his bid.

- a) Preparation. Each bid shall be carefully prepared using the proposal and proposal data forms included as a part of the bidding documents. Entries on the proposal and proposal data forms shall be typed, using dark black ribbon, or legibly written in black ink. All prices shall be stated in words and figures except where the forms provide for figures only. In case of discrepancy, the amount shown in words will govern.

The BIDDER shall acknowledge, in the space provided in the proposal form, receipt of each addendum issued for the specifications and documents during the bidding period.

The BIDDER shall assemble all drawings, catalog data, and other supplementary information necessary to thoroughly describe materials and equipment covered by the proposal, and shall attach such supplemental information to the copies of the specifications and documents submitted.

- b) Signatures. Each BIDDER shall sign the proposal with his usual signature and shall give his full business address. The BIDDER'S name stated on the proposal shall be the exact legal name of the firm. The names of all persons signing should also be typed or printed below the signature.

Proposals by partnerships shall be signed with the partnership name followed by the signature and designation of one of the partners or other authorized representative. A complete list of the partners shall be included with the proposal.

Proposals by a corporation shall be signed in the official corporate name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation.

A proposal by a person who affixes his signature the word "president," "secretary," "agent," or other designation, without disclosing his principal, will be rejected. Satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished. Bidding corporations shall designate the state in which they are incorporated and the address of their principal office.

- c) Submittal. The original proposal (and its accompanying copy) shall be transmitted to arrive at the designated address not later than the date and time stipulated in the Legal Notice and Invitation to Bid.

Submit the original proposal and one signed copy of the proposal to:

City of Wharton, Texas  
120 E. Caney Street  
Wharton, Texas 77488

Attention: Paula Favors  
City Secretary

Each bid must be submitted in a sealed envelope bearing on the outside the name of the BIDDER, his address, and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

**4. METHOD OF BIDDING: UNIT PRICE.**

Prices shall be firm, not subject to qualification, condition or adjustment. Prices shall be in United States dollars. Prices shall be lump sum except where unit prices are requested by the bid forms. If unit price items are required by the proposal, the unit prices for each of the several items in the proposal of each BIDDER shall include its pro-rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to the requirement may be rejected as informal and non-responsive. The special attention of all BIDDERS is called to this provision, for should conditions make it necessary to revise the quantities, no limit will be fixed for such increased or decreased quantities nor extra compensation allowed, provided the net monetary value of all such additive and subtractive changes in quantities of such items of work pursuant to public competitive bidding statutes (i.e., difference in cost) shall not increase or decrease the original contract price by more than twenty-five (25%) percent. A proposed decrease only that exceeds twenty-five (25%) percent of the original contract price must be agreed to in advance by the Contractor.

**5. DISCLOSURE BY BIDDER:**

Each BIDDER shall submit with the bid documents, on the form furnished for that purpose, his Pre-Bid Disclosure Statement showing his experience record in performing the type of work embraced in the contract, his organization and equipment available for the work contemplated, and, when specifically requested by the OWNER, a detailed financial statement. The OWNER shall have the right to take such steps as it deems necessary to determine the ability and responsibility of the BIDDER to perform his obligations under the Contract and the BIDDER shall be responsive in furnishing the OWNER all such information and data for this purpose as it may request. OWNER reserves the right to reject any bid where an investigation of the available evidence or information does not satisfy the OWNER that the BIDDER is responsible to carry out properly the terms of the Contract. This shall also apply to any proposed subcontractor(s).

**6. SUBCONTRACTS:**

The BIDDER is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this contract must be acceptable to the OWNER, and that a Pre-Bid Disclosure Statement for each proposed subcontractor must also be submitted with the bid documents.

**7. BID SECURITY:**

Each bid must be accompanied by certified or cashier's check, or a bid bond prepared on the form of the bid bond attached hereto, duly executed by the BIDDER as principal and having as surety therein a surety company approved by the OWNER, authorized to do business in the State of Texas, in the amount of not less than five (5%) percent of the bid. Such certified or cashier's checks, or bid bonds will be returned to all except the three lowest BIDDERS within fifteen (15) days after the opening of bids, and the remaining checks, or bid bonds will be returned promptly

after the OWNER and the accepted BIDDER have executed the contract or if no award has been made, within thirty (30) days after the date of the opening of bids. The bid security will be returned upon demand of the BIDDER at any time thereafter, so long as he has not been notified of the acceptance of his bid.

**8. ADDENDA AND INTERPRETATIONS:**

No oral interpretations by OWNER and its representatives shall be binding upon OWNER as to the meaning of the plans, specifications, contract documents, or other pre-bid documents.

Every request for such interpretation should be made in writing, addressed to Jones & Carter Engineering, and must be received prior to the date fixed for the opening of bids in order to be considered. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be on file at the Department mentioned above prior to the date fixed for opening of bids, and will be mailed by certified mail with return receipt requested to all prospective BIDDERS (at the respective addresses furnished for such purposes), prior to said date. It will be the BIDDER'S responsibility to inquire as to any addenda issued and failure of any BIDDER to receive any such addenda or interpretation shall not relieve such BIDDER from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

**9. TELEGRAPHIC MODIFICATION:**

Any BIDDER may modify his bid by telegraphic and/or telefax communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic or telefax communication is received by the OWNER prior to the closing time, and provided further, the OWNER is satisfied that a written confirmation of the telegraphic or telefax modification over the signature of the BIDDER was also mailed prior to the closing time. The telegraphic or telefax communication should not reveal the total bid price, but should provide the addition or subtraction, or other modification, so that the final prices or terms will not be known by the OWNER until the original sealed bid is opened.

Revised bids submitted before the opening of bids, whether forwarded by mail, telegram, or telefax if representing an increase in excess of two percent (2%) of the original bid, must have the bid security adjusted accordingly; otherwise the bid will not be considered responsive.

If written confirmation is not received within two (2) days from the closing time, no consideration will be given to the telegraphic or telefax modification.

**10. TIME FOR RECEIVING BIDS:**

Bids received prior to the advertised hour of opening will be securely kept sealed. The officer whose duty it is to open them will decide when the specified time has arrived, and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is shown to the

satisfaction of the OWNER that the nonarrival on time was due solely to delay in the mails for which the BIDDER was not responsible, such bid will be received and considered.

BIDDERS are cautioned that, while telegraphic or telefax modifications of bids may be received as provided above, such modifications, if not explicit and if in any sense subject to misinterpretation, shall make the bid so modified or amended, subject to rejection for nonresponsiveness.

**11. OPENING OF BIDS:**

At the time and place fixed for the opening of bids, the OWNER will cause to be opened and publicly read aloud every bid received within the time set for receiving bids, irrespective of any irregularities therein. BIDDERS and other persons properly interested may be present, in person or by representative.

**12. WITHDRAWAL OF BIDS:**

Bids may be withdrawn on written, telegraphic, or telefax request dispatched by the BIDDER in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the BIDDER is placed in the mail and postmarked prior to the time set for bid opening. The bid security of any BIDDER withdrawing his bid in accordance with the foregoing conditions will be returned promptly.

**13. AWARD OF CONTRACT: REJECTION OF BIDS:**

The contract will be awarded to the responsive and responsible BIDDER submitting the lowest bid complying with the conditions of the Legal Notice and Invitation for Bids. The BIDDER to whom the award is made will be notified at the earliest possible date. The OWNER, however, reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in its interest.

The OWNER reserves the right to consider as not responsible any BIDDER who does not habitually perform with his own forces the major portions of the work involved in construction of the improvements embraced in this contract.

**14. EXECUTION OF AGREEMENT: PERFORMANCE AND PAYMENT BOND:**

Subsequent to the award and within ten (10) days after the prescribed forms are presented for signature, the successful BIDDER shall execute and deliver to the OWNER an agreement in the form included in the contract documents in such number of copies as the OWNER may require.

Having satisfied all conditions of award as set forth elsewhere in these documents, the successful BIDDER shall, within the period specified in the preceding paragraph, furnish a Performance Bond and Payment Bond, in accordance with the following parameters:



- a. For a Contract in excess of \$100,000.00, a Performance Bond shall be executed in the full amount of the Contract conditioned upon the faithful performance of the Work in accordance with the plans, specifications, and Contract Documents. Said Bond shall be solely for the protection of the City.
- b. For a Contract in excess of \$50, 000.00, a Payment Bond shall be executed in the full amount of the Contract, solely for the protection of all proper claimants supplying labor and material in the prosecution of the Work provided for in the Contract, for the use of each such claimant perfecting a proper claim.

When bonds are required they shall serve as security for the faithful performance of the contract, and for the payment of all persons, firms or corporations to whom the Contractor may become legally indebted for labor, materials, tools, equipment, or services of any nature including utility and transportation services, employed or used by him in performing the work. Such bonds shall be in the same form as that included in the contract documents and shall bear the same date as, or a date subsequent to that of the agreement. The current power of attorney for the person who signs for any surety company shall be attached to such bonds. These bonds shall be signed by a guaranty or surety company legally authorized to do business in the State of Texas.

The failure of the successful BIDDER to execute such agreement and to supply the required bonds and insurance certificates within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the OWNER may grant in writing, based upon reasons determined sufficient by the OWNER, shall constitute a default, and the OWNER may either award the contract to the next lowest responsive and responsible BIDDER or readvertise for bids, and may charge against the defaulting BIDDER the difference between the amount of the defaulted bid and the amount for which a contract for the work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by readvertising, the defaulting BIDDER shall have no claim against the OWNER for a refund.

**15. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT:**

The successful BIDDER, upon his failure or refusal to execute and deliver the contract, bonds and insurance certificates required within ten (10) days after he has received notice of the acceptance of his bid, shall forfeit to the OWNER, as liquidated damages (and not as a penalty) for such failure or refusal, the security deposited with his bid.

**16. TIME OF COMPLETION AND LIQUIDATED DAMAGES:**

BIDDER must agree to commence work on or before a date to be specified in a written "Notice to Proceed" issued by the OWNER and to fully complete the project within 90 consecutive calendar days thereafter, as provided in Article 2 of the Agreement.

BIDDER must agree also to pay as mutually agreed to liquidate damages, and not as a penalty, the sum of \$250.00 per day for each consecutive day thereafter, as provided in said Article 2.

**17. NOTICE OF SPECIAL CONDITIONS:**

Attention is particularly called to those parts of the contract documents and specifications that deal with the following:

- A. Inspection and testing of materials.
- B. Insurance requirements.
- C. Wage and Hour Provisions.
- D. State Sales and Use Tax Exemption Provisions.
- E. Subsurface Geologic Conditions.
- F. Project Phase Requirement - Scope.

**18. LAWS AND REGULATIONS:**

The BIDDER'S attention is directed to the fact that all applicable federal, state and local laws, statutes, ordinances, codes and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

**19. EQUAL EMPLOYMENT OPPORTUNITY:**

Attention of BIDDERS is particularly called to the requirement for ensuring that employees and applicants for employment are not discriminated against because of their race, religion, gender, physically challenged condition or national origin.

**20. PRE-BID CONFERENCE:**

No Pre-bid meeting will be held.

**21. INFORMATION TO BE SUBMITTED WITH PROPOSAL:**

Each BIDDER shall submit with his proposal pertinent information concerning proposed equipment and materials and proposed construction organization.

- a) Equipment and Materials. In addition to the information submitted on the proposal and proposal data forms, each BIDDER shall submit all specifications, preliminary drawings, and similar descriptive information necessary to describe completely the equipment and materials he proposes to furnish.

The proposal shall be based on new equipment and materials which comply with specifications and documents in every respect, unless the BIDDER takes specific exception as provided hereinbefore. If alternate or "equal" equipment and materials are indicated in the proposal, it shall be understood that the OWNER will have the option of selecting any one of the alternates so indicated and such selection shall not be a cause for extra compensation or extension of time.

22. **PREFERENCE LAW:**

Proposal evaluations will take into consideration any Preference Laws of the State of Texas and any reciprocity laws of other states as they may be addressed by Texas law.

23. **SUBSURFACE GEOLOGIC CONDITIONS:**

24. **DISPOSAL OF EXCESS MATERIALS:**

After backfilling and compacting any trench backfill or backfill around structures, there may be in some instances an excess of material over that required to bring the backfill up to the original grade. In such cases where there is an excess of material, BIDDER shall load and haul it away from the job site and dispose of it in a legal manner so as not to trespass, adversely impact any protected wetlands, adversely impact the 100 year flood plain, adversely impact any endangered species, or otherwise create drainage diversions or impoundment's. No extra remuneration for this work will be allowed.

25. **EROSION AND SEDIMENT CONTROL MEASURES:**

The BIDDER is expected to conduct his work in such a manner as to minimize any soil erosion or sediment runoff from the construction site. Earth cuts and fills shall have smooth, flat sideslopes, as generally indicated on the PLANS, to preclude erosion of the soil. Such operations should be timed consistent with the actual need for doing the work and only to leave raw, unprotected surfaces for a minimum of time.

Existing lawns are to remain intact as far as practical. Such areas as are disturbed shall be duly restored by the BIDDER to as good or better than original condition using the same type of grass, shrubs, or cover as the original. The BIDDER shall be responsible for correcting any erosion that occurs at his sole cost without claim for extra compensation.

As construction progresses, and in accordance with recent federal legislation regulating stormwater runoff and management from construction sites greater than five acres in size, if applicable, (See: Section 405 of the Water Quality Act of 1987, Section 402(P) as amended), and at locations where erosion with sediment runoff occurs or is likely to occur, the BIDDER shall construct temporary ditches, perimeter siltation screens, retainage levees, drains, inlets, or other works to correct the condition. Upon completion of the work, such facilities shall be removed.

During construction, the BIDDER shall take the necessary precautions to see that erosion is controlled and sediment runoff is prevented so as to protect the quality of any neighboring water bodies.

26. **SAFETY PROVISIONS:**

BIDDER shall provide barricades, flares, warning signs, and/or flagmen so that danger and inconvenience to the public, railroad and job site working personnel will be eliminated. In addition to any other requirements of the Contract Documents, the BIDDER shall be responsible

for familiarity and compliance with all Federal (OSHA), State, Railroad and local safety rules, laws and requirements with particular attention to be given to excavation and trench safety requirements.

**27. PROTECTION OF PROPERTY AND EXISTING UTILITIES:**

Within developed areas, all public and private property along and adjacent to the BIDDER'S operations, including lawns, yards, shrubs, drainage gradients, and trees, shall be adequately protected, and when damages occur, they shall be repaired, replaced, or renewed or otherwise put in a condition equal to or better than that which existed before the BIDDER caused the damage or removal.

An attempt has been made to show all known existing utilities on the PLANS, but the possibility remains strong that some underground utilities may exist that have not been shown. The BIDDER, through mandatory contact with local utility owners, shall keep himself informed and take such precautions as necessary to avoid damage.

**28. GUARANTEE:**

The BIDDER shall guarantee the work for a period of one (1) year after date of acceptance in writing by the OWNER. During this period, the BIDDER shall make any repairs and/or replacements of defective materials and corrections due to poor workmanship, all as may be required for full compliance with the Specifications. This guarantee shall apply to all matters reported by the OWNER in writing within said one (1) year period and this guarantee shall be included in the coverage period set forth in the Performance Bond.

**29. STATE SALES AND USE TAX EXEMPTION:**

Pursuant to 34 Texas Administrative Code 3.291, in order for the City of Wharton to continue to benefit from its status as a State Sales and Use Tax Exempt Organization, after August 14, 1991 construction contracts must be awarded on a "separated contract" basis. A "separated contract" is one that distinguishes the value of the tangible personal property (materials such as pipe, bricks, lumber, concrete, paint, etc.) to be physically incorporated into the project realty from the total contract price. Under the "separated contract" format, the contractor in effect becomes a "seller" to the City of Wharton of materials that are to be physically incorporated into the project realty. As a "seller", the contractor will issue a "Texas Certificate of Resale" to the supplier in lieu of paying the sales tax on materials at the time of purchase. The contractor will also issue a "Certificate of Exemption" to the supplier demonstrating that the personal property is being purchased for resale and that the resale is to the City of Wharton, which is a sales tax exempt entity under UTCA Tax Code Section 151.309(5). Contractors should be careful to consult the most recent guidelines of the State Comptroller of Public Accounts regarding the sales tax status of supplies and equipment that are used and/or consumed during project work (gas, oil, rental equipment), but that are not physically incorporated into the project realty. Such items are generally not tax exempt. Contractors that have questions about the implementation of this new policy are asked to inquire directly with the State Comptroller of Public Accounts, Tax Administration Division, State of Texas, Austin, Texas 78774 (tel. 512-463-4934). Bidders will

not include any federal taxes in bid prices since the City of Wharton is exempt from payment of such federal taxes. "Texas Certificates of Exemption", "Texas Certificates of Resale" and "Texas Sales Tax Permits" are forms available to the contractor through the regional offices of the State Comptroller of Public Accounts.

BID FORM

Bidding Firm: \_\_\_\_\_

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

City, State, Zip : \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Owner: City of Wharton

Address: City of Wharton  
120 E. Caney Street  
Wharton, Texas 77488  
Attention: Paula Favors, City Secretary  
Telephone: (979) 532-2491

Bid Location: **Wharton City Hall**  
**120 E. Caney Street**  
**Wharton, Texas 77488**  
**Attention: Paula Favors, City Secretary**

**CITY OF WHARTON  
BID FOR THE 2017 SEAL COAT PROJECT**

Gentlemen:

The undersigned bidder has carefully examined the Instructions to Bidders, this Proposal, the General Conditions of Agreement, the Supplementary General Conditions, the Technical Specifications and the drawings for the work herein above described and referred to in the Invitation to Bid and has carefully examined the site of the work and will provide all necessary labor, superintendence, machinery, equipment, tools, materials, services and other means of construction to complete all the work upon which he bids, as called for in the Contract, the Specifications and shown on the drawings, and in the manner prescribed therein and according to the requirements of the Engineer as therein set forth for the amounts below:

1. Specifications and Contract Documents dated July 2017.
2. Addenda as acknowledged below:

<u>No.</u> _____	<u>Date</u> _____	<u>No.</u> _____	<u>Date</u> _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

In submitting this bid, I agree:

- (1) To hold my bid open, not withdraw or modify the bid, until **60 calendar days** following the bid date.
- (2) To accept the provisions of the instructions to bidders regarding the basis for bidding and the disposition of the bid security.
- (3) To enter into a contract with the owner by executing an agreement on the basis of this bid and to furnish a performance bond, a payment bond, and a certificate of insurance as required by the condition of the contract, all within 10 days of contract award.
- (4) To accomplish the work in accord with the contract documents by furnishing all materials, equipment and labor for proper construction and completion of the work.
- (5) To substantially complete the work within **90 calendar** days from date of Notice to Proceed.
- (6) To pay as liquidated damages, and not as a penalty, the sum of \$250 for each consecutive calendar day thereafter as provided in the General and Supplementay Conditions.

**CONTRACTOR TO FILL IN THE FOLLOWING:**

The following items shall include all of the labor, equipment, and materials necessary for construction of the 2017 Seal Coat Project as described in the specifications for the project.

Item No.	Description of Item with Unit Bid Price in Written Words	Unit	Approx. Quantity	Unit Price	Total Amount
1.	Move-in and start-up, including performance and payment bonds for 100 percent (100%) of the contract amount.  @ _____  _____	L.S.	1	\$ _____	\$ _____
	Per Lump Sum				
2.	Asphalt material conforming to TxDOT Item 316. Asphaltic material shall be AC-15P applied at a rate of 0.3 gal/SY.  @ _____  _____	S.Y.	106,000	\$ _____	\$ _____
	Per Square Yard				
3.	Aggregate material conforming to TxDOT Item 316. Aggregate material shall be Grade 4 (PB) aggregate applied at a rate of 26.3 lbs/SY.  @ _____  _____	S.Y.	106,000	\$ _____	\$ _____
	Per Square Yard				

**TOTAL BID \$** \_\_\_\_\_

**LIST OF SUBCONTRACTORS**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

As a bidder I acknowledge that:

1. The Owner reserves the right to reject any and all bids.
2. The contract price may be increased or decreased, or the contract time reduced or extended to compensate for changes in the work as ordered by the Engineer and provided for in the Conditions of the Contract.

Furthermore, as bidder I certify that:

1. I am the only person or party associated with or having an interest in this bid and it is made without collusion involving and other person, partnership or corporation.
2. The amounts given in this bid have been carefully checked and are submitted as correct and final. Attached is the LIST OF BASE BID EQUIPMENT MANUFACTURERS AND SUBSTITUTIONS. Attached is a bid bond in the total amount of five percent (5%) of the maximum total bid amount or a cashier's check in the total amount of five percent (5%) of the maximum total bid amount.

\_\_\_\_\_  
Date

Signed \_\_\_\_\_  
(Company)

By \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Phone)

\_\_\_\_\_  
Witness

SEAL (if Bidder is a Corporation)

-- o o --



**BID BOND**

STATE OF TEXAS           §  
  §       KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF WHARTON   §

THAT WE, the undersigned, \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are hereby held and firmly bound unto the CITY OF WHARTON, TEXAS as OWNER in the penal sum of \_\_\_\_\_ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 2017

The Condition of the above obligation is such that whereas the Principal has submitted to the OWNER a certain BID attached hereto and hereby made a part hereof to enter into a contract in writing, for 2017 STREET IMPROVEMENT PROJECT.

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the form of Agreement attached hereto (properly completed in accordance with said BID) and shall furnish payment and performance bonds for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall furnish insurance certificates, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void. Otherwise the same shall remain in force and effect, it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

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

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

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

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

IMPORTANT - Surety companies executing BONDS must be legally authorized by the State Board of Insurance to transact business in the State of Texas.

**CONTRACTOR'S**

**PRE-BID DISCLOSURE STATEMENT**

All questions must be answered or your bid will be deemed non-responsive and subject to rejection. The data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. This Pre-Bid Disclosure Statement is submitted to the City of Wharton by:

\_\_\_\_\_

\_\_ a Corporation, \_\_ a Partnership, \_\_\_ a Texas Joint Venture, or \_\_ an Individual.

Address: \_\_\_\_\_ CONTRACTOR'S #: \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Years in business under present business name: \_\_\_\_\_

3. Years of experience in construction work of the type called for in this contract as: A General Contractor \_\_\_\_\_, A Subcontractor \_\_\_\_\_.

4. What projects has your organization completed? List most recent FIRST.

Contract Address	Type of Work	Date Completed	OWNER'S Name and Address
<u>Amount</u>			

5. What projects does your organization have under way as of this date?

Contract Address	Type of Work	% Completed	OWNER'S Name and Address
<u>Amount</u>			

6. Have you ever failed to complete any work awarded to you? \_\_\_ Yes \_\_\_ No. If "Yes", state where and why. \_\_\_\_\_

\_\_\_\_\_

7. Are you at present in any lawsuits involving construction work of any type? \_\_\_ Yes \_\_\_ No. If "Yes", explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Explain in detail the manner in which you have inspected the work and jobsite proposed in this contract: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. Explain in detail your plan or layout for performing the work proposed in this contract:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. If this contract is awarded to you, your company's office administrative manager for the work will be Mr. (Ms.) \_\_\_\_\_, and your resident construction superintendent will be Mr. (Ms.) \_\_\_\_\_.

11. What experience in this type of work does the individual designated as resident superintendent above have? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. What portions of the work do you intend to subcontract? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. What equipment do you own that is available for the proposed work?

Description, Size, Quantity Capacity, etc.	Condition	Years in Present Service Location

14. 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

15. Attach resumes for the principal members of your organization, including the officers as well as the proposed superintendent for the project.

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 Engineer and Owner in verification of the recitals comprising this Pre-Bid Disclosure Statement.

The signatory of this questionnaire guarantees the truth and accuracy of all statements herein made and all answers herein expressed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**SUBCONTRACTOR'S**

**PRE-BID DISCLOSURE STATEMENT**

All questions must be answered or your bid will be deemed non-responsive and subject to rejection. The data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. This Pre-Bid Disclosure Statement is submitted to the City of Wharton by: \_\_\_\_\_ a Corporation, \_\_\_ a Partnership, \_\_\_ a Texas Joint Venture, or, \_\_\_ an Individual.

Address: \_\_\_\_\_ CONTRACTOR'S #: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

2. Years in business under present business name: \_\_\_\_\_

3. Years of experience in construction work of the type called for in this contract as:  
A General Contractor \_\_\_\_\_, A Sub-contractor \_\_\_\_\_.

4. Have you ever previously worked as a subcontractor for this general contractor?  
\_\_\_\_ Yes; \_\_\_\_ No; If yes, list three most recent projects in which your company has served as a subcontractor to this general contractor.

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

5. What projects has your organization completed? List most recent FIRST.

Contract	Type of Work	Date Completed	OWNER'S Name and Address	Amount-
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. What projects does your organization have under way as of this date?

Contract	Type of Work	Date Completed	OWNER'S Name and Address	Amount
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

7. Have you ever failed to complete any work awarded to you?  
\_\_\_ Yes \_\_\_ No. If "Yes", state where and why. \_\_\_\_\_

\_\_\_\_\_

8. Are you at present in any lawsuits involving construction work of any type? \_\_\_ Yes  
\_\_\_ No. If "Yes", explain: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

9. Explain in detail the manner in which you have inspected the work and jobsite proposed  
in this contract: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Explain in detail your plan or layout for performing the work proposed in this contract:

\_\_\_\_\_

\_\_\_\_\_

11. If this contract is awarded to you, your company's office administrative manager for the  
work will be Mr. (Ms.) \_\_\_\_\_, and your resident construction superintendent will be Mr.  
(Ms.) \_\_\_\_\_.

\_\_\_\_\_

12. What experience in this type of work does the individual designated as resident  
superintendent above have? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. What portions of the work do you intend to sub-subcontract \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. What equipment do you own that is available for the proposed work?

Description, Size, Quantity Capacity, etc.	Condition	Years in Present Service Location

15. 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 to the general contractor?  Yes  No

16. Attach resumes for the principal members of your organization, including the officers as well as the proposed superintendent for the project.

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 Engineer and Owner in verification of the recitals comprising this Pre-Bid Disclosure Statement.

The signatory of this questionnaire guarantees the truth and accuracy of all statements herein made and all answers herein expressed.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

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

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

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



**NOTICE OF AWARD**

TO:

Dear:

The City of Wharton has considered the BID submitted by you for the above-described work in response to its Legal Notice and Invitation for Bids dated \_\_\_\_\_ 2017 and Instruction to Bidders.

You are hereby notified that your BID has been accepted for prime coat in the amount of \_\_\_\_\_ unit price per square yard for the amount of \_\_\_\_\_ unit per square yard, and seal coat in the amount of \_\_\_\_\_ unit per square yard.

You are required by the Instructions to Bidders to execute the Agreement and furnish any required Contractor's Performance Bond, Payment Bond and Certificates of Insurance within ten (10) calendar days from the effective date of this Notice.

If you fail to execute this Agreement and furnish any required bonds and insurance certificates within ten (10) days from the date of this Notice, Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your bid as abandoned and as a forfeiture of your BID BOND.

The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the Owner.

Dated this the \_\_\_\_ day of \_\_\_\_\_ 2017.

CITY OF WHARTON, TEXAS

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

Name: Tim Barker

Title: Mayor

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF AWARD is hereby acknowledged by:

\_\_\_\_\_ this the \_\_\_\_ day of \_\_\_\_\_ 2017.

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

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

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

## AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_ 2017 by and between the City of Wharton, Texas (hereinafter called OWNER) \_\_\_\_\_ of \_\_\_\_\_, Texas (hereinafter called CONTRACTOR).

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

### **Article 1. WORK.**

CONTRACTOR shall furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the work described herein and complete all the work as specified or indicated in the Contract Documents for 2017 Street Improvement Project.

### **Article 2 CONTRACT TIME.**

2.1 The Work shall be substantially completed within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 90 consecutive calendar days after the date when the Contract Time commences to run.

2.2 **Liquidated Damages.** OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 2.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the work is not substantially complete on time. Accordingly, instead of requiring such proof, OWNER and CONTRACTOR hereby mutually agree that as liquidated damages for the delay (but not as a penalty) CONTRACTOR shall pay OWNER \$250.00 for each calendar day that expires after the time specified in paragraph 2.1 for substantial completion until the Work is substantially complete.

### **Article 3. CONTRACT PRICE.**

3.1 CONTRACTOR shall perform the Work described in the Contract Documents for the amounts shown in the Bid Proposal, and OWNER shall pay CONTRACTOR in current funds based on the Bid Proposal.

**Article 4. PAYMENT PROCEDURES.**

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

4.1 **Final Payment.** Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as provided in said paragraph 14.13.

**Article 5. CONTRACTOR'S REPRESENTATIONS.**

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

5.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

5.2 CONTRACTOR has made or caused to be made examinations and investigations of information and the project site as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations or similar data are or will be required by CONTRACTOR for such purposes.

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

5.4 CONTRACTOR is skilled and experienced in the type of work described in the Contract Documents.

**Article 6. CONTRACT DOCUMENTS.**

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR are attached to this Agreement, made a part hereof and consist of the following:

- 6.1 Advertisement for Bids.
- 6.2 Instructions to Bidders.
- 6.3 Bid Proposal.
- 6.4 Bid Bond.
- 6.5 CONTRACTOR'S and SubCONTRACTOR'S Pre-Bid Disclosure.

- 6.6 Agreement.
- 6.7 Performance Bond. (if applicable).
- 6.8 Payment Bond. (if applicable).
- 6.9 General Conditions.
- 6.10 Supplementary General Conditions.
- 6.11 Standard Specifications.
- 6.12 Addendum number(s).
- 6.13 CONTRACTOR'S Certificate(s) of Insurance.
- 6.14 Notice of Award.
- 6.15 Notice to Proceed.
- 6.16 Any modification, including Change Orders, duly delivered after execution of this Agreement.

There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Article 1 of the General Conditions).

**Article 7 MISCELLANEOUS.**

7.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.

7.2 No assignment by a party hereto of any rights under or interests in the Contract Documents 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 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.

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

7.4 The invalidity or unenforceability of any provision of the Contract Documents shall not affect the validity or enforceability of any other provision of the Contract Documents.

7.5 This Agreement and the Contract Documents are subject to all applicable laws, statutes, codes, ordinances, rules and regulations.

7.6 In the event of default by CONTRACTOR under the Contract Documents, OWNER shall have all rights and remedies afforded to it at law or in equity to enforce the terms of the Contract Documents. The exercise of any one right or remedy shall be without prejudice to the enforcement of any other right or remedy allowed at law or in equity.

7.7 If any action at law or in equity is necessary by OWNER to enforce or interpret the terms of the Contract Documents, OWNER shall be entitled to reasonable attorneys' fees and costs and any necessary disbursements in addition to any other relief to which the OWNER is entitled.

7.8 The Contract Documents constitute the entire agreement between the parties hereto and supersede all prior agreements, understandings, or oral communications between the parties. The Contract can be modified or amended by written agreement of the parties.

7.9 These Contract Documents are governed by the laws of the State of Texas and the parties agree that venue for all lawsuits arising from these Contract Documents shall be set in Wharton County, Texas.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. 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.

This Agreement will be effective on \_\_\_\_\_, 2017.

CITY OF WHARTON

By: \_\_\_\_\_  
Tim Barker, Mayor

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

Attest: \_\_\_\_\_  
Paula Favors, City Secretary

Attest: \_\_\_\_\_

ACKNOWLEDGEMENTS

STATE OF TEXAS

COUNTY OF WHARTON

This instrument was acknowledgement before me on this \_\_\_\_ day of \_\_\_\_\_ 2017 by  
Tim Barker, Mayor of the City of Wharton, Texas.

\_\_\_\_\_  
Notary Public, State of Texas

This instrument was acknowledgement before me on this \_\_\_\_ day of \_\_\_\_\_ 2017 by  
\_\_\_\_\_ of \_\_\_\_\_ a Texas corporation on behalf of said  
corporation.

\_\_\_\_\_  
Notary Public, State of Texas

Address for giving notices:

Address for giving notices:

City of Wharton  
Attn: City Secretary Paula Favors  
120 E. Caney Street  
Wharton, TX 77488  
Phone: (979) 532-2491  
FAX: (979) 532-0181

Contractor hereby acknowledges and understands that this is a "separated contract" pursuant to 34 Texas Administrative Code 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 realty: \$\_\_\_\_\_.

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(corporation, partnership, or individual)

hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the CITY OF WHARTON, TEXAS, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_ 2017, a copy of which is hereto attached and made a part hereof, for the construction of the:

**2017 STREET IMPROVEMENT PROJECT**

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year post-construction workmanship guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

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



This bond is subject to and governed by Section 2253.02 of the Texas Government Code (Vernon's Texas Codes Annotated) and Article 7.19-1 of Vernon's Texas Insurance Code and all amendments thereto.

IN WITNESS WHEREOF, this instrument is executed in triplicate, each counterpart of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_ 2017.

ATTEST: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal) Secretary By: \_\_\_\_\_(s)  
(Signature)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

ATTEST: \_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Surety) Secretary By: \_\_\_\_\_  
(Attorney-in-Fact)

(SEAL)

\_\_\_\_\_  
(Witness as to Surety) \_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

NOTE: Date of BOND must not be prior to date of Contract. If Contractor is a Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be legally authorized by the State Board of Insurance to transact business in the State of Texas.

**ATTACH POWER OF ATTORNEY**

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto the CITY OF WHARTON, TEXAS, hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_ 2017 a copy of which is hereto attached and made a part hereof, for the construction of the 2017 STREET IMPROVEMENT PROJECT.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge any remaining legal right of any beneficiary hereunder, whose timely filed and legally perfected claim may be unsatisfied.

This bond is subject to and governed Section 2253.02 of the Texas Government Code (Vernon's Texas Codes Annotated) and Article 7.19-1 of Vernon's Texas Insurance Code and all amendments thereto.

IN WITNESS WHEREOF, this instrument is executed in triplicate, each counterpart of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_ 2017.

ATTEST: \_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal) Secretary By: \_\_\_\_\_  
(Signature)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal) \_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Surety) Secretary By: \_\_\_\_\_  
(Attorney-in-Fact)

(SEAL)

\_\_\_\_\_  
(Witness as to Surety) \_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_

NOTE: Date of BOND must not be prior to date of Contract. If Contractor Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must be legally authorized by the State Board of Insurance to transact business in the State of Texas.

**NOTICE TO PROCEED**

**DATE:**

**TO:**

Project Description: 2017 Street Improvement Project  
for City of Wharton

Dear:

You are hereby notified to commence work in accordance with the Agreement dated \_\_\_\_\_, 2017, on or before \_\_\_\_\_, 2017 and you are to complete the WORK within 90 calendar days thereafter.

The date of completion of all WORK is therefore, \_\_\_\_\_, 2017.

City of Wharton  
OWNER

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

Tim Barker

Title: Mayor

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(Signature)

By:

Title:

**STANDARD  
GENERAL CONDITIONS  
OF THE  
CONSTRUCTION CONTRACT**

Prepared by  
The City of Wharton, Texas  
as an Adaptation From the 1983 Base Document Prepared by

Engineers' Joint Contract Documents Committee

and originally

Issued and Published Jointly By:

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
A practice division of the  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

-----

AMERICAN CONSULTING ENGINEERS COUNCIL

-----

AMERICAN SOCIETY OF CIVIL ENGINEERS

-----

CONSTRUCTION SPECIFICATION INSTITUTE

The base document from which this adaptation was prepared  
(1983 edition) was approved and endorsed by:

The Associated General Contractors of America

## TABLE OF CONTENTS OF STANDARD GENERAL CONDITIONS

Article Number	Title
1	DEFINITIONS
2	PRELIMINARY MATTERS
3	CONTRACT DOCUMENTS: INTENT, AMENDING AND REUSE
4	AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS
5	BONDS AND INSURANCE
6	CONTRACTOR'S RESPONSIBILITIES
7	OTHER WORK
8	OWNER'S RESPONSIBILITIES
9	ENGINEER'S STATUS DURING CONSTRUCTION
10	CHANGES IN THE WORK
11	CHANGE OF CONTRACT PRICE
12	CHANGE OF CONTRACT TIME
13	WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK
14	PAYMENTS TO CONTRACTOR AND COMPLETION
15	SUSPENSION OF WORK AND TERMINATION
16	TIME FOR COMPLETION AND LIQUIDATED DAMAGES
17	MISCELLANEOUS
	SUPPLEMENTARY GENERAL CONDITIONS

SCOPE. The Standard General Conditions of the Construction Contract prepared by the National Society of Professional Engineers (NSPE-1910-8, 1983 Edition) as amended by the CITY to meet local requirements, shall form a part of this Contract, together with the following Supplementary General Conditions. A copy of the locally amended Standard General Conditions (NSPE-1910-8) is bound herewith. The following supplements modify, change, delete, or add to the General Conditions. Where any part of the general conditions is modified or voided by these articles, the unaltered provisions of that part shall remain in effect.

## ARTICLE 1. DEFINITIONS

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

1.1 Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents. These Addenda are a part of the Contract Documents and modify the drawings, specifications or other bid documents as indicated. No verbal changes in the Work not depicted or described in writing shall be binding.

Supplements to, changes in, or corrections to the drawings and/or specifications issued in writing by OWNER during the period of bidding. These addenda are a part of the Contract and modify the drawings and/or specifications as indicated. No verbal changes in the work as shown or described shall become binding.

1.2 Agreement - The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 Alternates. Additions, omissions from, or changes to requirements for the project, each of which shall be bid separately and shall be included in or omitted from the Contract at the discretion of OWNER.

1.4 Application for Payment - The form developed by OWNER which is to be used by CONTRACTOR in requesting interim progress or final contract payments and which is to include such supporting documentation as is required by the Contract Documents.

1.5 Bid - The written offer or proposal of the bidder submitted on the OWNER prescribed form setting forth in figures and in script the prices for the Work to be performed.

1.6 Bonds – Bid, Performance and Payment Bonds and any other instruments of security.

1.7 Calendar Day. This is a calendar day contract. When a period of time is referred to in the Contract Documents by days, it will be computed as calendar days to exclude the first and include the last calendar day of such period. If the last calendar day of any such period falls on a Saturday or Sunday or on a calendar day listed as a legal holiday by the Contract Documents such

calendar day will be omitted from the computation. A calendar day of twenty-four hours is measured from midnight, to the next midnight and shall constitute a single calendar day.

1.8 Change Order - A document developed 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 Time, issued on or after the Effective Date of the Agreement. Approved Change Orders are part of the Contract Documents.

1.9 Contract Documents - The Agreement, Addenda (which pertain to the Contract Documents), and 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 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 amendments, modifications, later approved Change Orders and supplements issued or after the Effective Date of the Agreement.

1.10 Contract Price - The moneys payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement.

1.11 Contract Time - The number of calendar days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the Work.

1.12 CONTRACTOR - The person, firm or corporation with whom OWNER has entered into the Agreement to construct the Work.

1.13 Defective - An adjective which when modifying the word "Work" refers to "Work" that is unsatisfactory, faulty or deficient, or does not conform to, or comply with the Contract Documents, or does not meet the requirements of any inspection, referenced standard, test or approval referred to in the Contract Documents, or has been damaged prior to the time OWNER makes the final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).

1.14 Drawings - The drawings which depict the character, design, and scope of the Work to be performed and which have been prepared and/or approved by OWNER and are referred to in the Contract Documents.

1.15 Effective Date of the Agreement - The date indicated in the Agreement document upon which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed by OWNER.

1.16 Engineer- The OWNER - designated Jones & Carter Engineering as the OWNER'S engineering representative for the project.

1.17 Field Order - A written order issued by OWNER which orders minor changes or interpretations in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Time.



1.18 Furnish. To supply at the jobsite the material, equipment, etc., referred to. Installation is not required of the supplier by the specifications, but shall be arranged for by the General CONTRACTOR.

1.19 General Requirements - Sections of Division 1 of the Specifications.

1.20 Laws and Regulations; Laws or Regulations - Federal and/or State Laws, rules, administrative agency regulations, local ordinances, local codes and/or court orders.

1.21 Notice of Award - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.22 Notice to Proceed - A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.23 OWNER - The City of Wharton, Texas and its authorized agents or representatives.

1.24 Partial Utilization - Placing a portion of the Work in service for the benefit of the OWNER and for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work.

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

1.26 Provide. To furnish and install in the location shown or approved at the job, the material, equipment, etc., referred to.

1.27 Resident Project Representative - The authorized representative of OWNER who is assigned to observe the site of the Project or any part thereof.

1.28 Shop Drawings - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.29 Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.30 Standard Abbreviations. Wherever reference is made to standard specifications, standards of quality or performance, as established by a recognized national authority, the reference may be by initials as generally recognized throughout the industry.

1.31 Subcontractor - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Project site.

1.32 Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of OWNER as evidenced by its definitive certificate of Substantial Completion, it is apparently sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

1.33 Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.

1.34 Supplier - A manufacturer, fabricator, supplier, distributor, material man or vendor.

1.35 Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

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

1.37 Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished by the CONTRACTOR under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.38 Work Directive Change - A written directive 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 physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A Work Directive Change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change 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 Time as provided in paragraph 10.2.

1.39 Working Day. This is NOT a working day contract. A week day (Monday through Friday, inclusive) in which weather conditions are such that work can be performed in a normal manner. Weekends (Saturday, Sunday) and holidays shall not be considered working days.

1.40 Written Amendment - A written amendment of 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 non-technical, rather than strictly Work-related, aspects of the Contract Documents.

## ARTICLE 2. PRELIMINARY MATTERS

### Delivery of Bonds:

2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

### Copies of Documents:

2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

### Commencement of Contract Time; Notice to Proceed:

2.3 The Contract Time will commence to run on the date indicated in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Agreement.

### Starting the Project:

2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

### Before Starting Construction:

2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to OWNER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from OWNER'S Engineer before proceeding with any Work affected thereby, however CONTRACTOR shall not be liable to OWNER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.5.1 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to OWNER for review:

2.5.1.a an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.5.1.b a preliminary schedule of Shop Drawing submissions; and

2.5.1.c a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the total Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work, which will be confirmed in writing by CONTRACTOR at the time of submission.

2.5.2 By the tenth (10th) day after award of the Contract by OWNER, CONTRACTOR shall deliver to OWNER original certificates (and any other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5.

Pre-construction Conference:

2.6 After the Effective Date of the Agreement, but before CONTRACTOR starts the Work at the Project site, a conference attended by CONTRACTOR, OWNER and others as appropriate will be held to discuss the schedules, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the progress and administration of the Work.

Finalizing Schedules:

2.7 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 finalize the schedules submitted. The finalized progress schedule will be acceptable to OWNER as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on OWNER responsibility for the progress or scheduling of the Work, nor relieve CONTRACTOR from full responsibility therefor. The finalized schedule of Shop Drawing submissions will be acceptable to OWNER'S Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to OWNER'S Engineer as to form and substance.

### ARTICLE 3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.1.1 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 Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by CONTRACTOR whether or not specifically called for. When words, which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that

meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, whether such reference be specific or by implication, shall mean the latest 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. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents. Clarifications and interpretations of the Contract Documents shall be issued by OWNER'S Engineer in writing as provided in paragraph 9.4.

3.1.2 If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to OWNER'S Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from OWNER'S Engineer however, CONTRACTOR shall not be liable to OWNER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

#### Amending and Supplementing Contract Documents:

3.2 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:

- a formal Written Amendment,
- a Change Order (pursuant to paragraph 10.4), or
- a Work Directive Change (pursuant to paragraph 10.1).

3.2.1 As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

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

- a Field Order (pursuant to paragraph 9.5),

3.3 OWNER Engineer's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or

3.4 OWNER Engineer's written interpretation or clarification (pursuant to paragraph 9.4).

Reuse of Documents:

3.5 Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct contract or indirect relationship with OWNER shall 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'S Engineer and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and specific written verification or adaptation by OWNER'S Engineer. All drawings, specifications or other documents (or copies of any thereof) are upon completion of the Project to become the property of OWNER. Further use thereof without written consent of OWNER is prohibited.

ARTICLE 4. AVAILABILITY OF LANDS: PHYSICAL CONDITIONS: REFERENCE POINTS

Availability of Lands:

4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 12. CONTRACTOR shall provide at his sole cost and option for any and all additional lands and access thereto that he may perceive are required for temporary construction facilities or storage of materials and equipment.

Physical Condition:

4.2 Explorations and Reports: Reference is made to the Supplementary Conditions for any identification of any reports of explorations and tests of subsurface conditions at the site that may have been utilized by OWNER'S Engineer in preparation of the Contract Documents. Any of these Explorations and Reports are expressly not part of these Contract Documents. CONTRACTOR may not rely upon the accuracy of the technical data contained in any such reports, nor upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to encountering any subsurface conditions at the site.

4.2.1 Existing Structures: Reference is made to the Supplementary Conditions for any identification of those drawings of physical conditions in or relating to existing surface or subsurface structures (except Underground Facilities referred to in paragraph 4.3) which are at or contiguous to the site that have been utilized by OWNER'S Engineer in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6,

CONTRACTOR shall have full responsibility with respect to investigation of and encountering physical conditions in or relating to such structures.

4.2.2 Report of Differing Conditions: If CONTRACTOR believes that:

any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

any physical condition uncovered or revealed at the site differs materially from that indicated, reflected or referred to in the Contract Documents,

4.2.3 CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.22), notify OWNER'S field representative and OWNER'S Engineer in writing about the inaccuracy or difference.

4.2.4 OWNER'S Review: OWNER'S Engineer will promptly review the pertinent conditions, determine the necessity of either CONTRACTOR or OWNER obtaining additional explorations or tests with respect thereto and advise CONTRACTOR in writing of the findings and conclusions.

4.2.5 Possible Document Change: If OWNER'S Engineer concludes that there is a material error in the Contract Documents or that because of newly discovered, latent conditions, a change in the Contract Documents is required, a Work Directive Change or a Change Order may be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments: In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, may be allowable to the extent that they are attributable to any such inaccuracy or difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefor as provided in Articles 11 and 12. All increases or decreases in the Contract Price shall be governed by all state and local statutes, codes, laws, ordinances, rules and regulations governing competitive bidding and Change Orders.

Physical Conditions - Underground Facilities:

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

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

4.3.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof as provided in paragraph 6.20 and paying for the repair of any damage thereto resulting from the Work, the cost of all of which will be mutually considered as having been included in the CONTRACTOR'S original Contract Price.

4.3.2.a Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.22), determine the owner of such Underground Facility and give written notice thereof to that owner and to OWNER'S Engineer. OWNER'S Engineer will promptly review the Underground Facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents may be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. All increases or decreases in the Contract Price shall be governed by all state and local statutes, codes, laws, ordinances, rules and regulations governing competitive bidding and Change Orders.

#### Reference Points:

4.4 OWNER shall provide engineering surveys to establish reference points for construction, which in OWNER Engineer's judgment are adequate to enable a skilled CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the General Requirements), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to OWNER'S Engineer whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and CONTRACTOR shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

### ARTICLE 5 BONDS AND INSURANCE

#### Performance and Payment Bonds:

5.1 For a Contract in excess of \$100,000.00, a Performance Bond shall be executed in the full amount of the Contract conditioned upon the faithful performance of the Work in accordance with the plans, specifications, and Contract Documents. Said Bond shall be solely for the protection of the City.



5.1.2 For a Contract in excess of \$50,000.00, a Payment Bond shall be executed in the full amount of the Contract, solely for the protection of all proper claimants supplying labor and material in the prosecution of the Work provided for in the Contract, for the use of each such claimant perfecting a proper claim.

5.2 CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance of the Work and payment of all CONTRACTOR'S labor, materials and supply 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 otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish any such other Bonds as may be required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are authorized to do business in the State of Texas. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.2.1 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within five days thereafter substitute another Bond or Surety, both of which must be acceptable to OWNER.

CONTRACTOR'S Liability Insurance:

5.3 CONTRACTOR shall purchase and maintain such commercial general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR'S performance and furnishing of the Work and CONTRACTOR'S other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts and/or omissions any of them may be liable:

5.3.1 Claims under workers or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR'S employees;

5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR'S employees;

5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5 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;

5.3.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7 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.

The insurance required by these paragraphs 5.3 and 5.6 shall include the specific type coverage's and be written for not less than the limits of liability and coverage amounts provided in these General Conditions, or required by law, whichever is greater. The commercial general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall be of an "occurrence"-type, when applicable, and shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least (30) thirty days prior written notice has been given to OWNER by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and furnish OWNER with evidence of continuation of such insurance at final payment and one year thereafter. All insurance coverage's furnished under the Contract Documents shall include the OWNER, and its officials, officers, partners, board members, agents and employees, as named additional insureds and hereinafter known as "additional insureds."

Contractual Liability Insurance:

5.4 The commercial general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR'S obligations under paragraphs 6.30 and 6.31.

5.5. Specific Coverage's of Insurance Required by Owner.

5.5.1. **Workmen's Compensation and Employer's Liability.** This insurance shall protect the laborer and insure the CONTRACTOR, and insulate the additional insureds, against all claims under applicable state workmen's compensation laws, pursuant to Section 5.3.1. The additional insureds shall also be protected under an Employer's Liability policy against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workmen's compensation law. This Employer Liability policy shall include an "all states" endorsement.

The liability limits shall not be less than:

Workmen's compensation	Statutory
Employer's liability	\$100,000 each occurrence

5.5.2. **Mandatory TWCC Rule 28 TAC Sect. 110.110 Language**

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.

**"Persons providing services on the project" ("subcontractor" in § 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.

- 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, § 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 showing 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 three years 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, § 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 for all employees of the person providing 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, 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 certificate of coverage ends during the duration of the project;

5. retain all required certificates of coverage on file for the duration of the project and for three years 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 clauses (I)-(1-7) of this subparagraph, 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 of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier, or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other 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 notice of breach from the governmental entity.

5.5.3. Commercial General Liability. This insurance shall be an "occurrence" type policy written in comprehensive form and shall protect the CONTRACTOR and the additional insureds against all claims described in Sections 5.3.2., 5.3.3., 5.3.4., and 5.3.5. of the General Conditions of the Contract Documents arising out of any intentional or negligent act and/or omission of the CONTRACTOR or his agents, employees, or subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage.

The liability limits shall not be less than:

Personal Injury and property damage and \$1,000,000 aggregate	\$1,000,000 combined single limit each occurrence
---	--

If the CONTRACTOR'S work, or work under his direction, requires blasting, explosive conditions, or underground operations, the comprehensive general liability coverage shall contain no exclusion relative to blasting, exploding, collapse of structures, or damage to underground property.

5.5.4. Umbrella Liability Policy. This insurance shall protect the CONTRACTOR and the additional insureds against all claims in excess of the limits provided under the employer's liability, comprehensive business automobile liability, and commercial general liability policies. The liability limits of the umbrella policy shall not be less than \$1,000,000. The policy shall be an "occurrence" type policy.

5.5.5. Transportation Insurance. This insurance shall be of the "all risks" type and shall protect the CONTRACTOR and the OWNER from all insurable risks of physical loss or damage to equipment and materials in transit to the jobsite and until the OWNER receives the equipment and materials at the jobsite. The coverage amount shall be not less than one-half of the full amount of the total contract.

Transportation insurance shall provide for losses to be payable to the CONTRACTOR and the OWNER as their interests may appear.

5.5.6. All policies required under Section 5.5 herein shall contain a "cross liability" or "severability of interest" clause or endorsement. Notwithstanding any other provision of these policies, the insurance afforded shall apply separately to each insured, named insured, or additional insured with respect to any claim, suit, or judgment made or brought by or for any other insured, named insured, or additional insured as though a separate policy had been issued to each, except the insurer's liability shall not be increased beyond the amount or amounts for which the insurer would have been liable had only one insured been named.

5.5.7. CONTRACTOR shall require each of his Subcontractors to procure and maintain during the life of his subcontract, Sub-CONTRACTOR'S Comprehensive General Liability and Property Damage Insurance of the type specified in subparagraph 5.5.1, 5.5.2, 5.5.3, 5.5.4 and paragraph 5.6 hereof, in amounts approved by OWNER.

5.5.8. The insurance required under subparagraphs 5.5.2, 5.5.3, 5.5.4 and paragraph 5.6 hereof shall provide adequate protection for CONTRACTOR and his Subcontractors respectively against damage claims which may arise from operations under this Contract, whether such operation be by the insured or by anyone directly or indirectly employed by him, and also, against any special hazards which may be encountered in the performance of this Contract.

5.5.9. CONTRACTOR shall not commence any work under this Contract until he has obtained all the insurance coverage required under this article and such insurance has been approved by OWNER, nor shall CONTRACTOR allow any Subcontractor to commence work on this Contract until the insurance required by the Subcontractor has been so obtained and approved.

Property Insurance:

5.6 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions, established by industry standards given the type of Work and value thereof, or as may be required by Laws and Regulations). This insurance shall include the interests of

OWNER, CONTRACTOR, and Subcontractors, in the Work, all of whom shall be listed as insureds or additional insured parties, which shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, CONTRACTOR shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment. The policies of insurance required to be purchased and maintained by CONTRACTOR in accordance with this paragraph shall be of an "occurrence"-type, when applicable, and contain a provision that the coverage afforded will not be canceled or materially changed until at least (30) thirty days prior written notice has been given to OWNER by certified mail.

5.6.1 Property Insurance Coverage. This insurance shall protect CONTRACTOR and the additional insureds against all claims described in Section 5.6 and shall provide the following minimum amounts:

5.7 CONTRACTOR waives all rights against OWNER, unless OWNER was solely negligent, for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraph 5.6 and any other property insurance applicable to the Work, and also waives all such rights against all other parties named as additional insureds in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontract between CONTRACTOR and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of OWNER, and all other parties named as additional insureds.

5.8 CONTRACTOR intends that any policies provided in response to paragraph 5.6 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by any Subcontractor, CONTRACTOR will obtain the same.

5.9 If OWNER has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, OWNER will attempt to notify CONTRACTOR in writing thereof within ten days of the date of delivery of such certificates to OWNER. CONTRACTOR shall provide to the OWNER such additional information in respect of insurance provided by CONTRACTOR as the OWNER may reasonably request. Failure on the part of the OWNER or its agents to detect an insurance deficiency as compared to the insurance requirements of the Contract shall not constitute a waiver by the OWNER of the insurance requirements which waiver by the OWNER of the insurance requirements which CONTRACTOR and/or Subcontract must meet to be in compliance herewith.

Partial Utilization - Property Insurance:

5.10 If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10. CONTRACTOR shall have the obligation to inform the insurers of OWNER'S intent to so occupy or use a portion or portions of the Work. The insurers of CONTRACTOR providing the property insurance shall consent to such use or occupancy by endorsement on the policy or policies, but the property insurance shall not be canceled or lapse on account of any such partial use or occupancy.

ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

6.1 CONTRACTOR shall supervise 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, procedures, safety and quality control of construction, but CONTRACTOR shall not be responsible for any negligence of others in any design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be solely responsible to see that the finished Work complies accurately with the Contract Documents and shall not rely upon the OWNER'S construction observation to accomplish same.

6.1.1 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER 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 the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.2 CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction of the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours as set forth by the OWNER, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S advanced written consent.

6.3 Preference employment shall be given to resident citizens of the area where such persons are available and fully qualified to perform the work to which the employment relates.

6.3.1. CONTRACTOR shall acquaint himself with all matters and conditions concerning the site and existing construction. Any practical criticism or exception regarding any feature of the



Work must be presented in writing to OWNER at least ten (10) days prior to bidding. After a Contract agreement to perform the Work has been signed by CONTRACTOR, it shall then be his responsibility to provide satisfactory Work that will meet the full intent of the Contract Documents. CONTRACTOR shall then pursue this Work with the other trades so that all phases of the Work may be properly coordinated without delays or damage to any parts of the Work.

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

6.4.1. CONTRACTOR shall provide and maintain suitable weather tight, washable, sanitary toilet facilities for all workmen for the entire construction period. CONTRACTOR shall comply with all requirements of applicable health authorities. When toilet facilities are no longer required, promptly remove from the site, disinfect and clean the area as required. CONTRACTOR shall keep toilet facility swept and supplied with toilet tissue at all times.

6.4.2 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by OWNER'S Engineer, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to OWNER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

6.5 CONTRACTOR shall notify OWNER in writing of any conflict between the manufacturer's directions and the Contract Documents and shall not perform any work on any item until such conflict has been resolved. Upon award of the Contract, CONTRACTOR will secure a certificate of exemption from the State Comptroller to preserve the CITY's exemption from Limited Sales, Excise and Use Tax in an amount representing that part of the total contract price representative of the value of tangible personal property to be physically incorporated into the project realty. The certificate of exemption must contain a statement to the effect that such materials or property have been or will be utilized in the performance of the contract to the full extent of the amount for which a certificate of exemption is requested.

6.5.1. Except where otherwise specified, CONTRACTOR shall, at all times, provide protection against weather, so as to maintain all work, materials, and fixtures free from injury or damages. All new work likely to be damaged shall be covered or otherwise protected as required.

6.5.2. While it is appreciated that CONTRACTOR has to maintain continuous construction operations and sequences, it should be understood that the electric distribution system must function during the Contract period with a minimum of inconvenience to the electric users and the water distribution system must function during the contract period with a minimum of inconvenience to the water users, and that the sewer collection and treatment system must

function during the contract period on a 24 hour daily basis throughout the year to meet the requirements of the Texas Commission on Environmental Quality (TCEQ). It is therefore incumbent on CONTRACTOR to plan ahead on the basis of integrating his construction sequencing program as far as possible into the normal operating sequence of the system. No departure from the normal operating sequence of the system will be allowed except with the specific written agreement of OWNER.

6.5.3. CONTRACTOR shall notify OWNER a minimum of 48 hours in advance of any Work which will be tied into the existing systems. Method of tie-in shall be submitted to OWNER for his approval prior to any Work being performed. At no time shall contaminated water that has not been disinfected be allowed to seep into the existing waterlines, and at no time shall sewage be allowed to flow into surrounding areas. Connection will be made during times of minimum sewage flows, if required by project.

6.5.4. CONTRACTOR shall coordinate his Work with that of other contractors whose work may occur at a conflicting time and location. The coordination shall be such that Work will be maintained at a normal rate.

6.5.5. Satisfactory access or detour roads shall be provided where necessary due to construction.

6.5.6. CONTRACTOR and his Registered Professional Engineer shall develop the Trench Safety System Plan and shall provide any necessary shoring, bracing and/or sheeting pursuant to Section 756.022 of the Texas Health and Safety Code and OSHA 29 C.F.R. 1926, Subpart P, Vol. 54 No. 209 of the Federal Register, October 31, 1989, pp. 45959-45991, and, as provided in Section 11 - "Trench Excavation and Shoring Safety Plan" of the Standard Specifications.

6.5.7. CONTRACTOR shall provide adequate barricades and warning devices in conformance with the guidelines for Traffic Control as established by the Texas Department of Transportation (TDOT) in the Texas Manual on Uniform Traffic Control Devices (TMUTCD). This provision shall be subsidiary to the rest of the Work in this Contract, and shall not constitute a separate pay item.

6.5.8. CONTRACTOR shall provide the services of a technical representative for CONTRACTOR furnished equipment, for a sufficient period to assist in start-up and initial adjustment of all equipment, and to train, advise and consult with OWNER'S operating personnel, if appropriate for the project.

6.5.9. All items of equipment required for this Contract shall be bid to provide as part of the price, literature explaining "Operation and Maintenance" of that item of equipment, if required by project. If a manufacturer does not print such a standard O&M manual, CONTRACTOR shall provide OWNER with a manual approved, in writing by the manufacturer.

Adjusting Progress Schedule:

6.6 CONTRACTOR shall submit to OWNER'S Engineer for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of

new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items:

6.7 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item, or the name of a particular Supplier, the naming of the item is intended to establish the type, function, performance standard and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER'S Engineer if sufficient information is submitted by CONTRACTOR to allow OWNER'S Engineer to determine that the material or equipment proposed is equivalent, or equal to, that named. The procedure for review by OWNER'S Engineer will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by OWNER'S Engineer from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER'S Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of Substantial Completion on time, whether or not acceptance of the substitute for use 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 and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement parts and service will be indicated. The application will also contain an itemized estimate of all costs or savings that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER'S Engineer in evaluating the proposed substitute. OWNER'S Engineer may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

6.8 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER'S Engineer, if CONTRACTOR submits sufficient information to allow OWNER'S Engineer to determine that the substitute proposed can be legally utilized by CONTRACTOR (e.g. patented or licensed processes) and is equivalent to that indicated or required by the Contract Documents. The procedure for review by OWNER'S Engineer will be similar to that provided in paragraph 6.7 as applied by OWNER'S Engineer and as may be supplemented in the General Requirements.

6.9 OWNER'S Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER'S Engineer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER'S Engineer prior written

acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guaranty or other surety with respect to any substitute. OWNER'S Engineer will record time required by OWNER'S Engineer and OWNER'S Engineer consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER'S Engineer accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of OWNER'S Engineer and any consultants for evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others:

6.10 CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization, whether initially or as a substitute, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.10.1 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER, 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 Contractor Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked by OWNER on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price may be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order may be issued or Written Amendment signed. All increases or decreases in the Contract Price shall be governed by all state and local statutes, codes, laws, ordinances, rules and regulations governing competitive bidding and Change Orders. No acceptance by OWNER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER to reject any defective or non-compliant Work.

6.11 CONTRACTOR shall be fully responsible to OWNER for all acts and/or omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct contract or indirect relationship with CONTRACTOR, just as CONTRACTOR is responsible for CONTRACTOR'S own acts and/or omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER and any such Subcontractor, subtier subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER to pay or to supervise the payment of any moneys due any such Subcontractor, subtier subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.11.1 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.

6.11.2 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and contains waiver provisions as required by paragraph 5.7.

Patent Fees and Royalties:

6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work, and if to the actual knowledge of OWNER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and anyone directly or indirectly employed by OWNER against any claims, damages, losses and expenses (including attorneys' fees and court costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights. It is the expressed intention of the parties hereto that the indemnity provided for in this paragraph is indemnity by CONTRACTOR to indemnify and protect OWNER from the consequences of OWNER'S own negligence where that negligence on the part of the OWNER is a concurring cause of the claims, damages, losses, and expenses referenced above. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, damage, loss and expense referenced above where such results from the sole negligence of the OWNER independent of the fault of any other person or entity.

Permits:

6.13 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees if any.

6.13.1 Fires shall not be built on the premises except by the express consent of OWNER and City Fire Chief.

Laws and Regulations:

6.14 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and 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.

6.14.1 If CONTRACTOR has actual knowledge that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give OWNER'S Engineer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated. If CONTRACTOR performs any Work knowing, or having reason to know, that it is contrary to such Laws or Regulations, and without such notice to OWNER'S Engineer, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

#### Taxes:

6.15 "Pursuant to 34 Texas Administrative Code 3.291, in order for the OWNER to continue to benefit from its status as a State Sales and Use Tax Exempt Organization, after August 14, 1991 construction contracts must be awarded on a "separated contract" basis. A "separated contract" is one that distinguishes the value of the tangible personal property (materials such as pipe, bricks, lumber, concrete, paint, etc.) to be physically incorporated into the Project from the total contract price. Under the "separated contract" format the CONTRACTOR in effect becomes a "seller" to the OWNER of materials that are to be physically incorporated into the Project realty. As a "seller", the CONTRACTOR will issue a "Texas Certificate of Resale" to the supplier in lieu of paying the sales tax on materials at the time of purchase. The CONTRACTOR will also issue a "Certificate of Exemption" to the supplier demonstrating that the personal property is being purchased for resale and that the resale is to a department of the City of Wharton, Texas, which is a sales tax exempt entity. CONTRACTOR should be careful to consult the most recent guidelines of the State Comptroller of Public Accounts regarding the sales tax status of supplies and equipment that are used and consumed during Project Work but that are not physically incorporated into the Project realty. If the CONTRACTOR has questions about the implementation of this policy he is asked to inquire with the State Comptroller of Public Accounts, Tax Administration Division, State of Texas, Austin, Texas 78774 (tel. 512-463-4934). The CONTRACTOR will not include any federal taxes in bid prices since the OWNER is exempt from payment of such taxes. "Texas Certificates of Exemption", "Texas Certificates of Resale" and "Texas Sales Tax Permits" are forms available to the CONTRACTOR through the regional offices of the State Comptroller of Public Accounts."

#### Use of Premises:

6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents or otherwise acquired by the CONTRACTOR, and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements. CONTRACTOR shall assume full responsibility for any damage to any Project land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER by any such adjacent owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration

or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify, and hold harmless OWNER from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER to the extent based on a claim arising out of CONTRACTOR'S performance of the Work. It is the expressed intent of the parties hereto that the indemnity provided for in this paragraph is indemnity by CONTRACTOR to indemnify and protect OWNER from the consequences of OWNER'S own negligence, when that negligence on the part of the OWNER is a concurring cause of the injury, death or damage.

6.16.1 Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit, and liability where the injury, death or damage results from the sole negligence of the OWNER independent of the fault of any other person or entity.

6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove and legally dispose of all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.17.1 CONTRACTOR shall be confined to all working easements provided by OWNER unless CONTRACTOR secures at his own cost additional private temporary construction easements. Generally, storage of excavation material and all CONTRACTOR equipment and material shall remain within the limits of working easements.

6.18 CONTRACTOR shall not load or permit any part of any structure or utility to be loaded in any manner that will endanger the structure or utility, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures or loss of subjacent or lateral support that will endanger it.

Record Documents:

6.19 CONTRACTOR shall as a precondition to interim progress payments regularly maintain and update and store in a safe place at the Project site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made by CONTRACTOR during construction. These periodically updated record documents, together with all approved samples and a counterpart of all approved Shop Drawings, will be at all times available to OWNER'S Engineer for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to OWNER'S Engineer for OWNER.

Safety and Protection:

6.20 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 employees and the general public, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1 All employees on the Work and other persons and organizations who may be affected thereby;

6.20.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3 Other property at the site or adjacent thereto, including drainage gradients, trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

6.20.4 Driveways, culverts, storm sewer inlets and laterals, and other public or private property that is destroyed or removed during the construction shall be replaced to its original condition by CONTRACTOR. Temporary drainage is to be provided as necessary.

6.20.5 CONTRACTOR is responsible for locating underground obstacles. It is not represented that the plans show all sewers, waterlines, electric lines, gas lines, telephone lines and other underground obstacles and utilities. CONTRACTOR shall exercise caution to prevent damage to existing facilities during the progress of the construction work, taking care to locate same in advance of the actual work. OWNER will render all assistance possible to CONTRACTOR in the matter of determining the location of existing utilities by making available such maps, records, and other available existing information as may be accessible to OWNER, when requested to do so, but the accuracy of such information will not be guaranteed. CONTRACTOR shall make good all damage to existing utilities resulting from his operations. Where a pipe, duct or other structure of a utility is exposed, which, in the opinion of OWNER requires strengthening, altering or moving, CONTRACTOR shall perform such work on same, as OWNER may order, which work may be paid for as extra work. Should CONTRACTOR, in the layout of his work, encounter any pipe, underground utility or structure, the location of which has not been furnished to him by OWNER, he shall bring such conditions to the attention of OWNER for his determination of the method to be used to remove or bypass such obstructions.

6.20.6 It is essential that in the event of any damage being caused to existing utilities that immediate attention to be given to their repair, if necessary at the expense of labor and material scheduled to be employed on the new work. Any repair work carried out shall be at the cost of CONTRACTOR and shall be to the complete satisfaction of OWNER, who will acknowledge same in writing. It is therefore, the duty of CONTRACTOR prior to the commencement of construction to inspect and accurately record in writing to OWNER the condition of any utility which he reasonably suspects or knows to be damaged, faulty, or defective. In addition, any such utilities so recorded which in the opinion of CONTRACTOR may deteriorate further as a result of the proposed mode of operations should be protected and/or remedial measures employed as agreed to with OWNER.



6.20.7 CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, restoration and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR'S duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and OWNER'S Engineer has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.21 CONTRACTOR shall designate a responsible representative at the site whose duty shall be the management of risk and concerted effort to prevent accidents. This person shall be CONTRACTOR'S superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.

Emergencies:

6.22 In emergencies affecting the safety or protection of persons, or the Work, or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give OWNER'S Engineer prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If OWNER'S Engineer determines that a change in the Contract Documents is required because of the CONTRACTOR'S action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

Shop Drawings and Samples:

6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to OWNER'S Engineer for review and approval in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the OWNER'S Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable OWNER'S Engineer to review the information as required.

6.23.1 Before ordering any material or doing any work, CONTRACTOR will verify all measurements of any existing and new work and shall be responsible for their correctness. Any differences, which may be found, shall be submitted to OWNER for consideration before proceeding with the work. No extra compensation will be allowed because of differences between actual dimensions and measurements indicated on the working drawings.

6.24 CONTRACTOR shall also submit to OWNER'S Engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

6.25 Before submission of each Shop Drawing or sample, CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

6.25.1 At the time of each submission, CONTRACTOR shall give OWNER'S Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to OWNER'S Engineer for review and approval, of each such variation.

6.26 OWNER'S Engineer will review and approve with reasonable promptness Shop Drawings and samples, but OWNER Engineer's review and approval will be only for general conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate or component item will not indicate approval of the assembly into which the item functions integrally. CONTRACTOR shall make corrections required by OWNER'S Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. CONTRACTOR shall direct Owner Engineer's specific attention in writing to the most current revisions, other than the corrections called for by OWNER'S Engineer on previous CONTRACTOR submittals.

6.27 OWNER Engineer's review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called OWNER Engineer's attention to each such variation at the time of submission as required and OWNER'S Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by OWNER'S Engineer relieve CONTRACTOR from responsibility for CONTRACTOR'S errors or omissions

in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1.

6.28 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to OWNER Engineer's review and approval of the pertinent submission will be at the sole risk, expense and responsibility of CONTRACTOR.

Continuing the Work:

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

Indemnification:

**6.30 CONTRACTOR AGREES TO AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITES, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROEPRTY, ARISING OUT OR IN CONNECTION WITH THE PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS, LIABILITY OR EXPENSE (A) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OR TO INJURY OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM AND (B) IS CAUSED IN WHOLE OR IN PART BY ANY CONDITION OF THE WORK OR MATERIALS, OR BY ANY ACT OR OMISSION OF CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY CONTRACTOR OR SUBCONTRACTOR OR ANYONE FROM WHOSE ACTS CONTRACTOR OR ANY SUBCONTRACTOR MAY BE LIABLE UNDER THIS CONTRACT.**

**6.30.1 SUCH INDEMNITY SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITES, OR LIABILITY ARISE IN PART FROM THE NEGLIGENCE OF OWNER.**

**6.30.2 IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, BOTH CONTRACTOR AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY THE CONTRACTOR, TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF OWNER'S OWN NEGLIGENCE, WHERE THAT NEGLIGENCE IS A CONCURRING CAUSE OF THE INJURY, DEATH OR DAMAGE. FURTHERMORE, THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL HAVE NO APPLICATION TO ANY CLAIM, LOSS, DAMAGE, CAUSE OF ACTION, SUIT, AND LIABILITY WHERE THE INJURY OR DEATH OR DAMAGE RESULTS FROM THE SOLE NEGLIGENCE OF THE OWNER INDEPENDENT OF THE FAULT OF ANY OTHER PERSON OR ENTITY.**

6.31 In any and all claims against OWNER or any of its consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.32 The obligations of CONTRACTOR under paragraph 6.30 shall not extend to any liability of OWNER, OWNER'S Engineer, consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

6.33 CONTRACTOR shall perform all phases of Work other than general clean up during weekdays, as defined in these Supplementary General Conditions. If CONTRACTOR desires to perform work other than general clean up during weekends or holidays, prior proper arrangements must be made in writing with OWNER or any other regulatory agency regarding such Work.

6.34 General. This Contract shall be based upon payment by CONTRACTOR and his Subcontractors of wage rates not less than General Prevailing Wage Rate of per diem wages for work of a similar character in the locality in which the Work is performed, for each type of laborer, workman or mechanic needed to implement the Contract at the Project Site, and not less than the general prevailing rate of per diem wages for legal holiday and overtime Work. The schedule of General Prevailing Wage Rates and other important Wage and Labor Standard Provisions are included in these Contract Documents elsewhere.

6.34.1 CONTRACTOR shall comply with all requirements of the prevailing wage law of the State of Texas, Texas Revised Civil Statutes, Article 5159a, including the latest amendments thereto.

6.34.2 Records. CONTRACTOR and each Subcontractor shall keep an accurate record showing the names and occupations of all laborers, workmen, and mechanics employed, together with the actual wages paid to each worker. At all reasonable hours, such records shall be open to inspection by the representatives of the OWNER. With each application for payment, CONTRACTOR shall provide a certified copy of such payroll records as necessary to substantiate compliance with this provision during the period of time for which the application for payment pertains. OWNER shall take cognizance of any and all employee complaints regarding any violations of the requirements of Article 5159a.

6.34.3 Penalty. In case CONTRACTOR and any Subcontractor fail to comply with the prevailing wage law, by statutory authority, CONTRACTOR shall forfeit to the OWNER \$60.00 per calendar day, or portion thereof, for each laborer, workman, or mechanic who is paid less than the specified rate for any Work done under the Contract.

6.34.4 Hours of Labor. CONTRACTOR shall comply with all requirements of the hours of work on public works in accordance with the laws of the State of Texas, Texas Revised Civil Statutes, Articles 5165.1 to 5165.3, including the latest amendments thereto.

No CONTRACTOR or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers, workmen or mechanics at the Project Site shall require or permit any laborer, workman or mechanic in any workweek in which he is employed on such Work to work in excess of forty hours in such workweek unless such laborer, workman or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

6.34.5 Veterans Preference. Pursuant to Texas Revised Civil Statutes, Article 4413(31), CONTRACTOR shall give preference in employment to honorably discharged veterans who were engaged in the services of the United States in time of war or conflict and who are, and have been, citizens of Texas for not less than five years.

6.34.6 Equal Employment Opportunities. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, gender, national origin, age, physically challenged condition, or a political belief or affiliation, and will comply with all state and federal statutes applicable to CONTRACTOR which relate to employment discrimination.

## ARTICLE 7 - OTHER WORK

### Related Work at Site:

7.1 OWNER may perform other work related to the Project at the site by OWNER'S own forces, have other work performed by utility owners or award other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in these Contract Documents, written notice thereof will be given to CONTRACTOR prior to OWNER authorizing any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. All increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

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

the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

7.3 If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to OWNER'S Engineer in writing any delays, defects or deficiencies in such work that renders it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in the other work.

Coordination:

7.4 If OWNER contracts with others for the performance of other work on the Project at the Project site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1 OWNER shall issue all communications to CONTRACTOR through OWNER'S Field Representative and/or Engineer.

8.2 In case of termination of the employment of OWNER'S Engineer, OWNER shall appoint a replacement Engineer whose status under the Contract Documents shall be that of the former Engineer.

8.3 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR within the time periods allowed by the Contract Documents and State statute after they are due as provided in paragraphs 14.4 and 14.13.

8.4 OWNER'S duties in respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site which are not part of the Contract Documents but which have been utilized by OWNER'S Engineer in preparing the Drawings and Specifications.

8.5 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.

8.6 OWNER'S responsibility in respect to certain inspections, tests and approvals is set forth in paragraph 13.4.

8.7. In connection with OWNER'S right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER'S right to terminate services of CONTRACTOR under certain circumstances.

## ARTICLE 9 - OWNER ENGINEER'S STATUS DURING CONSTRUCTION

OWNER'S Representative:

9.1 OWNER'S Engineer will be OWNER'S representative during the construction period.

Visits to Site:

9.2 OWNER'S Engineer will make periodic visits to the site at intervals appropriate to the various stages of construction to observe the progress and general quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. OWNER'S Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work because CONTRACTOR is responsible for same. OWNER Engineer's efforts will be directed toward providing for OWNER only, a greater degree of confidence that the CONTRACTOR'S completed Work will conform to the Contract Documents. On the basis of such limited visits and on-site observations as an experienced and qualified design professional working for OWNER, OWNER'S Engineer will keep OWNER informed of the progress of the Work and will endeavor to advise OWNER of any obvious defects and deficiencies in the Work.

On-Site Project Representation:

9.3 OWNER may furnish a Project Field Representative to assist OWNER'S Engineer in observing the daily performance of the Work. This is an option available to OWNER that need not be exercised nor may it be relied upon by the CONTRACTOR in any way. The duties, responsibilities and limitations of authority of any such Project Field Representative and assistants will be determined by the OWNER.

Clarifications and Interpretations:

9.4 OWNER'S Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as OWNER'S Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation by OWNER'S Engineer justifies an increase in the Contract Price or an extension of the Contract Time and the OWNER and CONTRACTOR are unable to agree to the basis, amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Article 11 or Article 12. Any increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change orders.

#### Authorized Variations in Work:

9.5 OWNER'S Engineer 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 Time and are consistent with the overall intent of 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 CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11 or 12. Any increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

#### Rejecting Defective Work:

9.6 OWNER'S Engineer will have the authority to disapprove or reject Work which OWNER'S Engineer believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

#### Shop Drawings, Change Orders and Payments:

9.7 In connection with OWNER Engineer's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.28 inclusive.

9.8 In connection with OWNER Engineer's responsibilities as to Change Orders, see Articles 10, 11 and 12.

9.9 In connection with OWNER Engineer's responsibilities in respect of Applications for Payment, etc., see Article 14.

#### Determinations for Unit Prices:

9.10 OWNER'S Engineer will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. OWNER'S Engineer will review with CONTRACTOR, OWNER Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). OWNER Engineer's written decisions thereon will be final and binding upon OWNER and CONTRACTOR.

#### Decisions on Disputes:

9.11 OWNER'S Engineer will be the 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 or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to OWNER'S Engineer in writing with a request for a formal decision in accordance



with this paragraph, which OWNER'S Engineer will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the CONTRACTOR (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to OWNER'S Engineer within sixty days after such occurrence unless OWNER'S Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, OWNER'S Engineer 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'S Engineer pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by CONTRACTOR of such rights or remedies it may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

#### Limitations on OWNER Engineer's Responsibilities:

9.13 Neither OWNER Engineer's authority to act under this Article 9, or elsewhere in the Contract Documents, nor any decision made by OWNER Engineer in good faith either to exercise or not exercise such authority, shall give rise to any personal duty or personal responsibility of OWNER Engineer to CONTRACTOR, and Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

9.14 Whenever in the Contract Documents the term "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of OWNER'S Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with 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'S Engineer any duty to supervise or direct the furnishing, performance, or quality control of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

9.15 OWNER'S Engineer will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, for which CONTRACTOR shall be responsible. OWNER'S Engineer will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

9.16 OWNER'S Engineer will not be responsible for the acts and/or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

## ARTICLE 10 - CHANGES IN THE WORK

10.1 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 that are in compliance with State competitive bidding statutes and laws governing Change Orders; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. 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).

10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12. All increases or decreases in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.

10.4 OWNER and CONTRACTOR may execute appropriate Change Orders (or Written Amendments) covering:

10.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;

10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

10.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by OWNER'S Engineer pursuant to paragraph 9.11;

10.4.4 provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S sole responsibility, and the amount of each applicable Bond will be adjusted accordingly.

## ARTICLE 11 - CHANGE OF CONTRACT PRICE

11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All original duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the original Contract Price.

11.2 The Contract price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on initial written notice delivered promptly by the CONTRACTOR or OWNER to the other party promptly and to OWNER'S Engineer promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall follow and be delivered within seven days after such occurrence (unless OWNER'S Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant believes he is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by OWNER'S Engineer in accordance with paragraph 9.11. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.

11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

11.4 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved shall be subject to the provisions of the contract.

11.5 By mutual acceptance of a lump sum.

11.6 On the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR'S Fee for overhead and profit (determined as provided in paragraph 11.7).

Cost of the Work:

11.7 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. 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.

11.8 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications as set forth by OWNER in the Contract Documents. 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, if any, which shall include social

security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday as may be applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above, to the extent authorized by OWNER.

11.8 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 all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

11.9 Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine which bid will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a Fee, the Sub-CONTRACTOR'S Cost of the Work shall be determined in the same manner as CONTRACTOR'S cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

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

11.10.1 Supplemental costs including the following:

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

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

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

11.11 Any sales, consumer, use or similar taxes related to the Work that OWNER is not exempt from paying, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

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

11.13 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with the performance and furnishing of the Work, provided they have resulted from causes other than the intentional and/or negligent acts and/or omissions of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts and/or omissions any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S Fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.

11.13.1 The cost of utilities, fuel and sanitary facilities at the Project site.

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

11.13.3 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

11.14 The term Cost of the Work shall not include any of the following:

11.14.1 Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership 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 Project site or in CONTRACTOR'S principal or a 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.

11.15 Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the Project site.

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

11.17 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same.

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

11.19 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR'S Fee:

11.20 The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

11.20.1 a mutually acceptable fixed fee; or if none can be agreed upon.

11.21 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

11.22 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 done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to OWNER. CONTRACTOR agrees that:

11.23 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 non-exempt taxes; and

11.24 CONTRACTOR'S costs for unloading and handling on the Project 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. No demand for additional payment on account of any thereof will be valid.

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

Unit Price Work:

11.26 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 established unit prices 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 OWNER'S Engineer in accordance with Paragraph 9.10.

11.27 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

11.28 Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 11 and applicable State law, if the parties are unable to agree as to the amount of any such increase.

## ARTICLE 12 - CHANGE OF CONTRACT TIME

12.1 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on initial written notice delivered by the CONTRACTOR or OWNER to the other party (but in no event later than seven days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall follow and be delivered within seven days after such occurrence (unless OWNER'S Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by OWNER'S Engineer in accordance with paragraph 9.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefor as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, extremely abnormal weather as described further in these Contract Documents, or acts of God.

12.3 All time limits stated in the Contract Documents are mutually agreed to be of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

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

### Warranty and Guarantee:

13.1 CONTRACTOR warrants and guarantees to OWNER that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all obvious patent

defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

13.1.1 In case of dispute as to the cause of improper functioning of all or any part of the work, the burden of proof that he has complied with the Contract Documents rests with CONTRACTOR for this work. He shall submit in writing his opinion of the cause of his recommendation for proving the adequacy of his work. OWNER shall have those tests made, which he deems advisable, by an independent testing laboratory of his choice. If any test so made indicates a defect in material of workmanship, or that one or more manufactured components of the work are performing below the standard set by the manufacturer's public data and specifications, the entire cost of all such tests shall be paid for by CONTRACTOR, and he shall also pay for re-testing of the corrected work until it functions satisfactorily. The work shall be guaranteed to be free from defects due to faulty workmanship or materials for a period of one year from the date of issue of the Certificate of Acceptance. Work found to be improper or imperfect shall be replaced or redone without cost to OWNER within the one year guarantee period. Neither the Certificate of Acceptance, final payment, of any provision of the Contract Documents shall free CONTRACTOR from his guarantee. Failure to repair or replace faulty work entitles OWNER to repair or replace the same and recover the costs from CONTRACTOR and/or his Surety. CONTRACTOR shall be the sole guarantor of the work installed under this Contract and no third party guarantees by Subcontractors or suppliers of various components or materials will be acceptable, nor shall agreements with Subcontractors or material or component suppliers by CONTRACTOR reduce CONTRACTOR'S responsibility under this agreement. All equipment is warranted or guaranteed to OWNER for one (1) year from the date of acceptance of the entire project. The CONTRACTOR shall transfer to the OWNER any and all third party warranties and/or guaranties that remain in effect beyond the one year guarantee period.

#### Access to Work:

13.2 OWNER, OWNER'S Engineer, OWNER'S Field Representative, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

13.2.1 It is agreed by CONTRACTOR that OWNER shall be and is hereby authorized to appoint from time to time OWNER Engineer's subordinate supervisors, observers, and/or inspectors, as the said OWNER may deem proper to inspect the material furnished and the work done under this construction agreement, and to see that the said material is furnished and said Work is generally done in accordance with the specifications. This OWNER function does not excuse the CONTRACTOR for quality control assurance, which is solely his responsibility. CONTRACTOR shall furnish all reasonable aid and assistance required by the OWNER'S Engineer, subordinate supervisors, or inspectors for the proper supervision and inspection and examination of the Work and all parts of the Work. CONTRACTOR shall regard and obey the directions and instructions of the OWNER'S Engineer and any subordinate supervisors, or inspector so appointed, when such directions are consistent with the obligations of this agreement and these accompanying specifications, provided, however, that should CONTRACTOR object to any order by any subordinate supervisor or inspector, CONTRACTOR may within six (6) days make written notice to OWNER for his decision. Except as herein before provided, the authority



of subordinate supervisors or inspectors shall be limited to the rejection of unsatisfactory Work and materials and to the suspension of the Work, until the questions of acceptability can be referred to OWNER.

#### Tests and Inspections:

13.3 CONTRACTOR shall give OWNER'S Engineer and /or OWNER'S Field Representative timely notice of readiness of the Work for all required inspections, tests or approvals.

13.4 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish OWNER'S Engineer the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER'S acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR'S purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals other than those, which are required by the Contract Documents, shall be paid by OWNER (unless otherwise specified).

13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER (or by OWNER'S Engineer if so specified).

13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered or otherwise concealed without written concurrence of OWNER'S Engineer, it must, if requested by OWNER'S Engineer, be uncovered and revealed for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given OWNER'S Engineer timely notice of CONTRACTOR'S intention to cover the same and OWNER'S Engineer has not acted with reasonable promptness in response to such notice.

13.7 Neither observations by OWNER'S Engineer nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S primary obligations to perform the Work and constantly employ quality control in accordance with the Contract Documents.

#### Uncovering Work:

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

13.9 If OWNER'S Engineer considers it necessary or advisable that covered Work be observed by OWNER'S Engineer or inspected or tested by others, CONTRACTOR, at OWNER Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as OWNER'S Engineer 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 bear all direct, indirect and consequential costs of such uncovering,

exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges or engineers, architects, attorneys and other professionals), and OWNER shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. All increases or decreases in the Contract price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

#### Owner May Stop the Work:

13.10 If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or 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 stop Work order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

#### Correction or Removal of Defective Work:

13.11 If required by OWNER'S Engineer, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by OWNER'S Engineer, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### One Year Correction Period:

13.12 If within one year after the date of issue of the Certificate of Acceptance 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, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before acceptance 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.

#### Acceptance of Defective Work:

13.13 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to OWNER Engineer's recommendation of final payment), prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by OWNER'S Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to OWNER Engineer's recommendation 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, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such final payment, an appropriate amount as determined by OWNER will be paid by CONTRACTOR to OWNER.

#### OWNER May Correct Defective Work:

13.14 If CONTRACTOR fails within a reasonable time after written notice by OWNER'S Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by OWNER'S Engineer in accordance with paragraph 13.11, 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. In exercising the rights and remedies under this paragraph, OWNER shall proceed with reasonable expediency. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Project 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 such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, 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, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

### Schedule of Values:

14.1 The schedule of values established will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to OWNER'S Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### CONTRACTOR'S Warranty of Title:

14.2 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 any and all prior liens.

### Review of Applications for Progress Payment:

14.4 OWNER'S Engineer will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and process the Application, 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. Twenty days after presentation of the Application for Payment with OWNER Engineer's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.

14.5 OWNER Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by OWNER'S Engineer, based upon ENGINEER'S limited on-site observations of the Work in progress as an experienced and qualified design professional, and on OWNER Engineer's review of the Application for Payment and the accompanying data and schedules, that the Work has progressed to the point indicated, that, to the best of OWNER Engineer's knowledge, information and belief, the status of the Work is in apparent general accord with the Contract Documents (subject to an evaluation of the Work as a functioning whole; prior to or upon Substantial Completion; and subject to the results of any subsequent tests called for in the Contract Documents; and subject to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10; and subject to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment, OWNER'S Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to OWNER'S Engineer in the Contract Documents, or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or OWNER to withhold payment to CONTRACTOR.

14.6 OWNER Engineer's recommendation of final payment will constitute an additional representation by OWNER that to the best of OWNER Engineer's knowledge the conditions

precedent to CONTRACTOR'S being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.

14.7 OWNER'S Engineer may refuse to recommend the whole or any part of any payment if, in OWNER Engineer's opinion, it would be incorrect to make such representations to OWNER. OWNER Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in OWNER Engineer's opinion to protect OWNER from loss because:

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

14.7.2 the Contract Price has been reduced by Written Amendment or Change Order.

14.7.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4 of OWNER Engineer's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

14.7.5 OWNER may for its own benefit and protection and not for the direct benefit of third parties, refuse to make payment in whole or in part of the amount recommended by OWNER'S Engineer because claims have been made against OWNER on account of CONTRACTOR'S improper performance of the Work, or payment bond claims have been filed in connection with the Work or there are other items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR written notice stating the reasons for such action.

Substantial Completion:

14.8 When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify OWNER'S Engineer 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. Within a reasonable time thereafter, OWNER and CONTRACTOR shall make an inspection of the Work to determine the status of completion. If OWNER'S Engineer does not consider the Work substantially complete, OWNER'S Engineer will notify CONTRACTOR in writing giving the reasons therefor. If OWNER'S Engineer considers the Work substantially complete, OWNER'S Engineer will prepare and process 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. At the time of delivery of the tentative certificate of Substantial Completion, OWNER'S Engineer will deliver to CONTRACTOR a written recommendation as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. OWNER Engineer's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

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

Partial Utilization:

14.10 Use by OWNER of any finished part of the Work, which has specifically been identified in the Contract Documents or which OWNER, and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by OWNER 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:

14.10.1 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, CONTRACTOR will certify to OWNER that said part of the Work is substantially complete and request OWNER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after such request, OWNER, and CONTRACTOR shall make an inspection of that part of the Work to determine its status of completion. If OWNER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 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.

14.10.2 OWNER may at any time request CONTRACTOR in writing to permit OWNER to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to OWNER'S Engineer and within a reasonable time thereafter OWNER, and CONTRACTOR shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to OWNER that such part of the Work is not ready for separate operation by OWNER, OWNER'S Engineer will finalize the list of items to be completed or corrected and will deliver such list to CONTRACTOR together with a written statement as to the division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, HVAC, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon OWNER and CONTRACTOR at the time when OWNER takes over such operation. During such operation and prior to Substantial Completion of such part of the Work, OWNER shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.9 in respect of CONTRACTOR'S property insurance.

#### Final Inspection:

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

14.11.1 A qualified person, representing CONTRACTOR, shall be present at this final inspection to demonstrate the systems and prove the performance of the equipment. Prior to this inspection, all Work shall have been completed, tested, balanced and adjusted and in final operating condition, if required by the project.

#### Final Application for Payment:

14.12 After CONTRACTOR has completed all such corrections to the satisfaction of OWNER'S Engineer and delivered all maintenance and operating instructions, schedules, guarantees, any maintenance bonds, certificates of inspection, marked-up record documents depicting as-built conditions (as provided in paragraph 6.19) and other documents--all as required by the Contract Documents, and after OWNER'S Engineer has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all claims arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a payment bond claim could be filed, and that 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 encumbered, have been paid or otherwise satisfied; and consent of the surety, if any is required, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a special indemnity Bond or other collateral satisfactory to OWNER to indemnify OWNER against any potential third party claim.

#### Final Payment and Acceptance:

14.13 If, on the basis of OWNER Engineer's observation of the Work during construction and final inspection, and OWNER Engineer's review of the final Application for Payment and accompanying documentation (all as required by the Contract Documents), OWNER'S Engineer is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, OWNER'S Engineer will, within twenty (20) days after receipt of the final Application for Payment, indicate in writing OWNER Engineer's recommendation of payment and process the Application for payment. Thereupon OWNER'S Engineer will give written notice to CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.16. Otherwise, OWNER'S Engineer will return the Application 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.

Thirty (30) days after presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance, and with OWNER Engineer's recommendation and notice of acceptability, the amount recommended by OWNER'S Engineer will become due and will be paid by OWNER to CONTRACTOR.

14.13.1 CONTRACTOR shall submit satisfactory evidence to the OWNER that all payrolls, material bills, and other indebtedness connected with the Work have been paid, before final certificate is issued.

14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of OWNER'S Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, 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'S Engineer 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 by OWNER.

CONTRACTOR'S Continuing Obligation:

14.15 CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by OWNER'S Engineer, nor the issuance of a certificate of Substantial Completion or Acceptance, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by OWNER'S Engineer pursuant to paragraph 14.13, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 14.16).

Waiver of Claims:

14.16 The making and acceptance of final payment will constitute:

14.16.1 a waiver of all claims by OWNER against CONTRACTOR, except third party claims arising from unsettled payment bond claims, from defective Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and



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

## ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

### Owner May Suspend Work:

15.1 OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety 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 may be allowed an increase in the Contract Price or an extension of the Contract Time, or both; directly attributable to any suspension if CONTRACTOR demonstrates an approved claim therefor as provided in Articles 11 and 12. Any increase or decrease in the Contract Price shall be governed by all state and local laws, statutes, codes, ordinances, rules and regulations governing competitive bidding and Change Orders.

### Owner May Terminate:

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

15.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

15.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a lien against such CONTRACTOR property or for the purpose of general administration of such CONTRACTOR property for the benefit of CONTRACTOR'S creditors;

15.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

15.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);

15.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

15.2.8 if CONTRACTOR disregards the rights of OWNER; or

15.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

15.3 OWNER may, after giving CONTRACTOR and the surety seven days written notice and to the extent permitted by Laws and Regulations, 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 OWNER 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 the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess will be paid to CONTRACTOR or surety. If such costs exceed such unpaid balance, CONTRACTOR or surety shall pay the difference to OWNER. Such costs incurred by OWNER will be incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, OWNER shall not be required to obtain the lowest price for the Work performed.

15.4 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.

15.5 Upon seven days written notice to CONTRACTOR OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and expenses sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court costs).

#### ARTICLE 16 - TIME FOR COMPLETION AND LIQUIDATED DAMAGES.

16.1 It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed, by and between the parties hereto, that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed.

16.2 CONTRACTOR agrees that said Work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time

specified. It is expressly understood and mutually agreed, by and between the parties hereto, that the time for the completion of the Work described herein is a reasonable time for completion of same, taking into consideration the average climatic range and weather conditions that the CONTRACTOR must reasonably anticipate, and usual industrial conditions prevailing in the locality.

16.3 If CONTRACTOR shall neglect, fail or refuse to complete the Work within the time herein specified, then CONTRACTOR does hereby agree, as a part consideration for awarding of this Contract, to pay the OWNER the amount specified in the contract, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth for each and every calendar day that CONTRACTOR shall be in default after the time stipulated in the Contract for completing the Work.

16.4 The damage to OWNER by reason of this Contract not being completed as of that date are incapable of definite ascertainment, and the parties hereto have therefore mutually fixed and limited such damages to the sum of \$250.00 per day for each day the job runs beyond such date and the fixing of such damages constitutes a part of the consideration for the Contract. It is further agreed that time is of the essence of each and every portion of this Contract and of the specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract, additional time is allowed for the completion of any Work, the new time fixed by such extension shall be of the essence of this Contract. Provided that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in the completion of work is due:

16.4.1 To any preference, priority or allocation order duly issued by the Federal Government.

16.4.2 To unforeseeable cause beyond the control and without the fault or negligence of CONTRACTOR, including, but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather.

16.4.3 To any delays of Subcontractors and/or material suppliers occasioned by any of the causes specified in 16.4.1 or 16.4.2.

16.4.4 Provided further, that CONTRACTOR shall, within seven (7) days from the beginning of such delay, notify OWNER, in writing, of the causes of the delay, and OWNER shall ascertain the facts and extent of the delay and notify CONTRACTOR within a reasonable time of OWNER'S decision in the matter.

## ARTICLE 17 - MISCELLANEOUS

### Giving Notice:

17.1 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 CONTRACTOR'S

Project Superintendent or to a member of the firm or to an officer of the corporation in the case of the CONTRACTOR, or to the General Manager of the CITY in the case of the OWNER, 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.

Computation of Time:

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

17.2.1 A calendar day of twenty-four hours is measured from midnight, to the next midnight, and shall constitute a single calendar day.

General:

17.3 Should OWNER suffer injury or damage to person or property because of any error, omission or act of the CONTRACTOR, or of any of the CONTRACTOR'S employees or agents, or others for whose acts and/or omissions CONTRACTOR is legally liable, OWNER'S claim will be made in writing to the CONTRACTOR within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitations or repose.

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the conditions, warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.30, 13.1, 13.12, 13.14, and 15.2 and all of the rights and remedies available to OWNER and OWNER'S Engineer thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to OWNER 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. All representations, conditions, warranties and guarantees made in the Contract Documents will survive the execution, final payment and termination or completion of the Agreement. All CONTRACTOR recitations contained in any document required by OWNER, whether delivered at the time of the execution of the Contract Documents, or at a later date, shall constitute representations, warranties and guarantees by CONTRACTOR herein.

17.5. CONTRACTOR shall comply with the Copeland Act 48, Statute 948 and all amendments or modifications of the original act of June 13, 1934.

SUPPLEMENTARY GENERAL CONDITIONS

SECTION 1 - WAGE AND LABOR STANDARD PROVISIONS-100% NON-FEDERALLY FUNDED CONSTRUCTION

Contents

1. GENERAL STATEMENT
2. CONTRACTOR RESPONSIBILITIES
3. BREACH OF WAGE & LABOR STANDARDS PROVISIONS
4. MINIMUM WAGE
5. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS
6. “ANTI-KICKBACK” PROVISION
7. JOBSITE CONDITIONS
8. EMPLOYMENT OF CERTAIN PERSONS PROHIBITED
9. PROVISIONS TO BE INCLUDED IN SUBCONTRACTS

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 benefit contribution) for work of similar character be paid to Contractor and subcontractor employees.

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. CONTRACTOR RESPONSIBILITIES

- a. That no person employed by Contractor/subcontractor is induced against his will, by any means, to give up any part of the compensation to which he is otherwise entitled.

### 3. BREACH OF WAGE AND LABOR STANDARD PROVISIONS

The CITY reserves the right to terminate this Contract for cause if the Contractor/subcontractors shall knowingly and continuously breach, without timely restitution or cure, any of these governing Wage and Labor Standard Provisions. A knowing and unremedied proven violation of these Wage and Labor Standard Provisions may also be grounds for debarment of the Contractor/subcontractor from future CITY contracts for lack of responsibility, as determined by the CITY. Recurrent violations, whether remedied or not, will be considered by the City Manager when assessing the responsibility history of a potential contractor/subcontractor prior to competitive award of future Public Works projects. The general remedies stated in this paragraph 3 above, are not exhaustive and not cumulative, for the CITY reserves legal and contractual rights to other specific remedies outlined herein below and in other parts of this Contract and as are allowed by applicable CITY resolutions, state and federal statutes.

### 4. MINIMUM WAGE

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. 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.

### 5. OVERTIME COMPENSATION ON NON-FEDERALLY FUNDED PROJECTS

No Contractor/subcontractor contracting for any part of the non-federally funded Contract Work (except for worksite 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.

### 6. "ANTI-KICKBACK" PROVISION

No person employed in the construction or repair of any CITY 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.

### 7. JOBSITE 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.

## 8. 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 less than the age of fourteen (14) years, as governed by Chapter 51 "Employment of Children", Texas Labor Code, (Vernon's Texas Codes 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 Wage Hour Manual at Paragraph 96:1; "Child Labor Requirements in Nonagricultural 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 clarification 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 General Manager is required to employ any person participating in a supervised work release or furlough program that is sanctioned by appropriate state or 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.

## 9. 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 may exercise over the Contractor.

**SCOPE.** This section shall cover the removal and disposal of all materials, in both open cut and tunnel excavations, necessary for performing the Work as shown on the drawings or called for in the proposal or special provisions, including sheeting and bracing, drainage, and other Work incidental to the preparation of the site for subsequent construction Work.

**PREPARATION OF THE SITE.** Prior to commencing construction operations, the CONTRACTOR shall make all the provisions necessary to assure the protection of all existing

improvements, both public and private. He shall protect trees, shrubs, planting and grass areas and shall make provisions for maintaining public travel in an acceptable manner.

**PROTECTION OF EXISTING IMPROVEMENTS.** Before any excavation is started, adequate protection shall be provided for all lawns, trees, shrubs, landscape work, fences, sidewalks, hydrants, utility poles, street, alley and driveway paving, curbs, storm sewers, ditches, headwalls, catch basins, surface inlets and all other improvements that are to remain in place. Such protection shall be provided as long as necessary to prevent damage from the CONTRACTOR'S operations. Shrubs, bushes, small trees and flowers, which have to be removed to permit excavation for the waterline, shall be protected and replanted or replaced when the backfill is completed. The CONTRACTOR shall exercise every precaution to prevent damage to property within and outside easements. He shall remove all debris and rock from the site and restore the ground surfaces to the original grade after proper compaction, replace or repair all driveways, buildings, fences, retaining walls, culverts, drains, pavings, sidewalks, etc. which are removed or damaged during construction. Repair, restoration or replacements of any improvements damaged or removed shall be the obligation of the CONTRACTOR at no additional cost to OWNER.

**PERMITS.** CONTRACTOR will obtain all necessary permits in public and private rights-of-way from the City of Wharton.

**DRAINAGE.** The CONTRACTOR shall make provisions for temporarily handling all flows in existing creeks, ditches, sewers, and trenches by employing pipes, flumes, or other approved methods at all times when his operations would, in any way, interfere with the natural functioning of said creeks, ditches, sewers and drains. The CONTRACTOR shall at all times during construction provide and maintain sufficient equipment for the lawful disposal of all water which enters the excavation, both in open cut trenches and in tunnels, to render such excavations firm and dry, until structures to be built thereupon are completed.

**METHODS.** Pipe underdrains, well point systems, deep well pumps or other suitable equipment and methods shall be used to keep all excavations firm and dry, at no additional cost to OWNER unless otherwise provided in the proposal.



**TECHNICAL  
SPECIFICATIONS**

**CITY OF WHARTON  
SINGLE COURSE SURFACE  
SPECIFICATIONS**

Obtained from the 1993 Texas Department of Transportation Standard Specification for Construction of Highways, Streets and Bridges, Item 316.

**I. CONSTRUCTION**

- A. This item consists of a surface treatment composed of a single application of asphalt covered with pre-coated crushed limestone aggregate applied to prepared base course.
- B. No asphalt material shall be applied when the air temperature is below 60 F and falling, but may be applied when the air temperature is above 50 F and is rising, the air temperature being taken in the shade away from artificial heat. Asphaltic material shall not be placed when rain is predicted within 24 hours or when the general weather conditions, in the opinion of the City Engineer or his representative, are not suitable.
- C. The Contractor will ensure that the area to be treated shall be clean of dirt, dust or deleterious matter by sweeping with a rotary broom or other approved methods.
- D. The asphalt material as specified, AC-5 shall be applied to the clean surface at the rate of 0.30 gallons per square yard, or as directed, and at a temperature of not less than 325 degrees F nor more than 340 degrees F and applied by use of an approved type self-propelled pressure distributor so operated as to distribute the material in the quantity specified, evenly and smoothly, under a pressure necessary for proper distribution.
- E. No traffic, hauling or placing of subsequent courses shall be permitted over the freshly applied asphalt.
- F. Immediately after asphalt is applied, a cover of pre-coated crushed limestone aggregate shall be uniformly applied and spread to the rate of 1 cubic yard to every 100 square yards as directed.
- G. The pre-coated aggregate shall be Type PB, Grade 4, as stated in the 1993 Texas Department of Transportation Standard Specification for Construction of Highways, Streets and Bridges. The graduation of pre-coated aggregate shall be as follows:

WEIGHT	PERCENT BY
Retained on 5/8" sieve-----	0
Retained on 1/2" sieve-----	0-2
Retained on 3/8" sieve-----	20-35
Retained on No. 4 sieve-----	95-100
Retained on No. 10 sieve-----	99-100

- H. The entire surface shall be rolled slowly with a pneumatic roller. The rolling with the self-propelled pneumatic roller shall continue until the aggregate is properly affixed to the asphalt. The entire surface shall be broomed when the surface is such that no aggregate will be dislodged. The brooming shall be done as directed by the City Engineer or his representative.
- I. The Contractor will supply barricades and warning signs as required or specified by the City Engineer or his representative.
- J. Asphalt material in turning radius comers shall be applied using hand wand.

## II. INTERPRETATION OF ESTIMATES OF QUANTITIES

- A. The quantities listed in the bid proposal form will be considered as approximate and will be used for the comparison of bids. Payment will be made to the Contractor only for actual quantities of work performed or materials furnished in accordance with the specifications. The City of Wharton reserves the right to increase or decrease the quantities of work to be done and materials to be furnished without in any way invalidating the unit prices bid. The Contractor is required to provide "load tickets" from material suppliers for material to be used on this project.

## III. SAFETY

The contractor shall be responsible for flagmen, barricades, safety cones, or whatever is necessary to maintain safety for the motorist. The Contractor shall make himself familiar with all Federal, State and local laws, ordinances which in any matter affect the conduct of the work and shall indemnify and safe harmless the City of Wharton and its representatives against any claim arising from the violation of any such law, ordinance regulation whether by himself or by his employees.

## IV. CLEANUP

The Contractor shall as a part of the contract, cleanup and remove all excess materials associated with the project. Additionally, all manholes and valve covers shall be covered with paper to prevent asphalt from covering them. Also at the beginning and ending of each application, there must be paper in place to allow for a straight and uniform beginning and ending. All paper used shall be removed from the work site by the Contractor after the rock has been rolled into place, but before the street is broomed.

**CITY OF WHARTON  
REFLECTORIZED PAVEMENT MARKINGS  
SPECIFICATIONS**

Obtained from the 1993 Texas Department of Transportation Standard Specification for Construction of Highways, Streets and Bridges, Item 666

**I. DESCRIPTION**

This Item shall govern for furnishing and placing reflectorized pavement markings of the types, colors, shapes, sizes, widths, and thickness shown on the plans.

**II. MATERIALS**

Type II Marking Materials. Type II markings are paint-type materials that are applied at ambient or slightly elevated temperatures. Type II marking materials shall conform to Departmental Materials Specifications D-9-8200, YPT-10 and/or WPT-10 and D-9-8290.

**III. EQUIPMENT REQUIREMENTS**

Equipment used to place pavement markings shall:

- 1) Be considered in satisfactory operating condition if it has an average placement rate of 5,000 linear feet per hour of acceptable four-inch solid or broken lines over any five (5) consecutive working days.
- 2) Have production capabilities similar to four-inch marking equipment and shall be capable of placing linear markings up to eight (8) inches in width in a single pass when used for placing markings in widths other than four (4) inches.
- 3) Be capable of placing broken and/or continuous white line from both sides.
- 4) Have an automatic cut-off device with manual operating capabilities to provide clean, reasonably square marking ends to the satisfaction of the Engineer, and to provide a method of applying broken line in an approximate stripe-to-gap ratio of 10 to 30. The length of the stripe shall not be less than 10 feet or more than 10.5 feet. The total length of any stripe-gap cycle shall not be less than 39.5 feet or more than 40.5 feet.
- 5) Be capable of placing lines with clean edges and of uniform cross-section. All lines shall have a tolerance of plus or minus 1/8 inch per four (4) inch width.
- 6) Apply beads by an automatic bead dispenser attached to the pavement marking equipment in such a manner that the beads are dispensed uniformly and almost instantly upon the marking as the marking is being applied to the road surface. The bead dispenser shall have an automatic cut-off control, synchronized with the cut-off of the pavement marking equipment.

#### IV. CONSTRUCTION

- 1) Guides to mark the lateral location of pavement markings shall be established as shown on the plans or as directed by the Engineer. The Contractor shall establish the pavement marking guides and the Engineer will verify the location of the guides.

Markings shall be placed in proper alignment with the guides. The deviation rate in alignment shall not exceed one (1) inch per 200 feet of roadway. The maximum deviation shall not exceed two (2) inches nor shall any deviation be abrupt.

- 2) Application of Type II Markings: The application of Type II marking materials shall be done only on surfaces with a minimum surface temperature of 50 F.

The application rate for Type II marking material shall be: between 15 and 20 gallons per mile of solid four (4) inch line and between 30 and 40 gallons per mile for solid eight (8) inch line except that, for new surface treatment projects the application rate shall be between 25 and 30 gallons per mile of solid four (4) inch line and between 40 and 50 gallons per mile for solid eight (8) inch line.

Pavement markings for new surface treatment projects shall be applied in two (2) applications each approximately one-half the application rate. The first application shall not contain glass beads. The interval between the first and second applications shall be a minimum of one (1) hour.

When, in the case of impending inclement weather, and the Engineer directs the Contractor to apply water-based traffic paint, the markings are damaged by subsequent rain, sleet, hail, etc., the Contractor will be paid for the initial placement and the replacement markings. However, if the Contractor places the markings at his option, the Contractor is responsible for all costs associated with the replacement markings.

#### V. MEASUREMENT

- 1) This Item will be measured by the linear foot, by each of the various words, symbols or shapes, or by any other unit as shown on the plans.
- 2) Where double stripes are placed, each stripe will be measured separately.
- 3) Type II pavement markings requiring two (2) applications on new surface treatments will be measured as one (1) marking.

## VI. PAYMENT

- 1) The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Reflectorized Pavement Markings" of the various types, colors, shapes, sizes, widths, and thickness (Type I markings only) specified. This price shall be full compensation for furnishing all materials; for application of pavement markings; and for all other labor, tools, equipment and incidentals necessary to complete the work, except as shown below.

**CITY OF WHARTON  
RAISED PAVEMENT MARKERS  
SPECIFICATIONS**

Obtained from the 1993 Texas Department of Transportation Standard Specification for Construction of Highways, Streets and Bridges, Item 672

**I. DESCRIPTION**

This Item shall govern for furnishing and installing raised pavement markers of the various classes and types.

**II. MATERIALS**

Raised pavement markers shall comply with the requirements of Departmental Materials Specifications as follows:

Class B, Pavement Markers (Reflectorized) D-9-4200

Class C, Traffic Buttons D-9-4300

Raised pavement markers shall be of the following classes and types:

**Class B Raised Pavement Markers (Pavement Markers, Reflectorized).** Class B raised pavement markers shall include types: I-A, I-C, I-R, II-A-A and II-C-R.

**Class C and D Raised Pavement Markers (Traffic Buttons).** Class C and D raised pavement markers shall include types: I-A, I-C, I-R, II-A-A, II-C-R, W and Y.

The following are descriptions for each type of raised pavement marker:

**Type I-A.** Type I-A shall contain an approach face that reflects amber light. The body, other than the reflective face, shall be yellow.

**Type I-C.** Type I-C shall contain an approach face that reflects white light. The body, other than the reflective face, shall be white, silver-white or light gray.

**Type II-A-A.** Type II-A-A shall contain two (2) reflective faces (approach and trailing) each of which shall reflect amber light. The body, other than the reflective faces, shall be yellow.

**Type II-C-R.** Type II-C-R shall contain two (2) reflective faces, an approach face which shall reflect white light and a trailing face which shall reflect red light. The body, other than the reflective faces, shall be white, silver-white or light gray. Optionally, the body may be one-half white, silver-white or light gray on the side that reflects white light and one-half red on the side that reflects red light.

**Type W.** Type W shall have a white body and no reflective faces.

**Type Y.** Type Y shall have a yellow body and no reflective faces.

The reflective faces of all Type II markers shall be positioned so that the direction of reflection of one (1) face shall be directly opposite to the direction of reflection of the other face.

Bituminous adhesive shall conform to the requirements of Departmental Materials Specification D-9-6130. Epoxy adhesive shall conform to the requirements of Item 575, "Epoxy".

### III. SAMPLING

Sampling will be in accordance with Test Method Tex-729-I.

### IV. CONSTRUCTION METHODS

- 1) Each class of raised pavement marker shall be from the same manufacturer.
- 2) Surfaces to which markers are to be attached by an adhesive shall be prepared by any method approved by the Engineer to ensure that the surface is free of dirt, curing compound, grease, oil, moisture, loose or unsound pavement markings and any other material which would adversely affect the adhesive bond. Unless otherwise shown on the plans, surface preparation for installation of raised pavement markers will not be paid for directly, but shall be considered subsidiary to this Item.
- 3) Guides to mark the lateral location of pavement markings shall be established as shown on the plans or as directed by the Engineer. The Contractor shall establish the pavement marking guides and the Engineer will verify the location of the guides.
- 4) The pavement markers shall be placed in proper alignment with the guides. The deviation rate in alignment shall not exceed one (1) inch per 200 feet of roadway. The maximum deviation shall not exceed two (2) inches nor shall any deviation be abrupt.
- 5) Markers placed that are not in alignment or sequence, as shown on the plans or as stated in this specification, shall be removed by the Contractor at the Contractor's expense. Removal shall be in accordance with Item 677, "Eliminating Existing Pavement Markings and Markers", except for measurement and payment. Guides placed on the roadway for alignment purposes shall not establish a permanent marking on the roadway.
- 6) Unless otherwise shown on the plans, the Contractor shall use the following adhesive materials for placement of markers:



- Epoxy adhesive for Class E markers.
  - Bituminous adhesive for Class A, B, C and D markers on bituminous pavements.
  - Epoxy adhesive for Class A, B, C and D markers on portland cement concrete pavements.
- 7) Adhesive shall be applied in sufficient quantity to ensure the following:
    - a. 100 percent of the bonding area of raised pavement markers shall be in contact with the adhesive.
    - b. Raised pavement markers, except for Class E, shall not be in contact with the pavement surface but shall be seated on a continuous layer of adhesive.
  - 8) Unless otherwise required by this Item, adhesives shall be applied in accordance with the manufacturer's recommendations.
  - 9) When bituminous adhesive is used, pavement and raised pavement marker temperature shall be at least 40F. The bituminous adhesive shall not be heated above 400 F. The bituminous adhesive shall be agitated intermittently to ensure even heat distribution.
  - 10) Epoxy adhesive shall be machine mixed.
  - 11) Raised pavement markers shall be free of rust, scale, dirt, oil, grease, moisture or contaminants which might adversely affect the adhesive bond.
  - 12) Raised pavement markers shall be placed immediately after the adhesive is applied and shall be firmly bonded to the pavement. Adhesive or any other material that impairs functional reflectivity will not be acceptable.


## V. MEASUREMENT

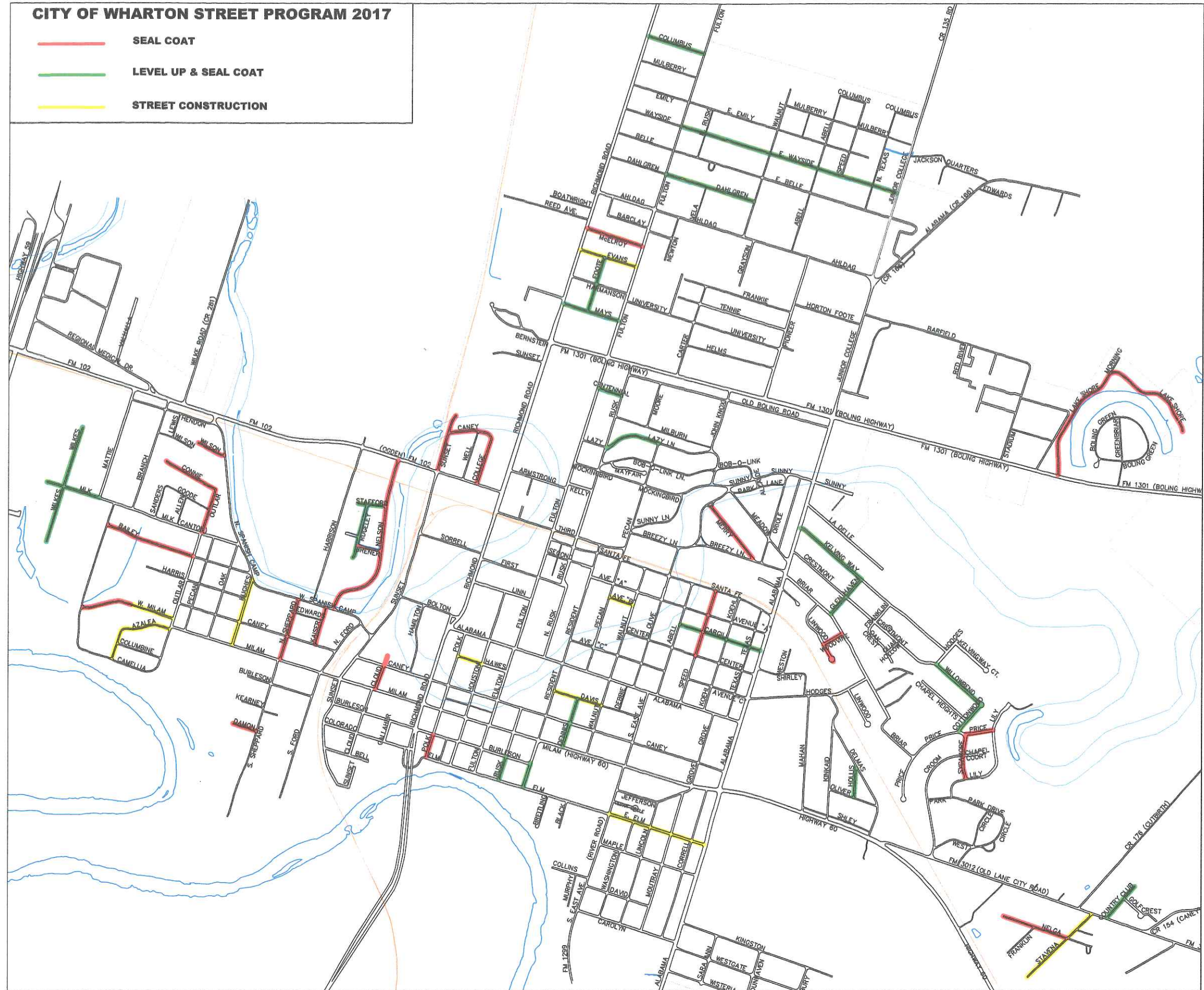
- 1) This Item will be measured as each raised pavement marker.
- 2) This is a plans quantity measurement Item and the quantity to be paid for will be that quantity shown in the proposal and on the "Estimate and Quantity" sheet of the contract plans, except as may be modified by Article 9.8. If no adjustment of quantities is required, additional measurements or calculations will not be required.

## VI. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Raised Pavement Markers" of classes and types specified. This price shall be full compensation for furnishing all materials, surface preparation, installation, labor, equipment, tools and incidentals necessary.

**CITY OF WHARTON STREET PROGRAM 2017**

-  SEAL COAT
-  LEVEL UP & SEAL COAT
-  STREET CONSTRUCTION



**ADDITIONAL CONDITION OF AWARD —**

**DISCLOSURE OF INTERESTED PARTY FORM:**

**NEW OBLIGATION OF THE CITY/COUNTY TO RECEIVE INFORMATION FROM  
WINNING BIDDER**

Effective January 1, 2016, pursuant to Texas Government Code, Section 2252.908 (the “Interested Party Disclosure Act”), the City may not award a contract to a bidder unless the bidder submits a Certificate of Interested Parties Form 1295 (the “Disclosure Form”) to the City as prescribed by the Texas Ethics Commission (“TEC”). In the event that the bidder’s bid for the City of Wharton is the best bid received, the City or its consultant, will promptly notify the bidder. That notification will serve as the conditional verbal acceptance of the bid. Upon this acceptance, the winning bidder must promptly, not later than 4:00pm on the Tuesday following award by City Council, file the materials described below.

**PROCESS FOR COMPLETING THE DISCLOSURE FORM**

The Disclosure Form can be found at <https://www.ethics.state.tx.us/forms/1295.pdf>, and reference should be made to the following information in order to complete it:

- (a) item 2 – Name of City: City of Wharton
- (b) item 3 – the identification number: 2017 Street Improvement , and
- (c) item 3 – description of the goods or services assigned to this contract by the City: Materials Bid for 2017 Street Improvement

You must:

- 1) complete the Disclosure Form electronically at the TEC’s “electronic portal”, and
- 2) print, sign and deliver a NOTARIZED copy (scanned and emailed is fine) of the Disclosure Form and Certification of Filing that is generated by the TEC’s “electronic portal.”

The following link will take you to the electronic portal for filing:  
<https://www.ethics.state.tx.us/TECCertInt/pages/login/certLogin.jsf>

Also, a detailed instruction video may be found here:  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

Neither the City nor its consultants have the ability to verify the information included in a Disclosure Form, and neither have an obligation nor undertake responsibility for advising any business entity with respect to the proper completion of the Disclosure Form.

## **City of Wharton Title VI Assurance**

The City of Wharton, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (8 State. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in consideration for an award.