

Specifications and Contract Documents for the Construction of
BEAR CREEK PARKWAY BRIDGE EROSION PROTECTION

DRAFT
CONTRACT

Addendum issued to
be incorporated into
Contract documents
at time of execution

City of Keller Project Number: 502202

Prepared for:



City of Keller
1100 Bear Creek Parkway
P.O. Box 770
Keller, Texas 76244



Zach Graves, P.E.
Date: FEBRUARY 24, 2025



teague nall and perkins, inc
5237 N. Riverside Drive, Suite 100
Fort Worth, Texas 76137
817.336.5773 phone
www.tnpinc.com

TNP Firm Registrations
Texas Board of Professional Engineers, Firm No. F-230
Texas Board of Professional Land Surveying, Firm No.
10011600 | 10194381 | 10011601

KEL 22154
FEBRUARY 2025

CONTRACTUAL DOCUMENT

CITY OF KELLER, TEXAS

Bear Creek Parkway Bridge Erosion Protection

TABLE OF CONTENTS

CONTRACTUAL DOCUMENTS

Request for Proposals
Instructions to Bidders
Proposal Form
Proposal Form Exhibit 'A'
Form CIQ-Conflict of interest Questionnaire
Form CIS-Local Government Officer Conflicts Disclosure Statement
Contractor Compliance to Texas State Sales Tax Code
Form TCG-Prohibition on Contracts with Companies Boycotting Israel
Safety Record Questionnaire
Acknowledgement of Insurance Requirements
Certificate of Insurance
Disadvantaged Business Form
Bid Bond
Statement of Qualifications
Form 1295-Certificate of Interested Parties
Standard Form of Agreement
Agreement Exhibit 1 (Key Personnel and Subcontractors)
Performance Bond
Payment Bond
Maintenance Bond
General Conditions of Agreement
Supplementary Conditions (includes Description of Pay Items)

CONSTRUCTION PLANS AND DETAILS

(Bound Separately)

GEOTECHNICAL REPORT

(Bound Separately)

REQUEST FOR PROPOSALS

ARTICLE 1: GENERAL NOTICE

- 1.01 The City of Keller, Texas ("Owner") extends this Request For Competitive Bid Proposals ("RFP") to solicit a response to the RFP ("Proposal") from any interested party ("Bidder") for the construction of the following project:

Bear Creek Parkway Bridge Erosion Protection
("Project")

- A. This Project consists of:
1. 204 SY of 6" Concrete Riprap.
 2. 269 SY of 48" Pier Protection Riprap (24" Diameter Stone).
 3. 819 SY of 24" Bank Stabilization Riprap (18" Diameter Stone).
 4. 641 CY of grading Excavation.
- B. The estimated Project completion date is September 2025.
- C. The engineer's opinion of probable construction cost is \$734,790.
- 1.02 **This RFP is a competitive bidding method in accordance with the Texas Government Code Chapter 2269, Subchapter C.**
- 1.03 Sealed Proposals must be delivered to the City of Keller at 1100 Bear Creek Parkway, Keller, TX 76248 no later than March 26th, 2025, at 2pm to be accepted. The Proposals will be publicly opened, and the names of the Bidders and any monetary proposals made by the Bidders will be read aloud at this time and place. Proposals received after this time will be returned unopened. Address Proposals to the attention of Chad Bartee, P.E. at the address immediately above.

ARTICLE 2: EXAMINATION AND PROCUREMENT OF PROPOSAL DOCUMENTS

- 2.01 Advertisement and information for the Project can be found at the following website:
- <http://www.civcastusa.com/>
- 2.02 Contract Documents may be downloaded or viewed free of charge at this website. It is the downloader's responsibility to determine that a complete set of documents, as defined in the Instructions to Bidders, are received. Printed copies of the Contract Documents may be purchased at the website for the cost of printing. The cost for printed Contract Documents is not refundable.
- 2.03 This website will be updated periodically with Addenda, lists of interested parties, reports or other information relevant to submitting a Proposal for the Project.
- 2.04 Printed copies of the Contract Documents and Geotechnical Report may be examined free of charge at the following addresses:

Engineer
Teague Nall and Perkins, Inc.
5237 N. Riverside Drive, Suite 100
Fort Worth, TX 76137
Zach Graves, P.E.

Owner
City of Keller
1100 Bear Creek Parkway
Keller, TX 76248
Chad Bartee, P.E.

ARTICLE 3: QUESTIONS REGARDING PROPOSAL PROCESS OR SOLICITATION DOCUMENTS

- 3.01 To ensure fairness during the procurement process, until the Contract is executed, Bidders and their employees, representatives and agents shall not contact an Owner staff, member of the selection committee, Owner's City Council, or consultant of the Owner identified immediately below.

A. Teague Nall and Perkins, Inc. (ENGINEER)

- 3.02 Direct questions regarding distribution of Contract Documents, design, and the RFP for this Project to Teague Nall and Perkins, Inc., 5237 N. Riverside Drive, Suite 100, Fort Worth, TX 76137. Contact Zach Graves at 817-665-7185.
- 3.03 All questions regarding the contract documents and plans must be submitted to Zach Graves on <https://www.civcastusa.com>. Modifications to the Contract Documents prior to the award of the Contract can only be made by Addenda. Response to Requests for Information that would indicate an addition, modification or clarification of the Contract Documents ("Addenda"), other than directing the attention of the requestor to a specific reference in the Contract Documents, will be made by Addenda for the benefit of all Bidders.

ARTICLE 4: PRE-PROPOSAL CONFERENCE

- 4.01 A Pre-Proposal Conference for the Project will not be held.

ARTICLE 5: AWARD OF CONTRACT

- 5.01 It is the intent of the Owner to award a construction contract for this Project (Standard Form of Agreement: "Agreement") to the Bidder who provides the lowest responsible bid. The Owner reserves the right to adopt the most advantageous interpretation of the Proposals submitted in the case of ambiguity or lack of clearness in stating Proposal prices, to reject any or all Proposals, and/or waive informalities. Also, the Owner reserves the right to reject the bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the bid is not responsive or the Bidder is unqualified or of doubtful financial ability, or fails to meet any other pertinent standard of criteria established by the Owner. Ranking of the Proposals will be completed in 45 days or less. Proposals may not be withdrawn within 60 days from the date on which Proposals are opened.

ARTICLE 6: PROPOSAL SECURITY

- 6.01 Bidders must submit an acceptable Bid Bond with their Proposal as a guarantee that the Bidder will enter into the Contract for the Project with the Owner within 15 days of Notice of Award of the Contract. The Bid Bond must be payable to City of Keller in the amount of 5 percent of the

proposed Contract Price. Bidder must execute the Contract, bonds and certificates of insurance on the forms provided in the Contract Documents.

ARTICLE 7: OTHER CONTRACT REQUIREMENTS

7.01 Performance, Payment, and Maintenance Bonds are required.

ARTICLE 8: SUBSTITUTE OR "OR EQUAL" ITEMS.

8.01 The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraph 6.05.A, 6.05.B, 6.05.C, 6.05.D, 6.05.E, and 6.05.F of the General Conditions and may be supplemented in the Supplementary Conditions.

ARTICLE 9: SUBCONTRACTORS, SUPPLIERS AND OTHERS.

9.01 Contractor shall not award Work to a subcontractor(s) that is (are) in excess of 50% of the total contract price without written approval of the Owner.

9.02 No Contractor shall be required to employ any subcontractor, supplier, other person or organization against whom Contractor has reasonable objection.

ARTICLE 10: DEBARMENT

10.01 By submitting a proposal, the bidder certifies that it is not currently debarred from receiving contracts from any political subdivision or agency of the State of Texas and that it is not an agent of a person or entity that is currently debarred from receiving contracts from any political subdivision or agency of the State of Texas.

ARTICLE 11: WAIVER OF SUBROGATION

11.01 The contractor and his subcontractors shall require their insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the City of Keller, its commissioners, partners, officials, agents, and employees and against all other contractors and subcontractors.

ARTICLE 12: IDENTIFICATION OF CONTRACTOR VEHICLES & EQUIPMENT

12.01 Contractor will be responsible for ensuring vehicles and equipment are clearly identified in a manner acceptable to the City, and be properly licensed and inspected in accordance with the State of Texas and Tarrant County regulations.

ARTICLE 13: EMPLOYEE SAFETY

13.01 Contractor must provide and enforce the use of appropriate safety equipment.

ARTICLE 14: SUBSTANCE ABUSE

- 14.01 Possession, consumption of, and/or reporting for work under the influence of alcohol, controlled substances, and/or dangerous drugs by subcontractors, officers, or employees of the Contractor will not be tolerated. Enforcement of this policy is the responsibility of Contractor.

ARTICLE 15: CRIMINAL HISTORY BACKGROUND CHECK

- 15.01 Prior to each employee commencing work, Contractor must conduct a criminal history check acceptable to the City, and forward all reports to an authorized City representative.

ARTICLE 16: CUSTOMER RELATIONS

- 16.01 Contractor is responsible for ensuring that its subcontractors or employees conduct themselves in a courteous and professional manner when dealing with City employees, elected or appointed officials, residents, and/or customers of the City. The City reserves the right to reject any Contractor subcontractor or employee and/or request replacement at any time.

END OF SECTION

INSTRUCTIONS TO BIDDERS

ARTICLE 1: DEFINED TERMS

- 1.01 Terms used in these Instructions for Bidders have the meanings indicated in the General Conditions and Supplementary Conditions.

ARTICLE 2: PROPOSALS RECEIVED

- 2.01 Refer to "Request for Proposals" for information on receipt of Proposals.

ARTICLE 3: COPIES OF CONTRACT DOCUMENTS

- 3.01 Obtain a complete set of the Contract Documents as indicated in "Request for Proposals."
- 3.02 Use complete sets of Contract Documents in preparing Proposals; neither the Owner nor the Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Contract Documents.
- 3.03 Owner and Engineer make copies of Contract Documents available on the above terms only for the purpose of obtaining Proposals for completion of Work and do not confer a license or grant permission or authorization for any other use.

ARTICLE 4: ARTICLE 4 - STATEMENT OF QUALIFICATIONS

- 4.01 Submit information as required in "Statement of Qualifications" with the Proposal to demonstrate the Bidder's qualifications and experience to complete the Work.

ARTICLE 5: EXAMINATION OF CONTRACT DOCUMENTS

- 5.01 Before submitting a Proposal:
- A. Examine and carefully study the Contract Documents, including any Addenda and the related supplemental data.
 - B. Become familiar and satisfied with all federal, state, and local Laws and Regulations that may affect cost, progress, or the completion of Work.
 - C. Carefully study and correlate the information available to the Bidder with the Contract Documents, Addenda and the related supplemental data.
 - D. Promptly give the Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that the Bidder discovers in the Contract Documents, Addenda and the related supplemental data and confirm that the written resolution provided by the Engineer is acceptable to the Bidder.
 - E. Determine that the Contract Documents, Addenda and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work.

ARTICLE 6: PRE-PROPOSAL CONFERENCE

- 6.01 Requirements for a Pre-Proposal Conference will be as stipulated in the Request for Proposals.

ARTICLE 7: INTERPRETATIONS AND ALTERNATE PROPOSALS

- 7.01 Submit all questions about the meaning or intent of the Contract Documents, Addenda and the related supplemental data to the Engineer on <https://www.civcastusa.com>. Interpretations or clarifications considered necessary by the Owner in response to such questions will be issued by Addenda and posted on the website to all parties recorded by the Engineer as having registered as a Bidder, received the Contract Documents, Addenda and the related supplemental data. Questions received less than 10 days prior to the date for opening of Proposals may not be answered. Only answers in Addenda authorized by the Owner will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Submit any offer of alternate terms and conditions or offer of Work not in strict compliance with the Contract Documents to the Engineer no later than 10 days prior to the date for opening of Proposals. Engineer will issue Addenda as appropriate if any of the proposed changes to the Contract Documents are accepted. A Proposal submitted with clarifications or taking exceptions to the Contract Documents, except as modified by Addenda, may be considered non-responsive.
- 7.03 Bidder may submit a separate and additional Proposal if the Bidder includes exceptions or the Bidder wishes to make a Proposal that is not in accordance with the terms and conditions of the Contract Document, or for Work that is not in strict compliance with the Contract Documents. Describe the intent and substance of the changes in the additional Proposal in adequate detail so they are clearly understood. Alternates will not be considered in the ranking and evaluation of the Proposals. Upon selection of the Proposal that offers the best value to the Owner, and after the award of the Contract, the Owner may consider proposed alternates in negotiating a final Contract Price.
- 7.04 Addenda may be issued to clarify, correct, or change the Contract Documents, Addenda or the related supplemental data as deemed advisable by the Owner.

ARTICLE 8: PROPOSAL SECURITY

- 8.01 A Proposal must be accompanied by an acceptable security payable to the Owner ("Bid Bond") in an amount of 5 percent of the Construction Price. The Bid Bond must be issued by a surety legally authorized to do business in the State of Texas and meeting the requirements of the General Conditions.
- 8.02 This Bid Bond will become void when the Performance and Payment Bonds are provided. Owner may annul the Notice of Award and the Bid Bond of the Bidder will be forfeited if the apparent Successful Bidder fails to execute and deliver the Agreement or Amendment to the Agreement. The Bid Bond of other Bidders whom the Owner believes to have a reasonable chance of receiving the award may be retained by the Owner until the earlier of 7 days after the Effective Date of the Agreement or 45 days after the date Proposals are opened. Bid Bonds furnished by such Bidders will be returned at that time.
- 8.03 Owner will return the Bid Bond of the Bidders that the Owner believes do not have a reasonable chance of receiving the award within 7 days after Proposals are opened.

ARTICLE 9: CONTRACT TIMES

9.01 Provisions for Contract Times are set forth in the Agreement.

ARTICLE 10: LIQUIDATED DAMAGES

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

ARTICLE 11: RETAINAGE

11.01 Provisions concerning the Bidder's rights to deposit securities and or retainage are set forth in the Agreement.

ARTICLE 12: PREPARATION OF PROPOSAL FORM

12.01 The Proposal Form is included with the Contract Documents. Obtain additional copies, if needed, from the Owner.

12.02 Complete all blanks on the Proposal Form by typing or printing in ink. Indicate Proposal prices for each Proposal item or alternate shown. Execute the Proposal as indicated below:

- A. Execute a Proposal for a corporation in the corporate name with the signature of the president, a vice-president or other corporate officer accompanied by evidence of authority of the individual to sign on behalf of the corporation. Show the corporate address and state of incorporation with the signature.
- B. Execute a Proposal for a partnership in the partnership name with the signature of a partner. The title of the partner must appear with the signature. The document must be accompanied by evidence of authority for that individual to sign on behalf of the partnership. Show the official address of the partnership with the signature.
- C. Execute a Proposal for a limited liability company in the name of the firm with the signature of an officer of that company. The document must be accompanied by evidence of authority for that individual to sign on behalf of the company. Show the state in which the firm was formed and the official address of the firm with the signature.
- D. Show the Bidder's name and official address for a Proposal by an individual.
- E. Execute a Proposal for a joint venture with a signature of an authorized person from each joint venturer in the manner indicated on the Proposal Form. The document must be accompanied by evidence of authority for each individual to sign on behalf of their respective organizations. Show the official address of the joint venture with the signature.

12.03 Type or print all names in ink below the signature.

12.04 Acknowledge receipt of all Addenda by filling in the number and date of each Addenda received. Provide a signature as indicated to verify that the Addenda were received. A Proposal that does not acknowledge the receipt of all Addenda may be considered non-responsive.

12.05 Provide the name, address and telephone number of the individual to be contacted for any communications regarding the Proposal in the Proposal Form.

- 12.06 Provide evidence of the Bidder's authority and qualification to do business in the state of the Project Site or covenant to obtain such qualification prior to award of the Contract.

ARTICLE 13: CONFIDENTIALITY OF PROPOSAL INFORMATION

- 13.01 In accordance with Texas Government Code 552.110, trade secrets and confidential information in Proposals are not open for public inspection. Proposals will be opened in a manner that avoids disclosure of the contents to competing Bidders and keeps the Proposals secret during considerations. All Proposals are open for public inspection after the Contract is awarded, but trade secrets and confidential information in Proposals are not typically open for public inspection. The Owner will protect this information to the extent allowed by law. Clearly indicate which specific documents are considered to be trade secrets or confidential information by stamping or watermarking all such documents with the word "confidential" prominently on each page or sheet or on the cover of bound documents. Place "confidential" stamps or watermarks so that they do not obscure any of the required information on the document, either in the original or in a way that would obscure any of the required information in a photocopy of the document. Photocopies of "confidential" documents will be made only for the convenience of the selection committee and will be destroyed after the Effective Date of Agreement. Original confidential documents will be returned to the Bidder after the Effective Date of Agreement if the Bidder indicates that the information is to be returned with the Proposal, and direction for its return are provided by the Bidder. Entire Proposals will not be allowed to be marked as "Confidential".

ARTICLE 14: SUBMITTAL OF PROPOSAL

- 14.01 Each prospective Bidder is furnished one copy of the Contact Documents with one separate unbound copy of the Proposal Form. Complete and submit the unbound copy of the Proposal Form along with all attachments identified in the Proposal Form.
- 14.02 Submit the Proposal no later than the date and time prescribed and at the place indicated in "Request for Proposals." Enclose the Proposal in an opaque sealed envelope plainly marked with the project name, the name and address of the Bidder along with the Bid Bond and other required documents. Enclosed the sealed envelope containing the Proposal in a separate envelope plainly marked on the outside with the notation "PROPOSAL ENCLOSED" if the Proposal is sent by mail or other delivery system. Address the outer envelope to the mailing address shown in "Request for Proposals." Assume full responsibility for ensuring that the Proposal arrived at the prescribed location before the prescribed time.

ARTICLE 15: MODIFICATION OR WITHDRAWAL OF PROPOSAL

- 15.01 Modify or withdraw a Proposal using a document executed in the same manner that a Proposal must be executed. Deliver the document to the place where Proposals are to be submitted prior to the date and time for the opening of Proposals.
- 15.02 An Bidder may withdraw its Proposal within 24 hours after Proposals are opened if the Bidder files a signed written notice with the Owner and promptly thereafter demonstrates to the reasonable satisfaction of the Owner that there was a material and substantial mistake in the preparation of its Proposal. The Bid Bond will be returned if it is clearly demonstrated to the Owner that there was a material and substantial mistake in its Proposal. A Bidder that requests

to withdraw its Proposal under these conditions may be disqualified from responding to a reissued Request for Proposals for the Work to be furnished under these Contract Documents.

ARTICLE 16: OPENING OF PROPOSALS

- 16.01 Proposals will be opened at the time and place indicated in "Request for Proposals." The Owner will receive, publicly open and read aloud the names of the Bidders and any monetary proposals made by the Bidders at this time and place as required by Texas Government Code Section 2269.154.

ARTICLE 17: PROPOSALS TO REMAIN SUBJECT TO ACCEPTANCE

- 17.01 All Proposals will remain subject to acceptance for 60 days, but the Owner may, at its sole discretion, release any Proposal and return the Bid Bond prior to the end of this period.

ARTICLE 18: EVALUATION OF PROPOSALS

- 18.01 Within 45 days after the date of opening the Proposals, the Owner will evaluate and rank each Proposal with respect to criteria described below. All proposals shall conform to Texas Government Code Chapter 2269. In evaluating Proposals, the Owner will consider whether or not the Proposals comply with the prescribed requirements, and such alternatives, prices and other data, as may be requested in the Proposal Form or may be requested from Bidders prior to a Notice of Award.
- 18.02 In evaluating Proposals, the Owner will consider the Contract Price to determine and rank Proposals to determine the lowest responsible Proposal. The Proposals will be evaluated using the information submitted in the Proposal Form and information submitted in the Statement of Qualifications as required by "Statement of Qualifications."
- 18.03 Owner may conduct such investigations as the Owner deems necessary to establish the responsibility, qualifications, and financial ability of consultants, individuals, or entities proposed to furnish parts of the Work in accordance with the Contract Documents.
- 18.04 The evaluation criteria are as described in this RFP.
- 18.05 Submission of a Proposal indicates the Bidder's acceptance of the evaluation technique and methodology as well as the Bidder's recognition that some subjective judgments must be made by the Owner during the evaluation.

ARTICLE 19: AWARD OF CONTRACT

- 19.01 The Bidder selected for award of the Contract will be the Bidder submitted the lowest responsible Proposal. The Owner is not bound to accept the lowest priced Proposal if that Proposal is not in the best interest to the Owner or the Project, as determined by the Owner. If the Owner determines that it is unable to reach a contract satisfactory to the Owner with the selected Bidder, then the Owner will terminate discussions in writing with the selected Bidder and proceed to the next Bidder in order of ranking until an agreement is reached or the Owner has rejected all Proposals.

- 19.02 Owner reserves the right to reject any and all Proposals, including without limitation, nonconforming, non-responsive, or conditional Proposals. The Owner may also reject the Proposal of any Bidder if the Owner believes that it would not be in the best interest of the Owner to make an award to that Bidder. The Owner reserves the right to waive all formalities.
- 19.03 More than one Proposal for the same Work from an individual or entity under the same or different names will not be considered, except as additional Proposals in accordance with Article 7. Reasonable grounds for believing that any Bidder has an interest in more than one Proposal for the Work shall be cause for disqualification of that Bidder and the rejection of all Proposals in which that Bidder has an interest.

ARTICLE 20: BONDS AND INSURANCE

- 20.01 Article 5 of the General Conditions sets forth the Owner's requirements as to performance, payment, maintenance and other bonds and insurance. When the successful Bidder delivers the executed Agreement to the Owner, it must be accompanied by the required bonds and required certificates of insurance.
- 20.02 Performance and Payment Bonds required for this Project will comply fully with provisions of Texas Government Code Chapter 2253. Provisions for administration of Bonds shall conform to Texas Government Code Chapter 2253 and provisions of these Contract Documents.
- 20.03 A Maintenance Bond is required as more fully described in these Contract Documents.

ARTICLE 21: RIGHTS OF THE OWNER

- 21.01 The Proposal of a Bidder shall not deprive the Owner of the right to accept a Proposal, which in its judgment offers the lowest responsible Proposal to the Owner, reject any and all Proposals, to waive irregularities in the Proposals, or to reject nonconforming, non-responsive, or conditional Proposals. In addition, the Owner reserves the right to reject any Proposal where circumstances and developments have, in the opinion of the Owner, changed the qualifications or responsibility of the Bidder.
- 21.02 Material misstatements in the material submitted for evaluation may be grounds for rejection of the Bidder's Proposal on this Project. Any such misstatement, if discovered after award of the contract to such firm, may be grounds for immediate termination of the Contract. Additionally, the Bidder will be liable to the Owner for any additional costs or damages to the Owner resulting from such misstatements, including costs and attorney's fees for collecting such costs and damages.
- 21.03 The right to suspend and terminate the procurement process or to terminate evaluations of Proposals received at any time.
- 21.04 The right to correspondence with the Bidders to seek an improved understanding of Proposals at any time. The right to request additional information from a Bidder during the evaluation of Proposals.
- 21.05 The right to request an interview with any or all Bidders.

- 21.06 The right to seek or obtain data and information from any source that has the potential to improve the understanding and evaluation of the Proposals.
- 21.07 The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- 21.08 The right to conduct an independent investigation of any information, including prior experience identified in a Proposal by contacting project references, accessing public information, contacting independent parties or any other means.

ARTICLE 22: SIGNING OF AGREEMENT

- 22.01 The Notice of Award to the successful Bidder will be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents that are identified in the Agreement. The successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to the Owner within 15 days. The Owner will deliver two fully signed counterparts to Successful Bidder within 10 days after receiving the signed documents from the Successful Bidder.
- 22.02 The Successful Bidder must also complete and submit a Certificate of Interested Parties (Form 1295) to the Owner as required by Texas Government Code Chapter 2252 with the signed Agreement.

ARTICLE 23: CONTRACT NOT TO BE ASSIGNED

- 23.01 Contract may not be assigned in whole or in part by the Bidder without the previous written consent of the Owner.

ARTICLE 24: SALES AND USE TAXES

- 24.01 City or state sales taxes should generally not be included in the Contract Price as the Owner qualifies as an exempt agency. Certain items such as rented equipment may be taxable even though the Owner is a tax exempt agency. Assume responsibility for including any applicable sales taxes in the Contract Price and assumes responsibility for complying with all applicable statutes and rulings of the State of Texas Comptroller.
- 24.02 It is the Owner's intent to have this Contract qualify as a "separated contract." In order for this contract to qualify:
 - A. Obtain a sales tax permit from the State of Texas Comptroller if awarded this Contract.
 - B. Identify the dollar value of materials exempt from the sales tax. This information must be reported in the "Statement for Materials and Other Charges" on the Proposal Form. Proposals not showing the Statement for Materials and Other Charges may be considered non-responsive.

END OF SECTION

PROPOSAL FORM

ARTICLE 1: PROPOSAL RECIPIENT

- 1.01 This Proposal is submitted to:

City of Keller
1100 Bear Creek Parkway, Keller, TX 76248
Attention: Mr. Chad Bartee, P.E.

- 1.02 The principal contact person who will serve as the interface between the Owner and the Proposer for all communication during the procurement period is:

A. Name: _____
Title: _____
Address: _____
Phone: _____ Fax: _____
Email: _____

- 1.03 The undersigned Bidder proposes and agrees, if this Proposal is accepted, to enter into an Agreement with Owner in the form included in the Contract Documents to perform all Work as specified or indicated in Contract Documents for the Contract Price indicated in this Proposal or as modified by Amendment. Bidder agrees to complete the Work within the Contract Price and within the Contract Times established in the Agreement or as modified by Amendment and comply with all the other terms and conditions of the Contract Documents.

ARTICLE 2: BIDDER'S ACKNOWLEDGMENTS

- 2.01 Bidder accepts all of the terms and conditions of the Request for Proposals and Instructions to Bidders, including without limitation those dealing with the disposition of required Bonds. The Proposal will remain subject to acceptance for 60 days after the opening of Proposals.
- 2.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of its failure to complete Work in accordance with the schedule set forth in the Agreement.

ARTICLE 3: BIDDER'S REPRESENTATIONS

- 3.01 In submitting this Proposal, Bidder represents, as set forth in the Agreement, that:
- A. The submittal of the Proposal has been duly authorized by, and in all respects binding upon, the Bidder.
- B. The undersigned declares that it is the Bidder or by holding the position below indicated is authorized to execute this Proposal Form on behalf of the Bidder and that all representations made on this Proposal Form are true and accurate.
- C. All information and statements contained in the Proposal are current, correct and complete and are made with full knowledge that the Owner will rely on such information and statements in determining the Successful Bidder for the Project.

- D. The submission of a Proposal will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of the RFP, that without exception the Proposal is premised upon completion of Work required by the Contract Documents, Addenda and the related supplemental data, that the Bidder has given the Engineer written notice of all conflicts, errors, ambiguities and discrepancies that the Bidder has discovered in the Contract Documents, Addenda and the related supplemental data and the written resolutions provided by the Engineer are acceptable to the Bidder, and that the Contract Documents, Addenda and the related supplemental data are generally sufficient to indicate and convey understanding of all terms and conditions for completion of Work.
- E. Bidder has examined and carefully studied the Contract Documents, the other related data identified in the Contract Documents, and the following Addenda, receipt of all of which is hereby acknowledged.

Addendum No.	Addendum Date	Signature Acknowledging Receipt

- F. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- G. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and the furnishing of the Work.
- H. Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02.
- I. Bidder has obtained and carefully studied all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions including surface, subsurface and Underground Facilities at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents to be employed by the Bidder, and safety precautions and programs incident thereto and accepts the consequences for not doing so.
- J. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Proposal for performance of the Work at the Contract Price proposed, within the Contract Times proposed and in accordance with the terms and conditions of the Contract Documents.
- K. Bidder is aware of the general nature of Work to be performed by the Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

- L. Bidder has correlated the information known to the Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- M. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Proposal is submitted.
- N. Bidder will submit written evidence of its authority to do business in Texas not later than the date of its execution of the Agreement.
- O. In accordance with Texas Government Code Chapter 2270, Bidder acknowledges that it does not boycott Israel and will not boycott Israel during the term of the Contract.
- P. Bidder acknowledges that it is aware and understands the requirements of Chapter 2252.908 of the Texas Government Code including but not limited to Form 1295-Certificate of Interested parties.
- Q. Bidder further represents that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Proposal; Bidder has not solicited or induced any individual or entity to refrain from making an offer; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the Owner.

ARTICLE 4: BASIS OF OFFER

- 4.01 Bidder will complete the Work in accordance with the Contract Documents for the Contract Price shown in the attached "Proposal Form Exhibit A":
 - A. Extended amounts have been computed in accordance with the General Conditions.
 - B. Bidder acknowledges that the estimated quantities are not guaranteed, and final payment for all Unit Price items will be based on actual quantities provided, measured as provided in the Contract Documents.
 - C. Unit Price and figures column will be used to compute the actual Proposal price.

ARTICLE 5: ARTICLE 5 – TIME OF COMPLETION

- 5.01 Bidder agrees that the Work will be Substantially Complete and will be completed and ready for final payment in accordance with the General Conditions on or before the dates or within the number of Calendar Days indicated in the Agreement.

PROPOSAL

- 5.02 The following documents comprise the Proposal:
 - A. Proposal Form and the accompanying completed forms immediately below
 - 1. "Proposal Form Exhibit A"
 - 2. "Conflict of Interest Questionnaire" (CIQ)

3. "Local Government Officer Conflicts Disclosure Statement" (CIS)
 4. "Contractor Compliance to Texas Sales Tax Code"
 5. "Prohibition on Contracts with Companies Boycotting Israel (TCG)"
 6. "Safety Record Questionnaire"
 7. "Acknowledgement of Insurance Requirements"
 8. "Disadvantaged Business Form"
- B. Required Bid Bond
- C. "Statement of Qualifications"

ARTICLE 6: DEFINED TERMS

- 6.01 The terms used in this Proposal have the meanings indicated in the RFP, General Conditions and the Supplementary Conditions. The significance of terms with initial capital letters is described in the General Conditions.

ARTICLE 7: STATEMENT OF MATERIALS AND OTHER CHARGES

- 7.01 Provide the following information with the Proposal:

Statement of Materials and Other Charges	
Materials Incorporated into the Project	\$
All Other Charges	\$
Total Contract Amount	\$

ARTICLE 8: ARTICLE 9 – VENUE

- 8.01 Bidder agrees that venue shall lie exclusively in Tarrant County, Texas for any legal action.

ARTICLE 9: PROPOSAL FORM SUBMITTAL

9.01 This Proposal Form is submitted by:

If Bidder is an Individual

Name: _____
(typed or printed)

By: _____
(Individual's Signature)

Doing business as: _____

Business Address: _____

Phone: _____ Email: _____
Proposal submitted on the following
date: _____

A Partnership

Partnership Name: _____
(typed or printed)

Name of General
Partner: _____
(typed or printed)

By: _____
(signature of general partner -- attach evidence of authority to sign)

Doing business as: _____

Business Address: _____

Phone: _____ Email: _____
Proposal submitted on the following
date: _____

A Corporation

Corporation Name: _____
(typed or printed)

State of Incorporation: _____

Type: _____
(general business, professional, service, limited liability)

Date of qualification to do business in Texas is: _____

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

Name: _____
(typed or printed)

Title: _____

Attest: _____
(Signature of Corporate Secretary)

Business Address: _____

Phone: _____ Email: _____

Proposal submitted on the following
date: _____

Joint Venture

Joint Venturer Name: _____
(typed or printed)

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

Name: _____
(typed or printed)

Title: _____

Business Address: _____

Phone: _____ Email: _____

Proposal submitted on the following
date: _____

Joint Venturer Name: _____
(typed or printed)

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

Name: _____
(typed or printed)

Title: _____

Business Address: _____

Phone: _____ Email: _____

Proposal submitted on the following
date: _____

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

Affidavits

One of the following four affidavits shall be executed and provided with this information. The individual signing the affidavit shall attach evidence of their authority to bind the organization to an agreement.

AFFIDAVIT FOR CORPORATION

State _____) §

County of _____) §

_____, being duly sworn deposes and says
(Name)

that they are _____ of the
(Title)

_____ corporation submitting the foregoing
qualification form and related information; have read such documents; and that such documents are
true and correct and contain no material misrepresentations; and that they are authorized to make this
affidavit on behalf of the Corporation.

(Signature)

Signed and sworn to me before this _____ day of _____, 20__.

(Notary Public)

My commission expires:

AFFIDAVIT FOR PARTNERSHIP

State _____) §

County of _____) §

_____, being duly sworn deposes and says
(Name)

that they are _____ of the
(Title)

_____ company submitting the foregoing qualification form and related information; have read such documents; and that such documents are true and correct and contain no material misrepresentations; and that they are authorized to make this affidavit on behalf of the Partnership.

(Signature)

Signed and sworn to me before this _____ day of _____, 20__.

(Notary Public)

My commission expires:

AFFIDAVIT FOR INDIVIDUAL

State _____) §

County of _____) §

_____, being duly sworn deposes and says
(Name)

that they are _____ of the
(Title)

_____ company submitting the foregoing qualification
form and related information; have read such documents; and that such documents are true and correct
and contain no material misrepresentations.

(Signature)

Signed and sworn to me before this _____ day of _____, 20__.

(Notary Public)

My commission expires:

JOINT VENTURE STATEMENT

We the undersigned do hereby give notice to our agreement to bid as a joint venture on the Project.

(Name of Joint Venture)

(Name of Firm)

(Signature)

Signed and sworn to me before this _____ day of _____, 20__.

(Notary Public)

My commission expires:

(Name of Firm)

(Signature)

Signed and sworn to me before this _____ day of _____, 20__.

(Notary Public)

My commission expires:

PROPOSAL FORM EXHIBIT 'A'**BEAR CREEK PARKWAY BRIDGE EROSION PROTECTION**

Item No.	Estimated Quantity	Unit	Item Description Total Unit Price Written in Words	Unit Price	Total Amount Bid
1	1	LS	<div>Site Preparation/Mobilization</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
2	1	LS	<div>Pre-Construction Video</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
3	1	LS	<div>Channel Debris Removal</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
4	6	EA	<div>Concrete Column Jackets</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Each</div>	\$ _____	\$ _____
5	2	EA	<div>Concrete Column Repairs</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Each</div>	\$ _____	\$ _____
6	641	CY	<div>Channel Excavation and Grading</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Cubic Yard</div>	\$ _____	\$ _____

KEL22154

PROPOSAL FORM EXHIBIT 'A'**BEAR CREEK PARKWAY BRIDGE EROSION PROTECTION**

Item No.	Estimated Quantity	Unit	Item Description Total Unit Price Written in Words	Unit Price	Total Amount Bid
7	358	CY	<div>48" Pier Protection Riprap (24" Diameter Stone)</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Cubic yard</div>	\$ _____	\$ _____
8	546	CY	<div>24" Bank Stabilization Riprap (18" Diameter Stone)</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Cubic Yard</div>	\$ _____	\$ _____
9	204	SY	<div>6" Concrete Riprap</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Square Yard</div>	\$ _____	\$ _____
10	435	SY	<div>6" Hike & Bike Trail Repair</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Square Yard</div>	\$ _____	\$ _____
11	1	LS	<div>Access Route</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____

PROPOSAL FORM EXHIBIT 'A'**BEAR CREEK PARKWAY BRIDGE EROSION PROTECTION**

Item No.	Estimated Quantity	Unit	Item Description Total Unit Price Written in Words	Unit Price	Total Amount Bid
12	1	LS	<div>Site Restoration and Sodding</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
13	1	LS	<div>Erosion Control & SWPPP</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
14	1	LS	<div>Traffic Control</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ _____	\$ _____
15	1	LS	<div>Project Allowance</div> <div>_____ Dollars and</div> <div>_____ Cents</div> <div>Per Lump Sum</div>	\$ 20,000.00	\$ 20,000.00

Total Base Bid

_____ Dollars and

_____ Cents

\$ _____

Construction Time: Offeror shall complete the work within 90 calendar days from notice to proceed to substantial completion.

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

OFFICE USE ONLY

Date Received

1 Name of vendor who has a business relationship with local governmental entity.

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes ☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

Signature of vendor doing business with the governmental entity

Date

LOCAL GOVERNMENT OFFICER CONFLICTS DISCLOSURE STATEMENT

FORM CIS

(Instructions for completing and filing this form are provided on the next page.)

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This is the notice to the appropriate local governmental entity that the following local government officer has become aware of facts that require the officer to file this statement in accordance with Chapter 176, Local Government Code.

OFFICE USE ONLY

Date Received

1 Name of Local Government Officer

2 Office Held

3 Name of vendor described by Sections 176.001(7) and 176.003(a), Local Government Code

4 Description of the nature and extent of each employment or other business relationship and each family relationship with vendor named in item 3.

5 List gifts accepted by the local government officer and any family member, if aggregate value of the gifts accepted from vendor named in item 3 exceeds \$100 during the 12-month period described by Section 176.003(a)(2)(B).

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

Date Gift Accepted _____ Description of Gift _____

(attach additional forms as necessary)

6 AFFIDAVIT

I swear under penalty of perjury that the above statement is true and correct. I acknowledge that the disclosure applies to each family member (as defined by Section 176.001(2), Local Government Code) of this local government officer. I also acknowledge that this statement covers the 12-month period described by Section 176.003(a)(2)(B), Local Government Code.

Signature of Local Government Officer

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

CONTRACTOR COMPLIANCE TO TEXAS SALES TAX CODE

Comply with all requirements of the Texas Sales Tax Code. The Contractor hereby certifies that the Contract Amount is divided as follows:

Material incorporated into the Project
(Resold to the Owner as defined in Tax Code) \$ _____

All other charges and costs \$ _____

Total * \$ _____

* The total must equal the total amount of the Contract:

CONTRACTOR:

By: _____
(signature of authorized person)

Address _____

Signature: _____

City State Zip

Title: _____

THIS FORM MUST BE RETURNED WITH YOUR BID

Form TCG 2270
VERIFICATION REQUIRED BY TEXAS GOVERNMENT CODE CHAPTER 2279

Contract identifier: _____

Department: _____

By signing below, Company hereby verifies the following:

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

SIGNED BY: _____

Print Name of Person: _____
Signing, Title, and
Company _____

Date signed: _____

STATE OF TEXAS §
COUNTY OF _____ §

BEFORE ME, the undersigned Notary Public on this day personally appeared _____ (Name), on behalf of _____ (Company) who being duly sworn, stated under oath that he/she has read the foregoing verification required by Texas Government Code Section 2270.002 and said statements contained therein are true and correct..

SWORN AND SUBSCRIBED TO before me, this _____ day of _____, 20____.

NOTARY OF PUBLIC,
FOR THE STATE OF TEXAS

My Commission Expires:

Government Code § 2270.002. Provision Required in Contract

Effective: September 1, 2017

A governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

The following definitions apply:

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

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

(3) "Governmental entity" means a state agency or political subdivision of this state.

State law requires verification from a Company for contracts involving goods or services (regardless of the amount) before the City can enter into the contract.

SAFETY RECORD QUESTIONNAIRE

The Owner desires to consider the safety records of potential contractors prior to awarding a proposal on this contract. The Owner uses the following written definition and criteria for accurately determining the safety record of an offeror prior to awarding a proposal on this contract.

The definition and criteria for determining the safety record of an offeror for this consideration shall be:

The Owner shall consider the safety record of the offerors in determining the responsibility thereof. The Owner may consider any incidence involving worker safety or safety of the public, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the Owner may consider, among other things:

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the proposer for violations of OSHA regulations within the past three (3) years.
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of State Health Services (DSHS), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.
- d. Any other safety related matter deemed by the Owner to be material in determining the responsibility of the offeror and his or her ability to perform the services or goods required by the proposal documents in a safe environment, both for the workers and other employees of offeror and the public.

In order to obtain proper information from offerors so that the Owner may consider the safety records of potential contractors prior to awarding a proposal on this contract, the Owner requires that offerors answer the following four (4) questions and submit them with their proposals:

QUESTION ONE

Has the offeror, or the firm, corporation, partnership, or institution represented by the offeror, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES _____ NO _____

If the offeror has indicated YES for question number one above, the offeror must provide to City of Keller, with its proposal submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

_____ Offeror's Initials

QUESTION TWO

Has the offeror, or the firm, corporation, partnership, or institution represented by the offeror, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.

YES _____ NO _____

If the offeror has indicated YES for question number two above, the offeror must provide to City of Keller, with its proposal submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

QUESTION THREE

Has the offeror, or the firm, corporation, partnership, or institution represented by offeror, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES _____ NO _____

If the offeror has indicated YES for question number three above, the offeror must provide to City of Keller, with its proposal submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, in any, and penalty assessed.

QUESTION FOUR

Provide your company's Experience Modification Rate, for the past three years and supporting information:

2024 to 2025 _____
2023 to 2024 _____
2022 to 2023 _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS

COUNTY OF TARRANT

I certify that I have made no willful misrepresentations in this Questionnaire nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this questionnaire will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

Signature

Title

CITY OF KELLER
ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS

I acknowledge that by submitting a bid for this project, I am aware of the insurance requirements outlined in these specifications. If I am awarded the bid, I will comply with all insurance requirements within 10 working days of the bid award, including providing proof that I have insurance which may include, but not be limited to, true and accurate copies of the policies. If I fail to forward all insurance requirements within the 10 working days of the award of the bid, I understand my bid bond will be forfeited.

Signature Printed name

Name of Company: _____

Address of Company: _____

City, State & Zip: _____

Telephone Number: () _____ Date: _____

****THIS PAGE MUST BE COMPLETED OR BID WILL BE REJECTED****



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No. Ext):	FAX (A/C, No):	
INSURED	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :		
	INSURER B :		
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
INSURED	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A :		
	INSURER B :		
	INSURER C :		
	INSURER D :		
INSURER E :			
INSURER F :			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
	UMBRELLA LIAB						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N / A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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FOR DISADVANTAGED BUSINESS ENTERPRISES ONLY

Disadvantaged Business Enterprises (DBE) are encouraged to participate in the City of Keller BID process. The City of Keller will provide additional clarification of specifications, assistance with BID Proposal Forms, and further explanation of bidding procedures to those DBEs who request it.

Representatives from DBE companies should identify themselves as such and submit a copy of the Certification.

The City recognizes the certifications of both the State of Texas Building and Procurement Commission HUB Program and the North Central Texas Regional Certification Agency. All companies seeking information concerning DBE certification are urged to contact:

State of Texas HUB Program
Texas Building & Procurement Commission
P O Box 13047
Austin, TX 78711-3047
(512) 463-5872

OR

North Central Texas Regional
Certification Agency
616 Six Flags Drive, #416-LB24
Arlington, TX 76011
(817) 640-0606

If your company is already certified, attach a copy of your certification to this form and return with BID.

COMPANY NAME: _____

REPRESENTATIVE: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

TELEPHONE NO. _____ FAX NO. _____

INDICATE ALL THAT APPLY:

_____ Minority-Owned Business Enterprise
_____ Women-Owned Business Enterprise
_____ Disadvantaged Business Enterprise

INSERT BID BOND HERE

STATEMENT OF QUALIFICATIONS

ARTICLE 1: REQUIREMENTS FOR THE STATEMENT OF QUALIFICATIONS

- 1.01 The Statement of Qualifications must be submitted and include, as a minimum, the information as described herein. Failure to submit the required information in the Statement of Qualifications may result in the Owner considering the Proposal non-responsive and result in rejection of the Proposal by the Owner. Bidders may be required to provide supplemental information if requested by the Owner to clarify, enhance or supplement the information provided in the Statement of Qualifications.
- 1.02 Bidders must provide the information requested in the Statement of Qualifications using the forms attached to this Section. A copy of these forms can be provided in Microsoft Word to assist with the preparation of the Statement of Qualifications. Information in these forms must be provided completely and in detail. Information that cannot be totally incorporated in the form may be included in an appendix to the form. This appendix must be clearly referenced by appendix number in the form, and the appended material must include the appendix number on every sheet of the appendix. The appendix must include only the information that responds to the question or item number to which the appended information applies.
- 1.03 The Owner, at its discretion, may also choose to conduct interviews with the lowest responsible bidder to provide the bidder the opportunity to demonstrate they can responsibly complete the Project. Failure to participate in the interview may result in disqualification from consideration for the Project.

ARTICLE 2: STATEMENT OF QUALIFICATIONS SUBMITTAL REQUIREMENTS, EVALUATION CRITERIA AND WEIGHTING STATEMENT OF QUALIFICATIONS SUBMITTAL REQUIREMENTS ARE AS FOLLOWS:

- A. Bidder General Information:
 1. Bidder shall complete and submit Table 1 and any needed appendix to the form (See section 1.02 above).
- B. Project Organization and Experience and Qualifications of Proposed Key Personnel:
 1. Provide an organizational chart for this Project showing the structure of Proposer's Project team with lines identifying the significant positions which shall include as a minimum the Key Personnel positions and other positions that are responsible for major elements of the Project execution. Significant positions indicated on the organizational chart can have named individuals other than Key Personnel. For those additional individuals, a summary paragraph can be included on these individual's qualifications and experience to describe their Project role and responsibilities. Except for the Key Personnel, it is acceptable for chart to have a position without a named individual. Chart shall indicate the anticipated percent of each person's time that will be committed to the Project. At a minimum the anticipated percent of each Key Personnel's time will be provided. Critical support elements of project management and administration, quality control, safety, subcontractor management, etc. shall be identified. Charts and accompanying summary paragraph on other individuals named on the charts will be not subject to the page limit.

2. Bidder shall complete and submit Table 2. Provide the names of the Key Personnel that will be actively working on this Project in Table 2. Key Personnel include the Project Manager, Project Superintendent, Safety Manager and Quality Control Manager. If one or more of these Key Personnel roles are to be filled by one individual, this information is to be provided with the list of proposed individuals. The Bidder must provide the services of the proposed Key Personnel for the life of the Project as a condition of qualification. Failure to provide the proposed Key Personnel may result in the disqualification of the Bidder and may void the award of the Contract. Key Personnel may only be changed with the prior written consent of the Owner. The Owner reserves the right to request a resume and conduct an interview with the substitute candidate to demonstrate that he/she is as qualified and experienced or better than the Key Personnel individual. The Owner also reserves the right to reject the substitute candidate.
3. Provide the resumes (not to exceed one page for each) of proposed Key Personnel with the Statement of Qualifications. The resume shall include:
 - a. Education and formal training credentials
 - b. Technical and managerial experience
 - c. Pertinent work history which describes project experience along with role and responsibilities on those projects
 - d. Information on prior projects that demonstrates experience with similar projects as this Project.
4. Bidders are to include a list of the current project assignments for each of the Key Personnel proposed, the anticipated completion date for this assignment and the percentage of the time they will have available to devote to this Project. The Project Superintendent must be dedicated to this Project full time for the duration of the Project.
5. Bidder will provide information on past projects where Key Personnel worked together.

C. Experience of Bidder with Similar Projects:

Similar Projects are defined as: (1) Channel Grading (2) Structural Concrete Construction/Repairs and (3) Bank Stabilization Projects. A minimum of five (5) Similar Projects must be provided. Projects included must have been completed within the last seven (7) years.

Bidders shall complete and submit Table 3 for each Similar Project. The involvement of the Key Personnel and/or Subcontractors in these projects shall be identified and highlighted with a minimum of project position/title and responsibilities.

The Bidder will submit Similar Project descriptive narratives which describes lessons learned from previous project experiences. This narrative is not to exceed one (1) page in length per Similar Project.

D. Project Resources; Subcontractors and Suppliers; Safety and Construction Time

1. Bidder shall complete and submit Table 4. Describe in narrative the Bidder's approach to managing Subcontractors and Suppliers for this Project. Bidder shall also complete and submit the Safety Record Questionnaire.

2. Bidder shall provide a narrative that demonstrates its ability to complete projects on time. Bidder will provide examples of projects where owner expectations for schedule were not met and the lessons learned.
3. Limit the narrative portion responding to D.1 and D3 above to two (2) pages.

Table 1 – Bidder General Information

Bidder doing business as			
Business address of principle office			
Telephone numbers			
Main number			
Fax number			
Website address			
Form of business (check one)	<input type="checkbox"/> A corporation	<input type="checkbox"/> A partnership	<input type="checkbox"/> An individual
If a Corporation			
Date of incorporation			
State of incorporation			
Chief Executive name			
President name			
Senior Management Names and Position	Name	Position	
Secretary name			
Treasurer name			
If a Partnership			
Date of organization			
State whether partnership is general or limited			
If an Individual			
Name			
Business address			
Indicators of Bidders Size			
Average number of current full-time employees		Average estimate of revenue for the current year	

Bidder Regional/Local Office	
Business address of office	

Name of office manager			
Telephone numbers			
Main number			
Fax number			
Website address			
Organization History			
List of names that this Bidder has and currently operates under over the history of the organization, including the names of related companies presently doing business:			
Names of Bidder	From date	To date	
List of companies, firms or organizations that own any part of the Bidder.			
Name of companies, firms or organization.	Percent ownership		
Construction Experience			
Years' experience in projects similar to the proposed project:			
As a general contractor			
<ul style="list-style-type: none"> • Lines of business and service offerings • Location of home office and other offices • Number of employees • Growth of business lines and service offerings • Other appropriate information <p>Provide information as to the history of the Bidder, including lines of business and service offerings, growth over time in terms of number of projects, size of projects, types of projects, firm revenue and number of employees.</p>			

Provide narrative information to indicate the number and types of projects and dollar volume currently under contract by the Bidder.	
Surety References	
Name:	Telephone (main number):
Mailing address (principal place of business):	Telephone (for notice of claim):
	Local Agent for Surety:
	Name: _____
Physical address (principal place of business):	Address: _____

	Telephone: _____
Surety is a corporation organized and existing under the laws of the state of: _____.	
Is surety authorized to provide surety bonds in the state of Texas? _____.	
Is surety listed in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury? _____	
If applicable, Surety A.M. Best rating _____	

Table 2– Proposed Key Personnel

Bidder doing business as:		
Experience of Key Personnel		
Provide information on the Key Personnel proposed for this Project that will fill the positions listed below. Provide information for individuals for each of these positions on the pages for each of these Key Personnel.		
Position	Key Personnel	
[Project Manager]		
[Project Superintendent]		
[Project Safety Manager]		
[Project Quality Control Manager]		
If Key Personnel are to fulfill more than one of the roles listed above, provide a written narrative describing how much time will be devoted to each function, their qualifications to fulfill each role and the percentage of their time that will be devoted to each role. If the individual is not to be devoted solely to this Project, indicate how time it to be divided between this Project and their other assignments.		

Table 2 continued – Proposed Project Manager

Bidder doing business as			
Primary candidate			
Name of individual			
Years of experience as project manager			
Years of experience with this Bidder			
Number of similar projects as project manager			
Number of similar projects in other positions			
Current project assignments			
Name of assignment	Percent of time used for this project	Estimated project completion date	
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidates role on project	

Table 2 continued – Proposed Project Superintendent

Bidder doing business as			
Primary candidate			
Name of individual			
Years of experience as project superintendent			
Years of experience with this Bidder			
Number of similar projects as superintendent			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	

Table 2 continued – Proposed Safety Manager

Bidder doing business as			
Primary candidate			
Name of individual			
Years of experience as project superintendent			
Years of experience with this Bidder			
Number of similar projects as superintendent			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	

Table 2 continued – Proposed Quality Control Manager

Bidder doing business as			
Primary candidate			
Name of individual			
Years of experience as project superintendent			
Years of experience with this Bidder			
Number of similar projects as superintendent			
Number of similar projects in other positions			
Current project assignments			
Name of assignment		Percent of time used for this project	Estimated project completion date
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
Name		Name	
Title/ position		Title/ position	
Organization		Organization	
Telephone		Telephone	
Email		Email	
Project		Project	
Candidate role on project		Candidate role on project	
Project		Project	
Candidate role on project		Candidate role on project	

Table 3 – Project Information for Similar Projects

Project owner		Project name	
General description of project and how this project meets the definition of similar project			
Project Budget and Schedule Performance			
Budget history		Schedule performance	
	Amount	% of Bid Amount	
Bid			Notice to Proceed
Change orders			Contract Substantial Completion date at Notice to Proceed
Owner enhancements			Contract final completion date at Notice to Proceed
Unforeseen conditions			Change Order authorized Substantial Completion date
Design issues			Change Order authorized final completion date
Total			Actual / estimated Substantial Completion date
Final cost			Actual / estimated final completion date
Key Project Personnel			
Identify with an asterisk (*) individuals that are Key Personnel for this Project		Project Manager	Project Superintendent
Name			
Percentage of time devoted to the project.			
Proposed for this project.			
Did Individual start and complete the project?			
If not, who started or completed the project in their place.			
Reason for change.			
Reference contact information (listing names indicates approval to contacting the named individuals as a reference)			
	Name	Title/ position	Organization
Owner			
Designer			
Construction Manager			
Surety			
Issues / disputes resolved or pending resolution by arbitration, litigation or dispute review boards			
Number of issues resolved:		Total amount involved in resolved issues:	
Number of issues pending:		Total amount involved in resolved Issues:	

Table 4 – Project Resources and Subcontractors and Suppliers

What work will the Bidder complete using its own resources?	
What work does the Bidder propose to subcontract on this project?	
Estimate of the amount of the Project that will be performed using in-house resources. _____ % of the total project value.	Estimate of the amount of the Project that will be performed by Subcontractors and Suppliers. _____ % of the total project value.

END OF SECTION

CERTIFICATE OF INTERESTED PARTIES**FORM 1295**

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

OFFICE USE ONLY

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

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

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

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

5 Check only if there is NO Interested Party.

☐**6 AFFIDAVIT**

I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.

Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said _____, this the _____ day
of _____, 20 _____, to certify which, witness my hand and seal of office.

Signature of officer administering oath

Printed name of officer administering oath

Title of officer administering oath

ADD ADDITIONAL PAGES AS NECESSARY

STANDARD FORM OF AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

THIS AGREEMENT is dated as of the _____ day of _____
in the year _____ by and between the City of Keller, TX (hereinafter called OWNER) and
_____ (hereinafter called CONTRACTOR).

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

Article 1. WORK.

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

Bear Creek Parkway Bridge Erosion Protection

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

Improvements associated with Bear Creek Parkway Bridge Erosion Protection. The project involves the construction of approximately 269 SY of 48" Pier Protection Riprap (24" Stone Diameter), 819 SY of 24" Bank Stabilization Riprap (18" Diameter), and 641 CY of Channel Excavation and Grading.

Article 2. ENGINEER.

The Project has been designed by:

Teague Nall and Perkins, Inc.
5237 N. Riverside Drive, Suite 100
Fort Worth, Texas 76137

Teague Nall and Perkins Inc. is hereinafter called ENGINEER and is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. The Work will be substantially completed within 90 calendar days from the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions within 120 calendar days from the date when the Contract Time commences to run.

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time of completion is the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1. above plus any extensions thereof allowed in accordance with Article 12.02 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER one thousand and 00/100 dollars (\$ 1,000.00) for each day that expires after the time specified in paragraph 3.1. for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one thousand and 00/100 dollars (\$ 1,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

4.1. Owner shall pay Contractor for completion of the Work in accordance with the Contract. Documents for the unit prices shown in the "Proposal Form Exhibit A". Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions. Bidder acknowledges that estimated quantities are not guaranteed and are solely for the purpose of comparison of Bids, and final payment for all unit price bid items will be based on actual quantities, determined as provided in the Contract Documents.

Article 5. PAYMENT PROCEDURES.

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

5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.05.B.3. of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Conditions.

The retainage amount shall be five (5%) percent on contracts equal to or exceeding \$500,000 in value. For contracts less than \$500,000, the retainage amount shall be ten (10%) percent.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

95 % of Work completed (90% for projects costing less than \$500,000 and 95% for all others).

N/A % of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02.A of the General Conditions).

5.2. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B and 14.07.C of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraphs 14.07.B and 14.07.C.

Article 6. INTEREST.

6.1 Interest will be paid on overdue payments as required by Texas Government Code Chapter 2251.

6.2 Interest will be paid on amounts withheld as retainage as required by Texas Government Code Chapter 2252.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02.A and 4.02.B of the General Conditions, and accepts the determination set forth in paragraphs SC-4.02 and 4.03 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraphs 4.02 and 4.03 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and

assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.04 of the General Conditions.

7.5. CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

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

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement.
- 8.2. Performance, Payment and Maintenance Bonds as contained herein.
- 8.3. Certificate of Insurance.
- 8.4. General Conditions.
- 8.5. Supplementary Conditions.
- 8.6. Specifications bearing the title **CONTRACT DOCUMENTS AND SPECIFICATIONS FOR Bear Creek Parkway Bridge Erosion Protection**
- 8.7. Drawings bearing the following general title:
Bear Creek Parkway Bridge Erosion Protection
- 8.8. Addenda numbers ____ to_____, inclusive.
- 8.9. CONTRACTOR's Proposal Form Exhibit A as contained herein.
- 8.10. Documentation submitted by CONTRACTOR prior to Notice of Award (Statement of Qualification forms, Safety Record Questionnaire, resumes, and other forms submitted with the proposal).
- 8.11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 9. MISCELLANEOUS.

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

9.2. 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 the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

Article 10. OTHER PROVISIONS

10.1. Contractor Key Personnel, Alternate Key Personnel and Subcontractors: Contractor shall not substitute or replace any Key Personnel or Subcontractor listed on Exhibit 1 of this Agreement without receiving prior written approval from Owner. Contractor will provide Owner with a written request for any such substitution or replacement stating the reason for the substitution or replacement, identification of the substitute or replacement Key Personnel or Subcontractor and the qualifications, experience and references to demonstrate substitute or replacement is equally or better qualified and experienced. The Owner reserves the right to request additional information and interview the Key Personnel or Subcontractor. Owner reserves the right to reject substitute or replacement.

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

This Agreement will be effective on _____, 20_____.

OWNER

CONTRACTOR

City of Keller, Texas

By_____

By_____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest_____

Attest_____

Address for giving notices:

1100 Bear Creek Parkway

P.O. Box 770

Keller, TX 76244

Address for giving notices:

Exhibit 1 Key Personnel and Subcontractors

Key Personnel shall consist of the following: **[Fill in the names contained in the Proposal]**

Project Manager: _____

Project Superintendent: _____

Safety Manager: _____

Quality Control Manager: _____

[Include in this Exhibit Table 2 of the Statement of Qualifications (pages 7 through 11), from Bidder's Proposal]

Subcontractors

Subcontractors shall comprise those listed on Table 4 attached to this Exhibit.

[Include in this Exhibit Table 4 of the Statement of Qualifications (page 12), from Bidder's Proposal]

END OF SECTION

PERFORMANCE BOND

STATE OF TEXAS

§

§

COUNTY OF TARRANT

§

KNOW ALL MEN BY THESE PRESENTS: That _____

_____ of the City of _____,

County of _____, State of _____,

as principal, and _____

authorized under the laws of the State of Texas to act as surety on bonds for principals, in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code, are held and firmly bound unto _____ City of Keller, Texas _____ (OWNER),

in penal sum of _____ Dollars (\$ _____),

which is not less than 100% of the contract price of the contract referenced below, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the ____

Day of _____ 20____, to construct the **Bear Creek Parkway Bridge Erosion Protection** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall faithfully perform, without limitations, said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, and in accordance with sound construction principles and practices, then this obligation shall be void one year after approval of the work by the OWNER's Engineer; otherwise to remain in full force and effect;

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of (Article 5160 for Public Work) (Article 5472d for Private Work)* of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein."

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway 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 to be performed thereunder.

*Not applicable for federal work. See "The Miller Act," 40 U.S.C. S270.

PERFORMANCE BOND (Cont'd)

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this

day of _____, 20____.

Principal

Surety

By _____

By _____

Title _____

Title _____

Address _____

Address _____

Phone No. _____

Phone No. _____

The name, address, and phone number of the Resident Agent of Surety is:

PAYMENT BOND

STATE OF TEXAS
COUNTY OF TARRANT

§
§
§

KNOW ALL MEN BY THESE PRESENTS: That _____

_____ of the City of _____

County of _____, and State of _____,

as principal, and _____

authorized under the laws of the State of Texas to act as surety on bonds for principals, in accordance with Surety Bonds and Related Instruments, Chapter 3503 of the Insurance Code, are held and firmly bound unto

_____ City of Keller, Texas _____ (OWNER),

in penal sum of _____ Dollars (\$ _____),

which is not less than 100% of the contract price of the contract referenced below, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the ____

day of _____, 20____, to construct the **Bear Creek Parkway Bridge Erosion Protection** which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void one year after approval of the work by the OWNER's Engineer; otherwise, to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Article 5160 of the Revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway 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 to be performed thereunder.

PAYMENT BOND (Cont'd)

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this

day of _____, 20____.

Principal

Surety

By _____

By _____

Title _____

Title _____

Address _____

Address _____

Phone No. _____

Phone No. _____

The name, address, and phone number of the Resident Agent of Surety is:

MAINTENANCE BOND

STATE OF TEXAS

§
§
§

COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS: That _____
(NAME OF CONTRACTOR)
as principal, and _____
(NAME OF SURETY)
a corporation organized under the laws of _____
and _____ as sureties,
do hereby expressly acknowledge themselves to be held and bound to pay unto the _____ City of Keller, Texas
(NAME OF OWNER)
_____, a private corporation, the sum of _____

(AMOUNT DETERMINED BY % OF TOTAL CONTRACT PRICE STATED IN SUPPLEMENTARY CONDITIONS)

Dollars (\$_____) for the payment of which sum well and truly to be made unto said _____
City of Keller, Texas and its successors, said principal and sureties
(NAME OF OWNER)
do hereby bind themselves, their assigns, and successors jointly and severally.

This obligation is conditioned, however, that, whereas said _____
(NAME OF CONTRACTOR)
has this day entered into a written contract with said City of Keller, Texas
(NAME OF OWNER)
to build and construct the **Bear Creek Parkway Bridge Erosion Protection**

(DESCRIPTION OF PROJECT AS IT APPEARS ON COVER OF CONTRACT DOCUMENTS)

which contract and the plans and specifications therein mentioned and adopted by the City of Keller, Texas
(NAME OF OWNER)
_____ are hereby expressly made a part thereof as though the same were written and embodied herein.

WHEREAS, under the specifications and contract, it is provided that the Contractor shall maintain and keep in good repair the work constructed and/or equipment furnished by him as contemplated by the plans, specifications, drawings, etc., and perform for a period of TWO (2) year(s) [NOTE: Period to be stated in Supplementary Conditions. If not so stated, the period shall be one (1) year.] from the date of acceptance as shown on the "Certificate of Completion" as issued by the Engineer, or the date of final payment by the Owner, whichever bears the later date, all necessary repairs, reconstruction and renewal of any part of said construction, and to furnish the labor and materials to make good and to repair any defective condition growing out of or on account of the breakage or failure of any substance or the improper function of any part of the construction work. The Contractor shall reimburse the Owner for the costs of all Engineering and special services required to be furnished by the Owner which are directly attributable to the restoration of the constructed work. Said maintenance contemplates the complete restoration of the constructed work to a functional use during the said period as set forth above. It is being understood that the purpose of this section is to require the correction of all defective conditions resulting from materials furnished or work and labor performed by the said Contractor under the conditions prescribed by the plans and specifications; and in case the said Contractor shall fail or refuse to perform as provided within ten (10) days after proper written notifications have been furnished to him by the Owner, it is agreed that the Owner may do said work and supply such materials and the said Contractor and Sureties herein shall be subject to the liquidated damages mentioned in said Contract for each calendar day's failure on its part to comply with the terms of the said provision of said Contract and this Maintenance Bond.

NOW, THEREFORE, if the said Contractor shall keep and perform its said agreement to maintain said work and keep the same in good repair for the said maintenance period as provided above, then these presents shall be null and void and have no further effect, but if default shall be made by the said Contractor in the performance of its contract to do so maintain and repair damages in the premises, as provided, and it is further understood and agreed that this obligation shall be a continuing one against the principal and sureties hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any clause during said time.

IN WITNESS WHEREOF, the said _____
(NAME OF CONTRACTOR)
has caused these presents to be executed by _____
(NAME OF CONTRACTOR'S AUTHORIZED SIGNER)
and the said _____
(NAME OF SURETY)
has caused these presents to be executed by its _____
(ATTORNEY-IN-FACT OR OFFICIAL)
and the said _____
(ATTORNEY-IN-FACT OR OFFICIAL)
has hereto set his hand this the _____ day of _____, 20____.

SURETY

PRINCIPAL

By _____
Signature

By _____

Print Name

ATTEST:

By _____
Witness Signature

SECRETARY

Print Name

NOTE: Date of Maintenance Bond must not be prior to date of Contract. Power of Attorney must be attached.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	5
1.01 <i>Defined Terms</i>	5
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS.....	9
2.01 <i>Delivery of Bonds</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	10
2.07 <i>Initial Acceptance of Schedules</i>	10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	11
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	12
4.01 <i>Availability of Lands</i>	12
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	14
4.06 <i>Hazardous Environmental Condition at Site</i>	14
ARTICLE 5 - BONDS AND INSURANCE.....	16
5.01 <i>Performance, Payment, and Other Bonds</i>	16
5.02 <i>Licensed Sureties and Insurers</i>	16
5.03 <i>Certificates of Insurance</i>	16
5.04 <i>CONTRACTOR's Liability Insurance</i>	16
5.05 <i>OWNER's Liability Insurance</i>	17
5.06 <i>Property Insurance</i>	17
5.07 <i>Waiver of Rights</i>	18
5.08 <i>Receipt and Application of Insurance Proceeds</i>	19
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	19
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	20
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES	20
6.01 <i>Supervision and Superintendence</i>	20
6.02 <i>Labor; Working Hours</i>	20
6.03 <i>Services, Materials, and Equipment</i>	20
6.04 <i>Progress Schedule</i>	21
6.05 <i>Substitutes and "Or-Equals"</i>	21
6.07 <i>Patent Fees and Royalties</i>	23
6.08 <i>Permits</i>	23

6.09 <i>Laws and Regulations</i>	24
6.10 <i>Taxes</i>	24
6.11 <i>Use of Site and Other Areas</i>	24
6.13 <i>Safety and Protection</i>	25
6.14 <i>Safety Representative</i>	25
6.15 <i>Hazard Communication Programs</i>	25
6.16 <i>Emergencies</i>	26
6.17 <i>Shop Drawings and Samples</i>	26
6.18 <i>Continuing the Work</i>	27
6.19 <i>CONTRACTOR's General Warranty and Guarantee</i>	27
6.20 <i>Indemnification</i>	28
ARTICLE 7 - OTHER WORK.....	29
7.01 <i>Related Work at Site</i>	29
7.02 <i>Coordination</i>	29
ARTICLE 8 - OWNER'S RESPONSIBILITIES.....	29
8.01 <i>Communications to Contractor</i>	29
8.02 <i>Replacement of ENGINEER</i>	30
8.03 <i>Furnish Data</i>	30
8.04 <i>Pay Promptly When Due</i>	30
8.05 <i>Lands and Easements; Reports and Tests</i>	30
8.06 <i>Insurance</i>	30
8.07 <i>Change Orders</i>	30
8.08 <i>Inspections, Tests, and Approvals</i>	30
8.09 <i>Limitations on OWNER's Responsibilities</i>	30
8.10 <i>Undisclosed Hazardous Environmental Condition</i>	30
8.11 <i>Evidence of Financial Arrangements</i>	30
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION.....	31
9.01 <i>OWNER'S Representative</i>	31
9.02 <i>Visits to Site</i>	31
9.03 <i>Project Representative</i>	31
9.04 <i>Clarifications and Interpretations</i>	31
9.05 <i>Authorized Variations in Work</i>	31
9.06 <i>Rejecting Defective Work</i>	32
9.07 <i>Shop Drawings, Change Orders and Payments</i>	32
9.09 <i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	32
9.10 <i>Limitations on ENGINEER's Authority and Responsibilities</i>	32
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS.....	33
10.01 <i>Authorized Changes in the Work</i>	33
10.02 <i>Unauthorized Changes in the Work</i>	33
10.03 <i>Execution of Change Orders</i>	33
10.04 <i>Notification to Surety</i>	33
10.05 <i>Claims and Disputes</i>	34
ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK.....	34
11.01 <i>Cost of the Work</i>	34
11.02 <i>Cash Allowances</i>	36
11.03 <i>Unit Price Work</i>	37
ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES.....	37
12.01 <i>Change of Contract Price</i>	37
12.02 <i>Change of Contract Times</i>	38

12.03 <i>Delays Beyond CONTRACTOR's Control</i>	38
12.04 <i>Delays Within CONTRACTOR's Control</i>	38
12.06 <i>Delay Damages</i>	38
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....	39
13.01 <i>Notice of Defects</i>	39
13.02 <i>Access to Work</i>	39
13.03 <i>Tests and Inspections</i>	39
13.04 <i>Uncovering Work</i>	40
13.05 <i>OWNER May Stop the Work</i>	40
13.06 <i>Correction or Removal of Defective Work</i>	40
13.07 <i>Correction Period</i>	40
13.08 <i>Acceptance of Defective Work</i>	41
13.09 <i>OWNER May Correct Defective Work</i>	41
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION.....	42
14.01 <i>Schedule of Values</i>	42
14.02 <i>Progress Payments</i>	42
14.03 <i>CONTRACTOR's Warranty of Title</i>	44
14.04 <i>Substantial Completion</i>	44
14.05 <i>Partial Utilization</i>	44
14.06 <i>Final Inspection</i>	45
14.07 <i>Final Payment</i>	45
14.09 <i>Waiver of Claims</i>	46
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....	46
15.01 <i>OWNER May Suspend Work</i>	46
15.02 <i>OWNER May Terminate for Cause</i>	46
15.03 <i>OWNER May Terminate For Convenience</i>	47
15.04 <i>CONTRACTOR May Stop Work or Terminate</i>	47
ARTICLE 16 - DISPUTE RESOLUTION.....	48
16.01 <i>Methods and Procedures</i>	48
ARTICLE 17 - MISCELLANEOUS.....	48
17.01 <i>Giving Notice</i>	48
17.02 <i>Computation of Times</i>	48
17.03 <i>Cumulative Remedies</i>	48
17.04 <i>Survival of Obligations</i>	48
17.05 <i>Controlling Law</i>	48

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19. *ENGINEER*--The individual or entity named as such in the Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

32. *PCBs*--Polychlorinated biphenyls.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

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

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

1.02 Terminology

A. *Intent of Certain Terms or Adjectives*

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

B. *Day*

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

C. *Defective*

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

D. *Furnish, Install, Perform, Provide*

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

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

2.02 Copies of Documents

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

2.03 Commencement of Contract Times; Notice to Proceed

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

2.04 Starting the Work

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

2.05 Before Starting Construction

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

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

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

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

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 Preconstruction Conference

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

2.07 Initial Acceptance of Schedules

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

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

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

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

3.02 Reference Standards

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

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

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

3.03 Reporting and Resolving Discrepancies

A. *Reporting Discrepancies*

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

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

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

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

3.05 Reuse of Documents

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

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

4.01 Availability of Lands

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

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

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

4.02 Subsurface and Physical Conditions

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

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

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

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

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

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

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

C. *Possible Price and Times Adjustments*

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

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

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

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

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

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

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

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

4.04 *Underground Facilities*

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

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

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

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

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

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

4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

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

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

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

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

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

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

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

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

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

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

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

ARTICLE 5 - BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

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

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

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

5.02 Licensed Sureties and Insurers

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

5.03 Certificates of Insurance

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

5.04 CONTRACTOR's Liability Insurance

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

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

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

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

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

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

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

3. include completed operations insurance;

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

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

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

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

5.05 OWNER's Liability Insurance

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

5.06 Property Insurance

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

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

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

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

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

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

6. include testing and startup; and

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

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

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

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

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

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or

resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

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

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and
2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

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

5.08 Receipt and Application of Insurance Proceeds

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

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

5.09 Acceptance of Bonds and Insurance; Option to Replace

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

5.10 Partial Utilization, Acknowledgment of Property Insurer

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

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

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER 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 or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

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

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

6.03 *Services, Materials, and Equipment*

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

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

6.04 Progress Schedule

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

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

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

6.05 Substitutes and "Or-Equals"

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

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

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

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

2. Substitute Items

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

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

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

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed

substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

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

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

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

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as

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

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

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

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

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

6.07 Patent Fees and Royalties

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

6.08 Permits

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

6.09 Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

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

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

6.10 Taxes

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

6.11 Use of Site and Other Areas

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

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

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

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

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

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

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 Emergencies

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

6.17 Shop Drawings and Samples

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

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

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

D. *Submittal Procedures*

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

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

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

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

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

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

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

E. ENGINEER's Review

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

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

3. 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 ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

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

6.19 CONTRACTOR's General Warranty and Guarantee

A. The CONTRACTOR warrants to the OWNER and ENGINEER that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defect not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

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

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

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ARCHITECT, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

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

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER, ARCHITECT, ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 Related Work at Site

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

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

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

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

7.02 Coordination

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

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

8.02 Replacement of ENGINEER

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 Furnish Data

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

8.04 Pay Promptly When Due

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

8.05 Lands and Easements; Reports and Tests

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

8.06 Insurance

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

8.07 Change Orders

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

8.08 Inspections, Tests, and Approvals

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

8.09 Limitations on OWNER's Responsibilities

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

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

8.11 Evidence of Financial Arrangements

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

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

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

9.04 Clarifications and Interpretations

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

9.05 Authorized Variations in Work

A. 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 Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 Rejecting Defective Work

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

9.07 Shop Drawings, Change Orders and Payments

- A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.
- B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.
- C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

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

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

9.10 Limitations on ENGINEER's Authority and Responsibilities

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

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

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

10.02 Unauthorized Changes in the Work

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

10.03 Execution of Change Orders

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

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 Notification to Surety

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

10.05 Claims and Disputes

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

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

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

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

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

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

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

11.01 Cost of the Work

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

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto.

The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

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

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

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

5. Supplemental costs including the following:

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

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

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

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

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

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

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

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

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

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

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

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

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

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

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

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

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

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

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

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

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. 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 ENGINEER subject to the provisions of paragraph 9.08.

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

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

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
2. there is no corresponding adjustment with respect any other item of Work; and
3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 Change of Contract Price

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or
2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or
3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

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

1. a mutually acceptable fixed fee; or
2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

- b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;
- c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
- d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

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

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

12.03 Delays Beyond CONTRACTOR's Control

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

12.04 Delays Within CONTRACTOR's Control

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

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

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

12.06 Delay Damages

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

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

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

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

13.01 Notice of Defects

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

13.02 Access to Work

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

13.03 Tests and Inspections

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

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

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

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

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

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

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

13.04 Uncovering Work

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

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

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

13.06 Correction or Removal of Defective Work

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

13.07 Correction Period

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

correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

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

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to 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, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 OWNER May Correct Defective Work

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

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

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

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments

A. *Applications for Payments*

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

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

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

B. *Review of Applications*

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

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

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

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

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

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

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Payment Becomes Due

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

D. Reduction in Payment

- 1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:
 - a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling OWNER to a set-off against the amount recommended; or
 - d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER

shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

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

14.03 CONTRACTOR's Warranty of Title

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

14.04 Substantial Completion

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER 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. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

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

14.05 Partial Utilization

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

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR

in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 Final Inspection

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

14.07 Final Payment

A. *Application for Payment*

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

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

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

B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due*

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

14.08 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of 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 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to 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.

14.09 *Waiver of Claims*

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

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

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

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

15.02 *OWNER May Terminate for Cause*

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

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);
2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;
3. CONTRACTOR's disregard of the authority of ENGINEER; or
4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.
5. CONTRACTOR'S failure to pay subcontractors in a timely fashion.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site

or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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

15.03 OWNER May Terminate For Convenience

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

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.

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

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

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

ARTICLE 17 - MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

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

17.03 Cumulative Remedies

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

17.04 Survival of Obligations

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

17.05 Controlling Law

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

SUPPLEMENTARY CONDITIONS
for
THE CITY OF KELLER, TEXAS

Bear Creek Parkway Bridge Erosion Protection

INDEX

<u>Section</u>	<u>Title</u>
SC-1.01	Defined Terms
SC-2.02	Copies of Documents
SC-2.03	Notice to Proceed
SC-2.04	Starting the Project
SC-2.05.B	Schedules
SC-3.01.A	Contract Drawings and Specifications
SC-4.02	Subsurface and Physical Conditions
SC-4.03	Differing Subsurface or Physical Conditions
SC-4.05	Reference Points
SC-5	Maintenance Bond
SC-5.01	Performance, Payment and Other Bonds
SC-5.02	Licensed Sureties and Insurers
SC-5.03	Certificates of Insurance
SC-5.04	Contractor's Liability Insurance
SC-5.04.B.4	Contractual Liability Insurance
SC-5.04.B.8	Worker's Compensation and Insurance Coverage
SC-5.05	Owner's Liability Insurance
SC-5.06	Property Insurance
SC-5.06.B	Property Insurance
SC-6.06.A	Subcontracts
SC-6.08.A	Storm Water Discharge Permit
SC-6.10.A	Taxes
SC-6.12	Record Documents
SC-6.13	Safety and Protection
SC-6.17	Shop Drawings and Samples
SC-12.03.A	Change of Contract Price; Change of Contract Times
SC-13.03	Tests and Inspections
SC-13.07	Two Year Correction Period
SC-14.01	Schedule of Values
SC-14.02.A.1	Applications for Payment
SC-14.02.C	Review of Applications for Progress Payment
SC-17	Miscellaneous
SC-18	Wage Rates
SC-19	Additional Contractor's Responsibilities
SC-20	Pay Items

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the General Conditions and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1.01 DEFINED TERMS:

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meanings assigned to them in the General Conditions or as amended below.

Delete paragraphs 1.01.A.5 through 1.01.A.7 entirely and insert the following in their place:

"5. *Proposal* – The documents submitted by an Bidder to establish the proposed Contract Price and Contract Times and provide other information and certifications as required by the Proposal Requirements. The term "Bid" shall have the same meaning as "Proposal" when used elsewhere in these Contract Documents."

"6. *Proposal Documents* – The Proposal Requirements, the proposed Contract Documents, and Addenda. The term "Bidding Documents" shall have the same meaning as "Proposal Documents" when used elsewhere in these Contract Documents."

"7. *Proposal Requirements* – The Request for Proposals, Instructions to Bidders, Proposal Security, Proposal Form and attachments, and required certifications and affidavits. The term "Bidding Requirements" shall have the same meaning as "Proposal Requirements" when used elsewhere in these Contract Documents."

Add the following language to the end of the definition for PROJECT (1.01.A.34):

*"The project consists of construction of **Bear Creek Parkway Bridge Erosion Protection.**"*

"The project is located in the City of Keller, Texas."

Add the following language to the end of the definition for OWNER (1.01.A.30):

"The words "Owner" or "City" in these documents shall be understood as referring to the City of Keller, Texas. 1100 Bear Creek Parkway, P.O. Box 770, Keller, TX 76244."

Add the following language to the end of the definition for ENGINEER (1.01.A.19):

"The word "Engineer" in these specifications shall be understood as referring to Teague Nall and Perkins, Inc., 5237 N. Riverside Drive, Suite 100, Fort Worth, Texas 76137, Engineer of the Owner, or such other representative as may be authorized by said Owner to act in any particular position."

Add the following language to the end of the definition for SPECIFICATIONS (1.01.A.41):

"Except as herein amended or supplemented, Divisions 100 through 800 of the Public Works Construction Standards, North Central Texas adopted by the North Central Texas Council of Governments (NCTCOG) dated November, 2017, with all amendments shall govern and shall constitute the specifications. They are not physically bound with these contract documents but are incorporated by reference. Where these NCTCOG specifications conflict with the specifications bound in this booklet or the construction plans, the bound specifications and the construction plans will govern."

Add the following language to the end of the definition for SUPPLEMENTARY CONDITIONS (1.01.A.44):

"Where in the Bonds and elsewhere in the contract, the terms "Special Provisions," and "Special Conditions" appear, they shall be read to mean "Supplementary Conditions""

Add the following paragraph to the end of section "1.01 Defined Terms":

"51. No Separate Pay Items—These items will be accomplished by the CONTRACTOR without the CONTRACTOR having a specific pay item for this work. The CONTRACTOR will have to include any costs for these work items in with the cost for pay items listed in Proposal Form Exhibit A."

SC-2.02 COPIES OF DOCUMENTS:

Delete the first sentence of paragraph 2.02 of the General Conditions and replace with the following sentence:

"OWNER shall furnish to CONTRACTOR up to five copies of the Contract Documents as are reasonably necessary for the execution of the Work."

SC-2.03 NOTICE TO PROCEED:

Delete paragraph 2.03 of the General Conditions in its entirety and replace with the following paragraph:

"The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement."

SC-2.04 STARTING THE PROJECT:

Delete paragraph 2.04 of the General Conditions in its entirety and replace with the following paragraph:

"CONTRACTOR shall start to perform the Work within ten (10) calendar days of the date when the Contract Time commences to run, but no work shall be done at the site prior to the Effective Date of the Agreement."

SC-2.05.B SCHEDULES:

Amend the first sentence of paragraph 2.05.B of the General Conditions to read as follows:

"Within five (5) days after the Effective Date of the Agreement, CONTRACTOR shall submit to ENGINEER for review."

SC-3.01.A CONTRACT DRAWINGS AND SPECIFICATIONS:

Add to paragraph 3.01.A of the General Conditions the following:

"Should a discrepancy arise in the contract documents, the drawings shall take precedence over the specifications."

SC-4.02 SUBSURFACE AND PHYSICAL CONDITIONS:

Add to paragraph 4.02 of the General Conditions the following paragraph:

"Subsurface explorations or tests, to ascertain the nature of the subsurface conditions or physical conditions at, or contiguous to, the project site, including the amount of rock, if any, are to be the sole responsibility of the CONTRACTOR."

Whether prospective Bidders perform this subsurface exploration jointly or independently shall be left to the discretion of such prospective Bidders. Subsurface explorations and tests shall not be attempted without the approval of the OWNER."

The results of a geotechnical investigation performed by Rone Engineers. (Report No. 513-6-090-01) are available for the Bidder's information only in preparing a proposal for the project."

SC-4.03 DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS:

Delete 4.03 in its entirety.

SC-4.05 REFERENCE POINTS:

Remove the first sentence of paragraph 4.05.A of the General Conditions and replace it with the following two sentences:

"The OWNER shall provide vertical and horizontal surveying control/reference points for construction which in the ENGINEER'S judgment are necessary to enable the CONTRACTOR to set his own specific line and grade construction stakes, but in no case closer than 400 linear feet apart. Construction staking by the CONTRACTOR is a no separate pay item."

SC-5.01 PERFORMANCE, PAYMENT, AND OTHER BONDS:

Remove the third sentence of paragraph 5.01.A of the General Conditions and replace it with the following two sentences:

" Contractor shall also furnish a Maintenance Bond in the amount at least equal to the Contract Price as security that the Contractor will maintain and keep in good repair the work covered by the Contract Documents. The Maintenance Bond shall remain in force for a period of two (2) years after the date of final acceptance of the work by the Owner."

Add the following paragraph 5.01.D:

"D. Insurance Requirements - CONTRACTOR and Subcontractors of any tier will be required, at their own expense, to maintain in affect at all times during the performance of the work, insurance coverage with limits not less than those set forth below, with insurers and under forms of policies satisfactory to the OWNER. It shall be the responsibility of the CONTRACTOR and Subcontractors to maintain adequate insurance coverage and to assure that all Subcontractors are adequately insured at all times. Failure of the CONTRACTOR and his Subcontractors to maintain adequate coverage shall not relieve CONTRACTOR of any contractual responsibility or obligation. Deductibles, of any type, are the responsibility of the CONTRACTOR."

SC-5.02 LICENSED SURETIES AND INSURERS:

Add the following language to the middle of the first sentence of paragraph 5.02.A of the General Conditions:

...duly licensed *"by the State of Texas to Provide surety bonds"* or authorized...

SC-5.03 CERTIFICATES OF INSURANCE

Add the following paragraph 5.03.B:

"B. Certificates of Insurance and Insurance Endorsements - At the time of the execution of this Contract and each Subcontract, the CONTRCATOR and his Subcontractors shall furnish Certificates of Insurance and Insurance Endorsements as evidence that the policies providing the required coverage and limits of insurance are in full force and effect. The Certificates of Insurance and Insurance Endorsements shall state the City, and the Engineer as Additional Insured where applicable. The Certificates of Insurance shall provide that any company issuing an insurance policy for the work under this Contract shall provide not less than 30 days advance notice in writing of cancellation, non-renewable, or material change in the policy of insurance. In addition, the contractor shall provide written notice to OWNER upon receipt of notice of cancellation of any insurance policy. All Certificates of Insurance and Insurance Endorsements shall clearly state that all applicable requirements have been satisfied including certification that the policies are of the "occurrence" type. Certificates of Insurance and Insurance Endorsements for CONTRACTOR and his Subcontractors, terminations, or alterations of such policies shall be mailed to Purchasing Technician, Finance Department, P.O. Box 770, Keller, TX 76244.

SC-5.04 CONTRACTOR'S LIABILITY INSURANCE:

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations: 5.04.A.1 and 5.04.A.2. Workers' Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

- | | | |
|-----|---|-------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman's): | Statutory |
| (3) | Employer's Liability: | \$1,000,000 |

5.04.A.3, 5.04.A.4, 5.04.A.5, and 5.04.A.6. Comprehensive General Liability (under paragraphs 5.04.A.3 through 5.04.A.6 of the General Conditions):

This insurance shall be an occurrence type policy written in comprehensive form and shall protect the CONTRACTOR and his Subcontractors and the Additional Insured against all claims arising from bodily injury, sickness, disease, or death of any person other than the CONTRACTOR's employees or damage to property of the City of Keller and the Engineer arising out of the act or omission of the CONTRACTOR or his Subcontractors or their agents, employees, or Subcontractors. This policy shall also include protection against claims insured by usual personal injury liability coverage, a (protective liability) endorsed to insure the contractual liability assumed by the CONTRACTOR and his Subcontractors under the article entitle indemnification and completed operations, products liability, contractual liability, broad form property coverage, premises/operations, and independent contractors.

- | | | |
|-----|--|---------------------------|
| (1) | \$2,000,000 | Each Occurrence |
| | \$4,000,000 | General Aggregate |
| | \$4,000,000 | Umbrella/Excess Liability |
| (2) | Property Damage liability insurance will provide Explosion, Collapse and Under-ground coverage where applicable. | |

5.04.B.1. Comprehensive Automobile Liability:

This insurance shall be written in the comprehensive form and shall protect the CONTRACTOR and his Subcontractors and the Additional Insured against all claims for injuries to members of the public and damage to property of others arising from the use of motor vehicles, and shall cover operation on and off the site of all motor vehicles licensed for highway use, whether they were owned, non-owned, or hired, the liability shall not be less than:

- | | |
|-------------|------------------------|
| \$1,000,000 | Per Occurrence |
| \$2,000,000 | Aggregate, or |
| \$2,000,000 | Combined Single Limits |

SC-5.04.B.4 CONTRACTUAL LIABILITY INSURANCE:

The Contractual Liability required by paragraph 5.04.B.4 of the General Conditions shall provide coverage for not less than the following amounts:

\$2,000,000	Each Occurrence
\$4,000,000	General Aggregate
\$4,000,000	Umbrella/Excess Liability

SC-5.04.B.8 WORKERS' COMPENSATION INSURANCE COVERAGE:

Add the following paragraphs to Article 5 of the General Conditions:

"5.04.B.8 Workers' Compensation Insurance Coverage.

In addition to other insurance requirements stipulated herein, the CONTRACTOR shall comply with all requirements of 28 TAC 110.110 and other requirements outlined in this section. Definitions contained in this section are for this section only.

5.04.B.8.1 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 OWNER'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 OWNER.

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

5.04.B.8.2 The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.

5.04.B.8.3 The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.

5.04.B.8.4 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended."

"5.04.B.8.5 The CONTRACTOR shall obtain from each person providing services on a project, and provide to the OWNER:

- (1) a certificate of coverage, prior to that person beginning work on the project, so the OWNER 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.*

5.04.B.8.6 The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

5.04.B.8.7 The CONTRACTOR shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

5.04.B.8.8 The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

5.04.B.8.9 The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, to:

- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;*
- (2) provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided 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 one year thereafter;
- (6) notify the OWNER in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

5.04.B.8.10 By signing this contract or providing or causing to be provided a certificate of coverage, the CONTRACTOR is representing to the OWNER that all employees of the CONTRACTOR who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the 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."

5.04.B.8.11 The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of the notice of breach from the OWNER.

5.04.B.8.12 The text for the notice prescribed in 5.04.B.8.8 shall read as follows:

REQUIRED WORKERS' COMPENSATION COVERAGE

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

Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether

your employer has provided the required coverage, or to report an employer's failure to provide coverage."

SC-5.05 OWNER'S LIABILITY INSURANCE:

Delete Paragraph 5.05 of the General Conditions in its entirety and replace with the following:

"The Contractor shall file with Owner a Certificate of Insurance naming the Owner as an additional insured with regard to the contract project and evidencing insurance coverage of limits not less than the limits indicated in SC-5.04 and SC-5.04.B.4."

SC-5.06 PROPERTY INSURANCE:

Delete Paragraph 5.06.A of the General Conditions in its entirety and insert the following in its place:

"5.06.A. CONTRACTOR shall purchase and maintain until final payment property insurance upon the Work at the site to the full insurable value of 100% of construction total (subject to such deductible amounts as may be provided in these Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and Engineer's consultants in the Work (all of whom shall be listed as insured or additional insured parties), shall insure against the perils of fire and extended coverage, 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 these 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 these 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 5.06.A shall comply with the requirements of GC-5.06.C."

SC-5.06.B PROPERTY INSURANCE:

Delete Paragraph 5.06.B of the General Conditions in its entirety.

SC-6.06.A SUBCONTRACTS:

Add the following sentence to paragraph 6.06.A of the General Conditions:

"CONTRACTOR shall not award Work under the Contract to a Subcontractor(s) that is (are) in excess of 50% of the total contract price without written approval of the OWNER."

SC-6.08.A STORMWATER DISCHARGE PERMIT:

Add the following paragraph to GC 6.08.A.

"State law prohibits discharges of pollutants into storm water from construction activities without a Texas Pollutant Discharge Elimination System Permit (TPDES). Operator(s) of construction sites where 1 or more acres are disturbed, smaller sites that are part of a larger common plan of development or sale where there is a cumulative disturbance of at least 1 acre, or any site designated by the Director, must submit an NOI to obtain coverage under an TPDES Storm Water Construction General Permit.

For the purpose of this project the contractor shall be the "OPERATOR". If required to submit a Notice of Intent (NOI) for storm water discharges associated with construction activities under the TPDES General Permit with the TCEQ, the contractor shall submit the NOI to the City and the TCEQ (if required) at least two (2) days prior to the preconstruction conference. In addition to submitting the NOI, the Contractor shall prepare, submit to the City, and retain on-site a Storm Water Pollution Prevention Plan in accordance with the TCEQ General Permit No. 150000 requirements."

SC-6.10.A TAXES:

Add the following paragraphs to paragraph 6.10.A of the General Conditions:

"The Contractor's attention is directed to Amendment No. 7 in Section 6a, Article 20.01, Chapter 20, Title 122A, Taxation-General of the Revised Civil Statutes of Texas and the recent amendments contained in H.B. 11 as passed by the Legislature of the State of Texas and enacted August 13, 1991.

These statutes provide that all items used by a Contractor, and incorporated into the project, can be purchased free of State and City sales tax when the project is being performed by an exempt agency. Excluded are equipment rentals and other items which are consumed by the Contractor but are not incorporated into the project.

This contract is issued by an organization which qualifies for exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act.

The Contractor performing this contract may purchase all materials, supplies, equipment used in the performance of this contract by issuing to his supplier an exemption or resale certificate.

It shall be the sole responsibility of the Contractor under the terms of this agreement to determine the applicability of the revisions to the tax code and pay all applicable taxes associated with this project without additional or separate pay for the same from the Owner."

SC-6.12 RECORD DOCUMENTS:

Add the following sentence to paragraph 6.12.A. of the General Conditions:

"Drawings submitted upon completion of the project will be submitted by the CONTRACTOR on full size set of construction plans."

SC-6.13 SAFETY AND PROTECTION:

Revise paragraph 6.13.A.3 of the General Conditions to include lawn irrigation systems and read as follows:

...other property at the site or adjacent thereto, including trees, shrubs, lawns, "lawn irrigation systems." walks, pavements...

Add the following paragraphs to Article 6.13.B of the General Conditions:

"The Contractor shall comply with the provisions of the Occupational Safety and Health Act of 1970, and the standards and regulations issued thereunder and warrant that all work, materials, and products furnished under this contract will conform to and comply with said standards and regulations which are in existence on the date of this contract. The Contractor further agrees to indemnify and hold harmless the Owner and the Engineer for all damages suffered by the Owner and the Engineer as a result of the Contractor's failure to comply with the Act and the Standards issued thereunder and for the failure of any material and/or equipment furnished under this contract to so comply.

The Contractor shall also comply with all pertinent provisions of the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., if not in conflict with those of the Occupational Safety and Health Act of 1970 and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment or work under the contract.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his equipment and employees, and for any damage which may result from their failure or their improper construction, maintenance or operation.

Per Texas House Bill 1569 effective as of September 1, 1989, it shall be the responsibility of the contractor to provide and maintain a viable trench safety system at all times during construction activities. The contractor is directed to become knowledgeable and familiar with the standards as set forth by the Occupational Safety and Health Administration (OSHA) for trench safety that will be in effect during the period of construction of the project and the contract is responsible for conforming to such regulations as prescribed by OSHA standards. A bid item for trench excavation safety protection and shoring is included in Proposal Form Exhibit A."

SC-6.17 SHOP DRAWINGS AND SAMPLES:

Amend the first sentence of paragraph 6.17.A of the General Conditions to read as follows:

"After checking and verifying all field measurements and after complying with applicable procedures specified herein, CONTRACTOR shall submit to 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, a number of copies such that the ENGINEER can retain five copies of all Shop Drawings, which will bear a stamp that CONTRACTOR has satisfied CONTRACTOR'S responsibility under the Contract Documents with respect to the review of the submission."

SC-12.03.A CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES:

Add to Paragraph 12.03.A. the following:

"Extensions of time due to weather delays shall be determined in accordance with the following formula:

$$E = R - P \text{ where } R > P \text{ and}$$

E = extra precipitation

P = average precipitation days

R = total precipitation days

Average Precipitation Days (P) are defined as those days of rain, sleet, hail, snow, or any combination thereof, and shall be based upon the average precipitation for each month of the year as defined in the Local Climatological Data Summaries issued by the National Climatic Center in Asheville, North Carolina, and for this contract shall be as follows:

AVERAGE PRECIPITATION

Month	J	F	M	A	M	J	J	A	S	O	N	D
No. of Days	7	7	7	8	9	6	5	5	7	6	6	6

Partial months shall be prorated uniformly for the entire month and the sum of all the months used will be rounded to the nearest whole number. This number shall be "P".

Total Precipitation Days (R) are defined as those days of rain, sleet, hail, snow, or any combination thereof, if determined by the Owner's Project Representative / City Inspector that the Contractor's construction can not progress substantially due to precipitation and thus be put in the Daily Inspection Log Book as a precipitation day. The sum of all the precipitation days shall be "R".

The total number of extra precipitation days (E) shall be granted to the Contractor as extension of time due to weather delays, and no additional time due to drying time for saturated soil will be allowed."

SC-13.03 TESTS AND INSPECTIONS:

Delete the paragraph 13.03.B of the General Conditions and replace with the following:

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

SC-13.07 TWO YEAR CORRECTION PERIOD:

Revise the title of paragraph 13.07 of the General Conditions to read *"TWO YEAR CORRECTION PERIOD"* and revise the content of paragraphs 13.07, 13.07.A, 13.07.B, 13.07.C and 13.07.D to reflect *"two (2) years"* where one (1) year is indicated.

SC-14.01 SCHEDULE OF VALUES:

Delete paragraph 14.01 of the General Conditions in its entirety and replace with the following paragraph:

"The schedule of values submitted as provided in paragraph 2.05.B.3 will serve as the basis for progress payments, subject to acceptance by the ENGINEER, and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed."

SC-14.02.A.1 APPLICATIONS FOR PAYMENTS:

Add a new sentence to the end of paragraph 14.02.A.1 of the General Conditions to read as follows:

"Prior to submitting Application for Payment to Engineer for review, the Contractor shall obtain the Project Inspector's signature verifying that record documents have been updated to reflect variations from the "As Bid" drawings up to the date for which the Contractor seeks payment."

SC-14.02.C REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

Revise the last sentence of paragraph 14.02.C.1 of the General Conditions to read as follows:

"Thirty (30) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due and when due will be paid by Owner to Contractor."

SC-17 MISCELLANEOUS:

Add the following paragraphs to Article 17 of the General Conditions:

"17.06 The use of explosives will not be allowed under this contract for the construction of the proposed facilities without approval of the ENGINEER and OWNER."

17.07 The Contractor is encouraged to abide by the Buy American Provision of Public Law 95-217 (Section 215) of Public Law 92-500 as amended) generally requiring

that preference be given to the use of domestic construction materials in the performance of this contract."

"17.08 The Contractor will not be required to furnish a field office on this contract."

SC-18 WAGE RATES:

Add a new Article entitled ARTICLE 18 - WAGE RATES to include the following:

"18.01 All Bidders will be required to comply with Chapter 2258, Prevailing Wage Rates of Vernon's Texas Codes Annotated with respect to the payment of prevailing wage rates. This applies to the construction of a public work, including a building, highway, road, excavation, and repair work or other project development or improvement, paid for in whole or in part from public funds, without regard to whether the work is done under the public supervision or direction. A worker is employed on a public work if the worker is employed by the contractor or any subcontractor in the execution of the contract for the project.

A worker employed on a public work by or on behalf of the City shall be paid not less than the general prevailing rate of per diem wages for the work of a similar character in the locality in which the work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work.

The State of Texas has adopted the Federal Davis-Bacon wage rates for the use in Texas and the City pursuant to and in accordance with the Texas Government Code, Section 2258.022. You may access the U. S. Department of Labor web site at the following web address to obtain these rates to be used in Tarrant County:

<http://www.gpo.gov/davisbacon/allstates.html>

It shall be the responsibility of the successful Bidder to obtain the proper wage rates from this site for Tarrant County for the type of work defined in these bid specifications."

SC-19 ADDITIONAL CONTRACTOR'S RESPONSIBILITIES:

Add a new ARTICLE 19 – ADDITIONAL CONTRACTOR'S RESPONSIBILITIES to the General Conditions as follows:

"19.01 Revegetation of Unpaved Areas

The Contractor shall revegetate unpaved areas disturbed by construction prior to acceptance of the project. Revegetation shall consist of seed sowing, straw mulching, fertilizing and watering. Revegetation shall be acceptable when vegetation growth achieves one (1) inch in height, with 85% coverage, and no greater than 10 square feet bare. The cost for revegetation of unpaved areas shall be subsidiary to the various items bid in Proposal Form Exhibit A unless otherwise provided as a separate pay item.

19.02 Protection of Livestock

The Contractor is responsible for the protection of all livestock at the project site from harm or injury resulting directly or indirectly from the Contractor's operations. Temporary fencing shall be erected in place of the fencing removed whenever the work is not in progress and when the site is vacated overnight, and/or at all times to prevent livestock from entering the construction area. The cost for livestock protection shall be subsidiary to the various items bid in Proposal Form Exhibit A. Therefore, no separate payment shall be allowed for any service associated with this work.

19.03 Replacement of Fences

All fences encountered and removed during construction of this project shall be restored to the original or a better than original condition upon completion of this project. Where wire fencing, either wire mesh or barbed wire is to be crossed, the Contractor shall set cross-braced posts on each side of the permanent easement before the fence is cut. Should additional fence cuts be necessary, the Contractor shall provide cross-braced posts at each point of the proposed cuts in addition to the cross-braced posts provided at the permanent easement limits, before the fence is cut. The cost for fence removal, temporary closures and replacement shall be subsidiary to the various items bid in Proposal Form Exhibit A. Therefore, no separate payment shall be allowed for any service associated with this work.

19.04 Protection of Trees, Plants, and Soil

All property along and adjacent to the Contractor's operations, including lawns, yards, shrubs, trees, etc., shall be preserved or restored after completion of the work, to a condition equal to or better than existed prior to start of the work. Trees which are to remain are identified on the plans and boring may be required to preserve the designated trees.

Any trees or other landscaped features scarred or damaged by the Contractor's operations shall be restored or replaced at the Contractor's expense. Trimming or pruning to facilitate the work will be permitted only by experienced workmen in an approved manner and only with the property owner's permission. Pruned limbs of 1" (one) diameter or larger, shall be thoroughly treated as soon as possible with a tree wound dressing.

The Contractor shall take all precautions required to prevent soil erosion during construction. If excessive erosion occurs, the Contractor shall take immediate measures to prevent further erosion and restore the disturbed surface with topsoil at completion of the work. No separate payment will be made for this work.

19.05 Underground Facilities

All underground facilities along and adjacent to the Contractor's operations including septic tanks, drainfields, sprinkler systems, butane tanks, etc., shall be preserved or restored after completion of the work, to a condition equal to or better than existed prior to start of the work. No separate payment will be made for this work.

19.06 Confinement of Work

The Contractor shall confine his construction activity and storage of material and equipment to the limits of the City of Keller's public right-of-way, and permanent and temporary construction easements.

19.07 Impairment of Access

Contractor shall make every reasonable effort to assure that adequate access is maintained to adjacent properties during the project. If conditions exist, occur or are encountered by the Contractor that will result in or cause any delay in the Contractor's performance of any part of the work beyond the time specified in the Agreement, Contractor shall take all reasonable steps necessary to assure that such prolonged performance does not materially or substantially impair access to adjoining businesses and properties, whether such impairment is inherently caused by the nature of the work, by the placement of temporary barriers by the Contractor or by any other cause. Contractor covenants and agrees to indemnify, hold harmless and defend Owner, its officers, agents, servants and employees from and against any and all claims, damages, losses and expenses, including but not limited to attorney's fees and court costs and other incidental litigation expenses, occasioned by or arising out of any claim or lawsuit, whether real or asserted, relating to such unnecessary or unreasonable impairment of access, whether based upon inverse condemnation, unnecessary or illegal taking of property or any other cause of action.

SC-20 PAY ITEMS:

Add a new Article to the General Conditions entitled ARTICLE 20 - PAY ITEMS with the following paragraphs to be included:

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

The following descriptions are intended to clarify the nature of the work required for this project, the provisions of the standard technical specifications shall apply, except as otherwise noted herein:

"Each pay item includes all labor, materials, equipment and incidentals necessary to construct that item. The contract shall be awarded based on the "TOTAL BASE BID."

CONSTRUCTION NON-PAY ITEMS:

No direct payment will be made for the following non-pay items or any other item of work required for the completion of this project which is not specifically itemized in Proposal Form Exhibit A. These items will be considered subsidiary to the Contract and the price of it shall be included in the prices for the various construction pay items in the proposal.

NON-PAY ITEM - **SPRINKLING FOR DUST CONTROL**: The Contractor shall sprinkle, as necessary, for dust control. However, no direct payment will be made for this item and it shall be considered incidental to this contract.

NON-PAY ITEM - **SAWCUTS**: All saw cutting required for the construction and/or removal of asphalt pavement, concrete pavement, sidewalks, driveways, curbs, curb & gutter, etc. shall be included in the price bid for the respective pay item.

NON-PAY ITEM – **CONSTRUCTION MATERIALS TESTING**: Contractor will be responsible for hiring an approved testing lab to perform all construction materials testing for the project, including trench/subgrade density tests, concrete compressions tests, concrete slump and mix design, and all other testing required by the City or the Technical Specifications. Construction materials testing shall be included in the price bid for the respective pay items.

CONSTRUCTION PAY ITEMS:

These items correspond to the items shown in Proposal Form Exhibit A. All construction and material pay items related to water, sanitary sewer, storm drainage and/or paving improvements shall be governed by the latest edition (Amended Fifth Edition, 2023) of the Public Works Construction Standards as published by the North Central Texas Council of Governments, unless otherwise noted. The primary NCTCOG specification items have been referenced for certain bid items, as a matter of convenience. Such designation is not exclusive of other NCTCOG specifications which may be applicable to the pay item or which may be referenced from within the indicated specification.

These specifications are hereby included by reference and shall be treated as if they were bound to this contract. The Contractor shall be required to possess a copy of such specifications with the contract document.

Regardless of any stipulation for pay units in any referenced specifications, all pay items shall be measured and paid in the units shown on Proposal Form Exhibit A.

BASE BID ITEMS:

BID ITEM: Site Preparation/Mobilization

This item consists of furnishing all labor and materials necessary for the preparation of the site and those areas adjacent to or offsite as may be designated on the plans for construction operations. All work shall be performed per NCTCOG Item 203, Site Preparation. This work shall include the clearing and grubbing and the removal of all obstructions not designated on the plans to remain in place. Such items include, but are not limited to the following: tree removal, removing existing bushes and vegetation, removing existing water meters and boxes identified in the plans, clearing of underbrush, stump removal, removal of topsoil, rock removal, miscellaneous debris removal, retaining wall removal, and removal of above ground and below ground utilities and structures, septic system and/or irrigation appurtenances, etc., including the relocation of any existing buildings or structures within the project limits not designated by a separate pay item. Any temporary fencing necessary for security or animal containment during construction shall be part of this pay item. Any trees in conflict with proposed improvements shall be identified by the Contractor for the City's review and approval prior to construction.

This item also includes all Contractor insurance, bonds and permits.

It is the Contractor's responsibility to verify all existing structures necessary to be relocated or removed that will conflict with construction and include the materials and labor necessary for this relocation and/or removal within this bid item. Unless otherwise noted, no separate payment will be made for the removal or relocation of existing structures within the limits of construction.

Prior to mobilization, Contractor shall schedule and attend a preconstruction meeting with the City Representative and Inspector. The Contractor shall be prepared to present and discuss schedule and related project elements before being given authorization to begin construction activities.

Measurement and payment shall be made on the basis of the lump sum price bid for site preparation as shown in the construction plans and shall be full compensation for all labor, materials, equipment, and incidentals necessary to complete the work, including hauling and disposal of unwanted material. The lump sum price bid shall also include all Contractor insurance, bonds and permitting costs. Any damage to existing structures or infrastructure shall be repaired and/or replaced at or above original condition as directed by the City and shall be considered subsidiary to this pay item.

BID ITEM: Pre-Construction Video

The Contractor shall prepare a video of existing conditions to verify the condition and location of all existing structures prior to construction. A copy of this video shall be submitted to and approved by the City Representative prior to beginning construction.

Measurement and payment shall be made on the basis of the lump sum price bid for pre-construction video. Payment shall be full compensation for all labor, materials, equipment, and incidentals necessary to complete the work.

BID ITEM: Channel Debris Removal

Channel Debris Removal includes all work associated with the clearing and removal of all obstructions within the channel for proposed channel improvements.

Measurement and payment shall be made on the basis of the unit price bid per lump sum. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: Concrete Column Jackets

Concrete column wraps shall be constructed at the locations shown in the plans, in accordance with plan details and notes.

Measurement and payment shall be made on the basis of the unit price bid per each. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: Concrete Column Repairs

Concrete column repairs shall be performed at the locations shown in the plans, in accordance with plan details and notes.

Measurement and payment shall be made on the basis of the unit price bid per each. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: Channel Excavation and Grading

Channel excavation and grading shall be performed at the locations shown in the plans, in accordance with plan details and NCTCOG Item 203.2 "Unclassified Excavation. Grading operations associated with the proposed channel improvements shall be considered subsidiary to the excavation quantity.

Measurement and payment shall be made on the basis of the cubic yard unit price for Channel Excavation and Grading, as computed by the method of average end areas in the plans. Shrinkage or swelling factors will not be considered in determining the calculated quantities. The contract price shall be total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work, including proper hauling and disposal of unwanted material.

BID ITEM: 48" Pier Protection Riprap (24" Diameter Stone)

Stone riprap shall be constructed at the locations shown in the plans, in accordance with plan details and NCTCOG Item 803.3 "Riprap". Riprap shall be placed on a filter fabric as indicated in the plan details. The filter fabric, riprap material, and necessary excavation shall be considered part of the stone riprap installation and included in this item. Thickness of riprap shall be as noted on the plans.

Filter fabric shall be installed at locations shown on the construction plans, in accordance with plan details and 2014 TxDOT Specification Item 432 "Riprap".

Measurement and payment shall be made on the basis of the unit price per cubic yard of riprap, complete in place, at the thickness stated in the proposal. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: 24" Bank Stabilization Riprap (18" Diameter Stone)

Stone riprap shall be constructed at the locations shown in the plans, in accordance with plan details and NCTCOG Item 803.3 "Riprap". Riprap shall be placed on a filter fabric as indicated in the plan details. The filter fabric, riprap material, and necessary excavation shall be considered part of the stone riprap installation and included in this item. Thickness of riprap shall be as noted on the plans.

Filter Fabric shall be installed at locations shown on the construction plans, in accordance with plan details and 2014 TxDOT Specification Item 432 "Riprap".

Measurement and payment shall be made on the basis of the unit price per cubic yard of riprap, complete in place, at the thickness stated in the proposal. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: 6" Concrete Riprap

Concrete riprap shall be constructed at the locations shown in the plans, in accordance with plan details and NCTCOG Item 803.3 "Riprap". Riprap shall be placed on a prepared base as indicated in the plan details. The prepared base, riprap material, and necessary excavation shall be considered part of the concrete riprap installation and included in this item. Thickness of riprap shall be as noted on the plans.

Measurement and payment shall be made on the basis of the unit price per square yard of riprap, complete in place, at the thickness stated in the proposal. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: 6" Hike and Bike Trail Repair

6" Hike and Bike Trail repair shall be constructed in accordance with plan details and NCTCOG Item 305.2 Concrete Sidewalks, Driveway Approaches, and Barrier Free Ramps". The thickness of the sidewalk shall be as noted on the plans. Demolition, removal, and haul-off associated with repairing the concrete sidewalk destroyed shall be considered subsidiary to this bid item.

Measurement and payment shall be made on the basis of the unit price per square yard of riprap, complete in place, at the thickness stated in the proposal. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, and incidentals necessary to complete the work.

BID ITEM: Access Route

Access route shall be constructed at the locations shown in the plans, in accordance with plan details.

The contractor may place gravel or similar material along access route to facilitate construction ingress or egress. Any gravel or similar material placed shall be removed upon completion of the project. The cost of any gravel or similar material and subsequent removal shall be considered subsidiary to the bid item.

Contractor shall seek City approval for access route and gravel material prior to installation. The contractor will be responsible for managing security and public/private access related to access route during construction. Any costs associated will be considered subsidiary to the bid item.

Measurement and payment shall be made on the basis of the unit price bid per lump for the furnishing of all labor, materials, tools, equipment and incidentals necessary to complete the work including excavation, placing and compacting base material, and cleanup.

BID ITEM: Site Restoration and Sodding

Site restoration and sodding shall be placed in accordance with NCTCOG Item 204.5 "Sodding" and shall be watered and maintained per NCTCOG Item 204.5.3.4 "Watering, and Finishing Sod". Contractor shall place solid block sod to restore the entire limits of disturbed areas and water until final project acceptance.

A minimum of 4" of topsoil per NCTCOG Spec 204.5 shall be utilized prior to installation of block sod. Grading surface to smooth condition shall be considered subsidiary to this bid item.

Watering shall be considered subsidiary to this pay item. The width of site restoration and sodding shall correspond with the width of the area disturbed within the existing R.O.W. and easements.

Measurement and payment shall be made on the basis of the unit price bid per lump sum. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, grading and incidentals necessary to complete the work. In addition to sodding and grading, the unit price bid shall be full compensation for restoring the easement and right-of-way areas to their pre-project conditions or better. The contractor shall video tape and document the condition of the entire construction area prior to construction to establish the existing condition.

BID ITEM: Erosion Control & SWPPP

This item shall consist of control measures and preparation of a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the NCTCOG Item 202 "Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control", The location of the control measures, including silt fences, etc. are shown in the plans. The Contractor shall be responsible for maintaining adequate and appropriate control measure items, quantities, locations, and any changes to the SWPPP and is responsible for providing any erosion control for the project. The erosion control pay item shall include any controls necessary to prevent the discharge of silt and sediment from the work area. Erosion control requirements include, but are not limited to, construction entrance, silt fence, inlet protection, erosion control mats, rock berms and preparation and implementation of a Storm Water Pollution Prevention Plan if required by the Texas Commission on Environmental Quality. All erosion controls shall be constructed in accordance with NCTCOG Item 202 "Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control". Contractor shall include removal of all temporary erosion controls upon completion of the project.

This pay item shall encompass costs for the entire project. Any control measures repairs/replacement/additions, or other measures necessary to maintain compliance with local ordinances, or State or Federal requirements shall be the responsibility of the CONTRACTOR.

Measurement and payment shall be made on the basis of the unit price bid per lump sum for erosion control and storm water pollution prevention elements. Storm water pollution prevention elements shall remain in place until the completion of the project and approval is granted by the City representative. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, grading and incidentals necessary to complete the work, including proper hauling, setup, and removal of storm water pollution prevention elements.

BID ITEM: Traffic Control

Contractor shall provide a traffic control plan and ensure that the placement and location of traffic control and safety devices are in accordance with the latest edition of the Texas Manual on Uniform Traffic Control Devices, NCTCOG Item 801.1 "Barriers and Warning and Detour Signs", and plan notes. This traffic control plan shall be submitted to the City for review and approval prior to implementation of the plan.

The Contractor is responsible for providing traffic control facilities that are adequate for his construction means and methods, including for pedestrian facilities and during material deliveries. The contractor shall coordinate all traffic control measures with the City Inspector.

Measurement and payment shall be made on a lump sum basis for all traffic control measures including, but not limited to, signage, barricades, flagmen, and all other measures necessary to ensure public safety. Traffic control facilities shall remain in place until the completion of the project and all permanent signage is installed. The contract price shall be the total compensation for the furnishing of all labor, material, tools, equipment, grading and incidentals necessary to complete the work, including proper hauling, setup, and removal of traffic control elements.

PROJECT ALLOWANCE

Projects of this type may require modifications to the contract and/or additional work which cannot be foreseen prior to construction. The cost for these modifications and/or additions will be reimbursed from this allowance if approved prior to performing the work. There is no guarantee that this allowance will be used at all. If used, it may be used in part or in whole at the City's discretion.

A project allowance of \$20,000 shall be given for any additional work associated with the project. Additional work shall be determined by the Owner. This work excludes any work listed on the bid proposal or work associated to complete the bid items.

Measurement and Payment shall be on approved invoices and an agreed upon amount of profit and overhead expenses and will include full compensation to complete the work as specified.

**CONSTRUCTION PLANS AND DETAILS
(BOUND SEPARATELY)**

**GEOTECHNICAL REPORT
(BOUND SEPARATELY)**