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PART I -- GENERAL PROVISIONS

SECTION 1
Terms, Definitions,
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SECTION 1
TERMS, DEFINITIONS, ABBREVIATIONS AND SYMBOLS

1.1 TERMS - Unless otherwise stated, the words *directed, required, permitted, ordered, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory*, or words of like meaning, refer to actions, expressions, and prerogatives of the Engineer.

1.2 DEFINITIONS

Addendum - Written or graphic instrument issued prior to the opening of Bids which clarify, correct or change the bidding or the Contract Documents. The term Addendum shall include bulletins and all other types of written notices issued to potential bidders prior to opening of Bids.

Agreement - See Contract.

Base - A layer of specified material of planned thickness placed immediately below the pavement or surfacing.

Bid - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work.

Bidder - Any individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work, acting directly or through a duly authorized representative.

Bid Guaranty - The cash, certified check or Bidder's surety bond accompanying the Bid as a guarantee that the Bidder will enter into a Contract with the Owner for the performance of the Work.

Bond - Bid, performance and payment bond or other instrument of security.

Change Order - A written order to the Contractor signed by the Owner directing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract time issued after the effective date of the Contract. A Change Order may or may not also be signed by the Contractor.

Code - City of Waco adopted Building, Electrical, Mechanical, Plumbing Codes and any other local, state, or federal codes as applicable.

Contract - The written agreement between the Owner and the Contractor covering the Work.

Contract Documents - Including but not limited to; the Contract Addenda (which pertain to the contract documents), notice inviting bids, instruction to bidders; Bid including documentation accompanying the Bid and any post-bid documentation when attached as an exhibit to the Contract, the Bonds, the general conditions, permits from other agencies, the Special Provisions, the Plans, the Standard Plans, Standard Specifications, Reference Specifications, and all Modifications issued after the execution of the Contract.

Contractor - The individual, partnership, corporation, joint venture, or other legal entity having a Contract with the Owner to perform the Work. In the case of work being done under permit issued by the Owner, the permittee shall be construed to be the Contractor. The term "prime contractor" shall mean Contractor.

Contract Price - The total amount of money for which the Contract is awarded.

Contract Unit Price - The amount stated in the Bid for a single unit of an item of work.

Days - Days shall mean consecutive calendar days unless otherwise specified.

Engineer - The Engineer of the Owner or his duly authorized representative.

Major Bid Item - A single Contract item constituting 10 percent or more of the original Contract Price.

Modification - Includes Change Orders and Supplemental Agreements. A Modification may only be issued after the effective date of the Contract.

Notice of Award - The written notice by the Owner to the successful Bidder stating that upon compliance by it with the required conditions, the Owner will execute the Contract.

Notice to Proceed - A written notice given by the Owner to the Contractor fixing the date on which the contract time will start.

Owner - The public governmental agency identified throughout the contract documents and as specifically identified in the contract. The term **Owner** means the City of Waco, Texas or its authorized representative.

Owner's Representative - The Engineer or other duly authorized assistant, agent, engineer, inspector or superintendent acting within the scope of the particular duties instructed to him.

Person - Any individual, firm, association, partnership, corporation, trust, joint venture, or other legal entity.

Plans - The drawings, profiles, cross sections, working drawings, and supplemental drawings, or reproductions thereof, approved by the Engineer, which show the location, character, dimensions or details of the Work.

Private Contract - Work subject to the Owner's inspection, control, and approval, involving private funds, not administered by the Owner.

Proposal - See Bid.

Reference Specifications - Those bulletins, standards, rules, methods of analysis or test, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the latest edition, including amendments in effect and published at the time of advertising the project or issuing the permit, unless specifically referred to by edition, volume, or date.

Roadway - The portion of a street reserved for vehicular use.

Service Connection - Service connections are all or any portion of the conduit, cable or duct, including meter, between a utility distribution line and an individual consumer's line.

Sewer Line - Any conduit intended for the reception and transfer of sewage and fluid industrial waste.

Special Provisions - Any provisions which supplement or modify the Standard Specifications.

Specifications - Standard Specifications, Reference Specifications, Special Provisions, and specifications in Supplemental Agreements between the Contractor and the Owner.

Standard Plans - Details of standard structures, devices, or instructions referred to on the Plans or in Specifications by title or number.

Standard Specifications - The Standard Specifications for Public Works Construction (SSPWC) for the City of Waco, Texas. These specifications are intended to

be written that only first class workmanship and finish of the best grade and quality will result. Barely meeting the very minimum requirements will not be considered as satisfactory. The fact that these specifications may fail to be so complete as to cover all details will not relieve the Contractor of full responsibility for providing a completed project of high quality, first class finish and appearance and satisfactory for operation.

State - The State of Texas.

Storm Drain - Any conduit and appurtenances intended for the reception and transfer of storm water.

Street - Any road, highway, parkway, freeway, alley, walk, or way.

Subbase - A layer of specified material of planned thickness between a base and the subgrade.

Subcontractor - An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work.

Subgrade - For roadways, that portion of the roadbed on which pavement, surfacing, base, subbase, or a layer of other material is placed. For structures, the soil prepared to support a structure.

Supervision - Supervision, where used to indicate supervision by the Engineer, shall mean the performance of obligations, and the exercise of rights, specifically imposed upon and granted to the Owner in becoming a party to the Contract. Except as specifically stated herein, supervision by the Owner shall not mean active and direct superintendence of details of the Work.

Supplemental Agreement - A written amendment of the Contract Documents signed by both parties.

Surety - Any corporation, bound with and for the Contractor for the acceptable performance, execution, and completion of the Work, and for the satisfaction of all obligations incurred.

Unit Price - See Contract Unit Price.

Utility - Tracks, overhead or underground wires, pipeline, conduits, ducts, or structures, sewers, or storm drains owned, operated, or maintained in or across a public right of way or private easement.

Work - That which is proposed to be constructed or done under the Contract or permit, including the furnishing of all labor, materials, and equipment.

Work Order - See Notice to Proceed.

Working Days - A working day is any day within the period between the start of the Contract time as defined in Part 1, Subsection 6.1 and the date of completion; or upon field acceptance by the Engineer for all work provided for in the Contract, whichever occurs first, other than:

- (1) Saturday,
- (2) Sunday,
- (3) any day designated as a holiday by the Owner,
- (4) any day the Contractor is prevented from the performance of the principal units of work under way for a continuous period of not less than 7 hours between 7:00 a.m. and 6:00 p.m., due to the weather or other conditions not under the control of the Contractor.

For every Saturday on which the Contractor chooses to work, one working day will be charged against the Contract working time. Work on Sunday will be permitted only in cases of emergency and then only with written permission of the Engineer. In cases of necessity, Contractors can be required to work on Saturdays and Sundays.

Contractors will not begin work in residential areas until 7:00 a.m.

1.3 ABBREVIATIONS

A. General - The abbreviations herein, together with others in general use, are applicable to these Standard Specifications and to project Plans or other Contract Documents.

All abbreviations and symbols used on Plans for structural steel construction shall conform to those given by the "Manual of Steel Construction" published by the American Institute of Steel Construction, Inc.

B. Common Usage

<u>Abbreviation</u>	<u>Word or Words</u>
ABS	Acrylonitrile - butadiene - styrene
AC	Asphaltic Concrete
ACP	Asbestos cement pipe
Alt	Alternate
Amer Std	American Standard
AWG	American Wire Gage (nonferrous wire)
AT&T	American Telephone and Telegraph Co.
BC	Beginning of curve
BHP	Brake horse power
Bdry	Boundary
BL	Base line
BM	Bench mark
BR	Beginning of return
BVC	Beginning of vertical curve
B/W	Back of wall
CAB	Crushed aggregate base
CAP	Corrugated aluminum pipe
CB	Catch Basin
Cb	Curb
CBR	California Bearing Ratio
c-c	Center to center
C&G	Curb and gutter
CIP	Cast iron pipe
CIPP	Cast-in place pipe
CL	Center line
CLF	Chain link fence
CMB	Crushed miscellaneous base
CMC	Cement mortar-coated
CML	Cement mortar-lined
CO	Cleanout (Sewer)
Col	Column
Conc	Concrete
Const	Construct, construction
Conn	Connection
Coord	Coordinate
CSP	Corrugated steel pipe
CTB	Cement treated base
CV	Check valve
db	Decibels
DF	Douglas fir
Dia	Diameter

<u>Abbreviation</u>	<u>Word or Words</u>
DIP	Ductile iron pipe
DT	Drain tile
Dwg	Drawing
Dwy	Driveway
Dwy Appr	Driveway Approach
DL	Dead load
EC	End of curve
EF	Each face
EG	Edge of gutter
EGL	Energy grade line
EI	Elevation
ELC	Electrolier lighting conduit
Eng	Engineer, Engineering
EP	Edge of pavement
ER	End of return
Esmt	Easement
ETB	Emulsion treated base
EVC	End of vertical curve
Ex	Existing
Exc	Excavation
Exp Jt	Expansion joint
°F	Degree on Fahrenheit temperature scale
Fab	Fabricate
FC	Face of curb
F&C	Frame and cover
FD	Floor drain
Fdn	Foundation
Fed Spec	Federal Specification
FG	Finished grade
FH	Fire hydrant
F&I	Furnish and install
FIC	Fiber optic cable
FL	Flow line
FS	Finished surface or flexural strength
ftg	Footing
ft-lb	Foot-pound
F/W	Face of wall
Ga	Gauge
Galv	Galvanized
GIP	Galvanized iron pipe
GL	Ground, grade, gas, or gutter line
GM	Gas meter
GP	Guy pole
Gr	Grade
Grtg	Grating
GSP	Galvanized steel pipe

<u>Abbreviation</u>	<u>Word or Words</u>
GV	Gate valve
HB	Hose bib
HC	House connection
Hdwl	Headwall
HGL	Hydraulic grade line
HMAC	Hot Mix Asphaltic Concrete
Hor	Horizontal
Hp	Horsepower
HPG	High pressure gas
HPS	High pressure sodium (Light)
Hyd	Hydraulic
ID	Inside diameter
Insp	Inspection
Inv	Invert
IP	Iron pipe or iron pin
JC	Junction chamber
Jct	Junction
JS	Junction structure
Jt	Joint
L	Length
Lab	Laboratory
LD	Local depression
LH	Lamp hole
LL	Live load or liquid limit
Long	Longitudinal
LP	Lamp post
LPS	Low pressure sodium (Light)
LTS	Lime treated soil
Maint	Maintenance
Max	Maximum
Meas	Measure
MH	Manhole
Mil Spec	Military specification
Misc	Miscellaneous
Mon	Monument
Mult	Multiple
MVL	Mercury vapor light
Obs	Obsolete
oc	On center
OD	Outside diameter
OE	Outer edge
Opp	Opposite
Orig	Original
PB	Pull box
PC	Point of curvature

<u>Abbreviation</u>	<u>Word or Words</u>
PCC	Portland cement concrete or point of compound curvature
PCVC	Point of compound vertical curve
PE	Polyethylene
PI	Point of intersection or plasticity index
PL	Property line or plastic limit
PMB	Processed miscellaneous base
POC	Point on curve
POT	Point on tangent
PP	Power pole
PRC	Point of reverse curve
PRVC	Point of reverse vertical curve
PSI	Pounds per square inch
PT	Point of tangency
PVC	Polyvinyl chloride
Pvmt	Pavement
Pvt R/W	Private Right-of-way
Q	Rate of flow in cubic feet per second
Quad	Quadrangle, Quadrant
R	Radius
R&O	Rock and oil
RA	Recycling agent
RAC	Recycled asphalt concrete
RAP	Reclaimed asphalt pavement
RC	Reinforced concrete
RCB	Reinforced concrete box
RCCP	Reinforced concrete cylinder pipe
RCP	Reinforced concrete pipe
RCV	Remote control valve
Ref	Reference
Reinf	Reinforced or reinforcement
Res	Reservoir
ROW	Right-of-way
RR	Railroad
SD	Storm drain
SDR	Standard thermoplastic pipe dimension ratio (ratio of pipe OD to minimum wall thickness)
SI	International System of Units (Metric)
Spec	Specifications
SR	Shrinkage ratio
SS	Sanitary sewer
St	Street
Sta	Station
Stab	Stability
Std	Standard
St Hwy	State highway

<u>Abbreviation</u>	<u>Words or Words</u>
Str	Straight
Str Gr	Straight grade
Struc	Structural/Structure
S/W	Sidewalk
SWBT	Southwestern Bell Telephone Co.
Tan	Tangent
TC	Top of curb
Tel	Telephone
TxDOT	Texas Department of Transportation
Topo	Topography
TP	Top of pavement
Tr	Tract
Trans	Transition
TS	Traffic signal or transition structure
TSC	Traffic signal conduit
TSS	Traffic signal standard
TU	TU Electric Co.
T/W	Top of wall
Typ	Typical
UC	Underground cable
USA	Underground Service Alert
Var	Varies, variable
VB	Valve box
VC	Vertical cover
VCP	Vitrified clay pipe
Vert	Vertical
Vol	Volume
WCR	Water cement ratio
WI	Wrought iron
WM	Water meter
WPJ	Weakened plane joint
WV	Water valve
X Conn	Cross connection
X-Sec	Cross section

C. Institutions

<u>Abbreviation</u>	<u>Word or Words</u>
AASHTO	American Assoc. of State Hwy. and Transportation Officials
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
API	American Petroleum Institute
AREA	American Railway Engineering Association
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers Association
AWS	American Welding Society

<u>Abbreviation</u>	<u>Word or Words</u>
AWWA	American Water Works Association
FAA	Federal Aviation Administration
NEMA	National Electrical Manufacturers Assn.
NOAA	National Oceanic and Atmospheric Administration (Dept. of Commerce)
OSHA	Occupational Safety and Health Administration
UL	Underwriters' Laboratories, Inc.
USGS	United States Geological Survey

1.4 METRIC INTERNATIONAL SYSTEM (SI)

A. General – The U.S. Standard Measures, also called the U.S. Customary System, is used as the principal measurement system in these specifications. However, certain material specifications and test requirements contained herein use the International System of Units (SI or metric system). Therefore, the following metric units and conversions are included. Reference is also made to ASTM E 380 for definitions of various units of the SI system and a more extensive set of conversion factors.

B. Metric Units

<u>Abbreviation</u>	<u>Unit</u>
A	Ampere
°C	Degree on Celsius temperature scale
cd	Candela
cm	Centimeter
g	Gram
J	Joule
kg	Kilogram
km	Kilometer
L	Liter
m	Meter
mm	Millimeter
N	Newton
Pa	Pascal
s	Second
W	Watt

C. Metric Conversions

U.S. Customary Unit	SI Unit
1 foot	0.3048 meter (m)
1 gallon	3.7854 liter (L)
1 inch	25.400 millimeter (mm)
1 psi	6.8948 kilopascal (kPa)
1 pound (mass)	0.4536 kilograms (kg)

U.S. Customary Unit	SI Unit
1 pound force per foot	14.59 newtons per meter (N/m)
1 foot-pound force	1.355 joules (J)
1 pound (force)	4.448 newtons (N)
Formula for converting temperature in degrees Fahrenheit to degrees Celsius	$C = \frac{F - 32}{1.8}$

1.5 SYMBOLS

Δ	Delta, the central angle between tangents
∠	Angle
%	Percent
'	Feet or minutes
"	Inches or seconds
#	Number
/	Per or of (between words)
°	Degree
ℓ	Base line
Ⓢ	Center line
ℓ	Flow line
O/S	Off set
ℓ	Property line
ℓ	Survey line or station line

SECTION 2
Scope and Control
of the Work

SECTION 2 SCOPE AND CONTROL OF THE WORK

2.1 PROPOSAL REQUIREMENTS

A. Proposal Form – The Owner shall furnish bidders with proposal forms which shall state the general location and description of the contemplated work and which shall contain an itemized list of the items of work to be done or materials to be furnished, and upon which bid prices are asked.

B. Quantities in Proposal Form – The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished; and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the Contractor only for the actual quantities of work performed or materials furnished in accordance with the plans and specifications; and it is understood that the quantities may be increased or decreased as hereinafter provided, without in any way invalidating the bid prices.

C. Examination of Plans, Specifications and Site of the Work – Bidders are advised that the plans, specifications and other documents on file as stated in the advertisement shall constitute all the information which the Owner shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, contract and bond forms carefully; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make an intelligent proposal.

No information given by the Owner or any official thereof, other than that shown on the plans and contained in the specifications, proposals and other contract documents, shall be binding upon the Owner. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting his bid, represents and warrants: that he has prepared his bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that he has reviewed, studied and examined the bid prior to the signing and submission of same; and that he was cognizant of the terms of his proposal, verified his calculations and found them to be correct and agrees to be bound thereby.

D. Preparation of Proposal – The bidder shall submit his proposal on the forms furnished by the Owner. All blank spaces in the form shall be correctly filled in and the bidder shall state the prices in numerals, for which he proposes to do the work contemplated or furnish the material required. Such prices shall be written in ink or typed distinctly and legibly. Bidders may submit an original computer print-out sheet bearing certification by and signature for the bidding firm. If the proposal is submitted by an individual, his name must be signed by him or his duly authorized agent. If the proposal is submitted by an association or partnership, the name and address must be given and

the proposal signed by a duly authorized member of the association or partnership. If the proposal is submitted by a corporation, the corporate name and business address must be given and the proposal signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the proposal must be properly certified and must be in writing and submitted with the proposal. The proposal shall be executed in ink. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

E. Proposal Guaranty - No proposal shall be considered unless it is accompanied by cash, cashier's check on any state or national bank, or acceptable bidder's bond payable unconditionally to the Owner. The cash, cashier's check or bidder's bond shall be in the amount of not less than five percent of the total amount of the bid. The proposal guaranty is required by the Owner as evidence of good faith and as a guarantee that if awarded the contract, the bidder shall execute the contract and furnish the required bonds and evidence of insurance within 10 days after the award of said contract or pay the damages as set forth below. The said bidder's bond shall be conditioned that, if the proposal is withdrawn after the bids have been opened or the Contractor refuses to execute the contract in accordance with his proposal and provide the required surety bonds, the Contractor and the surety shall become liable to the Owner for the amount of the bidder's bond. If a bidder's bond is used, the surety thereon shall designate an agent in the Owner's county to whom required notices may be delivered and upon whom service of process may be had.

In the event cash or a cashier's check is submitted along with the proposal of the bidder, and the contractor does not execute the contract and provide the required surety bonds within 10 days after award of said contract, or withdraws his bid after bids have been opened, the Owner shall be entitled to the proceeds of such check.

F. Filing of Proposals - No proposal shall be considered unless it is filed at the place and within the time limit for receiving proposals as stated in the advertisement. Each proposal shall be in a sealed envelope, plainly marked with the word "Proposal," and the name or description of the project as designated in the advertisement.

G. Withdrawing Proposals - Proposals filed with the Owner can be withdrawn or modified and redeposited prior to the time set for opening proposals. Request for non-consideration of proposals must be made in writing addressed to the Owner prior to the time set for opening proposals. After other proposals are opened and publicly read, the proposal for which non-consideration is properly requested may be returned unopened. The proposal may not be withdrawn after the bid opening has commenced. The bidder, in submitting the same, warrants and represents that his bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid shall not and cannot be withdrawn after opening because of any mistake committed by the bidder, provided, however, that any bidder may withdraw his bid 60 days after the actual date of opening thereof, should no award have been made to such bidder.

H. Opening Proposals – The proposals filed with the Owner shall be opened at the time stated in the advertisement and publicly read aloud; and shall thereafter remain on file with the Owner.

I. Irregular Proposals – Proposals shall be considered irregular if they show any omissions, alterations of form, additions, unbalanced values or conditions not called for, unauthorized alternate bids or other irregularities of any kind. The Owner may reject any proposal containing any such irregularity. The Owner, however, reserves the right to waive any irregularities and to make the award in the best interest of the Owner.

The bidder or Contractor shall not take advantage of any error in the bidding or contract documents. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown on or mentioned in both. In case of any apparent difference between the drawings and specifications, or any other apparent error which the bidder or Contractor may discover, he shall refer the matter at once to the Owner as to which, in accordance with the intent of the contract documents, shall govern. The Owner shall have the right to correct any error discovered.

J. Rejection of Proposals – The Owner reserves the right to reject any or all proposals; and all proposals submitted are subject to this reservation. Reasons for rejection of proposals shall include but not be limited to the following reasons:

- (1) proposal received after the time limit for receiving proposals as stated in the advertisement or any subsequently issued addendum;
- (2) proposal unaccompanied by the required bid security;
- (3) proposal constituting a nonresponsive bid;
- (4) proposal containing unsolicited conditions or qualifications.

K. Disqualification of Bidders – Bidders may be disqualified and their proposal not considered for any of the following specific reasons:

- (1) reason for believing collusion exists among bidders;
- (2) reasonable grounds for believing that any bidder is interested in more than one proposal for the work contemplated;
- (3) the bidder or his surety being currently in any litigation against the Owner, or where such litigation is contemplated or imminent, in the sole opinion of Owner;
- (4) the bidder being in arrears on any existing contract or having defaulted on a previous contract;
- (5) lack of competency, responsibility or financial capability as revealed by the bid questionnaires, financial statement, etc.;
- (6) uncompleted work which in the judgement of the Owner shall prevent or hinder the prompt completion of additional work if awarded;
- (7) unbalanced value of any bid items.

2.2 AWARD AND EXECUTION OF CONTRACT

A. Consideration of Contract – After proposals are opened, the proposals shall be tabulated for comparison on the basis of the bid prices and quantities shown in the proposal. Until final award of the contract, the Owner reserves the right to reject any or

all proposals, to waive technicalities or irregularities at its option, to re-advertise for new proposals or proceed to do the work otherwise in the best interests of the Owner. Each bidder shall be furnished a copy of the bid tabulation upon request.

B. Award of Contract and Commencement of Work – The award, if made, shall be to the lowest and best responsible bidder within 60 days after the opening of proposals; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the contract. Following award and execution of the contract and required surety bonds, the Contractor shall commence work within 10 days from the date specified in a written work order to be issued by the Owner. No work shall commence prior to the issuance of such work order or before the required insurance has been obtained by the Contractor, with certificates filed with the Owner evidencing the required coverage to be in force. Should the Owner unreasonably delay the issuance of the work order through no fault of the Contractor, the Contractor shall be entitled only to an equitable extension of contract time, the contract amount to remain unchanged.

C. Return of Proposal Guaranty – The Owner shall normally return the proposal guaranties accompanying all proposals within 10 working days after bid opening except for the three apparent low proposals. The three apparent low proposal guaranties shall be retained by the Owner until the required contract and surety bonds have been executed, after which they shall be returned.

D. Execution of Contract – The person or persons, partnership, company, firm, association or corporation to whom a contract is awarded shall within 10 working days after receipt of the contract, sign the necessary agreements entering into the required contract with the Owner. No contract shall be binding on the Owner until all authorized signatures required by law have been affixed and the executed contract delivered to the Contractor.

E. Failure to Execute Contract – The failure of the bidder to execute the contract or provide the required statutory surety bonds within 10 working days after the contract is awarded shall constitute a breach of his proposal and the Owner may annul the award and retain the proceeds of the bid security. In the event the Owner should re-advertise for bids, the defaulting Contractor shall not be eligible to bid.

2.3 ASSIGNMENTS – The Contractor shall not assign, transfer, convey or otherwise dispose of this contract, or his right to execute it, or his right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the Owner.

The Contractor shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this contract or his claim thereto without the prior written consent of the surety company and the written approval of the Owner.

The approval of the Owner of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments.

The approval by the Owner of any assignment, transfer or conveyance shall not operate to release the Contractor or surety hereunder from any of the contract and bond obligations, and the Contractor shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of his assignees, their agents and employees, as if they were his own.

2.4 SUBCONTRACTS - The Contractor shall not make any subcontract for performing any portion of the work included in the contract without written notice to the Owner. This contract having been made pursuant to the bid submitted by the Contractor and in reliance with the Contractor's personal qualifications and responsibility, the Owner reserves the right to withhold approval of any subcontractor which the Owner may deem would not be in the Owner's best interest.

The Contractor shall, as soon as practicable after signing the contract, submit a separate written notice to the Owner identifying each proposed subcontractor. Upon request of the Owner, the Contractor shall promptly furnish additional information tending to establish that any proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this contract.

If the Owner determines that any proposed subcontractor is unacceptable, he shall so notify the Contractor, who may thereupon submit another proposed subcontractor unless the Contractor decides to do the work himself. Disapproval by the Owner of any proposed subcontractor shall not provide a basis for any claim by the Contractor.

If an approved subcontractor fails to properly perform the work undertaken, he shall be removed from the job upon request of the Owner, following notification to the Contractor in writing of the request for removal and the reasons therefor.

Each subcontract entered into shall provide that the provisions of this contract shall apply to such subcontractor and his officers and employees in all respects as if he and they were employees of the Contractor. The Owner's decision not to disapprove of any subcontract shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible for the acts, omissions, negligence or defaults of his subcontractors and of such subcontractor's officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of his subcontract.

The Contractor agrees to bind each subcontractor, and each subcontractor agrees to be bound by the terms of the contract documents insofar as applicable to his work. The Contractor and each subcontractor jointly and severally agree that nothing in the contract documents or otherwise shall create or be deemed to create any rights in favor of a subcontractor against the Owner; nor shall be deemed or construed to impose upon the Owner any obligation, liability or duty to a subcontractor, or to create any contractual relation whatsoever between a subcontractor and the Owner.

The provision contained herein shall likewise apply to any sub-subcontracts.

2.5 CONTRACT BONDS - Before execution of the Contract by the Owner, the Bidder shall file with the Owner surety bonds in the amounts and for the purposes noted below. Bonds shall be on forms furnished by the Owner and duly executed by a responsible corporate Surety, authorized to issue such bonds in the State of Texas and acceptable

to the Owner, and secured through an authorized agent with an office in Texas. The Bidder shall pay all bond premiums, costs, and incidentals.

Each bond shall incorporate, by reference, the contract and be signed by both the Bidder and Surety.

The Bidder shall provide two good and sufficient surety bonds. The "Payment Bond" (Material and Labor Bond) shall be for not less than 100 percent of the Contract Price, to satisfy claims of material suppliers and of mechanics and laborers employed by it on the Work. The bond shall be maintained by the Contractor in full force and effect until the Work is accepted by the Owner, and until all claims for materials and labor are paid.

The "Performance Bond" shall be for 100 percent of the Contract Price to guarantee faithful performance of all Work, within the time prescribed, in a manner satisfactory to the Owner, and that all materials and workmanship will be free from original or developed defects.

Should any bond become insufficient, the Contractor shall renew the bond within 10 days after receiving notice from the Owner.

Should any Surety at any time be unsatisfactory to the Owner, notice will be given the Contractor to that effect. No further payments shall be deemed due or will be made under the Contract until a new Surety shall qualify and be accepted by the Owner.

Changes in the Work, or extension of time, made pursuant to the Contract, shall in no way release the Contractor or Surety from its obligations. Notice of such changes or extensions shall be waived by the Surety.

On contracts of \$25,000 or less, the surety bond requirement shall not be required.

2.6 PLANS AND SPECIFICATIONS

A. **General** - The Contractor shall keep at the Work site a copy of the Plans and Specifications, to which the Engineer shall have access at all times.

The Plans, Specifications and other Contract Documents will govern the Work. The Contract Documents are intended to be complementary and cooperative and to describe and provide for a complete project. Anything in the Specifications and not on the Plans, or on the Plans and not in the Specifications, shall be as though shown or mentioned in both.

While it is believed that much of the information pertaining to conditions which may affect the cost of the Work will be shown on the Plans or indicated in the Specifications, the Owner does not warrant the completeness or accuracy of such information. The Contractor shall ascertain the existence of any conditions affecting the cost of the Work which would have been disclosed by reasonable examination of the site.

Existing improvements visible at the job site, for which no specific disposition is made on the Plans, but which could reasonably be assumed to interfere with the satisfactory completion of the improvements contemplated by the Plans, shall be removed and disposed of by the Contractor as directed by the Engineer.

The Contractor shall, upon discovering any error or omission in the Plans and Specifications, immediately call it to the attention of the Engineer.

B. **Precedence of Contract Documents** - If there is a conflict between Contract Documents, the document highest in precedence shall control. The precedence shall be:

- (1) Permits and licenses from other agencies as may be required by law.

- (1) Permits and licenses from other agencies as may be required by law.
- (2) Special Provisions.
- (3) Approved Submittals.
- (4) Plans.
- (5) Standard Plans.
- (6) Standard Specifications.
- (7) Reference Specifications.

Change Orders, Supplemental Agreements and approved revisions to Plans and Specifications will take precedence over Items 2 through 6 above. Detailed plans shall have precedence over general plans.

C. Shop Drawings, Product Data and Samples - Shop drawings are drawings, diagrams, schedules and other data specially prepared for the work by the Contractor or any subcontractor, manufacturer, supplier or distributor to illustrate some portion of the work.

Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the work.

Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work shall be judged.

The Contractor shall provide, review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the work or in the work of the Owner or any separate Contractor, all shop drawings, product data and samples required by the contract documents.

By approving and submitting shop drawings, product data and samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the work and of the contract documents.

As the Engineer's review is only for general conformance with the requirements of the contract documents, the Contractor shall not be relieved of responsibility for any deviation from the requirements of the contract documents by the Engineer's approval of shop drawings, product data or samples unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submission and the Engineer has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the shop drawings, product data or samples by the Engineer's approval thereof. The Contractor shall direct specific attention, in writing or on submitted shop drawings, product data or samples, to revisions other than those requested by the Engineer on previous submittals.

The Contractor shall be responsible for delays caused by rejection of the submittal of inadequate or incorrect shop drawings, product data or samples. The Contractor shall be responsible for seeing that any "approved" copies of shop drawings bearing the approval of the Engineer are allowed on the job site. The Contractor shall be responsible for providing all copies of approved shop drawings necessary for the construction operation.

The Contractor shall keep adequate records of submittal and approvals so that an accurate up-to-date record file is maintained at the job site at all times.

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No portion of the work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the Engineer. All such portions of the work shall be in accordance with approved submittals.

2.7 SUBSURFACE DATA - All soil and test hole data, water table elevations, and soil analyses shown on the drawings or included in the Specifications apply only at the location of the test holes and to the depths indicated. Soil test reports for test which have been drilled are available for inspection at the office of the Engineer. Any additional subsurface exploration shall be done by Bidders or the Contractor at their own expense.

The indicated elevation of the water table is that existing at the date the test hole data was determined. It is the Contractor's responsibility to determine and allow for the elevation of groundwater at the date of project construction. A difference in elevation between groundwater shown in soil boring logs and groundwater actually encountered during construction will not be considered as a basis for extra work.

2.8 RIGHT-OF-WAY - Rights-of-way, easements or rights of entry for the Work will be provided by the Owner. Unless otherwise provided, the Contractor shall make arrangements with property owners; pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas and facilities temporarily required, prior to using said work areas. The Contractor shall indemnify and hold the Owner harmless from all claims for damages caused by such actions.

2.9 SURVEYING

A. Permanent Survey Markers - The Contractor shall notify the Engineer at least 7 days before starting Work in order that the Engineer may take necessary measures to ensure the preservation of survey monuments and bench marks. The Contractor shall not disturb permanent survey monuments or bench marks without the consent of the Engineer, and shall bear the expense of replacing any that may be disturbed without permission. Replacement shall be done only by the Engineer.

B. Lot Stakes - The Contractor shall preserve property line and corner survey markers, except where their destruction is unavoidable, and the Contractor is proceeding with authority of the owner of the affected property. Markers that are lost or disturbed by the Contractor's operations shall be replaced at the Contractor's expense by a Public Land Surveyor registered by the State of Texas.

C. Survey Service - Except for private contracts, the Engineer will perform and be responsible for the accuracy of surveying adequate for construction. The Contractor shall preserve construction survey stakes and marks for the duration of their usefulness. If any construction survey stakes are lost or disturbed and need to be replaced, such replacement shall be by the Engineer at the expense of the Contractor.

The Contractor shall notify the Engineer in writing at least 2 working days before survey services will be required in connection with the laying out of any portion of the Work. The Contractor shall dig all holes necessary for line and grade stakes, and shall set bluetops for grade control as required by Engineer.

Unless otherwise specified, stakes will be set and stationed by the Engineer for curbs, headers, sewers, storm drains, structures, and rough grade and a corresponding cut or fill to finished grade (or flowline) indicated on a grade sheet.

D. Private Engineers, Contractors - Surveying by private engineers or contractors on the Work shall conform to the quality and practice required by the Engineer.

E. Line and Grade - All work shall conform to the lines, elevations, and grades shown on the Plans.

Three consecutive points set on the same slope shall be used together so that any variation from a straight grade can be detected. Any such variation shall be reported to the Engineer. In the absence of such report, the Contractor shall be responsible for any error in the grade of the finished work.

Grades for underground conduits will be set at the surface of the ground. The Contractor shall transfer them to the bottom of the trench in a manner approved by the Engineer.

2.10 EXISTING STRUCTURES - The plans show the general locations of all known surface and subsurface structures. The locations of many gas mains, water mains, conduits, sewers, other utilities, etc., however, are unknown, and the Owner assumes no responsibility for failure to show any or all these structures on the plans or the show them in their exact locations. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades; or requires the building of special work, provisions for which are not made in the plans and proposal; in which case the provisions in these specifications for extra work shall apply.

2.11 AUTHORITY OF OWNER AND ENGINEER - The Owner has the final authority in all matters affecting the Work. Within the scope of the Contract, the Engineer has the authority to enforce compliance with the Plans and Specifications. The Contractor shall promptly comply with instructions from the Engineer or an authorized representative.

On all questions relating to quantities, the acceptability of material, equipment, or work, the execution, progress or sequence of work, and the interpretation of Specifications or drawings, the decision of the Engineer is final and binding, and shall be precedent to any payment under the Contract, unless otherwise ordered by the Owner.

2.12 INSPECTION - The Work is subject to inspection and approval by the Engineer. The Contractor shall notify the Engineer before noon of the working day before inspection is required. Unless otherwise authorized, work shall be done only in the presence of the Engineer or an authorized representative. Any work done without proper inspection will be subject to rejection. The Engineer and any authorized representatives shall at all times have access to the Work during its construction at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with these specifications. Inspection of the Work shall not relieve the Contractor of the obligation to fulfill all conditions of the Contract.

SECTION 3
Changes in Work

SECTION 3 CHANGES IN WORK

3.1 CHANGES REQUESTED BY THE CONTRACTOR

A. General - Changes in specific methods of construction may be made at the Contractor's request when approved in writing by the Engineer.

Changes in the Plans and Specifications, requested in writing by the Contractor, which do not materially affect the Work and which are not detrimental to the Work or to the interests of the Owner, may be granted by the Owner to facilitate the Work, when approved in writing by the Engineer.

B. Payment for Changes Requested by the Contractor - If such changes are granted, they shall be made at a reduction in cost or at no additional cost to the Owner. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes.

3.2 CHANGES INITIATED BY THE OWNER

A. General - The Owner may change the Plans, Specifications, character of the work, or quantity of work, provided the total arithmetic dollar value of all such changes, both additive and deductive, does not exceed 25 percent of the Contract Price. Should it become necessary to exceed these limitations, then either party of the Contract, upon demand, shall be entitled to negotiate for revised consideration on the work performed.

Change Orders shall be in writing and state the dollar value of the change or establish method of payment, any adjustment in contract time, and, when negotiated prices are involved, shall provide for the Contractor's signature indicating acceptance.

B. Payment

(1) Contract Unit Prices - If a change is ordered in an item of work covered by a Contract Unit Price, and such change does not involve a substantial change in the character of the work from that shown on the Plans or included in the Specifications, then an adjustment in payment will be made based upon the increase or decrease in quantity and using the Contract Unit Price. In the case of such an increase or decrease in a Major Bid Item, the use of this basis for the adjustment of payment will be limited to that portion of the change which, together with all previous changes to that item, is not in excess of 25 percent of the total cost of such item based on the original quantity and Contract Unit Price.

If a change is ordered in an item of work covered by a Contract Unit Price, and such change does involve a substantial change in the character of the work from that shown on the Plans or included in the Specifications, an adjustment in payment will be made in accordance with Part 1, Subsection 3.2.B(3).

Should any Contract item be deleted in its entirety, payment will be made only for actual costs incurred prior to notification of such deletion.

(2) Stipulated Unit Prices - Stipulated unit prices are those established by the Owner in the Contract Documents, as distinguished from Contract Unit Prices

submitted by the Contractor. Stipulated unit prices may be used for the adjustment of Contract changes.

(3) Agreed Prices - Adjustments in payments for changes other than those set forth in Part 1, Subsection 3.2.B(1) and 3.2.B(2) will be determined by agreement between Contractor and Owner. If unable to reach agreement, the Owner may direct the Contractor to proceed on the basis of Extra Work in accordance with Part 1, Subsection 3.3.

3.3 EXTRA WORK

A. General - New or unforeseen work will be classified as "extra work" when the Engineer determines that it is not covered by Contract Unit Prices or stipulated unit prices.

- (1) The Owner reserves the right to add work to this contract, by change order, at locations not specified in the bid documents. The price for such extra work will be mutually agreed upon by the Owner and the Contractor.

B. Payment - The extra work done by the Contractor as authorized and approved by the Engineer shall be paid for in the manner hereinafter described; and the compensation thus provided shall be accepted by the Contractor as payment in full for all labor, materials, tools, equipment and incidentals and all superintendents' and timekeepers' services, all insurance, bond and all other overhead expense incurred in the performance of the extra work.

Payment for extra work shall be made by one of the following methods:

- (1) **Method "A"** - By unit prices agreed on in writing by the Engineer and approved by the Owner before said extra work is commenced; subject to all other conditions of the contract.
- (2) **Method "B"** - By lump sum price agreed on in writing by the Engineer and the Contractor and approved by the Owner before said extra work is commenced, subject to all other conditions of the contract.
- (3) **Method "C"** - By actual field cost of the work plus 25 percent as described herein below, agreed on in writing by the Engineer and the Contractor, and approved by the Owner before said extra work is commenced, subject to all other conditions of the contract.

In the event extra work is to be performed and paid for under Method "C", the actual field cost of the work shall include the wages of all workmen, foremen, timekeepers, mechanics and laborers, the cost of materials, supplies, trucks, rental on machinery and equipment, only for the time actually employed or used on such extra work, plus all power, fuel, lubricants, water and similar operating expenses and rateable proportion of premiums on construction and maintenance bonds, public liability and workers' compensation and all other insurance required by law or ordinances. The Engineer shall direct the form in which the accounts of actual field cost shall be kept and shall specify in writing the method of doing work, and the type and kind of machinery and equipment to be used. The 25 percent of the actual field cost to be paid the Contractor shall cover and compensate him

for profit, overhead, general supervision and field office expense, and all other elements of cost and expense not embraced within the actual field cost as herein specified. The Contractor shall give the Engineer access to all accounts, bills and vouchers relating thereto.

Method "C" shall be used only in the event that Method "A" or "B" are not applicable or in the best of interest of the Owner.

3.4 CHANGED CONDITIONS - The Contractor shall notify the Engineer in writing of the following Work site conditions, hereinafter called changed conditions, promptly upon their discovery and before they are disturbed:

- (1) Subsurface or latent physical conditions differing materially from those represented in the Contract; and
- (2) Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in work of the character being performed.

The Engineer will promptly investigate conditions when notified of any conditions discovered by it which appear to be changed conditions. If the Engineer determines that the conditions are changed conditions and that they will materially increase or decrease the costs of any portion of the Work, a Change Order will be issued adjusting the compensation for such portion of the Work in accordance with Part 1, Subsection 3.2.B. If the Engineer determines that conditions of which it has been notified by the Contractor do not justify an adjustment in compensation, the Contractor will be so advised in writing, which notice shall also advise the Contractor of its obligation to notify the Engineer, in writing, if the Contractor disagrees. Should the Contractor disagree with such determination, it may submit a written notice of potential claim to the Engineer before commencing the disputed work. The Contractor shall proceed as provided in Part 1, Subsection 3.5.

If the Engineer determines that the conditions are changed conditions and that they will materially affect the performance time, the Contractor, upon submitting a written request, may be granted an extension of time subject to the provisions of Part 1, Subsection 6.5.

The Contractor's failure to give notice of changed conditions promptly upon their discovery and before they are disturbed shall constitute a waiver of all claims in connection therewith.

3.5 DISPUTED WORK

A. General - If the Contractor is of the opinion that (a) the work necessary or required to accomplish the result intended by this contract; or (b) any work ordered to be done as contract work by the Owner is extra work or additional work and not contract work; or (c) any determination or order of the Owner violates the terms and provisions of this contract, the Contractor shall promptly, either before proceeding with such work or complying with such order or determination, notify the Owner in writing of his contentions with respect thereto and request a final determination thereof.

Such determination of the Owner shall be given in writing to the Contractor. If the Owner determines that the work in question is extra work and not contract work, or the determination or order complained of requires performance by the Contractor beyond that required by the contract or violates the terms and provisions of the contract, thereupon the Owner shall cause either (a) the issuance of a written order covering the extra work as provided for in Part 1, Subsection 3.3 hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the contract.

If the Owner determines that the work in question is contract work and not extra work, or that the determination or order complained of does not require performance by the Contractor beyond that required by the contract or violate the terms and provisions

of the Contract, he shall direct the Contractor to proceed, and the Contractor must promptly comply. In order to reserve his right to claim compensation for such work resulting from such compliance, however, the Contractor must, within 20 calendar days after receiving the Owner's determination and direction, notify the Owner in writing that the work is being performed, or that the determination and direction is being complied with, under protest.

If the Contractor fails to so appeal to the Owner for a determination or, having so appealed, should the Contractor thus fail to notify the Owner in writing of his protest, the Contractor shall be deemed to have waived any claim for extra compensation or damages therefor. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the Contractor due to a court order against the Owner, or due to the Owner's failure to secure right-of-way at the time required or because of a conflict of a utility with the work shall not be a cause for additional compensation for damages sustained by the Contractor, but may be a cause for extension of contract working time only.

In addition to the foregoing requirements, the Contractor shall, upon notice from the Owner, produce for examination and audit at the Contractor's office, by the representatives of the Owner, all his books and records showing all of his acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the Contractor may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the Contractor, the Owner shall be released from all claims arising under, relating to or by reason of this contract, except for the sums to be due under the payment provisions of this contract. It is further stipulated and agreed that no conduct on the part of the Owner or any agent or employee of the Owner shall ever be construed as a waiver of the requirements of this section, which such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the contract documents; and in any action against the Owner to recover any sum in excess of the contract amount the Contractor must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the Owner, upon demand therefor, shall also produce for inspection by the Contractor such records as the Owner may have with respect to such disputed work or work performed under protest pursuant to order of the Owner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

B. Performance of Extra or Disputed Work - While the Contractor or his subcontractor is performing extra work in accordance with the Owner's written order, the cost of which is to be determined by Method "C" set forth in Part 1, Subsection 3.3.B hereof, or is performing disputed work or complying with a determination or order under protest in accordance with Part 1, Subsection 3.5.A hereof, the Contractor shall daily furnish the Owner's representative at the site with three copies of verified statements showing:

- (1) The name and number of each workman employed on such extra work or engaged in complying with such determination or order, the character of extra

work each is doing and the wages paid to him, including the rate and amount of payroll taxes contributions for insurance and federal social security; and

(2) The nature, cost and quantity of any materials, plant or construction equipment furnished or used in connection with the performance of such extra work or in complying with such determination or order, and from whom purchased or rented.

A copy of such statements shall be signed by the Owner's representative, noting thereon any items in question, and shall be returned to the Contractor within two working days after submission. This signature shall not be construed as the Owner's agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by Owner representatives.

The Contractor and his subcontractors, when required by the Owner, must also produce for inspection and audit by designated Owner representatives, any and all of his books, vouchers, records, daily job diaries and reports, canceled checks, etc., showing the nature and quantity of labor, materials and equipment actually used in the performance of the extra work; the amounts expended therefor; and the costs incurred for insurance premiums and other items of expense directly chargeable to such extra work. The Contractor must permit the Owner's representatives to make extracts therefrom or copies thereof as may be desired.

Failure of the Contractor to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such extra work.

SECTION 4
Control of Materials

SECTION 4 CONTROL OF MATERIALS

4.1 MATERIALS AND WORKMANSHIP

A. General - All materials, parts, and equipment furnished by the Contractor in the Work shall be new, high grade, and free from defects. Quality of work shall be in accord with the generally accepted standards. Materials and work quality shall be subject to the Engineer's approval.

Materials and work quality not conforming to the requirements of the Specifications shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the Contractor, at its expense, when so directed by the Engineer.

If the Contractor fails to replace any defective or damaged work or material after reasonable notice, the Engineer may cause such work or materials to be replaced. The replacement expense shall be deducted from the amount to be paid to the Contractor.

Used or secondhand materials, parts, and equipment may be used only if permitted by the Specifications.

B. Protection of Work and Materials - The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the Work. Stored materials shall be reasonably accessible for inspection. The Contractor shall also adequately protect new and existing work and all items of equipment for the duration of the Contract.

The Contractor shall not, without the Owner's consent, assign, sell, mortgage, pledge as security, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the Contract.

C. Inspection Requirements - Unless otherwise specified, inspection is required at the source for such typical materials and fabricated items as bituminous paving mixtures, structural concrete, metal fabrication, metal casting, welding, concrete pipe manufacture, protective coating application, and similar shop or plant operations. Steel pipe in sizes less than 18 inches; vitrified clay, asbestos-cement, polyvinyl chloride, and ductile iron pipe in all sizes are acceptable upon certification as to compliance with the Specifications, subject to sampling and testing by the Owner. Standard items of equipment such as electric motors, conveyors, elevators, plumbing fixtures, etc., are subject to inspection at the job site only. Special items of equipment such as designed electrical panel boards, large pumps, sewage plant equipment, etc., are subject to inspection at the source, normally only for performance testing. The Specifications may require inspection at the source for other items not typical of those listed in this subsection. The Owner will provide all inspection and testing laboratory services.

D. Test of Materials - Before incorporation in the Work, the Contractor shall submit samples of materials, as the Engineer may require, at no cost to the Owner. The Contractor, at its expense, shall deliver the materials for testing to the place and at the time designated by the Engineer. All materials tested shall be representative of the materials to be used in the Work and a statement to this effect shall be submitted by the

Contractor with the material sample. Unless otherwise provided, all initial testing and any required retesting shall be performed under the direction of the Engineer, and at no expense to the Contractor.

The Contractor shall notify the Engineer in writing, at least 15 days in advance, of its intention to use materials for which tests are specified, to allow sufficient time to perform the tests. The notice shall name the proposed supplier and source of material.

If the notice of intent to use is sent before the materials are available for testing or inspection, or is sent so far in advance that the materials on hand at the time will not last but will be replaced by a new lot prior to use on the Work, it will be the Contractor's responsibility to renotify the Engineer when samples which are representative may be obtained.

E. Certification – The Engineer may waive materials testing requirements of the Specifications and accept the manufacturer's written certification that the materials to be supplied meet those requirements. Materials test data may be required as part of the certification.

Asphalt – The Contractor shall provide the Engineer with three copies of manufacturer's certified analysis on each tank car or truck load of asphalt.

F. Trade Names or Equals – The Contractor may supply any of the materials specified or offer an equivalent. The Engineer shall determine whether the material offered is equivalent to that specified. Adequate time shall be allowed for the Engineer to make this determination.

Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of manufacturer, such wording is used for the purpose of facilitating its description and shall be followed by the words *or approved equal*. A listing of materials is not intended to be comprehensive, or in order of preference. The Contractor may offer any material, process, or equipment considered to be equivalent to that indicated.

The Contractor shall, at its expense, furnish data concerning items offered by it as equivalent to those specified. The Contractor shall have the material tested as required by the Engineer to determine that the quality, strength, physical, chemical, or other characteristics, including durability, finish, efficiency, dimensions, service, and suitability are such that the item will fulfill its intended function.

Test methods shall be subject to the approval of the Engineer. Test results shall be reported promptly to the Engineer, who will evaluate the results and determine if the substitute item is equivalent. The Engineer's findings shall be final. Installation and use of a substitute item shall not be made until approved by the Engineer.

If a substitute offered by the Contractor is not found to be equal to the specified material, the Contractor shall furnish and install the specified material.

The specified Contract completion time shall not be affected by any circumstance developing from the provisions of this subsection.

G. Weighing Equipment – All scales used for proportioning materials shall be inspected for accuracy and certified within the past 12 months by a commercial scale company approved by the Engineer.

The accuracy of the work of a scale service agency, except as stated herein, shall meet the requirements of the latest revision of the National Bureau of Standards Handbooks 44 and 112 pertaining to weight devices. A certificate of compliance shall be presented, prior to operation, to the Engineer for approval and shall be renewed whenever required by the Engineer at no cost to the Owner.

All scales shall be so arranged that they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be clearly legible. Scales shall be accurate to within 1 percent when tested with the plant shut down. Weighing equipment shall be so insulated against vibration or moving of other operating equipment in the plant area that the error in weighing with the entire plant running will not exceed 2 percent for any setting nor 1½ percent for any batch.

H. Calibration of Testing Equipment – Testing equipment, such as, but not limited to pressure gages, metering devices, hydraulic systems, force (load)–measuring instruments, and strain measuring devices shall be calibrated by a testing agency acceptable to the Engineer at intervals not to exceed 12 months and following repairs, modification, or relocation of the equipment. Calibration certificates shall be provided when requested by the Engineer.

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SECTION 5
Utilities

SECTION 5 UTILITIES

5.1 LOCATION – The Permittee, in the case of private contract, or the Owner, will indicate on the Plans for the project those substructures which may affect the Work. Information regarding removal, relocation, abandonment, or installation of new utilities will be furnished to prospective bidders.

Where underground main distribution conduits such as water, gas, sewer, electric power, telephone or cable television are shown on the Plans, the Contractor, for the purpose of preparing a Bid, shall assume that every property parcel will be served by a service connection for each type of utility.

Existing utility line locations shown on the Plans are approximate only and are furnished as a guide for the Contractor. The Contractor will verify the location and elevation of all utilities before beginning excavation. The Contractor shall notify utility companies that have utilities in the construction area at least 48 hours prior to starting construction to allow them to locate and mark their utilities and make adjustments if required.

The Contractor shall determine the location and depth of all utilities, including service connections, which have been marked by the respective owners and which may affect or be affected by its operations. If no pay item is provided in the Contract for this work, full compensation for such work shall be considered as included in the prices bid for other items of work.

5.2 PROTECTION – The Contractor shall not interrupt the service function or disturb the support of any utility, such as the base and thrust blocks, without authority from the owner or order from the Owner. All valves, switches, vaults, and meters shall be maintained readily accessible for emergency shutoff.

Upon learning of the existence and location of any utility omitted from or shown incorrectly on the Plans, or not properly marked, the Contractor shall immediately notify the Engineer in writing.

The Contractor shall immediately notify the Engineer and the utility owner if any utility is disturbed or damaged.

5.3 REMOVAL – Unless otherwise specified, the Contractor shall remove all interfering portions of utilities shown on the Plans or indicated in the Bid documents as "abandoned" or "to be abandoned in place." Before starting removal operations, the Contractor shall ascertain from the Owner whether the abandonment is complete, and the costs involved in the removal, plugging, capping, and disposal shall be included in the Bid for the items of work necessitating such removals.

All utility poles and guy wires, private sign posts, sign guy wires, and similar private obstructions which interfere with the construction of this project will be removed and replaced or moved to a new permanent location by the owners thereof without cost to the Contractor.

The removal of City of Waco street sign posts and signs is the responsibility of the Contractor. The Contractor shall be responsible for all damage to street signs and sign posts that remain in place or are removed and replaced within the limits of his operations.

In the event that street sign posts and/or signs are damaged or destroyed by the Contractor's operations, they shall be replaced by the Contractor. No separate compensation will be paid for the work, but the costs thereof should be included in such contract pay items as are provided.

5.4 RELOCATION – The owners responsible for utilities within the area affected by the Work will complete their necessary installations, relocations, repairs or replacements before commencement of work by the Contractor. When the Specifications or Plans indicate that a utility installation is to be relocated, altered or constructed by others, the Owner will conduct all negotiations with the utility owners and the work will be done at no cost to the Contractor. Utilities which are relocated in order to avoid interference with the proposed permanent work shall be protected in their relocated position and the cost of such protection shall be included in the Bid for the items of work necessitating such relocation.

After award of the Contract, portions of utilities which are found to interfere with the Work will be relocated, altered or reconstructed by the utility owners, or the Engineer may order changes in the Work to avoid interference. Such changes will be paid for in accordance with Part 1, Subsection 3.2.

When the Plans or Specifications provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be included in the bid for the items of work necessitating such work. Temporary or permanent relocation or alteration of utilities requested by the Contractor for its convenience shall be its responsibility, and it shall make all arrangements and bear all costs.

The utility owner will relocate service connections as necessary within the limits of the Work or within temporary construction or slope easements unless otherwise specified. When directed by the Engineer, the Contractor shall arrange for the relocation of service connections as necessary between the meter and property line, or between a meter and the limits of temporary construction or slope easements. The relocation of such service connections will be paid for in accordance with provisions of Part 1, Subsection 3.3. Payment will include the restoration of all existing improvements which may be affected thereby. The Contractor may, for convenience or to expedite the Work, agree with the owner of any utility to disconnect and reconnect interfering service connections. The Owner will not be involved in any such agreement.

5.5 DELAYS – The Contractor shall notify the Engineer of its construction schedule insofar as it affects the protection, removal or relocation of utilities. Said notification shall be in writing and shall be included as a part of the construction schedule required in Part 1, Subsection 6.1. The Contractor shall notify the Engineer in writing of any subsequent changes in the construction schedule which will affect the time available for protection, removal or relocation of utilities.

The Contractor will not be entitled to damages or additional payment for delays attributable to utility relocations or alterations.

The Contractor may be given an extension of time for unforeseen delays attributable to unreasonably protracted interferences by utilities in performing work correctly shown on the Plans.

5.6 COOPERATION - When necessary, the Contractor shall so conduct its operations as to permit access to the Work site and provide time for utility work to be accomplished during the progress of the Work.

SECTION 6
Prosecution, Progress and
Acceptance of the Work

SECTION 6 PROSECUTION, PROGRESS, AND ACCEPTANCE OF THE WORK

6.1 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF WORK - After notification of award and prior to start of any work, the Contractor shall submit its proposed construction schedule in triplicate to the Engineer for approval. The construction schedule shall be in the form of a tabulation chart or graph and shall be in sufficient detail to show chronological relationship of all activities of the project. These include, but are not limited to: estimated starting and completion dates of various activities, submittal of shop drawings to the Engineer for approval, procurement of materials and scheduling of equipment. The construction schedule shall recognize the requirements of Subsection 5.5 and reflect completion of all work under the Contract within the specified time and in accordance with the Specifications. The schedule will be prepared prior to the pre-construction conference.

For the construction of underground utilities or storm drainage lines, construction limits in paved areas shall be the length of two city blocks including one intersection, construction into the third block shall be equal distance to that which has been completely cleared, backfilled, compacted, graveled, and flushed where deemed necessary by the Engineer in the first block. No more than one street intersection shall be blocked at one time.

The graveling of pavement cut behind construction should be moistened and kept to street grade and free from blowing dust for at least two weeks until any asphalt is placed. The maintenance of these street cuts shall be at the Contractor's expense and included in bid items of the proposal.

Unless otherwise provided, the Contract time shall commence upon the date of issuance of a work order. The Work shall start within 10 days thereafter, and be diligently prosecuted to completion within the time provided in the Specifications. A Work Order will not be issued to the Contractor until an approved schedule of construction has been reviewed by the Engineer.

If the Contractor desires to make a major change in the method of operations after commencing construction, or if the schedule fails to reflect the actual progress, the Contractor shall submit to the Engineer a revised construction schedule in advance of beginning revised operations.

The Engineer may waive these requirements for work constructed under permit.

6.2 PROSECUTION OF WORK - To minimize public inconvenience and possible hazard and to restore street and other work areas to their original condition and state of usefulness as soon as practicable, the Contractor shall diligently prosecute the Work to completion. If the Engineer determines that the Contractor is failing to prosecute the Work to the proper extent, the Contractor shall, upon orders from the Engineer, immediately take steps to remedy the situation. All costs of prosecuting the Work as described herein shall be included in the Contractor's Bid. Should the Contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Engineer, the Engineer may suspend the Work in whole or part, until the Contractor takes said steps.

As soon as possible under the provisions of the Specifications, the Contractor shall backfill all excavations and restore to usefulness all improvements existing prior to the start of the Work.

If Work is suspended through no fault of the Owner, all expenses and losses incurred by the Contractor during such suspensions shall be borne by the Contractor. If the Contractor fails to properly provide for public safety, traffic, and protection of the Work during periods of suspension, the Owner may elect to do so, and deduct the cost thereof from monies due the Contractor. Such actions will not relieve the Contractor from liability.

6.3 SUSPENSION OF WORK

A. General - The Work may be suspended in whole or in part when determined by the Engineer that the suspension is necessary in the interest of the Owner. The Contractor shall comply immediately with any written order of the Engineer. Such suspension shall be without liability to the Contractor on the part of the Owner except as otherwise specified in Subsection 6.5.C.

B. Archaeological and Paleontological Discoveries - If discovery is made of items of archaeological or paleontological interest, the Contractor shall immediately cease excavation in the area of discovery and shall not continue until ordered by the Engineer. When resumed, excavation operations within the area of discovery shall be as directed by the Engineer.

Discoveries which may be encountered may include, but not be limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones, and fossils.

The Contractor shall be entitled to an extension of time and compensation in accordance with the provisions of Subsection 6.5.

6.4 CONTRACTOR DEFAULT: OWNER'S RIGHT TO SUSPEND WORK AND ANNUL CONTRACT

- The work or any portion of the work under contract shall be suspended immediately on written order of the Owner declaring the Contractor to be in default. A copy of such notice shall be served on the Contractor's surety. The contract may be annulled by the Owner for any good cause or causes, among others of which special reference is made to the following:

(a) failure of the Contractor to start the work within 10 days from the date specified in the written work order issued by the Owner to begin the work;

(b) substantial evidence that the progress of the work being made by the Contractor is insufficient to complete the work within the specified working time;

(c) failure of the Contractor to provide sufficient and proper equipment, materials or construction forces for properly executing the work;

(d) substantial evidence that the Contractor has abandoned the work or discontinuance of the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so;

(e) substantial evidence that the Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the work;

(f) deliberate failure on the part of the Contractor to observe any

requirements of these specifications or to comply with any orders given by the Engineer as provided for in these specifications;

(g) failure of the Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Owner;

(h) substantial evidence of collusion for the purpose of illegally procuring a contract or perpetuating fraud on the Owner in the construction of work under contract;

(i) repeated and flagrant violations of safe working procedures;

(j) the filing by the Contractor of litigation against the Owner prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the Contractor shall discontinue the work or such part thereof as the Owner shall designate; whereupon the surety may either at its option assume the contract or that portion thereof which the Owner has ordered the Contractor to discontinue, and perform the same or, with the written consent of the Owner, sublet the same; provided, however, that the surety shall exercise its option, within two weeks after the written notice to discontinue the work has been served upon the Contractor and upon the surety or its authorized agents. The surety in such event shall assume the Contractor's place in all respects, and shall be paid by the Owner for all work performed by it in accordance with the terms of the contract, but in no event shall such payments exceed the contract amount, regardless of the cost to the surety to complete the work.

All monies remaining due the Contractor at the time of his default shall thereupon become due and payable to the surety as the work progresses, subject to all terms of the contract. In case the surety does not within the hereinabove specified time, exercise its obligation to assume the contract or that portion thereof which the Owner has ordered the Contractor to discontinue, then the Owner shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the Contractor hereto agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the Contractor for the purpose of his work and to procure other tools, equipment and materials for the completion of the same; and to charge to the account of the Contractor the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the Owner out of such monies as may be due or may at any time thereafter become due the Contractor under and by virtue of the contract or any part thereof.

The Owner shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the contract, if the same had been completed by the Contractor, then in such case the Owner may pay to the Contractor the difference in the cost, provided that the Contractor shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the contract if the same had been completed by the Contractor, the Contractor and his surety shall pay the amount of the excess to the Owner on notice from the Owner for

excess due including any costs incurred by the Owner, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the Owner by contract or otherwise under the provisions of this section, the Contractor shall continue the remainder of the work in conformity with the terms of the contract; and in such manner as not to hinder or interfere with the performance of workmen employed as above provided by the Owner or surety.

6.5 DELAYS AND EXTENSIONS OF TIME

A. General - If delays are caused by unforeseen events beyond the control of the Contractor, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor will not be entitled to damages or additional payment due to such delays, except as provided in Subsection 6.5.C. Such unforeseen events may include: war, government regulations, labor disputes, strikes, fires, floods, adverse weather or elements necessitating cessation of work, inability to obtain materials, labor or equipment, required extra work, or other specific events as may be further described in the Specifications.

No extension of time will be granted for a delay caused by the Contractor's inability to obtain materials unless the Contractor furnishes to the Engineer documentary proof. The proof must be provided in a timely manner in accordance with the sequence of the Contractor's operations and the approved construction schedule.

If delays beyond the Contractor's control are caused by events other than those mentioned above, the Engineer may deem an extension of time to be in the best interests of the Owner. The Contractor will not be entitled to damages or additional payment due to such delays, except as provided in Subsection 6.5.C.

If delays beyond the Contractor's control are caused solely by action or inaction by the Owner, such delays will entitle the Contractor to an extension of time as provided in Subsection 6.5.B.

B. Extensions of Time - Extensions of time, when granted, will be based upon the effect of delays to the Work. They will not be granted for noncontrolling delays to minor portions of the Work unless it can be shown that such delays did or will delay the progress of the Work.

C. Payment for Delays to Contractor - The Contractor will be compensated for damages incurred due to delays for which the Owner is responsible. Such actual costs will be determined by the Engineer. The Owner will not be liable for damages which the Contractor could have avoided by any reasonable means, such as judicious handling of forces, equipment, or plant. The determination of what damages the Contractor could have avoided will be made by the Engineer.

D. Written Notice and Report - If the Contractor desires payment for a delay as specified in Subsection 6.5.C or an extension of time, it shall file with the Owner a written request and report of cause within 15 days after the beginning of the delay. The request for payment or extension must be made at least 15 days before the specified completion date. Failure by the Contractor to file these items within the times specified will be considered grounds for refusal by the Owner to consider such request.

6.6 TIME OF COMPLETION - The Contractor shall complete the Work within the time set forth in the Contract. The Contractor shall complete each portion of the Work within

such time as set forth in the Contract for such portion. Unless otherwise specified, the time of completion of the Contract shall be expressed in working days.

6.7 COMPLETION AND ACCEPTANCE - The Work will be inspected by the Engineer for acceptance upon receipt of the Contractor's written assertion that the Work has been completed.

If, in the Engineer's judgement, the Work has been completed and is ready for acceptance, it will so notify the Contractor in writing. The Engineer will, in its notification, give the date when the Work was completed. This will be the date when the Contractor is relieved from responsibility to protect the Work.

All work shall be guaranteed by the Contractor against defective workmanship and materials furnished by the Contractor for a period of 1 year from the date the Work was completed. The Contractor shall replace or repair any such defective work in a manner satisfactory to the Engineer, after notice to do so from the Engineer, and within the time specified in the notice. If the Contractor fails to make such replacement or repairs within the time specified in the notice, the Owner may perform this work and the Contractor or Contractor's sureties shall be liable for the cost thereof.

The Contractor will provide the Owner with a notarized affidavit stating that all bills for materials, labor and other obligations have been paid, discharged or waived.

6.8 LIQUIDATED DAMAGES - Failure of the Contractor to complete the Work within the time allowed will result in damages being sustained by the Owner. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each working day in excess of the time specified for the completion of Work, as adjusted in accordance with Subsection 6.5, the Contractor shall pay to the Owner, or have withheld from monies due it, the sum of \$250, unless otherwise provided in the Specifications.

Execution of the Contract shall constitute agreement by the Owner and Contractor that \$250 per day is the minimum value of the costs and actual damage caused by the failure of the Contractor to complete the Work within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due the Contractor if such delay occurs.

6.9 USE OF IMPROVEMENTS DURING CONSTRUCTION - The Owner reserves the right to take over and utilize all or part of any completed facility or appurtenance. The Contractor will be notified in writing in advance of such action. Such action by the Owner will relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic or from the action of the elements or from any other cause, except Contractor operations or negligence. The Contractor will not be required to reclean such portions of the improvement before field acceptance, except for cleanup made necessary by its operations. Nothing in this section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

In the event the Owner exercises its right to place into service and utilize all or part of any completed facility or appurtenance, the Owner will assume the responsibility and liability for injury to persons or property resulting from the utilization of the facility or appurtenance so placed into service, except for any such injury to persons or property caused by any willful or negligent act or omission by the Contractor, Subcontractor, their officers, employees, or agents.

SECTION 7
Responsibilities
of the Contractor

**SECTION 7
RESPONSIBILITIES OF THE CONTRACTOR**

7.1 CONTRACTOR'S EQUIPMENT AND FACILITIES - The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the Work. Such equipment and facilities shall meet all requirements of applicable ordinances and laws.

7.2 LABOR

A. General - Only competent workers shall be employed on the Work. Any employee who in the opinion of the Owner is found to be incompetent, intemperate, troublesome, disorderly, or otherwise objectionable, or who fails or refuses to perform work properly and acceptably, shall be immediately removed from the Work by the Contractor and not be reemployed on the Work.

Under urgent circumstances, the Owner may require immediate removal of an employee for cause, to be followed by written confirmation.

B. Laws - The Contractor, its agents, and employees shall be bound by and comply with applicable provisions of Federal, State, and local laws related to labor.

The Contractor shall strictly adhere to the provisions of the Labor Standards and Prevailing Wage Requirements regarding minimum wages; the 8-hour day and 40-hour week; overtime; Saturday, Sunday, and holiday work; and nondiscrimination because of race, color, national origin, sex, or religion.

The Owner has on file a schedule of prevailing wage rates for the types of work to be done under the Contract. The Contractor shall not pay less than these rates. The prevailing wage rate will be included in the contract documents.

Contractor or any Subcontractor hereunder, shall pay to the City of Waco sixty dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under this Contract. All Subcontractors concerning the Contract shall include this provision to be made applicable to all Subcontractors.

7.3 LIABILITY INSURANCE - Contractor will provide continuous enforcement of adequate insurance issued by companies authorized to conduct business in the State of Texas covering all employees employed by the Contractor. The Contractor shall keep in full force and effect during the term of this Agreement insurance in the following types and minimum amounts:

<u>Type</u>	<u>Amount</u>
Comprehensive General Liability, including Contractual liability, premises/operation, and personal injury liability	Bodily Injury \$250,000 per person \$500,000 aggregate
Property Damage	\$100,000 each occurrence \$100,000 aggregate
Worker's Compensation	Statutory
Employer's Liability	\$100,000
Comprehensive Automobile Liability, including owned, non-owned and hired car coverage	Bodily Injury \$250,000 per person \$500,000 aggregate
Property Damage	\$100,000 each occurrence \$100,000 aggregate

All insurance policies will name the City of Waco as an additional insured. All insurance policies shall be subject to the examination and approval of City for their adequacy as to form, content, form of protection, and insurance company. The Contractor shall furnish to the City's Risk Manager, for the City files, certificates or copies, plainly and clearly evidencing such insurance, with exclusions, exceptions, or limitations, prior to the execution of this Agreement by all parties.

All insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the Owner shall be notified by registered mail, return receipt requested, giving a sufficient time before the date thereof to comply with any applicable law or statute, but in no event less than 10 days before expiration or cancellation is effective.

Subcontractors must meet the requirements and amounts as stated above. The cost of this insurance shall be included in the Contractor's Bid.

7.4 WORKERS' COMPENSATION INSURANCE

A. Definitions:

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

Duration of the Project - Includes the time from the beginning of the work on the project until the Contractor's/Person's work on the project has been completed and accepted by the governmental entity.

Persons Providing Services on the Project ("Subcontractor" in Texas Labor Code §406.096) - Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project.

"Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

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

(2) no later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

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

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

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

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

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided 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 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 governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

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

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

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

7.5 PERMITS - The Owner will obtain, at no cost to the Contractor, all encroachment and building permits necessary to perform Contract work in streets, highways, railways or other rights-of-way. The Contractor shall obtain and pay for all costs incurred for

permits necessitated by its operations such as, but not limited to, those permits required for night work, overload, blasting, and demolition. For private contracts, the Contractor shall obtain all permits incidental to the Work or made necessary by its operations, and pay all costs incurred by the permit requirements.

The Contractor shall pay all business taxes or license fees that are required for the work.

7.6 THE CONTRACTOR'S REPRESENTATIVE – Before starting work, the Contractor shall designate in writing a representative who shall have complete authority to act for it. An alternate representative may be designated as well. The representative or alternate shall be present at the Work site whenever work is in progress or whenever actions of the elements necessitate the Contractor's presence to take measures necessary to protect the Work, persons, or property. Any order or communication given to this representative shall be deemed delivered to the Contractor. A joint venture shall designate only one representative and alternate. In the absence of the Contractor or its representative, instructions or directions may be given by the Engineer to the superintendent or person in charge of the specific work to which the order applies. Such order shall be complied with promptly and referred to the Contractor or its representative.

In order to communicate with the Owner, the Contractor's representative, superintendent, or person in charge of specific work shall be able to speak, read, and write the English language.

7.7 COOPERATION AND COLLATERAL WORK – The Contractor shall be responsible for ascertaining the nature and extent of any simultaneous, collateral, and essential work by others. The Owner, its workers and contractors and others, shall have the right to operate within or adjacent to the Work site during the performance of such work.

The Owner, the Contractor, and each of such workers, contractors and others, shall coordinate their operations and cooperate to minimize interference.

The Contractor shall include in its Bid all costs involved as a result of coordinating its work with others. The Contractor will not be entitled to additional compensation from the Owner for damages resulting from such simultaneous, collateral, and essential work. If necessary to avoid or minimize such damage or delay, the Contractor shall redeploy its work force to other parts of the Work.

Should the Contractor be delayed by the Owner, and such delay could not have been reasonably foreseen or prevented by the Contractor, the Engineer will determine the extent of the delay, the effect on the project, and any extension of time.

7.8 PROJECT SITE MAINTENANCE

A. Cleanup and Dust Control – Throughout all phases of construction, including suspension of work, and until the final acceptance, the Contractor shall keep the site clean and free from rubbish and debris. The Contractor shall also abate dust nuisance by cleaning, sweeping and sprinkling with water, or other means as necessary. The use of water resulting in mud on public streets will not be permitted as a substitute for sweeping or other methods.

When required by the Plans or Specifications, the Contractor shall furnish and operate a self-loading motor sweeper with spray nozzles at least once each working day

for the purpose of keeping paved areas acceptably clean wherever construction, including restoration, is incomplete.

Materials and equipment shall be removed from the site as soon as they are no longer necessary. Before the final inspection, the site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be included in the Contractor's Bid.

Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.

Excess excavated material from catch basins or similar structures shall be removed from the site immediately. Sufficient material may remain for use as backfill if permitted by the Specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping.

Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

The Owner may elect to perform clean up, if the Contractor fails to comply with the Engineer's orders, and deduct the cost thereof from monies due the Contractor.

B. Air Pollution Control – The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.

C. Vermin Control – At the time of acceptance, structures entirely constructed under the Contract shall be free of rodents, insects, vermin, and pests. Necessary extermination work shall be arranged and paid for by the Contractor as part of the Work within the Contract time, and shall be performed by a licensed exterminator in accordance with requirements of governing authorities. The Contractor shall be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination operations.

D. Sanitation – The Contractor shall provide and maintain enclosed toilets for the use of employees engaged in the Work at each project location. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances, and regulations pertaining to public health and sanitation.

Wastewater shall not be interrupted. Should the Contractor disrupt existing sewer facilities, sewage shall be conveyed in closed conduits and disposed of in a sanitary sewer system. Sewage shall not be permitted to flow in trenches or be covered by backfill.

E. Temporary Light, Power, and Water – The Contractor shall furnish, install, maintain, and remove all temporary light, power, and water at its own expense. These include piping, wiring, lamps, and other equipment necessary for the Work. The Contractor shall not draw water from any fire hydrant (except to extinguish a fire), without obtaining permission for the City water office.

F. Water Pollution Control – The Contractor shall exercise every reasonable precaution to protect channels, storm drains, and bodies of water from pollution. It shall

conduct and schedule operations so as to minimize or avoid muddying and silting of said channels, drains, and waters. The Contractor will comply with EPA National Pollutant Discharge Elimination system (NPDES) requirements. Water pollution control work shall consist of constructing those facilities which may be required to provide prevention, control, and abatement of water pollution.

G. Drainage Control – The Contractor shall maintain drainage within and through the work areas. Earth dams will not be permitted in paved areas. Temporary dams of sandbags, asphaltic concrete, or other acceptable material will be permitted when necessary. Such dams shall be removed from the site as soon as their use is no longer necessary.

The Contractor shall provide at his own cost and expense all methods of adequately draining the Work. No separate measurement or compensation will be paid for suddrains or other methods of draining, but the cost thereof shall be included in such contract pay items as are provided in the proposal and contract.

The Contractor shall be entirely responsible for adequate draining and pumping of water from the excavation. In the event of failure to provide adequate draining and pumping, which results in unstable subgrade conditions requiring the use of foundations or concrete cradles, they shall be placed at the entire cost and expense of the Contractor.

7.9 PROTECTION AND RESTORATION OF EXISTING IMPROVEMENTS – The Contractor shall be responsible for the protection of public and private property adjacent to the Work and shall exercise due caution to avoid damage to such property.

The Contractor shall repair or replace all existing improvements within the right-of-way which are not designated for removal (e.g., curbs, sidewalks, driveways, fences, walls, signs, utility installations, pavement, structures, etc.) which are damaged or removed as a result of its operations. When a portion of a sprinkler system within the right-of-way must be removed, the remaining lines shall be capped. Repairs and replacements shall be at least equal to existing improvements and shall match them in finish and dimension.

Trees, lawns, and shrubbery that are not to be removed shall be protected from damage or injury. If damaged or removed due to Contractor's operations, they shall be restored or replaced in as nearly the original condition and location as is reasonably possible. Lawns shall be reseeded, sodded, sprigged and covered with suitable mulch.

The Contractor shall give at least a one-week notice in writing to occupants or owners of adjacent property to permit them to salvage or relocate plants, trees, fences, sprinklers, and other improvements, within the right-of-way which are designated for removal and would be destroyed because of the Work.

The removal of trees and shrubbery shall be approved by the Engineer in all cases where the necessity of such removal is open to question.

All costs to the Contractor for protecting, removing, and restoring existing improvements shall be included in the Bid.

7.10 PUBLIC CONVENIENCE AND SAFETY

A. Traffic and Access – The Contractor's operations shall cause no unnecessary inconvenience. The access rights of the public shall be considered at all times. Unless

otherwise authorized, traffic shall be permitted to pass through the Work, or an approved detour shall be provided.

Safe and adequate pedestrian and vehicular access shall be provided and maintained to: fire hydrants; commercial and industrial establishments; churches, schools and parking lots; service stations and motels; hospitals; police and fire stations; and establishments of similar nature. Access to these facilities shall be continuous and unobstructed unless otherwise approved by the Engineer.

Vehicular access to residential driveways shall be maintained to the property line except when necessary construction precludes such access for reasonable periods of time. If backfill has been completed to the extent that safe access may be provided, and the street is opened to local traffic, the Contractor shall immediately clear the street and driveways and provide and maintain access.

The Contractor shall cooperate with the various parties involved in the delivery of mail and the collection and removal of trash and garbage to maintain existing schedules for these services.

Grading operations, roadway excavation and fill construction shall be conducted by the Contractor in a manner to provide a reasonably satisfactory surface for traffic. When rough grading is completed, the roadbed surface shall be brought to a smooth, even condition satisfactory for traffic.

The Contractor shall include in its Bid all costs for the above requirements.

B. Storage of Equipment and Materials, in Public Streets - Construction materials shall not be stored in streets, roads, or highways for more than 14 days after unloading. All materials or equipment not installed or used in construction within 14 days after unloading shall be stored elsewhere by the Contractor at its expense unless authorized additional storage time by the Engineer.

Construction equipment shall not be stored at the Work site before its actual use on the Work nor for more than 5 days after it is no longer needed. Time necessary for repair or assembly of equipment may be authorized by the Engineer.

Excavated material, except that which is to be used as backfill in the adjacent trench, shall not be stored in public streets unless otherwise permitted. After placing backfill, all excess material shall be removed immediately from the site.

C. Street Closures, Detours, Barricades - The Contractor shall comply with all applicable State, County and City requirements for closure of streets. The Contractor shall provide barriers, guards, lights, signs, temporary bridges, flagpersons, and watchpersons. The Contractor shall be responsible for compliance with additional public safety requirements which may arise. The Contractor shall furnish and install signs and warning devices and promptly remove them upon completion of the Work. The "Texas Manual on Uniform Traffic Control Devices for Streets and Highways" requirements shall apply to the above.

At least 48 hours in advance of closing, partially closing or reopening, any street, alley, or other public thoroughfare, the Contractor shall notify the Engineering Department, and comply with their requirements. Deviations must first be approved in writing by the Engineer.

Prior to beginning construction, the Contractor shall submit a proposed plan of the streets which he plans to barricade to the City Traffic Operations Manager for his approval and assistance.

The Contractor shall secure approval, in advance, from authorities concerned for the use of any bridges proposed by it for public use.

All costs involved shall be included in the Bid.

D. Public Safety

(1) Safety Orders - The Contractor shall have at the Work site, copies or suitable extracts of any Safety Orders that would apply to the construction project. The Contractor shall comply with provisions of these and all other applicable laws, ordinances, and regulations.

Before excavating any trench 5 feet or more in depth, the Contractor shall submit a detailed plan to the Owner showing the design of shoring, bracing, sloping, or other provisions to be made for the worker's protection from the hazard of caving ground during the excavation of such trench. The plan shall be prepared by a registered Civil Engineer. No excavation shall start until the Engineer has accepted the plan.

Payment for performing all work necessary to provide trench safety shall be included in the bid items for trench safety.

(2) Use of Explosives - Explosives may be used only when authorized in writing by the Engineer, or as otherwise stated in the Specifications. Explosives shall be handled, used, and stored in accordance with all applicable regulations.

The Engineer's approval of the use of explosives shall not relieve the Contractor from liability for claims caused by blasting operations.

(3) Special Hazardous Substances and Processes - Materials that contain hazardous substances or mixtures may be required on the Work. A Material Safety Data Sheet shall be requested by the Contractor from the manufacturer of any hazardous products used.

Material usage shall be accomplished with strict adherence to Occupational Safety and Health Administration (OSHA) and Texas Hazard Communication Act requirements and all manufacturer warnings and application instructions listed on the Material Safety Data Sheet and on the product container label.

The Contractor shall notify the Engineer if a specified product cannot be used under safe conditions.

7.11 PATENT FEES OR ROYALTIES - The Contractor shall absorb in its Bid the patent fees or royalties on any patented article or process furnished or used in the Work. The Contractor shall indemnify and hold the Owner harmless from any legal action that may be brought for infringement of patents.

7.12 LAWS TO BE OBSERVED - The Contractor shall keep fully informed of State and Federal laws and County and Municipal ordinances, codes, and regulations which in any manner affect those employed in the Work or the materials used in the Work or in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with such laws, ordinances, codes, and regulations.

7.13 INDEMNIFICATION - IF CONTRACTOR FAILS TO PROVIDE THE INSURANCE REQUIRED IN SECTION 7.3 NAMING CITY AS ADDITIONAL INSURED, THEN CONTRACTOR AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED UNDER THIS AGREEMENT, AND HEREBY AGREES TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY OR IN CONNECTION WITH THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE SOLE NEGLIGENCE OF THE CITY, ITS EMPLOYEES, AGENTS, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY. IF CONTRACTOR PROVIDES THE APPROPRIATE INSURANCE NAMING CITY AS AN ADDITIONAL INSURED, THEN THIS SECTION SHALL NOT APPLY.

7.14 EQUAL EMPLOYMENT OPPORTUNITY - During the performance of this Contract, the Contractor agrees as follows:

- (a) the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin. The Contractor shall take affirmative action to insure that applicants are employed, that employees are treated during employment without regard to their race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees or applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- (b) the Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin or age.
- (c) the Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided, advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (d) the Contractor shall include the provisions of this section in all Subcontracts pertaining to the Work.

During the course of the Work, the Contractor shall submit to the Engineer, on a monthly basis, a breakdown by minority group of all employees at the site of the Work.

7.15 STATE AND LOCAL SALES AND USE TAXES - The Owner qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act as amended. Therefore, the Contractor shall not pay such taxes which would otherwise be payable in connection with the performance of this Contract.

The Contractor shall issue an exemption certificate in lieu of the tax on the purchase, rental or lease of:

- (a) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and
- (b) all materials, supplies, equipment and other tangible personal property used or consumed by the Contractor in performing the Contract with the Owner.

Materials and supplies "used in the performance of a contract" include only those materials actually incorporated into the property being improved and those supplies directly used to incorporate such materials into the property being improved. Overhead supplies and supplies used indirectly or only incidental to the performance of the contract with the Owner are not included in the exemption.

Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the Contractor must name the Owner and the project for which the equipment, material and supplies are being purchased, leased or rented.

7.16 TAX CERTIFICATION - Contractor hereby certifies that it is not delinquent in the payment of any taxes owed to the City and will pay any taxes owed to the City so that such taxes will not become delinquent. If the previous certification is determined to be false, such false certification shall constitute grounds for termination of the Contract at the option of the City. This Contract is subject to Article VIII, Section 8 of the City of Waco, Texas Charter, as amended, and as follows:

- (a) the City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City of Waco for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to so offset the said taxes against the same.

7.17 OFFSET OF OTHER DEBTS AGAINST CITY - Contractor agrees that the City is entitled to counterclaim and offset against any debt, claim, demand, or account owed by the City to Contractor pursuant to this Contract, for any debt owed to the City, other than for arrearage of taxes which are governed by Part I, Section 7.16. The City may withhold, from payment under this Contract, an amount equal to the total amount of debts owed to the City by Contractor. The City may apply the amount withheld to the debts owed to the City by Contractor until said debts are paid in full.

7.18 TIME OF FILING CLAIMS: It shall be agreed by both parties hereto that all questions of disputes or adjustments presented by the Contractor shall be in writing and filed with the Engineer within thirty (30) days after the Engineer has given any directions, orders, or instructions to which the Contractor desires to take exception. The Engineer shall reply to such written exceptions by the Contractor and render his final decisions in writing. In case the Contractor should disagree with the Engineer's decisions, any demand for arbitration should be filed with the Engineer in writing within ten (10) days after the date of delivery to the Contractor of the Engineer's final decision. He further agrees that final acceptance of the work by the City and the acceptance by the Contractor of the final payment shall be a bar to any claims by either party.

7.19 FORCE MAJEURE: Neither party shall be held responsible for losses resulting if the fulfillment of any terms or provisions of this contract are delayed or prevented by any cause not within the control of the party whose performance is interfered with, which by the exercise of reasonable diligence said party is unable to prevent.

7.20 WAIVER: No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

7.21 MODIFICATIONS: This contract can be modified or rescinded only by a written statement signed by both parties or their duly authorized agents.

7.22 RIGHT TO ASSURANCE: Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

7.23 VENUE: Waco, McLennan County, Texas

**SECTION 8
Measurement and
Payment**

SECTION 8 MEASUREMENT AND PAYMENT

8.1 MEASUREMENT OF QUANTITIES FOR UNIT PRICE WORK

A. General - Unless otherwise specified, quantities of work shall be determined from measurement or dimensions in horizontal planes. However, linear quantities of pipe, piling, fencing and timber shall be considered as being the true length measured along longitudinal axis.

Unless otherwise provided in Specifications, volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimension.

B. Methods of Measurement - Materials and items of work which are to be paid for on basis of measurement shall be measured in accordance with methods stipulated in the particular sections involved.

C. Certified Weights - When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales or, when approved by the Engineer, on a completely automated weighing and recording system. The Contractor shall furnish the Engineer with duplicate licensed weighmaster's certificates showing actual net weights. The Owner will accept the certificates as evidence of weights delivered.

D. Units of Measurement - Measurements shall be in accordance with U.S. Standard Measures. A pound is an avoirdupois pound. A ton is 2,000 pounds avoirdupois. The unit of liquid measure is the U.S. gallon.

8.2 LUMP SUM WORK - Items for which quantities are indicated "Lump Sum" or "L.S." shall be paid for at the price indicated in the Bid. Such payment shall be full compensation for the items of work and all work appurtenant thereto.

When required by the Specifications or requested by the Engineer, the Contractor shall submit to the Engineer within 15 days after award of Contract, a detailed schedule to be used only as a basis for determining progress payments on a lump sum contract or designated lump sum bid item. This schedule shall equal the lump sum bid and shall be in such form and sufficiently detailed as to satisfy the Engineer that it correctly represents a reasonable apportionment of the lump sum.

8.3 PAYMENT

A. General - The quantities listed in the Bid schedule will not govern final payment. Payment to the Contractor will be made only for actual quantities of Contract items constructed in accordance with the Plans and Specifications. Upon completion of construction, if the actual quantities show either an increase or decrease from the quantities given in the Bid schedule, the Contract Unit Prices will prevail subject to the provisions of Part 1, Subsection 3.2.B(1).

The unit and lump sum prices to be paid shall be full compensation for the items of work and all appurtenant work, including furnishing all materials, labor, equipment, tools, and incidentals.

Payment will not be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed, and material placed outside of the Plan lines. No compensation will be allowed for disposing of rejected or excess material.

Whenever any portion of the Work is performed by the Owner at the Contractor's request, the cost thereof shall be charged against the Contractor, and may be deducted from any amount due or becoming due from the Owner.

Whenever immediate action is required to prevent injury, death, or property damage, and precautions which are the Contractor's responsibility have not been taken and are not reasonably expected to be taken, the Owner may, after reasonable attempt to notify the Contractor, cause such precautions to be taken and shall charge the cost thereof against the Contractor, or may deduct such cost from any amount due or becoming due from the Owner. Owner action or inaction under such circumstances shall not be construed as relieving the Contractor or its Surety from liability.

Payment shall not relieve the Contractor from its obligations under the Contract; nor shall such payment be construed to be acceptance of any of the Work. Payment shall not be construed as the transfer of ownership of any equipment or materials to the Owner. Responsibility of ownership shall remain with the Contractor who shall be obligated to store any fully or partially completed work or structure for which payment has been made; or replace any materials or equipment required to be provided under the Contract which may be damaged, lost, stolen or otherwise degraded in any way prior to acceptance of Work, except as provided in Part 1, Subsection 6.9.

Guarantee periods shall not be affected by any payment, but shall commence on the date of final completion and acceptance of all work covered by the project.

Not later than the 15th day of each calendar month, the Owner shall make a progress payment to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under this Contract, but to insure the proper performance of this Contract, the Owner shall retain ten percent of the amount of each estimate until final completion and acceptance of all work covered by the contract: Provided, that the Contractor shall submit his estimate not later than the first day of the month: Provided, further that the Owner at any time after fifty percent of the work has been completed, if it finds that satisfactory progress is being made, may make any of the remaining progress payments in full: Provided, further, that on completion and acceptance of each separate building, public work, or other division of the Contract on which the price is stated separately in the Contract, payment may be made in full, including retaining percentages thereon, less authorized deductions.

B. Partial Payment – The Owner shall make an approximate estimate of the value of the work done during the month under the Specifications. The estimate may include acceptable nonperishable materials and equipment delivered to the Work.

The Contractor shall furnish to the Owner such detailed information as he may request to assist him in the preparation of monthly estimates. It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the Owner of the amount of work done or of its quality or sufficiency

nor as an acceptance of the work or the release of the Contractor of any of his responsibility under the Contract.

No partial payment made to the Contractor or its sureties will consummate a waiver of the liquidated damages under Part 1, Subsection 6.8.

On contracts for which no surety bonds are required, payment to the Contractor will be made when all work to be performed under the contract is complete and accepted by the Owner. The Owner shall retain ten (10) percent of the total contract price for sixty (60) days after completion and acceptance of the work by the Owner.

C. Retainage - As security for the faithful completion of the Work by the Contractor, the Owner shall retain ten percent of the total dollar amount of work done on all contracts less than \$400,000; five percent of the total dollar amount of work done on all contracts of \$400,000 or more.

D. Final Inspection and Acceptance - Whenever the improvements provided for by the Contract shall have been completely performed on the part of the Contractor, the Contractor shall notify the Engineer that the improvement is ready for final inspection. The Engineer shall then make such final inspection, and if the work is satisfactory and in accordance with the specifications and contract documents, the Contractor shall be issued a certificate of acceptance.

E. Final Payment - Whenever the improvements provided for by the Contract shall have been completely performed on the part of the Contractor, as evidenced in the certificate of acceptance, and all required submissions provided to the Owner, a final estimate showing the value of the work shall be prepared by the Engineer as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of this final estimate, less any sums that have been previously paid, deducted or retained under the provisions of the Contract, shall be paid the Contractor, provided the Contractor has furnished to the Owner a one (1) year guarantee and an affidavit or other satisfactory evidence that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for and used in the performance of the Work have been paid or otherwise satisfied, or that the person or persons to whom the same may respectively be due have consented to such final payment.

The acceptance of the Contractor of the final payment as aforesaid shall operate as and shall be a release to the Owner from all claims or liabilities under the Contract, including all Subcontractor claims, for anything done or furnished or relating to the Work under the Contract or for any act or neglect of said Owner relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the Contractor on any partial or final payment, or on the retainage.

F. Payment Withheld - In addition to express provisions elsewhere contained in the contract, the Owner may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the Owner's interest, or, if it so elects,

may withhold or retain all or a portion of any progress payment or refund payment or account of:

- (1) Unsatisfactory progress of the work not caused by conditions beyond the Contractor's control;
- (2) Defective work not corrected;
- (3) Contractor's failure to carry out instructions or orders of the Owner or his representative;
- (4) A reasonable doubt that the contract can be completed for the balance then unpaid;
- (5) Work or execution thereof not in accordance with the contract documents;
- (6) Claim filed by or against the Contractor or reasonable evidence indicating probable filing of claims;
- (7) Failure of the Contractor to make payments to subcontractor or for material or labor;
- (8) Damage to another contractor;
- (9) Unsafe working conditions allowed to persist by the Contractor;
- (10) Failure of the Contractor to provide work schedules as required by the Owner; or
- (11) Use of subcontractors without the Engineer's approval.

When the above grounds are removed, payment shall be made for amounts withheld because of them, and Owner shall never be liable for interest on any delayed or late payment.

G. Mobilization - When a bid item is included in the Proposal form for mobilization and subject to the conditions and limitations in the Specifications, the costs of work in advance of construction operations and not directly attributable to any specific bid item will be included in the progress estimate. When no such bid item is provided, payment for such costs will be considered to be included in the other items of work.