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## 103 DEFINITIONS AND ABBREVIATIONS

### 103.1 SUMMARY

This section includes definitions and resolves potential conflicts between associated documents and notes included in the Contract Documents. Conformance to the terms of this section is a requirement that is subsidiary to all other items in this Contract, and no direct payment shall be allowed for any item referenced under this section.

### 103.2 DEFINITIONS

The following words and expressions, or pronouns used in their place, shall whenever they appear in this Contract be construed as follows, unless a different meaning is clear from the context:

**Abbreviations:** Wherever the abbreviation defined herein occur on the plans, in the specifications, contract, bonds, advertisement, bid or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as shown in Abbreviations and Acronyms sections.

**Addendum, Bulletin, or Letter of Clarification:** Written changes, revisions, or any additional contract provisions issued by the owner or its representative, to the prospective bidders, to be acknowledged by the bidders prior to bid opening.

**Advertisement:** Legal publications pertaining to the work contemplated or under contract.

**Approved, Directed, Required, and Words of like Import:** Whenever they apply to the work being performed as directed by the contract, specifications, drawings, or written direction given by the owner or representative, shall imply the direction, requirements, permission or designation of the owner.

**Air Temperature:** The temperature measured in degrees Fahrenheit (°F) in the shade, not in the direct rays of the sun, and away from artificial heat.

**Apparent Low Bidder:** The Bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the Department.

**Architect or Engineer of Record:** A person registered as an architect/engineer or licensed as a landscape architect, in accordance with State law, exercising overall responsibility for the design or a significant portion of the design and performs certain Contract administration responsibilities as described in the Contract; or a firm employed by the City to provide professional architectural/engineering services.

**Award:** The City's acceptance of a Contractor's bid for a proposed Contract that authorizes the Department to enter into a Contract.

**Backfill:** Embedment and final backfill as indicated in specifications of standard drawings.

**Base:** a layer of specified material of plan thickness placed immediately below the pavement course surfacing.

**Bid:** The written statement or statements duly filed with the City office specified in the advertisement for bids of these specifications by the person, persona, partnership, company, firm, association, or corporation proposing to do the work contemplated, including the approved form on which the formal bids for the work are to be prepared.

**Bid Bond:** The security designated in the advertisement and bid, to be furnished by each BIDDER on all bids in excess of \$50,000, as a guaranty of good faith to enter into a contract with the OWNER and execute the required bonds for the work contemplated after the work is awarded to the BIDDER and payment of damages upon the BIDDER'S failure to enter into the contract.

**Bidder:** Any person, persons, partnership, company, firm, association, or corporation acting directly or through a duly authorized representative submitting a bid for the work contemplated.

**Bidders Questionnaire:** A prequalification form completed by a prospective Bidder reflecting a Bidder's financial data and experience.

**Blast Cleaning:** Using one of the blasting methods including, but not limited to, water blasting, low-pressure water blasting, high-pressure water blasting, abrasive blasting, water-abrasive blasting, shot blasting, slurry blasting, water injected abrasive blasting, and brush blasting.

**Brush Blasting:** Sweeping lightly with an abrasive blast to remove loose material.

**Business Day:** A Business Day for non-construction activities is defined as the time period in which the Burnet City Hall is open for public business between the days of Monday through Friday (inclusive) from 8 A.M. to 5 P.M. In general discussions, a "Business Day" should differ from a "Calendar Day" and should be properly and intentionally written as such.

**Calendar Day:** Any successive day of the week, month, or year, without regard to holidays, or any other day in particular.

**City:** The City of Burnet, Texas. At times this definition may include a representative authorized to act on behalf of the City. Responsibility for final enforcement of contracts involving the City is by Charter vested in the City Manager.

**City Attorney:** The City Attorney of the City of Burnet, Texas, or the City Attorney's duly authorized assistants or agents.

**City Engineer:** The OWNER'S Project Manager overseeing the administration of the CONTRACT and the CONTRACTOR'S performance thereunder. Unless otherwise specifically provided in the CONTRACT Documents, the OWNER'S Project Manager is an employee of City, and is not the Consulting Engineer.

**Certificate of Insurance:** A form approved by the City covering insurance requirements stated in the Contract.

**Change Order:** A written order to the contractor from the City of Burnet authorizing and directing an addition, deletion, or revision to the work within the scope of the contract documents, or authorizing an adjustment to the contract price or time.

**Contract (Documents):** Contract documents are all of the written, printed, or typed and drawn language that comprise and govern the performance of the contract (or agreement) between the Owner and the contractor or consultant. The Contract Documents include but are not limited to Bid Advertisement, Instruction to Bidders, Proposal, Addendums, Specifications, General and Special Conditions, Drawings, Bid Bond, Performance Bond, Insurance, and any supplemental changes pertaining to the work or materials constructed.

**Contract Intent:** The intent of the Contract is to describe the complete work to be performed. The Contractor shall furnish materials, supplies, tools, equipment, labor, and other incidentals necessary for the proper prosecution and completion of the work in accordance with the Contract Documents.

**Contract Price:** The total amount payable to the contractor as directed under the terms and conditions of the contract documents. At times the term may be used in the context of describing the unit price of an item.

**Contract Time:** The number of working days specified for completion of the work including authorized additional working days.

**Contract Work:** Everything required furnishing and completing by the contractor, as directed by any, or all, parts of the contract documents.

**Contractor:** The person(s), partnership, firm, or any combination thereof, as an independent contractor entering into the contract for the execution of the work, acting directly or through a duly authorized representative.

**Control of Access:** The condition in which the right to access of owners or occupants of abutting land or other persons in connection with a highway, roadway, or construction site, is fully or partially controlled by public authority.

**Control Point:** An established point shown on the plans to provide vertical and horizontal references for geometric control for construction.

**Commencement of Construction:** The initial disturbance of soils associated with clearing and grubbing, grading, or excavation activities, as well as other construction-related activities (e.g., stockpiling of fill material, demolition).

**Consulting Engineer:** The person, firm, or entity hired as an independent consultant by the OWNER to design the Project and represent the OWNER in the administration of the CONTRACT in whatever capacity the OWNER designates; the OWNER may, at its sole option, designate the Consulting Engineer to be the Engineer for purposes of administration of the CONTRACT. The Consulting Engineer shall be understood to be the Consulting Engineer of the OWNER, and nothing contained in the CONTRACT Documents shall be construed to make the Consulting Engineer an employee of the OWNER, nor shall they be construed to create any contractual or agency relationship between the Consulting Engineer and the CONTRACTOR. The term includes the officers, employees, associates, agents, and sub-consultants of Consulting Engineer, if any.

**Date of Written Authorization:** Date of the written work order authorizing the Contractor to begin work.



**Drawing(s):** Only those drawings specifically entitled as such and as specified in the contract, or in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.

**Easement:** A real property right acquired by 1 party to use land belonging to another party for a specified purpose.

**Embedment:** Bedding and initial backfill.

**Equal:** Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in **Substitution of Materials** Section, as determined by the Engineer in his or her sole discretion.

**Extra Work:** Work other than that which is expressly or impliedly required by the Contract documents at the time of the execution of the Contract.

**Final backfill:** Material required filling the trench from the top of the initial backfill to ground elevation or subgrade of a street.

**Hazardous Materials or Waste:** Hazardous materials or waste include but are not limited to explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiologic agents, and other material classified as hazardous by 40 CFR 261, or applicable City of Burnet, State of Texas, and federal regulations.

**High-Pressure Water Blasting:** Water blasting with pressures between 5,000 and 10,000 psi.

**HS:** Horseshoe shaped conduit, generally constructed of brick and mortar, usually older drainage systems. Newer systems are constructed of reinforced concrete.

**Incentive/Disincentive Provisions:** An adjustment to the Contract price of a predetermined amount for each day the work is completed ahead of or behind the specified milestone, phase, or Contract completion dates. The amount of the incentive/disincentive is determined based on estimated costs for engineering, traffic control, delays to the motorists, and other items involved in the Contract.

**Initial backfill:** Material that covers the utility line (usually 6-inches on all sides of the pipe or as directed by specs and drawings).

**Inspector:** Any representative of the OWNER or as specified in the contract documents designated to inspect the work.

**Interpretation of Specifications:** Throughout the Contract Documents, all declarative, imperative statements and phrases shall be interpreted as constituting specific instructions to the Contractor, unless specifically stated otherwise.

**Joint venture:** Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid proposal.

**Letter of Clarification:** See Addendum.

**Limits of Construction:** An area with established boundaries, identified within the road right of way and easements, where the Contractor is permitted to perform the work.

**Letting:** The receipt, opening, tabulation, and determination of the apparent low Bidder.

**Low-Pressure Water Blasting:** Water blasting with pressures between 3,000 and 5,000 psi.

**Maintenance Bond:** A bond executed by a corporate surety in accordance with the contract documents and Article 7.19-1, Vernon's Texas Insurance Code, in the amount of the contract guaranteeing the prompt, full and faithful performance of the general guaranty and warranty contained in the Contract Documents.

**Major Item:** A major item is any line item of the work to be performed of the total contract amount, which amounts to 5 percent or more, or \$100,000, whichever is less.

**Milestone Date:** The date that a specific portion of the work is to be completed, before the completion date for all work under the Contract.

**National Holiday:** January 1, the last Monday in May, July 4, the first Monday in September, the fourth Thursday in November, December 24, or December 25.

**Non-Site-Specific Contracts:** Contracts in which a geographic region is specified for the work and for which work orders, with or without plans, further detail the limits and work to be performed.

**Owner:** The City of Burnet. The City may be represented by any of the Department Directors clearly identified in the contract documents as the principal contact person for each project.

**Owner's Representative:** The Engineer or other duly authorized assistant, agent, inspector or superintendent acting within the scope of the particular duties instructed to him or her by the City of Burnet.

**Payment Bond:** A bond executed by a corporate surety in accordance with Article 7.19-1, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the

protection and use of payment bond beneficiaries who have a direct contractual relationship with the general CONTRACTOR or a subcontractor to supply public work labor or material.

**Performance Bond:** The approved form of security furnished by the CONTRACTOR and the CONTRACTOR'S Surety as a guarantee of good faith on the part of the CONTRACTOR to execute the work in strict accordance with the plans, specifications and terms of the contract, and that the CONTRACTOR will maintain the work constructed by him/her in good condition for the period of time required; said security shall be in accordance with the City of Burnet Specifications and individual contract documents.

**Plan or Plans:** The plans are the drawings, or reproductions therefrom, made by or approved by the OWNER showing in detail the location, dimension and position of the various elements of the project, including such profiles, typical cross-sections, layout diagrams, working drawings, preliminary drawings and such supplemental drawings as the OWNER may issue to clarify other drawings or for the purpose of showing changes in the work hereinafter authorized by the OWNER. The plans are usually bound separately from the other parts of the Contract Documents, but they are part of the Contract Documents just as though they were bound therein.

**Prequalification Statement:** The forms on which required information is furnished concerning the Contractor's ability to perform and finance the work.

**Project Midpoint:** For the purposes of this addendum, the Mid-point of a project is that point at which one-half of the CONTRACT amount, less retainage and extra work, has been paid to the CONTRACTOR for services rendered.

**Proposal:** The written and signed offer of the bidder, when submitted on approved proposal forms, to perform the contemplated work and furnish the necessary material and labor in accordance with the provisions of the plans and specifications, special and general provisions, and all contract documents.

**Proposal Guaranty:** The security designated in the proposal and furnished by the Bidder as a guarantee that the Bidder will enter into a Contract if awarded the work.

**Quality Assurance (QA):** Sampling, testing, inspection, and other activities conducted by the Engineer to determine payment and make acceptance decisions.

**Quality Control (QC):** Sampling, testing, and other process control activities conducted by the Contractor to monitor production and placement operations.

**Sandblasting, Dry:** Spraying blasts of pressurized air combined with sand.

**Sandblasting, Wet:** Spraying blasts of pressurized water combined with sand.

**Saturated Surface Dry (SSD):** Saturated Surface Dry (SSD) describes the condition of the aggregate in which the pores in each particle of the aggregate particle are filled with water and no excess water is on the particle surface. This allows the absorption and the specific gravity of the aggregate to be measured.

**Shot Blasting:** Spraying blasts of pressurized air combined with metal shot.

**Site:** The area upon or in which the CONTRACTOR'S operations are carried on, and such other areas adjacent thereto as may be designated as such by the OWNER.

**Special Provisions:** The special clauses of the contract, setting forth conditions or requirements peculiar to the specific project involved, supplementing the standard or general specifications and taking precedence over any conditions or requirements of the standard or general specifications with which they are in conflict. The term includes any and all addendums that expressly supplement and take precedence over the general or standard specifications, regardless of whether they are peculiar to a specific project or apply to all projects.

**Specifications (Specs):** The directions, provisions, and requirements contained herein, together with the special provisions supplemental hereto pertaining to the method and manner of performing the work or to the qualities or quantities of the materials to be furnished under the contract Specifications include all of the general, special and technical conditions or provisions, and all addendum or supplements thereto.

**Standard Drawings:** Drawings and sketches approved by the City Engineer to be used in conjunction with project drawings, special provisions, and general specifications.

**Standard Details:** Standard Details are drawings set up for use in multiple projects, and are set as a minimum requirement. They may be included as a separate bound set of drawings, or may be included in whole or in part in the Construction Drawings, or both. Standard Details will be referenced in the construction drawings with a callout corresponding to the number of the Standard Detail as shown on the Standard Detail drawing itself.

**Storm Water Pollution Prevention Plan (SWPPP or SW3P):** A document consisting of the following: evaluation of how and where pollutants may be mobilized by stormwater onsite, site plan for managing stormwater run-off, identification of appropriate erosion and sediment controls, maintenance and inspection schedule, record keeping process, and identification of stormwater discharge points from site.

**Subcontract:** The agreement between the Contractor and subcontractor establishing the obligations of the parties for furnishing of materials and performance of the work prescribed in the Contract documents.

**Sub-Contractor:** The person(s), partnership, firm, or any combination thereof, as an independent contractor entering into the contract with the principal contractor for the execution of the work, acting directly or through a duly authorized representative, as directed by the contractor under contractual obligations with the owner.

**Subbase:** Layer of specified material of plan thickness between a base and a subgrade.

**Subgrade:** That portion of the roadbed upon which the subbase, base or the pavement is to be placed. It includes 12-inches beyond the back of the curb for concrete paved streets.

**Subsidiary:** Materials, labor, or other elements that because of their nature or quantity have not been identified as a separate item and are included within the items on which they necessarily depend.

**Superintendent:** The representative of the Contractor who is available at all times and able to receive instructions from the Engineer or authorized representatives and to act for the Contractor.

**Supplier:** Any subcontractor contracting with the CONTRACTOR, or any of its subcontractors, to fabricate or deliver or who actually fabricates or delivers materials, supplies or equipment to be consumed or incorporated into the work.

**Sureties:** The corporate bodies which are bound by such bonds as are required with and for the CONTRACTOR. The sureties engaged to be responsible for the entire and satisfactory fulfillment of the Contract and for any and all requirements as set out in the specifications, Contract or plans. In order for a surety to be acceptable, the surety shall conform to the requirements of Article 7.19-1, Texas Insurance Code.

**Unit Price:** Where in the bid form a "Unit Price" is set forth, the "Unit Price" shall include the furnishing by the CONTRACTOR of all labor, tools, materials, machinery, appliances, water, heat, utilities, transportation, plant and equipment appurtenant to and necessary for the construction in every detail and the completion in a workmanlike manner of all the work to be done under these specifications. The "Unit Price" shall also include all permanent protection of overhead, surface and underground structures, cleaning up, finish, overhead expense, bond, insurance, patent fees, royalties, risk due to the elements, delay, profit, injuries, damages, claims and all other items not specifically mentioned that may be required to construct fully each item of the work, complete in place.

**Water-Abrasive Blasting:** Spraying blasts of pressurized water combined with abrasive media.

**Water Blasting:** Spraying blasts of pressurized water of at least 3,000 psi.

**Water-Injected Abrasive Blasting:** Abrasive blasting with water injected into the abrasive/air stream at the nozzle.

**Work:** All work including the furnishing of all labor, materials, tools, equipment, required submittals and incidentals to be performed by the CONTRACTOR under the terms of the contract.

**Work Order, or Notice to Proceed:** Written notice to the Contractor to begin the work. The work order may include the date on which work or time charges are to begin, the number of working days for specified work (for multiple work order Contracts), and plan sheets providing additional details specific to a location or to an item of work for non-site-specific work.

**Work Day:** A work (or working) day is defined as a calendar day not including Saturdays, Sundays, or legal holidays authorized in the list prepared by the City for contract purposes, in which weather or other conditions not under the control of the CONTRACTOR shall permit the performance of the principal units of work underway for a continuous period of not less than 7 hours between 7 A.M. and 6 P.M. A principle unit of work shall be that unit which controls completion time of the contract. Nothing in this definition shall be construed as prohibiting the CONTRACTOR from working on Saturdays, if the CONTRACTOR so desires and permission of the OWNER has been granted. Work on Sundays shall not be permitted except in cases with the written permission of the owner. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the contract. Work at nighttime or outside the 7 A.M. and 6 P.M. shall not be permitted except in cases of extreme emergency and then only with the written permission of the owner.

**Working Time, Completion Time or Contract Time:** The time set forth in the contract for the performance and completion of the work contracted for. The time may be expressed as calendar days, working days or a specific date.

### 103.3 RESOLUTION OF CONFLICTS

Inclusion of specifications from multiple sources may lead to minor conflicts in terminology, dimensions, quantities, specifications, and requirements. Conflicts between any of the Contract Documents shall be resolved as follows:

1. Special Provisions in the Construction Contract shall take precedence over all other Contract Documents.
2. Requirements, quantities, and other information contained in the Specifications and Construction Drawings (including notes on the plans) shall take precedence over requirements contained in the Construction Contract. Conflicts between Specifications and Construction Drawings shall be resolved as detailed below.
3. Actual quantities measured in the field, installed and accepted, shall take precedence over quantities listed in any of the Contract Documents; however, payment for quantities may be by lump sum, unit price, plan quantity, or otherwise as described elsewhere in the Contract Documents.
4. In all cases where there are conflicts within the Contract Documents, the first Specification referenced on each line item on the Unit Price Schedule shall control for that line item, and shall determine the method of measurement for that line item.
5. Dimensions, quantities, specifications, and all other requirements that are included in a Project Manual (including requirements in the Unit Price Schedule) that has been prepared for a specific project, shall take precedence over dimensions, quantities, specifications, and all other requirements that are included in the Construction Drawings. Measurement units and item descriptions used in the Unit Price Schedule shall take precedence over measurement units and item descriptions included in the plans or specifications.
6. Dimensions, quantities, specifications (including notes) and all other requirements that are included in the Construction Drawings shall take precedence over conflicting data that is included in Standard Details, Standard Specifications, and Special Specifications.
7. Dimensions and quantities written in words or numbers shall take precedence over scaled measurements or quantities calculated from drawings, both in the Construction Drawings and Standard Details.
8. In all instances, written communications take precedence over any verbal understandings between any parties involved. Verbal instructions, submittals, and communications shall be for convenience only and shall not be binding on any party involved.
9. Any third-party reports, exhibits, documents, and / or recommendations that have been prepared by third parties, such as geotechnical reports and traffic studies that have been submitted to the design engineer for his use, may be made available or included in the Contract Documents for use as supporting data and for informational purposes only. The recommendations contained in such documents were made to the design engineer, and the design engineer may or may not have agreed with and followed those recommendations during final design. Therefore, all other Contract Documents shall take precedence over recommendations and requirements contained in such third-party reports.

10. All other conflicts shall be resolved by the Owner, and shall be resolved in a manner that is consistent with the Owner's best interest.

**103.4 ABBREVIATIONS**

Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal, or in any other document or instrument herein contemplated, or to which the specifications apply or may apply, the intent and meaning shall be as follows:

%	Percent
'	Foot or Feet
"	Inch or Inches
#	Pound or pounds
AASHTO	American Association of State Highway and Transportation Officials
ABA	American Bankers Association
ACI	American Concrete Institute
am, a.m.	Before noon
ANSI	American National Standards Institute
Asph.	Asphalt
Assn.	Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
APWA	American Public Works Association
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
Be	Outside diameter of Pipe
Bd	Trench width
Blvd	Boulevard
c	Centigrade
cc	Cubic Centimeter
CFR	Code of Federal Regulations
cfs	Cubic feet per second
C.I.	Cast Iron
CL, C.L.	Center Line
cm	Centimeter
co	Cleanout
c.o.c.	Cleveland Open Cup
Conc.	Concrete
Cond.	Conduit
Corr.	Corrugated
cSt	Centistokes (Viscosity)
Cu.	Cubic
Culv.	Culvert
CY,C.Y.	Cubic Yard
D	Inside Diameter
D.I.	Ductile Iron
Dia.	Diameter
Dr.	Drive, or Driveway
Elev.	Elevation
F	Fahrenheit
FM	Factory Mutual
fps	Feet per second
Ft.	Foot or Feet

Gal.	Gallon
g, gm	Gram
HDPE	High Density Polyethylene
HP	Horsepower
Hr.	Hour
ID	Inside Diameter
in.	Inch or Inches
ISSA	International Slurry Surfacing Association
Kg or kg	Kilogram
kPa	Kilopascals
L	Liter
Lb.	Pound or Pounds
LDPE	Low Density Polyethylene
L.F.	Linear foot or feet
Lin.	Linear
LL	Liquid Limit
LLDPE	Linear Low Density Polyethylene
LMDPE	Linear Medium Density Polyethylene
LOI	Loss on Ignition
M	Meter
Max.	Maximum
MH	Manhole
Min.	Minimum or Minute
M.J.	Mechanical Joint
mm	Millimeter
Mod.	Modified
Mono.	Monolithic
mph	Miles per hour
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry
MPa	Megapascal
MUTCD	(Texas) Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
Nat' I	National
NEMA	National Electrical Manufacturers Association
No.	Number
N.P.T.	National Pipe Thread
NRMCA	National Ready-mixed Concrete
NSF	National Sanitation Foundation
o.d.,OD	Outside Diameter
OSHA	Occupational Safety and Health Administration
oz.	Ounce
Pa	Pascal
PI, P.I.	Plasticity Index
pm,p.m.	After noon
psi	Pounds per Square Inch
PVC	Polyvinyl Chloride
PVCO	Molecularly Oriented PVC
R	Radius
RAP	Recycled/Reclaimed Asphalt Pavement
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
Reinf.	Reinforced or reinforcing
Rem.	Remove

Rep.	Replace
R/W, ROW, Sani., San.	Right-of-Way Sanitary
Sec.	Second
S.F.	Square Feet
Sq.	Square
SSPC	The Society for Protective Coatings [formerly Steel Structures Painting Council]
St.	Street
Strm	Storm
Std.	Standard
Str.	Strength
SWPPP	Storm Water Pollution Prevention Plan
SY, S.Y.	Square Yard
TAC	Texas Administrative Code
Tex-###-X	Refer to TxDOT Manual of Testing Procedures
TCEQ	Texas Commission on Environmental Quality
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
TxDOT	Refer to TxDOT Standard Specifications for Construction of Highways, Streets and Bridges
Item#	Underwriter's Laboratory
UL	Micrometers
Um, nm	United States
US, U.S.	United States Code
U.S.C.	United States Environmental Protection Agency
USEPA	Vertical
Vert.	Volume
Vol.	Weight
Wt.	Water
WT	Wastewater
WW	Yard
Yd.	



## 104 INSTRUCTIONS TO BIDDERS

### 104.1 INTRODUCTION

Instructions to the Contractor in these specifications are generally written in active voice, imperative mood. The subject of imperative sentences is understood to be "the Contractor." The City's responsibilities are generally written in passive voice, indicative mood. Phrases such as "as approved," "unless approved," "upon approval," "as directed," "as verified," "as ordered," and "as determined" refer to actions of the Engineer unless otherwise stated, and it is understood that the directions, orders, or instructions to which they relate are within the limitations of and authorized by the Contract.

### 104.2 PROPOSAL PREPARATION

The bidder shall submit its proposal on the forms furnished or approved by the OWNER. All blank spaces in the form shall be correctly filled in, the bidder shall state the prices, in both words, and numerals, for which it proposes to do the work, contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly. If an individual submits the proposal, that individual or duly authorized agent must sign the proposal. If an association or partnership submits the proposal, the name and address must be given and the proposal signed by a duly authorized member of the association or partnership. If a corporation submits the proposal, 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. The CONTRACTOR accepts all risks associated with bidding in this manner. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

#### 104.2.A. Plan, Specs, and Site Examination

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 obtain and read the most current versions of all referenced State, Federal, and National standards; 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 a 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 a bid, represents and warrants: that it has prepared the bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that it has done any inspection or test it deems appropriate; that it has reviewed, studied and examined its bid prior to the signing and submission of same; and that it was cognizant of the terms of its proposal, verified its calculations and found them to be correct and agrees to be bound thereby.

- 1. Availability of Lands for Work:** The lands upon which the work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.
- 2. Copies of Bidding Documents:** Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents. Owner and Engineer, in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bid for the Work and do not confer a license or grant for any other use.

3. **Bid Form:** The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the Issuing Officer). All blanks on the Bid Form must be completed by printing in black ink or by typewriter. Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature. Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

#### 104.2.B. Quantities in Proposal

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 as measured in the field or otherwise determined by the Engineer 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. If greater or lesser quantities are required than those quantities indicated in the Unit Price Schedule, the Contractor shall provide the required quantities. The method and amount of payment adjustments for quantities and changes, if any, will depend on whether the contract is Lump Sum, Plans Quantity, or Unit Price, and will be calculated accordingly.

#### 104.2.C. Addenda

Bidders desiring further information, or interpretation of the Specifications, must make request for such information in writing to the City or Engineer, a minimum of 48-hours before the bid opening. Answers to all such requests will be given in writing to all bidders, in Addendum form, and all Addenda will be bound with, and made a part of, the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from, the Specifications or other Contract Documents, or should he be in doubt as to their meaning, he should at once notify the Engineer in order that a written Addendum may be sent to all bidders. Any Addenda issued twenty-four (24) hours before the opening of bids will be mailed or delivered to each Contractor contemplating the submission of a proposal on this work. The proposal as submitted by the Contractor will be so constructed as to include any Addenda if such are issued by the City/Engineer twenty-four (24) hours before the opening of bids. 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.

#### 104.2.D. Statement of Qualification

No proposal shall be considered unless it has included a Bidders Statement of Qualifications (SOQ). A statement of Bidders Qualification form is to be filled and included in the proposal from all bidders. The City will award to contract to a qualified bidder; therefore an SOQ is required prior to award of contract. To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for in the contract documents. Each bid must contain evidence of Bidder's qualification to do business in the state where the project is located or covenant to obtain such qualification prior to award of the contract.

#### 104.2.E. Nonresponsive Proposal

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 and/or Notice to Bidders or any addendum. 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. A proposal that has one or more of the deficiencies listed below is nonresponsive and will not be considered.

1. Failure to sign the proposal.

2. The proposal is in a form other than the official proposal form issued to the Bidder or Bidders.
3. The proposal was not in the hands of the letting official at the time and location specified in the advertisement.
4. Proposal writing is illegible.
5. The Bidder fails to acknowledge or improperly acknowledges receipt of all addenda issued.
6. The Bidder modifies the proposal in a manner that alters the conditions or requirements for work as stated in the proposal form.
7. Any other items inconsistent with the requirements set for by the City.

#### **104.2.F. Withdrawing the Proposal**

Proposals filed with the OWNER can be withdrawn or modified and redeposit 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 will be returned unopened. The proposal may not be withdrawn after bid opening has commenced. The bidder, in submitting the same, warrants and represents that its 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 its bid 90 days after the actual date of opening thereof, should no award have been made to such bidder.

#### **104.2.G. Bid Submission**

Bids shall be submitted at the time and place indicated in the Advertisement of Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title and name and address of Bidder and accompanied by the Bid Security. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it. Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Project Manual including the text "To be filled out and returned by bidder." The Bidding Documents may be retained by Bidder. The unbound copy of the Project Manual is to be completed and submitted in a sealed envelope labeled in the center of envelope with the project name. The bidder's full name and contact information shall be listed on the upper left hand corner of the envelope.

#### **104.2.H. Opening and Consideration of Proposals**

The proposals filed with the OWNER shall be opened at the time stated in the advertisement and/or in the Notice to Bidders, or any subsequently issued addendum, and publicly read aloud, and shall thereafter remain on file with the OWNER. No Contract shall be awarded based on such proposals until after at least two days have elapsed. Contract shall only be awarded after the City Council has made a decision to do so. 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 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.

#### **104.2.I. Rejection of 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 in or mentioned in both. In the case of any apparent difference between the drawings and specifications, or any other apparent error which the BIDDER or

the CONTRACTOR may discover, the BIDDER or CONTRACTOR shall refer the matter to the OWNER, to which the decision of the OWNER shall govern and made known via the issuance of addenda. The OWNER shall have the right to correct any error discovered. Proposals may be rejected if they are found to be non-responsive or disqualified for other specific reasons.

#### **104.2.J. Disqualification**

Bidders may be disqualified and their proposals not considered for any, and not limited to, the following reasons:

1. Reasonable belief that collusion exists among the bidders.
2. Reasonable belief that any BIDDER is interested in more than one proposal for the work contemplated.
3. The BIDDER having a history of filing frequent, excessive and meritless claims, or fraudulent claims, against the OWNER, or against other contractors on a project of the OWNER.
4. The BIDDER or its Surety having defaulted on a previous Contract, or the BIDDER performing poorly on a previous Contract.
5. Lack of competency, skill, judgment, financial capability, integrity, reputation, reliability or responsibility to perform the work as revealed by the bid proposal, bid questionnaires, financial statement, performance history or other relevant information obtained by the OWNER.
6. Uncompleted work, which in the judgment of the OWNER shall prevent or hinder the prompt completion of additional work if awarded.
7. Failure of BIDDER to use OWNER'S form of bid bond in submitting its bid, or submission of a cashier's check drawn on a state or national bank not located in the OWNER'S jurisdictional area.
8. Unbalanced value of any bid items.
9. The BIDDER is currently a party to any litigation against the OWNER.

Other reasons not shown in these specifications shall be presented to City's Council. The last reserves the right to make final decision in disqualification situations not covered by these specifications.

#### **104.2.K. Return of Proposal Guarantee**

The OWNER shall normally return the proposal guaranties accompanying all proposals within 30 calendar 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. The City may retain the remaining guaranties for up to 30 days after opening of bids if the one or more of the said are found to be within 3% of the lowest bid, or irregularities and other situations are found within the bids.

#### **104.3 PROPOSAL GUARANTEE**

No proposal shall be considered unless it is accompanied by a cashier's check on any state or national bank or acceptable bidder's surety bond, payable unconditionally to the OWNER. The cashier's check or bidder's surety bond shall be in the amount of not less than five (5) percent of the total amount of the bid. The type of check or money order must be indicated on the face of the instrument and the instrument must be no more than 90 days old. 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 receipt of the awarded Contract or pay the damages as set forth below. The bidder's surety 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 its 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 surety bond. In the event 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 and evidence of insurance within 10 days after receipt of the awarded Contract, or withdraws its bid after bids have been opened, the OWNER shall be entitled to the proceeds of such check. Provided however, if the Contract price is less than \$100,000.00, the Bidder shall have the option of providing a Letter of Credit in lieu of a Performance Bond, said Letter of Credit to be in a form acceptable to City of Burnet.

#### 104.4 CONFLICT OF INTEREST DISCLOSURE

The contractor shall fill out and submit a Conflict of Interest Disclosure form with bid documents. The questionnaires require disclosures describing certain business and gift giving relationships, if any, the filers may have with Local Government Officers or a member of a governing body of a local government entity.

This applies to:

- Businesses and individuals who contract with the City,
- Businesses and individuals who seek to contract with the City (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealing with the City

A copy of the required reporting form shall be included in the bid documents. Compliance is the individual responsibility of each individual, business and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file it with the Burnet City Secretary at 1001 Buchanan Dr. Ste 4, Burnet, Tx 78611.

## 105 CONTRACT AWARD AND EXECUTION

### 105.1 INTRODUCTION

The OWNER will attempt to award the Contract within 90 days after the opening of proposals. The award, if made, shall be to the lowest responsible bidder; 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. The City will make decision based on physical location of the CONTRACTOR's business, whether bid amount falls within 3% of lowest bid, and including but not limited to contractors experience and financial accountability. If awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 calendar days after receipt of the awarded Contract.

### 105.2 CONTRACT AWARD

Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, unresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive, or the Bidder is unqualified, or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms other than price with the Successful Bidder.

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

Owner also may consider the operating costs, maintenance requirements, performance date and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.

By submitting a bid for the project described in these Instructions to Bidders, each bidder agrees to the determination of the low bidder and payment procedures described in the contract documents and each bidder further agrees that he is not, and will not be disadvantaged in any way by these bid evaluation procedures and/or subsequent bid award and/or payment procedures.

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen days thereafter, Contractor will sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. If Owner does not request a specific number of counterparts, the Contractor will sign and deliver three (3) copies. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

### 105.3 CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this Contract to it, the CONTRACTOR represents and warrants:

1. That it is financially solvent, and sufficiently experienced and competent to perform the work.
2. That the facts stated in the proposal and the information given by it pursuant to the bidding documents is true and correct in all respects.
3. That has read, understood and complied with all the requirements set forth in the bidding documents.
4. That it is familiar with and understands all laws and regulations applicable to the work.
5. Unless otherwise specifically provided for in the Contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this Contract, in the manner and within the time herein prescribed.

### 105.3.A. Contractor Site Visit

By executing the Contract, the CONTRACTOR represents that it has visited the site of work, has fully familiarized itself with the local and on-site conditions under which the work is to be performed and has correlated its observation with the requirements of the Contract documents. In addition, the CONTRACTOR represents that it has satisfied itself as to subsurface conditions at the site of the work. Information, data and representations contained in the Contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that it shall make no claims for damages; additional compensation or extension of time against the OWNER because of encountering actual conditions in the course of the work, which vary or differ from conditions or information, contained in the Contract documents. Except as provided in *Site Preparation* section, Existing Structures, Facilities and Appurtenances, all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

### 105.3.B. Contractor Employee Wages

Contractor hereby acknowledges and agrees that Contractor and each subcontractor are responsible for complying with the applicable provisions of Chapter 2258 of the Texas Government Code regarding the payment of prevailing wage rates. Contractor and each subcontractor shall pay wages to persons performing labor in connection with this Contract in an amount that is not less than the applicable prevailing wage rates for such workers. The Contractor shall forfeit as a penalty to Owner 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 said stipulated rate for any work done under this Contract by the Contractor or by any subcontractor under Contractor. Owner may withhold additional funds as appropriate when confronted with wage rate violations.

### 105.4 BONDS

All Proposals shall be accompanied by a certified cashier's check (or BID BOND) upon a national or state bank in the amount of five percent (5%) of the Total Maximum Bid Price payable without recourse to City of Burnet, or a Bid Bond in the same amount from a reliable Surety company as a guarantee that Bidder will enter into a contract and execute Performance Bond within ten (10) days after Notice of Award of Contract to him.

If the Contract amount is greater than \$25,000 but less than or equal to \$100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the bidder receiving the award may elect to furnish a Performance Bond in the same amount if the bidder so chooses. Provided however, if the Contract price is less than \$50,000.00, the Bidder shall have the option of providing a Letter of Credit in lieu of a Payment Bond, said Letter of Credit to be in a form acceptable to City of Burnet.

If the amount of the Contract, including OWNER-accepted alternates and allowances, if any, is greater than \$100,000, Performance and Payment Bonds in amount of 100% of the Contract amount are mandatory and shall be provided by the bidder receiving the award.

If the Contract amount is less than \$50,000, the bidder receiving the award may elect not to provide Performance and Payment Bonds, or a Letter of Credit; provided that in such event, no money will be paid to the CONTRACTOR until final completion and acceptance of all work by OWNER. If the bidder receiving the award elects to provide Performance and Payment Bonds in 100% of the Contract amount, progress payments will be disbursed in accordance with the applicable contract provisions. CONTRACTOR shall not begin any Work on this Project until all bonds and required insurance have been furnished by Contractor and approved by Owner. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as

published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

#### **105.4.A. Surety Bonds**

With the execution and delivery of the Contract, the CONTRACTOR shall furnish and file with the OWNER in the amounts herein required, the surety bonds specified hereunder. Without exception, the OWNER'S bond forms must be used, and exclusive venue for any lawsuit in connection with such bonds shall be specified as the county in which the OWNER's principal office is located. Such surety bonds shall be in accordance with the provisions of Texas Government Code, Chapter 2253, as amended, and Article 7.19-1 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement which increases the Contract price with or without notice to the surety, but in no event shall a change which reduces the Contract amount reduce the penal amount of such bonds. If performance and payment bond forms are included in the bid documents, these forms shall be used with this Contract.

All sureties must be listed as approved sureties by the U.S. Department of Treasury. In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the CONTRACTOR shall provide substitute bonds or equivalent security satisfactory to the OWNER to protect the interests of OWNER and of persons furnishing labor and materials in the prosecution of the Work.

#### **105.4.B. Performance Bond**

A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or, conditioned on the faithful performance of the work in accordance with the plans, specifications and Contract documents, including performance of any guarantees or warranties required by OWNER, and including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the Contract documents.

#### **105.4.C. Payment Bond**

Bond shall be in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime CONTRACTOR, or a subcontractor to supply public work labor or material.

#### **105.4.D. Maintenance Bonds**

If required, Contractor shall provide a Maintenance Bond in the amount of 100 percent of the Contract Price. This Bond shall become effective on the date of Substantial Completion for all or any part of the project, and shall remain in effect for a period of two (2) years after the date of Substantial Completion for any roadway work, or any other work as indicated in the contractual documents, except as provided otherwise by Laws or Regulations. Surety for the Maintenance Bond shall meet the same requirements as for Performance and Payment Bonds set forth in this section. Specific requirements for this Maintenance Bond shall be as established in the Agreement.

#### **105.4.E. Additional Bonds**

If at any time the OWNER is, or becomes, dissatisfied with any surety on a performance, or payment bond, the CONTRACTOR shall, within five days after notice from the OWNER, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum as requested, and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds have been furnished to and accepted by the OWNER.



#### 105.4.F. Developer Bonds

In order to insure that it might not incur liabilities, the City may require, before it gives approval of the plans for development, that the owner of said development shall provide sufficient surety bond(s) to guarantee that claims against such development, in the event of default, shall be satisfied. Such bonds shall be no less than 100-percent of the Developer-CONTRACTOR contract amount.

#### 105.4.G. Sureties

No sureties shall be accepted by the OWNER who are now in default or delinquent on any bonds or who are interested in any litigation against the OWNER. All bonds shall meet the applicable requirements of Article 7.19-1, Texas Insurance Code and Chapter 2253, Texas Government Code, shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the OWNER. Each bond shall be executed by the CONTRACTOR and surety. Each surety shall designate on the bond the name, address and phone number of a representative for the surety located in a county of the State of Texas acceptable to the OWNER to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety. The OWNER reserves the right to reject any and all sureties.

### 105.5 INSURANCE

Any insurance policies required under this Item may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered or otherwise negatively impacted by doing so, nor may any of the requirements or special provisions of this Item be limited or circumvented by doing so.

#### 105.5.A. Contractor's Insurance

Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract the CONTRACTOR and each subcontractor at its own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. Certificates of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, non-renewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner. Coverage shall be of the following types and not less than the specified amounts:

1. **Workers' Compensation** as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than \$500,000 for each accident, \$100,000 disease - each employee, \$500,000 disease - policy limit.  
Contractor hereby represents to the Owner that all employees of the Contractor who will provide services on the Project will be covered by worker's 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 Texas Worker's Compensation Commission, 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.

The policy shall contain the following endorsements in favor of Owner:

- a. Waiver of Subrogation, form WC 420304; and
- b. 30-day Notice of Cancellation, form WC 420601.

The following is the form of notice of worker's compensation coverage prescribed by the Texas Worker's Compensation Commission. Pursuant to Section 110.110(d)(7), this notice must be printed with a title in at least 30-point bold type, and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population.

The Contractor shall contractually require each person with whom it contracts to provide services on the Project to Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of the Texas Labor Code, Section 401.011(44) for all of its employees providing services on the Project, for the duration of the Project. That person or entity shall provide prior to beginning work 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. This section's intent is to apply all requirements set forth for Contractor to all subcontractors, whether entities or persons with whom the CONTRACTOR has entered into a contract.

REQUIRED WORKER'S COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by worker's compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee." "Call the Texas Worker's Compensation Commission at (512) 440-3789 to receive further information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

2. **General liability insurance**, including independent CONTRACTOR'S liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring CONTRACTOR'S (or subcontractor's) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth in the Contract Documents. Contractor's Liability Insurance shall also include completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
  - a. General Aggregate (Except Products -Completed Operations) of \$100,000;
  - b. Each Occurrence Bodily Injury of \$300,000;
  - c. Property Damage Each Occurrence of \$25,000. Property Damage liability insurance will provide Explosion, Collapse and Underground coverage where applicable.
  - d. OWNER listed as an additional insured, endorsement CG 2010.
  - e. 30-day notice of cancellation in favor of Owner, endorsement CG 0205.
  - f. Aggregate limits of insurance per project, endorsement CG 2503.
  - g. Waiver of Transfer of Recovery against Others in favor of Owner, endorsement CG 2404.
  - h. Independent Contractors coverage.
3. **Business Automobile Liability Insurance**, covering owned, hired, and non-owned vehicles, with a bodily injury (including death) minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident. Such insurance shall include coverage for loading and unloading hazards. The policy shall contain the following endorsements in favor of Owner:
  - a. Waiver of Subrogation endorsement TE 2046A;
  - b. 30-day Notice of Cancellation endorsement TE 0202A; and
  - c. Additional Insured endorsement TE 9901 B, naming City of Burnet, its Aldermen, officers, officials and employees as additional insured.
4. **Owner's Liability Insurance**: CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this Contract an OWNER's protective liability insurance policy naming the OWNER and the Design Engineer as insures for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this Contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the

CONTRACTOR's liability insurance with a combined bodily injury and property damage minimum limit of \$600,000 per occurrence and \$1,000,000 aggregate.

5. **"Umbrella" Liability Insurance:** If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring CONTRACTOR for an amount of not less than \$1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverage required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insurers.
6. **Railroad Protective Insurance:** When required in the Special Provisions, CONTRACTOR shall obtain, maintain and present evidence of railroad protective insurance (RPI). The policy shall be in the name of the railroad company having jurisdiction over the right-of-way involved. The minimum limit of coverage shall meet the specifications provided by the railroad company. The OWNER shall specify the amount of RPI necessary.

#### 105.5.B. Insurance Requirements

Insurance to provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:

1. Any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final.
2. Policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas.
3. All liability policies required herein shall be written with an "occurrence" basis coverage trigger.
4. Companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR.
5. Approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any subcontractors) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability.
6. No special payments shall be made for any insurance that the CONTRACTOR and subcontractors are required to carry; all are included in the Contract price and the Contract unit prices.
7. The CONTRACTOR shall retain all required certificates of insurance for the duration of the project and for one year thereafter and shall have the responsibility of enforcing insurance requirements among its SUBCONTRACTORS. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

#### 105.5.C. Owner's Property Insurance

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

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

### 105.6 CONTRACT EXECUTION

The CONTRACTOR shall within 10 business days after receipt of the Contract sign the necessary agreements entering into the required Contract with the OWNER. The failure of the CONTRACTOR to execute the Contract or provide the required statutory surety bonds within 10 business days after the Contract is received shall constitute a breach of its 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 may not be eligible to bid.

#### 105.6.A. Intent of Contract Documents

The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the Contract documents. It is not intended to mention every item of work in the specifications that can be adequately shown on the drawings, nor is it to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions or obligations contained in the Contract documents.

#### 105.6.B. Notice to Proceed

Upon OWNER receipt of the executed Contract and the required insurance and surety bonds, a notice to proceed shall be issued by the OWNER indicating the date upon which the Contract time shall start and the projected date of completion. The OWNER will attempt to provide the work order within the time specified in the plans. The CONTRACTOR shall commence work within 10 days from the date specified in the written work order. No work shall commence before the notice to proceed has been issued. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.

#### 105.6.C. Delay of Contract

The CONTRACTOR shall not be entitled to any claim for damages due to delay in the award or work order. If the CONTRACTOR encounters any delay occasioned by the OWNER's failure or inability to obtain right-of-way or is delayed by the relocation or removal of any of the utilities or other installations of similar kind, the CONTRACTOR shall not be entitled to any claim for damages by virtue of any delay. 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.

- 1. Force Majeure:** A delay in the completion of the Work that arises from one or more of the following events shall be considered an excused delay provided notice is given as provided herein: unforeseeable causes beyond the control and without the fault or negligence of the Contractor or its subcontractors or suppliers, including but not restricted to, acts of God, acts of the public enemy, acts of terrorism, acts of federal, state or local government in its sovereign capacity, acts of Owner, fires, floods, epidemics, quarantines, freight embargoes, unusually severe weather (excluding delays caused by above-average but not excessive rainfall), or delays of Owner as described in subsections below, delays of subcontractors or suppliers at any time arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or subcontractors or suppliers performing Work under this Contract (provided, however, that failure to order supplies, materials or equipment when shortages are known or expected, in time to perform the Work in accordance with the Contract Documents, is not excused.)

The Contractor, within a reasonable period of time, but in no event more than 14 days from the beginning of any such delay (unless Contracting Officer grants a further period of time), notifies Contracting Officer or OWNER in writing of the causes of delay to enable Owner to investigate and document the cause and duration of the delay. The Contractor shall submit with each application for payment a "Time Extension Request" form (provided by the Project Manager) documenting any requests for Contract time extension. The form shall be submitted even if no time extension is requested.

2. **Delay for Weather Conditions:** The Contract Time set out in the Contract Documents, including Substantial Completion Date and Final Completion Date, are deemed to include normal weather conditions at the Project site. The Contractor may be entitled to an excused delay due to unusual and severe weather conditions if the weather conditions are (a) excessive and severe for the period of time, (b) could not have been reasonably anticipated, (c) had an adverse effect on the scheduled construction, and (d) Contractor reasonably performed other Work on the Project in place of the scheduled work and still incurred a delay in the construction schedule. In order to be entitled to a delay on this basis, Contractor must provide OWNER with notice of the delay (as provided herein) and data substantiating the claim, including weather information issued by the National Oceanic and Atmospheric Administration ("NOAA") for the City in which the Project is located (or if such information is not available for the Project location, then for the closest City) which shows that the weather conditions were in excess of those that are normal for the site, and job logs that indicate impacted work and estimated effect of the weather. Unless the parties agree to a different method of determining weather conditions, weather information produced by NOAA will be used to determine normal and abnormal weather conditions at the Project site.

In order to be entitled to a Time extension due to weather conditions, Contractor must provide OWNER with notice of the adverse condition and its impact on the construction schedule as soon as Contractor becomes aware that a delay will or is likely to occur, to enable Owner to investigate and document the conditions. Such notice will be provided in writing as soon as reasonably possible but in no event later than 14 days after the date of the commencement of the weather condition giving rise to the claim for the delay.

3. **Delay Caused by Owner:** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or by Engineers (other than an excused delay), or of a separate contractor employed by the Owner, then the Contractor shall promptly notify the OWNER, in writing, of such delay, to enable Owner and/or the Engineers to take action to reduce or eliminate the delay. Contractor must notify Owner and Project Manager as soon as possible after it becomes aware of the condition that it believes has caused or will be likely to cause a delay, but in no event less than 7 days after it becomes aware of such condition. Contractor's failure to do so will constitute a failure to mitigate damages and a waiver of Contractor's claim as provided under the terms of the Contract Documents. Owner's proper exercise of any of its remedies under the Contract Documents, including, but not limited to, remedies of suspension of the Work or requirement for correction or re-execution of any defective Work, shall not under any circumstances be construed as constituting a delay to Contractor's performance of the Work.

In the event of an excused delay under this Section, the Contractor shall submit with each application for payment a "Time Extension Request" form (provided by the OWNER) documenting any requests for Contract Time extension. The form shall be submitted even if no time extension is requested. Project Manager will provide Contractor with a reasonable period of extension of the Contract Time as may be equitable, provided that all conditions for obtaining an extension are met. The time extension will be set out in a Change Order. Any such extension of the Contract Time shall be net of any unexcused delays caused by or due to the fault of Contractor or anyone performing Work under the Contract.

Any provision of the Contract Documents to the contrary notwithstanding, it is expressly agreed that the extension of the Contract Time shall be Contractor's sole remedy for any delay unless the same shall have been

caused by acts constituting interference by the Owner which interfered with Contractor's performance of the work, and then only to the extent that such acts continue after Contractor's written notice to Owner of such interference. Owner's exercise of any of its rights or remedies under the contract documents, including the right to suspend the Work or to require correction or re-execution of any defective Work shall not under any circumstances be construed as interference with Contractor's performance of the Work.

#### 105.6.D. Modification of Contract

The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

1. **Increased or Decreased Quantities of Work:** The OWNER reserves the right to decrease the work under this Contract. Payment to the CONTRACTOR for the Contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the Contract, except as provided below:
  - a. When the quantity of work to be done or of materials to be furnished under any major item of the Contract is more than 125 percent or less than 75 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the Contract.
  - b. Any revised consideration shall be paid for as is hereinafter provided under Payment for Extra Work Item. The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a bid and execution of the Contract, is deemed to consent to the OWNER's right to reduce the total original Contract amount by more than 25 percent. This would not be applicable to the Additional Bid Items which are used on a per need basis. The OWNER may increase or decrease these items without reserve.
2. **Alteration of Plans and Specifications:** The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be considered as waiving or invalidating any condition or provision of the Contract and bonds. Such changes shall be issued by the Engineer.
3. **Extra Work:** When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and Contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the Engineer. Extra Work is further explained in Item for Payment of Extra Work and Item for Disputed Work and Claims for Additional Compensation.
4. **Differing Site Conditions:** During the progress of the work, differing subsurface or latent physical conditions may be encountered at the site. The two types of differing site conditions are defined as: differ materially from those indicated in the Contract and unknown physical conditions of an unusual nature differing materially from those ordinarily encountered or not anticipated and generally recognized as inherent in the work provided for in the Contract. Engineer shall be notified if differing site conditions are encountered. Unless directed otherwise, suspend work on the affected items and leave the site undisturbed. The Engineer shall make a determination whether differing site conditions exist. CONTRACTOR has the right to investigate site, perform any form of exploratory search at own expense prior to bids opening, provided that such investigation does not constitute a nuisance to OWNER or public, interrupt routine operations, or cause adverse impact of any form. The OWNER, or its representative, has the right to reject any differing site conditions claim if such conditions could have been determined with prior investigation by the CONTRACTOR.

The Project Manager/Engineer will observe the Work for general compliance with the Contract Documents. The Project Manager/Engineer will initiate Change Order Requests and evaluate the Contractor's proposed cost and related time, and develop Construction Change Directives. The Contractor shall provide proposed costs and time for Change Order Requests as soon as possible, but not more than 20 days, after receipt of the Change Order request from the OWNER. The OWNER will conduct inspections to determine the date or dates of Substantial Completion and the date of Final

Completion. The Project Manager in conjunction with the Design Engineer will review, upon receipt from the Contractor, the as-built drawings, written warranties, owner's manuals and related documents required by the Contract.

5. **Finality of Change Orders:** In addition to the OWNER, the CONTRACTOR shall sign the Change Order Documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the CONTRACTOR to sign a Change Order shall not relieve the CONTRACTOR of its obligation to execute the proposed changes in accordance with this Item and the other terms and provisions of this Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.

#### 105.6.E. Change Orders

Owner and Contractor may at any time, without notice to or approval of the Surety, by written Change Order hereto, make changes in the Work, the Contract Amount, the Contract Time, or otherwise modify the Contract. If applicable unit prices are contained in the Agreement, the Owner may require the Contractor to proceed with the desired unit prices specified in the Contract; provided that in case of a unit price contract the net value of all changes does not increase the original total amount of the agreement by more than twenty-five percent (25%) or decrease the original total amount by eighteen percent (18%).

Any provision in the Contract Documents to the contrary notwithstanding, in the event Contractor receives an order, directive, instructions, or other communication regarding the Work from Owner or Engineers that Contractor believes will result in a change in the scope of Work, the Contract Time and/or the Contract Amount, Contractor shall promptly notify the person making the request, and the OWNER that the requested change will result in an increase in the Contract Time and/or Contract Amount before undertaking the Work. Contractor may not perform the Work unless and until it receives a written Change Directive from OWNER. Failure of CONTRACTOR to follow this requirement will constitute a waiver by Contractor of the right to obtain additional time or additional payment for the work. This provision shall not apply to instructions given by Owner or Engineer in an emergency situation to prevent or address an imminent threat of injury to persons or damage to property, or action taken by Contractor in accordance with Section for Emergencies.

#### 105.7 EXTRA WORK CLAIMS

Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

##### 105.7.A. Disputed Work Compensation Claims

If the CONTRACTOR is of the opinion that:

1. Certain work necessary or required to accomplish the result intended by this Contract or certain work ordered to be done as contract work by the OWNER is actually Extra Work and not CONTRACTOR work, or
2. any determination or order of the OWNER violates the terms and provisions of this Contract.

CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of its contentions with respect thereto and request a final determination by the OWNER. 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 that the 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 Change or Modification of Contract 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 written notice is not given, the Contractor waives the right to additional compensation unless the circumstances could have reasonably prevented the Contractor from knowing the cost impact before performing the work. Notice of the request and the documentation of the costs will not be construed as proof or substantiation of the validity of the request. Submittal of the request shall be in sufficient detail to enable the Engineer to determine the basis for entitlement, adjustment in the number of working days specified in the Contract, and compensation.

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, the OWNER shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve its right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within fourteen (14) 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. The CONTRACTOR must note on notice if the claimed Extra Work is still under protest or if the claim has been dropped by the CONTRACTOR. If the Extra Work claim has been dropped, the CONTRACTOR may not reinstate that same claim. Payment, if any is due, shall be made when the OWNER makes a final determination regarding the merit of the CONTRACTOR'S 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 its protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefore. 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 cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of Contract working time only.

Unless the aforesaid requirements and conditions 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, when 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. 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 its books and records showing all of its acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute.

The cost for extra work performed by Contractor or Subcontractor will be determined by either: 1) an agreed lump sum, 2) an agreed unit price, or 3) an actual field cost as agreed to by the Owner.

The Contractor and Subcontractor will be allowed mark-up percentages for overhead and profit for changes in the Work as described below, unless the Agreement sets forth different provisions for determining overhead and profit. In the event of a conflict, the provisions of the Agreement shall control. The maximum allowable mark-up percentage of the actual cost of the Work will be 15% on the first \$20,000 and 10% on the balance over \$20,000.

If subcontracted work is involved, the Contractor will include with Contractor's cost proposal a detailed breakdown for the Subcontractor in accordance with the above requirements for the Contractor. The Subcontractor will be allowed the same mark-up percentages as provided above for the Contractor. The Contractor will be allowed the following mark-up on subcontracted work: a maximum of 8% on the first



\$30,000, and 5% on the balance over \$30,000. Under no circumstances will the OWNER be obligated to accept any change orders requested by the contractor.

If the scope of Work is reduced by the Owner such that the Contractor will not incur costs for deleted Work, the Contractor will credit those costs to the Owner and retain only Contractor's overhead and profit incurred prior to notification of Owner's reduction of the scope of the Work. If extra Work is requested by the Owner, the Contractor will be allowed to add to Contractor's actual costs a percentage as noted above to cover Contractor's overhead and profit. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

#### **105.7.B. Additional or Extra Work Compensation Claims**

While the CONTRACTOR or any subcontractor is performing Extra Work or complying with a determination or order under protest in accordance with Disputed Work and Claims for Additional Compensation Item (the cost of which shall also be determined by the method set out as aforementioned), the CONTRACTOR shall daily furnish the Engineer or other representative of the OWNER at the project site with three copies of verified statements showing:

1. The name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on 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 or her, including the rate and amount of payroll taxes, contribution for insurance and federal social security.
2. The nature, cost and quantity of any materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of the 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 its subcontractors, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of their 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 therefore; 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 there from 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. OWNER (or representative) may require the CONTRACTOR at that time to sign document that they are not willing to provide all required information.

#### **105.7.C. Cleanup**

Upon completion of the work, CONTRACTOR shall remove litter, debris, objectionable material, temporary structures, excess materials, and equipment from the work locations. Clean and restore property damaged by the Contractor's operations during the prosecution of the work. Leave the work locations in a neat and presentable condition. This work will not be paid for directly but will be considered subsidiary to Items of the Contract. Remove from the right of way cofferdams, construction buildings, material and fabrication plants, temporary structures, excess materials, and debris resulting from construction.

Where work is in a stream, remove debris to the ground line of the bed of the stream. Leave stream channels and rights of way in a neat and presentable condition. Clean structures to the flow line or the elevation of the outfall channel, whichever is higher. Dispose of all excess material in accordance with federal, state, and local regulations.

The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. Contractor's construction of the Work shall include removal of spatters and spills from materials and landscaping shall be neat and plants and grass installed as part of the Project shall be healthy and in good condition, and exterior surfaces shall be clean, neat, and free of debris. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

The aforementioned site cleanup shall be done regardless whether there is a pending claim against the OWNER. The OWNER reserves the right to withhold a minimum payment of 10 (ten) percent of total contract price up to a maximum of 25 (twenty five) percent of total contract price from the contractor if OWNER has deemed the site improperly clean, safe, or fully finished per design drawings, general specifications, and special condition specifications.

## 106 CONTROL OF WORK

### 106.1 INTRODUCTION

This section shall be used in reference to coordination between different entities whether implicitly or explicitly involved or named into contractual documents. With exception to litigations and claims, the following nomenclature shall be used as a guide in general coordination with entities and peoples such as but not limited to the OWNER, inspectors, and franchise utility companies.

### 106.2 CONTRACT DOCUMENTS

#### 106.2.A. Authority of Engineer

The Engineer has the authority to observe, test, inspect, approve, and accept the work. The Engineer decides all questions about the quality and acceptability of materials, work performed, work progress, Contract interpretations, and acceptable Contract fulfillment. The Engineer has the authority to enforce and make effective these decisions. The Engineer acts as a referee in all questions arising under the terms of the Contract. The Engineer's decisions will be final and binding.

The Project Manager does not have the authority to execute Change Orders or agree to changes in the Work which affect the Contract Amount or the Contract Time. These changes must be approved by the City Engineer or City Manager and in some cases the City Council. The City may delegate any part of his respective functions hereunder, but the Contractor will be notified in writing of any such delegation and the extent thereof.

#### 106.2.B. Priority of Contract Documents

The Contract documents are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict between Contract documents, priority of interpretation shall be in the following order: OWNERS written changes, signed agreement (or Contract), performance and payment bonds, proposal, special provisions (or conditions), advertisement for bids (or invitation to bidders, or request for proposals), project (or Contract) drawings, Technical Construction Standard Specifications, and Standard Details.

#### 106.2.C. Contract Documents and Specifications

The OWNER shall furnish the CONTRACTOR, without charge, a minimum of one copy of the Contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and specifications shall be accessible at all times to the OWNER at the job site.

The plans, the specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the Contract. All requirements occurring in any of them are binding. In cases of discrepancies, figured dimensions shall govern over scaled dimensions; plans shall govern over Standard Specifications, special provisions shall govern over both plans and Standard Specifications. All other provisions of the Standard Specifications shall remain in force.

#### 106.2.D. Supplemental Drawings and Specifications

In order to carry out the intent of the Contract documents and to assist the CONTRACTOR in performing its work, the OWNER, after the execution of the Contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the Contract documents and reasonably inferable therefrom. The OWNER, or design Engineer, may charge the CONTRACTOR for submittal of additional copies deemed not necessary to complete the work per the contractual documents. no The OWNER shall not charge extra costs on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the Contract documents, incurring extra costs, unless the CONTRACTOR has first brought the matter, in writing, to the OWNER'S attention for adjustment before proceeding with the work covered by such.

If the OWNER shall decide that there is no departure from the requirements of the Contract documents, the CONTRACTOR shall then proceed with the work as shown, specified or directed. If the OWNER shall decide that extra work is involved, OWNER shall so modify the supplemental drawings, specifications or instructions to

eliminate the extra work, or cause a written change order to be issued in accordance with Item for Change or Modification of Contract herein.

#### **106.2.E. Referenced Standards**

All referenced State, Federal, and National standards, their most current version in effect, unless specifically noted otherwise shall be followed unless they fall in direct contradiction to the standards written herein. In case of conflict the CONTRACTOR shall notify the OWNER and obtain guidance prior to proceeding with work. Referenced standards may include, but are not limited to, publications such as TxDOT Standard Specifications for Construction of Highways, Streets and Bridges, TxDOT Manual of Testing Procedures, Federal Specifications, ASTM designations, AWWA standards, and standards of other professional societies and associations.

#### **106.2.F. Contract Document Errors and Corrections**

The Engineer shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract documents. The CONTRACTOR shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or specifications, the CONTRACTOR shall promptly submit the matter to the OWNER who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the CONTRACTOR without this determination and instructions shall be at the CONTRACTOR's own risk and expense. The work is to be made complete as intended by the Contract Documents.

#### **106.2.G. Plans and Shop Drawings**

The Engineer may provide working drawings to supplement the plans with all necessary details not included on the Contract plans. The CONTRACTOR shall be permitted also to provide working drawings (sometimes referred to as shop drawings) as directed in the Contract Documents to supplement the plans with all necessary details not included on the Contract plans. Working drawings shall be prepared and furnished in a timely manner and obtain approval, if required, before the beginning of the associated work. For all working drawing submittal requirements, the Engineer may allow electronic and other alternative submission procedures.

“Shop Drawings” or “working drawings” means drawings, diagrams, schedules, and other data, which are prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. “Samples” means physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to assist in the establishment of standards by which the Work will be judged.

Working drawings shall be submitted using United States standard measures and in the English language. The routing of submittals for review and approval will be established at the preconstruction conference. The Contractor is responsible for the accuracy, coordination, and conformity of the various components and details of the working drawings. Department approval of the Contractor's working drawings will not relieve the Contractor of any responsibility under the Contract. The work performed under this Article will not be measured or paid for directly, but will be subsidiary to pertinent Items.

- 1. Purpose:** The purpose of submittals by the CONTRACTOR is to demonstrate that the CONTRACTOR understands the design concept, and that it demonstrates its understanding by indicating which equipment and materials it intends to furnish and install, and by detailing the fabrication and installation methods it intends to use. The CONTRACTOR shall be responsible for dimensions that are to be confirmed and correlated at the job site, fabrication processes and techniques of construction, coordination of its work with that of other trades and satisfactory performance its work. The CONTRACTOR shall check and verify all measurements and review submittals prior to being submitted, and sign or initial a statement included with the submittal, which signifies compliance with plans, specifications, and dimensions suitable for the application. 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. **Procedure:** 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, CONTRACTOR shall submit two (2) copies of shop drawings, layouts, manufacturer's data and material schedules as may be required by the Engineer for his/her review. Submittals may be checked by and stamped with the approval of the CONTRACTOR and identified as the Engineer may require. Such review by the Engineer shall include checking for general conformance with the design concept of the project and general compliance with information given in the General Contract Documents. Indicated actions by the Engineer, which may result from his/her review, shall not constitute concurrence with any deviation from the plans and specifications unless such deviations are specifically identified by the method described below, and further shall not relieve the CONTRACTOR of responsibility for errors or omissions in the submitted data. Processed shop drawing submittals are not change orders.
3. **Shop Drawing Conflicts:** If deviations, discrepancies or conflicts between submittals and the design drawings and/or specifications are discovered, either prior to or after submittals are processed, the design drawings and specifications shall govern. Any deviation from the specified criteria shall be expressly stated in writing in the submittal. 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.
4. **Shop Drawing Approval:** ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.
5. **Shop Drawing Rejection and Delays:** 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 providing all copies of approved shop drawings necessary for the construction operations. One (1) copy of the approved submittals shall be retained by the CONTRACTOR at the job site until completion of the project and shall be available per the request of the OWNER or representative.
6. **Continuation of Work:** Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by section under Claims, or as OWNER and CONTRACTOR may otherwise agree in writing.

### 106.3 WORKMANSHIP, WARRANTIES AND GUARANTEES

Unless otherwise expressly provided in the Contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR's compliance with these requirements.

### 106.3.A. Cooperation of Contractor

The CONTRACTOR shall cooperate with the Engineer, other Contractors, and utility and railroad companies. All work associated with fulfilling this requirement is subsidiary to the various Items of the Contract and no direct compensation will be made. Provide all information necessary to administer the Contract. Maintain at least one copy of the Contract at the work locations at all times.

Designate in writing a competent, English-speaking Superintendent employed by the Contractor. The Superintendent must be experienced with the work being performed and capable of reading and understanding the Contract. Ensure the Superintendent is available at all times and able to receive instructions from the Engineer or authorized representative and to act for the Contractor. The Engineer may suspend work if a Superintendent is not available or does not meet the above criteria.

1. **Cooperating with Utility Providers:** Use established safety practices when working near utilities. Consult with the appropriate utilities before beginning work. Notify the Engineer immediately of utility conflicts. The Engineer will decide whether to adjust utilities or adjust the work to eliminate or lessen the conflict. Unless otherwise shown on the plans, the Engineer will make necessary arrangements with the utility owner when utility adjustments are required. Use work procedures that protect utilities or appurtenances that remain in place during construction. Cooperate with utilities to remove and rearrange utilities to avoid service interruption or duplicate work by the utilities. Allow utilities access to the right of way. Immediately notify the appropriate utility of service interruptions resulting from damage due to construction activities. Cooperate with utilities until service is restored. Maintain access to fire hydrants when necessary.
2. **Cooperation between Contractors:** CONTRACTOR shall cooperate and coordinate with other Contractors working within the limits or adjacent to the limits. Cooperation shall be extended to sub-contractors, inspectors, or any other person(s) whether directly or indirectly related to the construction.
3. **Cooperating with Inspectors:** Inspectors are authorized representatives of the OWNER. Inspectors are authorized to examine all work performed and materials furnished, including preparation, fabrication, and material manufacture. Inspectors shall inform the Contractor of failures to meet Contract requirements. Inspectors may reject work or materials and may suspend work until any issues can be referred to and decided by the Engineer. Inspectors cannot alter, add, or waive Contract provisions, issue instructions contrary to the Contract, act as foremen for the Contractor, or interfere with the management of the work. Inspection or lack of inspection will not relieve the Contractor from obligation to provide materials or perform the work in accordance with the Contract. Contractor shall:
  - a. Provide safe access to all parts of the work and provide information and assistance to the Engineer to allow a complete and detailed inspection.
  - b. Give the Engineer sufficient notice to inspect the work. Work performed without suitable inspection, as determined by the Engineer, may be ordered removed and replaced at Contractor's expense.
  - c. Remove or uncover portions of finished but not inspected work as directed. Once inspected, restore work to Contract requirements. If the uncovered work is acceptable, the costs to uncover, remove, and replace or make good the parts removed will be paid for by the CONTRACTOR. If the work is unacceptable, assume all costs associated with repair or replacement, including the costs to uncover, remove, and replace or make good the parts removed. If the previously inspected and approved construction is modified or uncovered, the costs to uncover, remove, and replace or make good the parts removed will be paid for in accordance with Item for Changes in the Work.

### 106.3.B. Workmanship

If the OWNER notifies the CONTRACTOR in writing of defective work, the CONTRACTOR shall correct the deficiencies within fourteen (14) calendar days of the Notice at no additional cost to the OWNER. If the defective work is not corrected within fourteen (14) calendar days, or the CONTRACTOR is not making satisfactory progress (in the opinion of the OWNER) to correct the deficiencies, the OWNER may withhold future payments for All Work until the defective work has been corrected to the satisfaction of the OWNER.

### 106.3.C. General Warranty

CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or normal wear and tear under normal usage.

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

1. observations by ENGINEER;
2. recommendations of any progress or final payment by ENGINEER;
3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test or approval by others; or
8. any correction of defective Work by OWNER.

Nothing written in these documents is intended to release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents. The warranty described herein binds the Contractor to repair or replace (at the option of Engineers or Owner) without cost to Owner, any Work discovered during the two year period to be out of compliance with the Contract Documents and any Work which during the two year period described herein exhibits defects in workmanship or materials or which malfunctions or fails to work correctly or in the manner intended.

The warranty provided herein will be extended by any work performed by the Contractor (or performed by the Owner or Surety in the event Contractor fails to perform its warranty obligations) in repairing or replacing non-complying or defective work or materials, so that all repaired or replaced work shall have a one year warranty from the date repairs or replacements are completed. In the event Contractor fails to comply with these provisions, Owner shall have, in addition to any other rights and remedies provided by law or the Contract Documents, the right to (1) perform the repair or replacement by its own employees or other contractor and demand reimbursement from Contractor for all amounts incurred by Owner, in which event Contractor shall pay said amounts to Owner within 30 days after demand, and/or (2) make demand on Surety to perform Contractor's obligations.

All warranties required by the Contract Documents shall include labor and materials and shall be signed by the manufacturer and/or Subcontractor as the case may be and countersigned by the Contractor. All warranties shall be delivered to the OWNER upon completion of the Work and before the submission of request for Final Payment. At the time of final completion of the Work, the Contractor agrees to assign to the Owner any and all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties.

### 106.3.D. Special Warranty

If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract documents, any of the work is found to be defective or not in accordance with the Contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

The CONTRACTOR shall remove from the site all portions of the work which are defective or nonconforming and which have not been corrected unless removal is waived in writing by the OWNER.

All subcontractors', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the Engineer, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

Any work repaired or replaced, pursuant to this section, shall be subject to the provisions of this section to the same extent as work originally performed.

#### **106.3.E. Owner's Rights**

The rights and remedies of the OWNER provided in this section are in addition to, and do not limit, any rights or remedies afforded to the OWNER by law or any other provision of the Contract documents, or in any way limit the OWNER's right to recovery of damage due to default under the Contract.

#### **106.4 CONSTRUCTION STAKES**

Unless otherwise expressly provided in the Contract drawings or specifications, the CONTRACTOR shall be responsible for all required Construction Staking associated with the project. When applicable, Costs for Construction Staking are paid under the appropriate bid item number included in the CONTRACT DOCUMENTS. In all other cases, Construction Staking is contingent to the rest of the project.

Copies of survey notes demonstrating third order level of accuracy shall be furnished to the OWNER within two weeks after the survey completion for final stakeout of the major project components. The furnished survey notes shall include the final vertical and horizontal stakeout notes for all drainage, street paving, structural, water, or sanitary sewer improvements. Alignments shall be tied to horizontal control with sufficient calls provided to delineate centerline or alignment. The location or monumentation of any real property boundaries or easements required for construction be performed by or under the direct supervision of a Registered Professional Land Surveyor in Texas as required by article 5282c of the Vernon's Texas Civil Statutes.

The CONTRACTOR is responsible for maintaining all survey control points and monuments in the construction area at all times and any costs for re-staking or re-establishing controls required shall be borne by the CONTRACTOR.

The OWNER will perform or confirm the initial and final measurement for payment and reserves the right to field verify any stakes placed, measurements for payment made and any work performed by the CONTRACTOR.

#### **106.5 MEANS AND METHODS OF CONSTRUCTION**

The OWNER'S approval of the CONTRACTOR'S means or methods of construction, or the OWNER's failure to exercise OWNER's right to prohibit such means or methods, shall not relieve the CONTRACTOR of its responsibility for the work or of its obligation to accomplish the result intended by the Contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the CONTRACTOR against the OWNER.

##### **106.5.A. Drawings Conformity**

All work shall conform to the lines, grades, cross-sections, and dimensions shown on the plans. Any deviation from the plans which may be required by the emergency needs of construction will be determined and authorized in writing by the OWNER.

##### **106.5.B. Means and Methods**

Unless otherwise expressly provided in the Contract drawings, specifications or bulletins, the means and methods of construction shall be such as the CONTRACTOR may choose; subject, however, to the OWNER's right to prohibit means and methods proposed by the CONTRACTOR which in the OWNER's judgment shall:

1. constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances,



2. cause unnecessary or unreasonable inconvenience to the public,
3. not produce finished work in accordance with the requirements of the Contract documents,
4. not assure the work to be completed within the time allowed by the Contract.

Where the Contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, sequencing of construction or a specific traffic control plan, the CONTRACTOR shall submit its proposed plan of procedure, sequencing or traffic control plan to the OWNER sufficiently in advance of the work affected to permit a reasonable time for review and comments. The sequence of construction and traffic control plan must be approved in advance by the OWNER before construction begins. Failure to submit the proposed plan within a reasonable time shall not create a claim for damages for resulting delay in the work or for damages, nor shall it be a cause for extension of working time to complete the work. CONTRACTOR further agrees to indemnify OWNER for any cause of action brought by any third party against the OWNER.

#### **106.5.C. Construction Zone**

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

1. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.
2. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### **106.5.D. Construction Safety**

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

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

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.

All damage, injury or loss to any property, caused directly or indirectly, in whole or in part, by CONTRACT, Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with section of Acceptance of Work that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion). OWNER may issue a stop work order if it has been observed that unsafe working conditions, methods, materials, etc. are occurring at the construction site.

#### **106.5.E. Construction Emergencies**

CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with laws or Regulations.

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

#### **106.5.F. Construction Safety Plan**

CONTRACTOR shall provide a Safety Plan for the Project which complies with, but is not limited to, the following guidelines. The Contractor is responsible for reviewing the specific requirements of the Contract, analyzing the planned methods of operation, and incorporating any additional specific or unique safety requirements in the written plan. The Contractor is responsible for ensuring that all applicable safety regulations are addressed as part of the Safety Plan. No Work shall commence on the Project site until the Safety Plan has been reviewed by Owner.

1. General Provisions: The Safety Plan shall include:
  - a. An acknowledgement that the Contractor is totally responsible for compliance with OSHA requirements and relevant federal, state and local laws, rules and other regulations, which require a place of employment that is free of unsanitary or hazardous conditions that would harm an employee's health or safety or which establishes procedures or requirements for workplace safety.
  - b. An emergency evacuation plan, and site evacuation plan as may be appropriate for the Scope of Work.
  - c. The Contractor's proposal for compliance with the specific safety requirements, including the procedures for completing and forwarding to the Owner all on site accident and incident reports.
  - d. A layout drawing of the site indicating access roads, fire and ambulance lanes, location of first aid stations, location or required danger alarm systems, location of offices, parking for private vehicles and equipment, and storage of all flammable and/or combustible liquids, gases or other hazardous materials, and the evacuation assembly area, as may be appropriate for the Scope of Work.
  - e. Plans for providing medical service. A copy is to be posted at the work site first aid station and the following emergency numbers shall be included for the given work area: Burnet City Manager: 512-715-3208.

- f. The name of the Contractor's Safety Manager, Superintendent or (Contractor's Safety Supervisor), his/her qualifications and delineate his/her authority to direct work stoppage and expend funds to eliminate imminent hazardous conditions.
  - g. A description of the following issues:
    - (1) The frequency at which safety inspections will be conducted by the Contractor's Safety Engineer, Contractor's Safety Supervisor or other assigned inspector.
    - (2) Construction areas that will be designated « Hard Hat Areas» and where warning signs will be posted at all entry points.
    - (3) The greatest number of employees to be working at any one time during peak construction periods.
    - (4) Contractor's policies for initial safety indoctrination of all employees.
    - (5) Contractor's plans for continued safety education for all employees, including weekly safety meetings.
    - (6) Contractor's housekeeping rules or regulations.
    - (7) Plans for providing adequate lighting, ventilation, noise control, and personal protective equipment.
    - (8) Plans for controlling access to prevent unauthorized persons from entering the construction area.
    - (9) Site Safety equipment provided by Contractor, with locations.
    - (10) Persons who are trained to administer First Aid.
    - (11) Procedures to be followed in case of emergency.
2. Special Provisions: Depending on the type of construction, additional items must be incorporated into the Contractor's Safety Plan. When applicable, these include the following:
- a. Where the illustration of crane operation signals shall be posted on the Project site.
  - b. Traffic control and marking of hazards (i.e. haul roads, highways or other traffic intersections, utilities, prohibited areas).
  - c. Fire protection and security systems interruption which include automatic detection devices and alarms, automatic sprinkler systems, fire pumps, fire hydrants, applicable water supplies and reservoirs. Plans shall include measures and/or procedures to provide interim fire and security protection to facilities or areas affected by interruptions.
  - d. Excavations including slope protection, shoring, guarding, barricades, excavation access, and excavated material storage. Scaffolding, including planking size, cleats, guardrails, toe boards, anchor points, put-logs, section pins, and scaffold access.
  - e. Ladders, including types for specific uses and types of anchors to be utilized.
  - f. Use of cranes or derricks and the testing and inspection thereof, including hook latches, cables, boom stops, load tables, warning devices and fire extinguishers.
  - g. Testing and inspecting equipment, and the provision of backup alarms for tractors, backhoes, dozers, motor graders, etc.
  - h. Requirements for storage of flammable/combustible liquids for gases, including paints.
  - i. Submittal of false work (multi-story structures) and formwork drawings for review and approval. This item should also be indicated on the Contractor's progress schedule to prevent submittal delay which could hold up project.
  - j. Provision of toilets, including frequency at which toilets will be cleaned with soap and water, and sterilized.
  - k. Complete Blasting Plan, if applicable, which includes procedures for blasting, permits, explosives handling, explosive storage, explosive transportation, hole loading, blast signals, and blaster qualifications.
  - l. Checking and testing electrical tools and appliances for the required ground and installation of electrical circuits in accordance with the National Electric Code.
  - m. Use of safety nets in areas where the use of safety harnesses and life lines or scaffolds is not practical. Use of safety harnesses, lifelines and lanyards when necessary.
  - n. Providing welding protection, including shields, fire extinguishers, ventilation, hot work permits and fire watches.

### 106.5.G. Record Drawings

During the performance of Work under the Contract, the Contractor shall record and delineate accurately on one set of prints of the Drawings, which will be furnished to Contractor by the OWNER, all changes in such Work which constitute significant departures from the original Drawings. The set of Drawings thus corrected and changed shall show the Work as actually constructed ("As-Built Drawings" or "Record Drawings"). Such As-Built Drawings shall be delivered to the OWNER for review and approval at the earliest practicable date prior to completion of all Work under the Contract, in any event not later than the date of acceptance of the completed Work.

The Contractor shall review said As-Built Drawings on site with the Engineers at monthly intervals to verify proper recording of data and shall incorporate such revised Drawings as may be furnished by the Design Engineer as the job progresses. The As-Built Drawings shall show sufficient detail to convey, among other pertinent information, the following: 1. Physical dimensions, relation to existing conditions, and horizontal and vertical location of all underground or hidden installations; and 2. All modifications to the Work as recorded in Change Orders and Construction Change Directives.

### 106.6 COORDINATION

The OWNER and the CONTRACTOR shall designate an address and, if available, a facsimile number where all notices, directions or other communications may be delivered. If the OWNER and the CONTRACTOR agree, service of notice under this section may be accomplished by e-mail under the same provisions as notice by facsimile.

#### 106.6.A. Local Access

The CONTRACTOR shall provide a telephone number, which will be answered by a representative during normal business hours and answered either live or electronically, outside normal business hours with said calls returned within one hour. The phone shall be accessible by direct dial without long distance charges for all citizens in the construction area and the City of Dallas personnel.

#### 106.6.B. Service of Notices

Notices to the surety or sureties on Contract bonds shall be directed or delivered to the surety's home office or to the surety's designated agent for delivery of notices. Service by mail shall be presumed complete upon deposit of the paper, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service. Service, by facsimile after 5:00 p.m. local time of the recipient, shall be deemed delivered on the following business day.

A party may change its designated address, facsimile number or e-mail address by delivering written notice of the new address, facsimile number or email address, properly signed, to all interested parties. Nothing herein contained shall be deemed to preclude hand delivery of any notice, direction or communication to a party mentioned above.

### 106.7 INSPECTION

It is the intent of the OWNER to inspect all work on this project. Some work may not require the presence of an inspector, and the CONTRACTOR should obtain written verification from the Engineer if an inspector is not needed before proceeding with that particular item of work. The CONTRACTOR must pay for all testing needed to determine acceptability for any work done without proper inspection, as directed by the Engineer.

The CONTRACTOR shall furnish the OWNER with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the OWNER may be ordered removed and replaced at the CONTRACTOR's expense.

#### **106.7.A. Removal of Defective or Unauthorized Work**

All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be removed and replaced at the CONTRACTOR's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR's risk and shall be considered unauthorized and at the option of the owner may not be measured and paid for and may be ordered removed at the CONTRACTOR's expense. Upon failure of the CONTRACTOR to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized or condemned work or materials immediately after receiving notice from the owner, the owner shall, after giving written notice to the CONTRACTOR, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the CONTRACTOR. Alternatively, the owner may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the Contract.

#### **106.7.B. Final Inspection**

Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the improvement is ready for final inspection. If the work is not acceptable to the OWNER at the time of such inspection, OWNER shall inform CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made. The OWNER shall make final inspection of all work included in the Contract as soon as practicable after remedies have been made and the work is ready for acceptance.

#### **106.7.C. Notice for Inspection**

The scheduled start of construction for each location shall be coordinated with the Department of Public Works a minimum of ten (10) days prior to the requested start date. Inspection of work associated with Department of Public Works projects will be done by the OWNER's appointed engineer, construction manager, or inspector. Inspections shall be requested through the appropriate appointed contract, a minimum of 24 hours prior to the need for inspection. The CONTRACTOR shall assure that the OWNER is aware of any work being performed on the project prior to the work taking place, and the CONTRACTOR should obtain written verification from the OWNER if an inspection is not needed before proceeding with any particular item of work.

#### **106.7.D. Owner Site Visits**

OWNER, ENGINEER, or its representative, will make visits to the site at intervals appropriate to the various stages of construction as OWNER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority, responsibility, and particularly but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

### 106.7.E. Overtime Inspection

Project inspectors must be paid at one and one-half their regular salary rates for all time spent on project inspection which exceeds 40 hours per week Monday through Friday and for time during legal Holidays declared by the OWNER. The OWNER will provide one inspector who will be available for this project during an eight-hour period on working days between the hours of 7:30 a.m. and 4:30 p.m., (Monday through Friday, except on legal Holidays,) for the duration of this project at no charge to the CONTRACTOR. All inspection performed on this project in excess of eight hours a day on working days, (Monday through Friday,) or before the hour of 7:30 a.m. or after the hour of 4:30 p.m., or performed on weekends or on legal Holidays may be considered overtime inspection.

The CONTRACTOR will be required to reimburse the OWNER for the cost of all inspection overtime, which may be necessary for the successful and expeditious prosecution of the work included in this CONTRACT. Inspection overtime will not be charged if the OWNER required the CONTRACTOR to work during overtime periods because of restrictions for water main tie-ins, traffic requirements, or other periods that inspection would normally be charged as determined by the OWNER. The OWNER's decision shall be final.

Except in an emergency situation, the CONTRACTOR shall be required to furnish in writing to the OWNER, not less than 36 hours in advance, a request to work overtime on Saturday, Sunday, Holiday, or any day on which the City Offices are closed for normal business. A written request is not required for overtime work on a weekday. Overtime will be scheduled at the discretion of the OWNER. The CONTRACTOR is not guaranteed that overtime will be accommodated.

Unless otherwise specified in the CONTRACT, inspection overtime will be charged to the CONTRACTOR, with the number of Inspectors to be determined by the OWNER under the following overtime conditions:

1. Weekdays between the hours of Midnight to 7:30 a.m. and between 4:30 p.m. to Midnight, at a rate of \$50.00 per hour per Inspector.
2. Saturdays, Sundays and Holidays between midnight to midnight with a minimum of four (4) hours, at rate of \$50.00 per hour per Inspector and a minimum of \$200 per day per Inspector.

Inspection fees will be accumulated during the monthly estimate period. A statement of charges for the estimate period will be provided to the CONTRACTOR. The statement of charges must be paid prior to the OWNER processing the next submitted estimate. PAYMENT IS DUE WITHIN TEN (10) DAYS AFTER THE DATE OF THE INVOICE. If payment is not made as due, the OWNER reserves the right to deduct or withhold amounts due from the monthly progress payment or final payment.

### 106.8 ACCEPTANCE

Once the work is satisfactory to the OWNER and in accordance with the specifications and CONTRACT documents, the CONTRACTOR shall be issued a certificate of acceptance. The Certificate of Acceptance will not be issued until all work required by contract, including all water and wastewater appurtenances have been adjusted to their final position.

#### 106.8.A. Termination of Contract

The contract will be considered fulfilled, save as provided in any maintenance stipulations, bond, or by law, when all the work has been completed, the final inspection, and final acceptance made by the OWNER, and final payment made by the OWNER.

#### 106.8.B. Guarantee after Completion

Unless otherwise specified in the technical section of these specifications, the CONTRACTOR shall, after test and acceptance, and for a period of one year from date of final written acceptance by the OWNER or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the contract documents, rebuild, repair, or replace any and all items which have proven defective due to unsatisfactory material and / or workmanship. Upon written notice from the OWNER, the CONTRACTOR shall immediately make any repairs that may be ordered, or such repairs will be made by the City of Burnet at the expense of the CONTRACTOR or the CONTRACTOR'S Surety. In case of an emergency where delay would cause serious loss or damage, the City of Burnet may undertake to have the defects repaired without previous notice. The expense of all repairs, including

all emergency repairs, shall be borne by the CONTRACTOR or the CONTRACTOR'S Surety, at no cost to the OWNER. This obligation shall survive termination of the contract.

#### **106.8.C. Final Payment**

Whenever the work provided for by the contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the work is ready for final inspection. The OWNER will then make such final inspection and if the work is satisfactory and in accordance with the specifications and contract documents, the OWNER shall issue a certificate of acceptance to the CONTRACTOR and submit a request to accept the work performed by the CONTRACTOR and payment of a final estimate under the terms of which the OWNER will release 100% of the retainage, plus the unpaid portions of the final estimate as the OWNER deems advisable. 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 within 30 days after the final acceptance by the OWNER, provided the CONTRACTOR has furnished to the OWNER a consent of Surety and 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 by 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.

#### **106.8.D. Audits**

By execution of the Contract, CONTRACTOR grants the OWNER the right to audit, at City's election, all of CONTRACTOR'S records and billings relating to the performance of the Work under the Contract. CONTRACTOR agrees to retain such records for a minimum of three (3) years following completion of the Work under this Contract. OWNER agrees that it will exercise the right to audit only at reasonable hours.

## 107 CONTROL OF MATERIALS

### 107.1 INTRODUCTION

This section shall be used in reference to material quality, storage, sampling, and source. The specifications for materials set out the minimum standard of quality that the OWNER believes necessary to procure a satisfactory project. Use only materials that meet Contract requirements. Unless otherwise specified or approved, use new materials for the work. Contractor may suggest in writing to the OWNER of less expensive material. In such cases the payment to the contractor shall be reduced accordingly based on the agreed price between the OWNER and CONTRACTOR. Contractor may suggest in writing to the OWNER of higher quality material. In such cases these shall be no additional accrued cost to the OWNER unless the OWNER agrees in writing to the cost and installation of higher quality materials.

### 107.2 SUBSTITUTION OF MATERIALS

No substitutions will be permitted until the CONTRACTOR has received written permission of the Engineer to make a substitution for the material that has been specified. The Owner reserves the right to refuse to accept substitutions of materials or equipment. Requests for substitution shall be made prior to the date of the preconstruction conference. Where the term "or equal," or "or approved equal" is used, it is understood that if a material, product, or piece of equipment bearing the name so used is furnished it will be approvable, as the particular trade name was used for the purpose of establishing a standard of quality acceptable to the OWNER. If a product of any other name is proposed for use, the Engineer's approval thereof must be obtained before the CONTRACTOR procures the proposed substitute.

Where the term "or equal," or "or approved equal" is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, as the representative of the OWNER, shall be the sole judge of the acceptability of substitutions. The provisions of this sub-section as related to "Substitutions" shall be applicable to all sections of these specifications.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the Engineer shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the Engineer.

Owner may, in its discretion, agree to accept substitutions of materials or equipment after the Contract has been signed for good cause shown. The Contractor may make substitutions of materials or equipment only with the prior written consent of Owner after evaluation and approval by the applicable Engineer and in accordance with a Change Order. A request for substitution constitutes a representation by Contractor that Contractor:

- a) has investigated the proposed product and determined that it is equal or superior in all respects to the specified product;
- b) shall provide identical warranties as those required for the specified product or any extended warranties required by Owner as a condition for approval of the substitution;
- c) shall coordinate installation and make changes to other Work which may be required at no cost to Owner;
- d) waives claims for additional costs or time extension which may subsequently become apparent;
- e) certifies that the proposed product will not affect or delay the approved Construction Schedule; and

#### 107.2.A. Salvageable Materials

All salvageable material shall be designated by and remain the property of the OWNER. Any designated salvageable material that is destroyed or damaged due to negligence of the CONTRACTOR shall be replaced with new material by the CONTRACTOR at no expense to the OWNER. Salvage material, unless designated for reuse, shall be returned to a location designated by the OWNER.



### 107.2.B. Source of Materials

The CONTRACTOR shall be free to obtain the approved materials, equipment and articles from sources of its own selection. However, if the OWNER finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work, the OWNER shall have the right to require the original source of supply changed by the CONTRACTOR. The CONTRACTOR shall have no claim for extra cost or damage because of this requirement.

### 107.2.C. Quality of Materials

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the Contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR's sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor shall furnish to the OWNER for its approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment that the Contractor contemplates incorporating into the Work. When required by the Contract or when called for by the OWNER, the Contractor shall furnish the OWNER for approval, full information concerning the material or articles the Contractor contemplates incorporating into the Work.

No lead based paint and no materials containing asbestos shall be incorporated into the Project. Coal tar sealants shall not be used on the Project. Contractor, subcontractors, and suppliers may be required to certify that these materials were not provided or installed as part of this Contract.

## 107.3 OFF-SITE STORAGE

Payment for costs incurred in storage of materials or equipment away from the project site will not be made by the OWNER unless:

1. The OWNER has approved off-site storage in writing; and
2. The materials or equipment are stored in a bonded warehouse located in the County approved by the OWNER and identified with the project for which they are stored as evidenced by warehouse receipts and appropriate documents of title.

Storage in facilities of the manufacturer or CONTRACTOR will not be permitted or paid for, unless such storage is expressly approved in writing by the OWNER.

### 107.3.A. Surplus Materials

Surplus materials shall be disposed of by the CONTRACTOR at his expense. Surplus excavation materials shall be removed from the site unless specified otherwise under the performance specifications.

## 107.4 MATERIAL SAMPLING AND TESTING

Unless otherwise stipulated in the Contract documents, initial testing of all materials, construction items or products incorporated in the work shall be performed at the direction and expense of the OWNER, including initial compaction and density tests deemed necessary. In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove out test shall be made as directed by the OWNER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER to make any tests of materials shall in no way relieve the CONTRACTOR of its responsibility of furnishing materials conforming to the Contract documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials (ASTM). The CONTRACTOR shall provide such facilities as the OWNER may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made. The CONTRACTOR shall furnish adequate samples without charge. Test materials and samples shall be stored so as to ensure the preservation of their quality and fitness for the Work. If directed by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and shall be placed under cover if directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

The CONTRACTOR shall furnish without additional cost to the OWNER such materials for testing as may be reasonably necessary. Retesting after failure to pass tests shall be at the expense of the CONTRACTOR. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and tests resulting therefrom shall be borne by the CONTRACTOR. The OWNER shall judge what is extra inspection and shall determine the additional cost incurred thereby and payable by the CONTRACTOR.

**108 LEGAL AND CONTRACT RESPONSIBILITIES**

**108.1 INTRODUCTION**

This section shall be used in reference to the legal relations and contract responsibilities between the OWNER and CONTRACTOR. This Contract is between the OWNER and the CONTRACTOR only. No person or entity may claim third-party beneficiary status under this Contract or any of its provisions, nor may any non-party sue for personal injuries or property damage under this Contract.

**108.2 CONTRACTOR INDEPENDENCE**

While engaged in carrying out and complying with the terms and conditions of this Contract the CONTRACTOR is, and shall be, an independent CONTRACTOR and shall not, with respect to its acts or omissions, be deemed an officer, employee or agent of the OWNER. The CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the OWNER.

The fact that the OWNER or the Engineer shall have the right to inspect or observe CONTRACTOR's work during performance and to exercise the other rights and prerogatives expressly reserved to the OWNER or the Engineer under this Contract is not intended to, and shall not any time, change or affect the status of the CONTRACTOR as an independent CONTRACTOR with respect to the OWNER, the CONTRACTOR's own employees or any other person, firm or corporation. Nothing contained in the Contract documents shall create any contractual or agency relationship between the Engineer and the CONTRACTOR.

**108.3 INDEMNIFICATION**

CONTRACTOR COVENANTS AND AGREES TO AND DOES HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE OWNER, ITS OFFICERS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY LOSS OR DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED, ARISING OUT OF THE WORK AND SERVICES TO BE PERFORMED HEREUNDER BY CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY THE ALLEGED NEGLIGENCE OF THE OFFICERS, EMPLOYEES, OF THE OWNER. CONTRACTOR LIKewise COVENANTS AND AGREES TO, AND DOES HEREBY, INDEMNIFY AND HOLD HARMLESS OWNER FROM AND AGAINST ANY AND ALL INJURIES, DAMAGE, LOSS OR DESTRUCTION TO PROPERTY OF OWNER DURING THE PERFORMANCE OF ANY OF THE TERMS AND CONDITIONS OF THIS CONTRACT, WHETHER ARISING OUT OF IN WHOLE OR IN PART, ANY AND ALL ALLEGED ACTS OR OMISSIONS OF OFFICERS, SERVANTS, OR EMPLOYEES OF OWNER.

THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

The provisions of this indemnification and all other Indemnification obligations set out in the Contract Documents, shall survive the termination of this Contract, howsoever caused, as to events occurring prior to such termination, and no payment, partial payment, nor issuance of a certificate of Substantial Completion nor a certificate of final completion nor acceptance or occupancy in whole or in part of the Work shall waive or release any of the provisions of this section or of any other indemnification contained in the Contract Documents.

**108.4 CLAIM AGAINST OWNER**

No claim whatsoever shall be made by the CONTRACTOR or Sub-CONTRACTOR against any officer, servant, employee or agent of the OWNER for or on account of, anything done or omitted to be done in connection with this Contract.

**108.4.A. Financial Interest**

CONTRACTOR is hereby advised to comply with the OWNER's financial interest or comparable policy. If OWNER does not implement a financial interest or comparable policy of its own, provisions of this Item shall govern matters of financial interest.

No officer, servant, employee or agent of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER or be financially interested, directly or indirectly, in the sale to the OWNER of any land, materials, supplies or services, except on behalf of the OWNER as an officer or employee. Any violation of this article with the knowledge, expressed or implied, of the persons, partnership, company, firm, association or corporation contracting with the OWNER shall render the Contract involved voidable by the OWNER.

#### **108.4.B. Claim Venue**

The parties herein agree that this Contract shall be performed in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the Contract documents shall be construed in accordance with the laws and court decisions of the State of Texas. The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Burnet County, Texas. If any provision or part of the Contract Documents is held to be void or unenforceable under any Law or Regulation, all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees and court costs. Reference is made to Section 271.159 of the Texas Local Government Code in connection with the recovery of attorney's fees. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages. The parties agree to mediate any dispute in good faith prior to filing suit for relief other than injunctive relief.

#### **108.5 NO WAIVER OF LEGAL RIGHTS**

Inspection by the Engineer; any order, measurement, quantity or certificate by the Engineer; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the Contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of Contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the Contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or its agents and the Engineer or assistants, discovered in the work before or after the final payment has been made.

#### **108.5.A. Faulty or Uncompleted Work**

Neither final acceptance of the work, nor final payment, shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship. The CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the Contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

The OWNER, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefrom:

1. Showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the CONTRACTOR or any other person under this Contract.
2. From showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect or improperly made in any particular, or
3. The work or the materials or any parts thereof do not in fact conform to the Contract requirements.

4. Demanding the recovery from the CONTRACTOR of any overpayments made to it, or such damages as the OWNER may sustain by reason of the CONTRACTOR's failure to perform each and every part of this Contract in strict accordance with its terms; or both.

#### **108.5.B. Compensation of Acknowledged Work**

The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

Unless otherwise provided in the Contract documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

#### **108.5.C. Severability**

In the event a term, condition, or provision in this Contract is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition or provision, shall be deleted and the remainder of the Contract shall remain in full force and effect.

#### **108.5.D. Successors and Assigns**

Subject to the limitations upon assignment and transfer herein contained, this Contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

### **108.6 OBLIGATION AND WORK PERFORMANCE**

Any failure or neglect on the part of OWNER, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the Contract documents nor render owner liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

In addition to those matters elsewhere expressly made the responsibility of the CONTRACTOR, the CONTRACTOR shall have the full and direct responsibility for the performance and completion of the work under this Contract and for any act or neglect of the CONTRACTOR, its agents, employees or subcontractors. CONTRACTOR shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under which the work must be done are different from what CONTRACTOR estimated or anticipated, or because of weather, floods, elements or other causes.

### **108.7 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract the CONTRACTOR agrees to nondiscrimination of employment practices.

#### **108.7.A. Nondiscrimination Toward Employees**

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 and that employees are treated equally 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 to be provided setting forth the provisions of this nondiscrimination clause. 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. The CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work.

#### **108.7.B. Labor Unions**

The CONTRACTOR shall send to each labor union or representative of workers with which it 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.

#### **108.8 STATE AND LOCAL SALES TAXES**

The OWNER qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of the Texas Limited Sales, Excise and Use Tax Act. 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 of all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and all materials, supplies and other tangible personal property, other than machinery, or equipment and its accessories, and repair and replacement parts, necessary and essential for the performance of the Contract with the OWNER which is to be completely consumed at the job site.

Tangible personal property necessary and essential for the performance of the Contract includes only such materials, tools and supplies specifically needed and directly used to incorporate tangible personal property into the real estate being improved under the Contract. Overhead supplies and supplies used indirectly or only incidental to the performance of the Contract with the OWNER are not included in the exemption. Tangible personal property is "completely consumed" if after being used once for its intended purpose it is used up or destroyed. Any exemption certificate issued by the CONTRACTOR is subject to the existing rules and interpretation governing the exemption issued by the Comptroller of Public Accounts of the State of Texas. The OWNER will not make interpretations of the extent or applicability of the exemption in a particular case; if the CONTRACTOR, or any subcontractor or supplier of the CONTRACTOR, has any questions about the extent or applicability of the exemption in specific circumstances, guidance should be sought from the State Comptroller's Office. 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.

The Contract Amount shall be final and be deemed to include all taxes payable (unless exempt as indicated above) in connection with the Work. CONTRACTOR may not issue a separate amount to OWNER indicating this to be the correct amount including all taxes and/or fees.

#### **108.9 PATENTS**

The CONTRACTOR shall pay all royalties and license fees and shall provide, by suitable legal agreement with the patentee or OWNER, for the use of any design, device, material or process covered by letters, patent or any copyright. The CONTRACTOR shall indemnify, defend, hold and save the OWNER and its officers, employees and agents harmless from all liability and claims for infringement of any patent or copyright. In the event that any claims, suit or action at law or in equity of any kind whatsoever is brought against the OWNER, or its officers, employees or agents involving any such patents, copyrights or license rights, then the OWNER shall have the right to and may retain from any money due or to become due to the CONTRACTOR such sum deemed necessary by the OWNER for its protection until such claim or suit shall have been settled and satisfactory evidence to that effect shall have been furnished the OWNER.

### 108.10 COMPLIANCE WITH LAWS

The CONTRACTOR shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment.

#### 108.10.A. Permits

The CONTRACTOR shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions. All work required under this Contract shall comply with all requirements of law, regulation, permit or license. If the CONTRACTOR finds that there is a variance, it shall immediately report this to the OWNER for resolution.

#### 108.10.B. Pleas of Misunderstanding

No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR and the CONTRACTOR's Sureties shall indemnify and save harmless the OWNER against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or order whether by the CONTRACTOR, employees, or Subcontractors. The OWNER shall not be liable for interest on any progress or final payment to be made under this Contract, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code.

#### 108.10.C. Jobsite Notice

Contractor shall post at the Project site, in a conspicuous place, any notices required by law to be posted there, and any notices required by the Owner in writing to be posted there, including the following notices required to be posted by Owner:

1. Workers' Compensation Notice:

**NOTICE OF REQUIRED WORKERS' COMPENSATION COVERAGE**  
**(Contractor Must Post at Project Site)**

**REQUIRED WORKERS' COMPENSATION COVERAGE**

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

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

**REQUISITOS SOBRE COBERTURA DE COMPENSACIÓN**

**"La ley requiere que todas las personas que trabajan en esta localidad o proporcionan servicios relacionados con este proyecto de construcción estén cubiertos por seguro de compensación. Esto incluye personas que proporcionan, transportan, o entregan equipo o materiales, o proporcionan trabajo o transportación y otros servicios relacionados a el proyecto, cualquiera que sea la identidad de su patrón o su situación como empleado."**

"Llame a la Comisión Tejana de Compensación a Trabajadores (Texas Workers' Compensation Commission), marcando el 512-440-3789 para recibir información de los requisitos legales sobre cobertura de seguros, para verificar si su patrón ha proporcionado la cobertura requerida, o para reportarlo, sin no lo ha hecho."

2. Notice of City of Burnet Safety Rules:

**CITY OF BURNET SAFETY RULES**

The following City of BURNET safety rules must be followed at all times:

- 1. The possession or use of tobacco products, alcoholic beverages, illegal drugs, and firearms or weapons on Owner's property is prohibited at all times, twenty-four hours a day. There shall be zero tolerance for violations of this provision.**
- 2. Contractor, subcontractors and all other persons performing Work at the Project site shall use only such access to the site and facilities as are designated by Owner, and shall comply with all other rules and requirements established by Owner for use or occupancy of the Project site. In addition, Contractor, and subcontractors shall be aware that there are construction and access easements existing on the Owner's property and upon the adjacent properties that govern coordination of construction activities. Contractor and subcontractors shall perform the Work in compliance with these easements at all times.**
- 3. Owner shall have the right to require the immediate removal from the Project site of any person performing Work who violates the provisions of these Safety Rules or who fails to comply with all other rules or requirements established by the City of Burnet for use or occupancy of the Project site. Owner may prohibit such person from being allowed to perform Work at the Project site in the future.**

**108.11 PROTECTION OF WORK AND OF PERSONS AND PROPERTY**

The CONTRACTOR shall have the responsibility to provide and maintain all safety measures and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site.

It shall be the duty and responsibility of the Contractor and all of its subcontractors to be familiar with and comply with all requirements of Public Law 91-596, 29 U.S.C. §§ 651 et. seq., the Occupational Safety and Health Act of 1970, (OSHA) and all amendments thereto, and to enforce and comply with all applicable provisions of OSHA.

**108.11.A. Sanitary Provisions**

The CONTRACTOR shall establish and enforce among its employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such a manner and at such points as shall be approved by the OWNER, and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER's jurisdiction shall be strictly complied with.

**108.11.B. Public Convenience**

Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, at its own expense, provide all material and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the OWNER. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to



endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

1. **Notice:** The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from the monies due or to become due the CONTRACTOR. The CONTRACTOR shall notify the OWNER when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The CONTRACTOR shall, when directed by the OWNER, keep any street or streets in condition for unobstructed use by emergency services. Where the CONTRACTOR is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.
2. **Right of Way:** Where the work passes over or through private property, the OWNER shall provide such right-of-way. The CONTRACTOR shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of property along or adjacent to the work. The CONTRACTOR shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the Contract documents or caused by agents or employees of the OWNER) by reason of any negligent act or omission on the part of the CONTRACTOR, its employees, agents or subcontractors, or at any time due to defective work or materials, or due to its failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

#### 108.11.C. Protection of Work

During performance and up to date of final acceptance, the CONTRACTOR shall be under the absolute obligation to protect the finished work against any damage, loss or injury. In the event of such damage, loss or injury, the CONTRACTOR shall promptly replace or repair such work, whichever the OWNER shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the OWNER's approval of or failure to prohibit means and methods of construction used by the CONTRACTOR. All risk of loss or damage to the work shall be borne solely by the CONTRACTOR until final completion and acceptance of all work by the OWNER, as evidenced by the OWNER's issuance of a certificate of acceptance.

#### 108.11.D. Protection of Persons

The CONTRACTOR shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site. Compensation shall be paid to the CONTRACTOR for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law or otherwise for the protection of persons or property according to item for Barriers and Warning and or Detour Signs.

The CONTRACTOR shall assume all duties owed by the OWNER to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site. Where the work is carried on, in or adjacent to any street, alley, sidewalk, public right-of-way or public place, the CONTRACTOR shall at its own cost and expense provide such flagmen and watchmen in addition to its responsibility to furnish, erect and maintain such warning devices, barricades, lights, signs, and other precautionary measures for the protection of persons or property as are required by law.

During periods when schools are in session, the CONTRACTOR will be required during the construction of the Work to maintain a suitable all-weather footpath across the Work at all designated school crosswalks and to move and reinstall pedestrian crossing warning signs as construction and routing of traffic lanes require.

The CONTRACTOR's responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs, and lights, and other precautionary measures shall not cease until directed in

writing by the OWNER or until final payment, whichever occurs first. If the OWNER discovers that the CONTRACTOR has failed to comply with the applicable federal and state law by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property, the OWNER may order such additional precautionary measures as required by law to be taken to protect persons and property. The CONTRACTOR shall reimburse the OWNER for any expense incurred by the OWNER in taking any additional precautionary measures as a result of the CONTRACTOR's failure to do so.

#### **108.11.E. Protection of Property**

The CONTRACTOR will be held responsible for all damage to the work and other public or private property due to the failure of warning devices, barricades, signs, lights, or other precautionary measures in protecting said property, and whenever evidence is found of such damage, the Engineer may order the damaged portion immediately removed and replaced by and at the cost and expense of the CONTRACTOR. Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the current Texas Manual of Uniform Traffic Control Devices, as amended, Texas Department of Transportation. Signage, barricades and other traffic control devices for detouring and maintenance of traffic on this Contract shall be as provided in above said manual and as directed by the Engineer. Costs associated with the acquisition and removal of required traffic control devices shall be considered incidental to the Work.

#### **108.11.F. Trench Safety Regulations**

The CONTRACTOR shall be responsible for complying with state laws and federal regulations relating to trench safety, including those which may be enacted during the performance under this Contract. The CONTRACTOR is advised that Federal Regulations 29 C.F.R. 1926.650-1926.652 have been, in their most recent version as amended, in effect since January 2, 1990. THE CONTRACTOR SHALL FULLY COMPLY WITH THE U. S. DEPARTMENT OF LABOR OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) REGULATIONS PERTAINING TO EXCAVATIONS, TRENCHING, AND SHORING AND SHALL PROVIDE AND FAMILIARIZE ITS EMPLOYEES INVOLVED IN EXCAVATION AND TRENCHING WITH THE PROVISIONS IN OSHA PAMPHLET NUMBER 2226, EXCAVATING AND TRENCHING OPERATIONS.

1. **Indemnification:** CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, SERVANTS, AGENTS AND EMPLOYEES, COMPLETELY HARMLESS FROM ANY CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES, IF ANY) FOR ANY PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT (INCLUDING ANY INJURY, DEATH OR DAMAGE SUFFERED BY THE CONTRACTOR'S OWN EMPLOYEES) ARISING OUT OF OR OCCASIONED BY THE USE OF ANY TRENCH EXCAVATION PLANS, REGARDLESS OF THEIR ORIGIN, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, STRICTLY LIABLE OR INTENTIONAL ACT OF THE CONTRACTOR, A SUBCONTRACTOR OR ANY INDIVIDUAL EMPLOYEE OR LABORER (WHETHER OR NOT AN EMPLOYEE OF THE CONTRACTOR OR A SUBCONTRACTOR) IN THE PERFORMANCE OR SUPERVISION OF ACTUAL TRENCH EXCAVATION UNDER THE CONTRACT. THIS INDEMNITY APPLIES REGARDLESS OF WHETHER OWNER'S OR CONSULTING ENGINEER'S NEGLIGENCE OR FAULT IN THE ADMINISTRATION OF THIS CONTRACT OR IN THE PREPARATION, REVIEW OR APPROVAL OF THE OWNER'S OR CONTRACTOR'S TRENCH EXCAVATION PLAN CONTRIBUTED TO THE INJURY, DEATH OR DAMAGE. OWNER ACCEPTS NO LIABILITY WHATSOEVER AS A RESULT OF ITS PREPARATION, REVIEW OR APPROVAL OF ANY TRENCH EXCAVATION PLAN UNDER THIS CONTRACT. OWNER MAKES NO WARRANTY, EXPRESS OR IMPLIED, CONCERNING THE ADEQUACY OR CORRECTNESS OF ANY TRENCH EXCAVATION PLAN. (THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THE CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PARAGRAPH SHALL NOT BE CONSTRUED TO WAIVE ANY GOVERNMENTAL IMMUNITY OF THE OWNER. THIS PARAGRAPH CONTROLS IN THE EVENT OF A CONFLICT WITH ANY OTHER INDEMNITY OR OWNER-WARRANTY PROVISION IN THE SPECIFICATIONS).
2. **Trench Safety Plan:** CONTRACTOR shall be responsible for providing to the OWNER an acceptable trench safety plan signed and sealed by a Professional Engineer qualified to do such work and

licensed/registered in the State of Texas. The CONTRACTOR shall be responsible for selecting an appropriate method of providing trench safety after due consideration of the job conditions, location of utilities, pavement conditions and other relevant factors. Slope-back methods which may result in unnecessary displacement of utilities and/or destruction of pavement shall not be used without permission from the OWNER. Plans for devices used to provide trench safety such as trench shields and shoring systems will be likewise certified by professional engineers licensed/registered in the State of Texas or by a professional engineer licensed/registered in the state of manufacture of the shield or shoring system.

3. **Explosives:** When required by the plans, or as requested, CONTRACTOR shall provide a written blasting plan. The OWNER retains the right to reject the blasting plan. CONTRACTOR shall store all explosives securely and clearly mark all storage places with "DANGER – EXPLOSIVES." Store, handle, and use explosives and highly flammable material in compliance with federal, state, and local laws, ordinances, and regulations. Assume liability for property damage, injury, or death resulting from the use of explosives. Contractor shall give at least a 48-hr. advance notice to the appropriate Roadmaster before doing any blasting work involving the use of electric blasting caps within 200 ft. of any railroad track.

#### 108.11.G. Shoring and Sheeting

The sides of all excavation shall be supported in accordance with the trench safety plan. Where bracing or sheeting and shoring are used, the trench width shall be increased accordingly, shall be considered as incidental work, and shall not be paid for as a separate item. All sheeting, shoring, and bracing shall have sufficient strength and rigidity to withstand the pressure exerted, to maintain the sides of the excavation properly in place, and to protect all persons or property from injury or damage. When excavations are made adjacent to existing buildings or other structures or in paved streets, particular care shall be taken to adequately sheet, shore, and brace the sides of the excavation to prevent undermining of or settlement beneath the structures or pavement. Underpinning of adjacent structures or pavement shall be done at the CONTRACTOR'S own cost and expense and in a manner satisfactory to the OWNER, or, when required by the OWNER, the pavement shall be removed, the void(s) satisfactorily filled, compacted, and the pavement replaced by the CONTRACTOR. The entire expense of such removal and subsequent replacement thereof shall be borne by the CONTRACTOR. Wooden sheeting, shoring, and bracing shall be left in place where it is adjacent to the pipe embedment for the initial lift of backfill, if directed by the OWNER.

The removal of all sheeting, shoring, and bracing shall be done in such manner as not to endanger or damage either new or existing structure, or private or public properties, and so as to avoid cave-ins or sliding of the banks. All holes or voids left by the removal of the sheeting, shoring, or bracing shall be immediately and completely filled and compacted with suitable materials. If, for any reason, the CONTRACTOR, with the approval of the OWNER, elects to leave in place the sheeting, shoring or bracing, no payment shall be allowed for such material left in place.

#### 108.11.H. Trenching Inspection

The CONTRACTOR shall cause all shoring or bracing to be inspected by an OSHA competent person. According to OSHA regulations, a competent person is defined as one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

#### 108.11.I. Payment of Special Trenching

Payment for trench safety shall be by the lineal feet (L.F.) of trench exceeding a depth of 5-ft. unless otherwise specified in the Contract. Excavation for slope-back methods shall be subsidiary to the trench safety pay item including replacement and re-compaction. Excess excavation for other trench safety methods is also subsidiary to the trench safety pay item. Costs relating to the preparation of the trench safety plan including geotechnical investigation, testing and report preparation fees are all subsidiary to the pay item for trench safety. Should trench safety measures be required during Contract performance where no pay item has been provided, then the CONTRACTOR shall immediately notify the OWNER and, if directed to do so, provide trench safety under the

provisions of Item for Extra Work and/or Item for Payment of Extra Work. Should the OWNER fail to authorize the work as provided for in aforementioned items, then the CONTRACTOR shall proceed under the provisions of item for Claims for Additional Compensation, and item for Performance of Extra or Disputed Work. Trench safety requirements are mandatory and shall not be waived. Payment for special shoring, if any, shall be based on the square feet (S.F.) of shoring used.

#### **108.11.J. Soil Borings**

Soil Borings are to be used for information only and are not warranted accurate in any way. The OWNER accepts no responsibility for any deviation from or variance in soil types and/or depths shown on the borings.

### **108.12 WORKING AREA**

The CONTRACTOR shall confine its equipment, storage of materials and construction operations to the area shown on the Contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the OWNER, and shall not unreasonably encumber the site or public right-of-way with its construction equipment, plant or materials. Such area shall not be deemed for the exclusive use of the CONTRACTOR. Other contractors of the OWNER may enter upon and use such portions of the area and for such items as determined by the OWNER are necessary for all purposes required by its contracts. The CONTRACTOR shall give to such other contractors all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the CONTRACTOR for its use shall be provided at its own effort, cost and expense.

#### **108.12.A. Project Signs**

Project signs shall be furnished, constructed, and erected by the CONTRACTOR as directed by the OWNER. Signs shall be placed in a location selected by the OWNER and maintained in good condition until the completion of the project. Project signs shall be removed by the CONTRACTOR upon the completion and acceptance of the project by the OWNER.

#### **108.12.B. Railway Crossings**

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal. Prior to crossing or working on Railroad Right-of-Way, the CONTRACTOR will be required to contact the railroad company, or companies, and to execute CONTRACTOR's Agreements as may be required by each railroad company involved. No work shall be permitted where railroads are involved until the Engineer is furnished sufficient correspondence from the railroad company involved to ascertain that either the agreement has been executed and a certified copy of the insurance policy furnished, or that no such action is required.

### **108.13 EXISTING STRUCTURES AND APPURTENANCES**

This item addresses only matters arising from certain existing, man-made surface and subsurface structures, facilities and appurtenances, not naturally occurring conditions. AS PROVIDED IN ITEM FOR CONTRACTOR'S WARRANTIES AND UNDERSTANDING, THE OWNER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM A DIFFERING, NATURALLY OCCURRING SURFACE OR SUBSURFACE CONDITION, OR FROM ANY MAN-MADE CONDITION THAT IS NOT A SURFACE OR SUBSURFACE STRUCTURE, FACILITY OR APPURTENANCE. The OWNER'S responsibility for any claim arising from existing, man-made surface and subsurface structures, facilities and appurtenances is governed solely by this item., and any situation involving a differing subsurface condition not included herein shall be governed solely by Item for Contractor's Warranties and Understanding.

### 108.13.A. Locations

The plans show the general locations of all known, existing man-made surface and subsurface structures, facilities and appurtenances. The locations of many gas mains, water and wastewater mains, storm sewers, drains, culverts, conduits and other man-made utility structures, facilities and appurtenances, however, are unknown. Notwithstanding any other provisions of the Contract, the Contractor shall be solely responsible for location and protection of any and all public lines and utility customer service lines in the Work area. Failure of a utility to be indicated does not relieve the Contractor of responsibility to protect utility lines encountered. The Contractor shall notify "One Call" (1-800-344-8377, or 811), and exercise due care to locate and to mark, uncover or otherwise protect all such lines within the limits of construction and any of the Contractor's work or storage areas.

THE OWNER DOES NOT WARRANT THE PLANS TO SHOW THE EXACT LOCATIONS OF ANY AND ALL KNOWN, EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES, AND DOES NOT WARRANT THAT IT KNOWS OF THE EXISTENCE OF ALL POSSIBLE EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES. The OWNER assumes no responsibility, except as provided below, for any failure to show any or all of these structures on the plans or to show them in their exact locations.

The OWNER may conduct certain test borings to be made on the site and indicated on the plans such information, or any information pertaining to the character or depth of materials is found from observations, records or otherwise. The action of the OWNER in revealing such information shall not in any manner be construed as a warranty on the part of the OWNER of the exact nature of the subsurface conditions that shall be encountered during construction of the work. Although the information is shown as accurately as possible, the OWNER does not guarantee that any materials to be encountered at any point or points are even approximately the same, either in character or elevations, as those shown on the plans. The information thus furnished by the OWNER is intended only as a guide to the CONTRACTOR's own investigations preliminary to submitting a bid for the work.

### 108.13.B. Conditions for to Work or Payment Increases

The CONTRACTOR and OWNER mutually, expressly agree that the failure of the OWNER to show any existing, man-made surface or subsurface structure, facility or appurtenance on the plans, or the failure to show them on the plans in their exact locations, shall not be considered as a basis of a claim for Extra Work, damages or other compensation of any kind, nor shall it be considered as a basis for increasing the quantities of work or unit prices on any bid item, unless:

1. The CONTRACTOR could not have discovered the existing, man-made surface or subsurface structure, facility or appurtenance by a reasonable review of the plans and specifications and a reasonable, careful inspection of the work site prior to bid opening or award of the Contract.
2. The existing, man-made surface or subsurface structure, facility or appurtenance is in a location that necessitates a substantial change in the alignment, depth or hydraulic gradient of the work to be constructed under the Contract because the CONTRACTOR cannot, by the use of reasonable skill or care, place the work in accordance with the original alignment, depth or hydraulic gradient.
3. The existing surface or subsurface structure, facility or appurtenance requires the construction of a special structure, facility, appurtenance or other special work, provisions for which are not already made in the plans and specifications, to protect the existing man-made surface or subsurface structure, facility or appurtenance, or the work to be constructed under the Contract from damage.

If either of the above elements occurs, the provisions of the specifications regarding claims for Extra Work apply. Otherwise, the condition is considered part of the Contract work and OWNER shall not be liable for extra compensation. Provided, however, that the OWNER will not be liable for payment of Extra Work claims under this subsection that are not timely filed in accordance with other provisions of the specifications, nor shall the OWNER be liable to pay for any additional work or additional costs arising solely from a decision of the CONTRACTOR to change the original means or methods of construction chosen because an existing, man-made surface or subsurface structure, facility or appurtenance is encountered.

### 108.13.C. Utility Coordination and Protection

It is the intention of the OWNER that all known conflicts between utility-owned facilities and the proposed construction will be cleared prior to the issuance of the work order. Utility information shown on the plans must be confirmed by actual field check in advance of construction. It will be the CONTRACTOR'S responsibility to locate and report all utility conflicts to the Engineer promptly in order to avoid unnecessary delays, and the CONTRACTOR will cooperate with utility owners in making the adjustment(s). Conflicts that are found during construction will be resolved as expeditiously as possible. The CONTRACTOR will be required to protect adequately all utility-owned facilities from damage or displacement by its operations.

The adjustment or location of any utility-owned facility which the CONTRACTOR may desire for its own convenience or ease of construction will be its responsibility to coordinate and will be at its own expense.

### 108.13.D. Hazardous Materials

OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible. Contractor agrees that it shall not transport to, use, generate, dispose of or install at the Project site any hazardous substance (as defined herein), except in accordance with applicable Environmental Laws. Further, in performing the Work, the Contractor shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws.

Upon uncovering any such materials the CONTRACTOR shall immediately:

1. Stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23),
2. Notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or specifying any special conditions under which such Work may be resumed safely.

If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefore as provided in the Contract Documents. If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in the Claims Section of these provisions. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others.

### 108.14 PROJECT CLEAN-UP

The CONTRACTOR shall be aware that keeping the project site in a neat and orderly condition is considered an integral part of the contracted work and as such shall be considered subsidiary to the appropriate bid items.

Clean up work shall be done as directed by the Engineer as the work progresses or as needed. If, in the opinion of the Engineer it is necessary, clean-up shall be done on a daily basis. Clean up work shall include, but not be limited to removing the trash, paper, rubbish and debris resulting from operations, sweeping streets clean of

dirt or debris, alleviating any dust nuisance in the work area, storing excess material in appropriate and organized manner and keeping trash of any kind off of residents' property.

If the Engineer does not feel that the jobsite has been kept in an orderly condition, on the next estimate payment (and all subsequent payments until completed) of the appropriate bid item(s) will be reduced by 25%. Upon completion of the work and before final acceptance and final payment shall be made, the CONTRACTOR shall completely clean and remove from the site of the work all equipment, construction materials, surplus and discarded materials, temporary structures and debris of every kind. CONTRACTOR shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the Contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the Engineer, and at the CONTRACTOR's sole cost.

#### **108.14.A. Disposal of Materials**

Surplus excavation and other materials removed as a part of the construction may be deposited at a legal disposal site in accordance with all applicable federal, state and local laws and regulations. In addition, if the materials are disposed of within private property, a release from the property owner must be obtained before final acceptance of the Work. Surplus excavation and other materials must not be deposited in areas designated as flood plain or along natural drainage ways. Material so deposited will be required to be removed at the CONTRACTOR'S expense and the area restored to its natural condition. Failure to comply promptly with the requirements of this special provision will result in withholding of payments due.

#### **108.14.B. Restoration of Property**

When and where any damage or injury is done to public or private property on the part of the CONTRACTOR, it shall restore or have restored at its own cost and expense such property to a condition equal (or improved) to that existing before such damage was done by repairing, rebuilding or otherwise restoring as may be directed, or it shall make good such damage or injury in a manner acceptable to the property owner or the Engineer. Replacement of previously constructed items, such as curb, gutter, sidewalks, driveways, paving, etc., shall conform to the specifications for new construction, unless directed otherwise by the OWNER. In case of failure on the part of the CONTRACTOR to restore such property or make good such damage or injury, the OWNER may, upon 48 hours' written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the CONTRACTOR under its Contract; or where sufficient Contract funds are unavailable for this purpose the CONTRACTOR or its surety shall reimburse the OWNER for all such costs.

## 109 PROSECUTION AND PROGRESS

### 109.1 INTRODUCTION

Before starting work, CONTRACTOR shall schedule and attend a preconstruction conference with the Engineer. Failure to schedule and attend a preconstruction conference is not grounds for delaying the beginning of working.

Unless otherwise shown in the Contract, begin work within 30 calendar days (7 calendar days for routine maintenance Contracts) after the authorization date to begin work as shown on the work order. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, and it shall be the CONTRACTOR'S responsibility to execute the work in the most expeditious manner.

### 109.2 CONSTRUCTION SCHEDULE

The CONTRACTOR must submit to the OWNER, within ten days after the Effective Date of the Agreement, a detailed Construction Schedule outlining the major items of work on the project. This schedule must be approved as to form by the OWNER prior to CONTRACTOR starting work on the project. The schedule must be updated on a monthly basis. CONTRACTOR shall submit a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

If the schedule submitted is not to the OWNER's satisfaction, the CONTRACTOR shall have an additional five days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be made acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

#### 109.2.A. Stop Work

The OWNER has the authority to stop work on the project if the CONTRACTOR fails to provide an updated schedule as requested. The OWNER shall not be responsible for any delay as a result of the CONTRACTOR'S failure to submit the schedule in a timely manner.

#### 109.2.B. Preconstruction Conference

Within twenty days after the Contract Times start to run, but before any Work at the site is started, OWNER shall schedule a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

### 109.3 PROSECUTION OF THE WORK

The CONTRACTOR shall begin the work to be performed under this Contract not later than 10 days from the date specified in the work order and shall conduct the work in such a manner and with sufficient equipment, material, and labor as is necessary to insure its completion within the working time.

Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations. Work shall be done only during the hours between 7:00 am and 6:00 pm unless the OWNER approves other hours. Nighttime work is allowed only when shown on the plans or directed or allowed by the Engineer. Nighttime work is defined as work



performed from 30 min. after sunset to 30 min. before sunrise. CONTRACTOR may work on Saturdays if so desires and permission of the OWNER has been granted. Work on Sundays shall be permitted only with the written permission of the OWNER. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the Contract. Work requiring inspection will not be permitted on a legal City holiday except by special written permission of the OWNER. Any work done without proper inspection is subject to removal and replacement at the direction of the OWNER.

#### **109.4 OBLIGATION TO COOPERATE WITH OTHER CONTRACTORS**

The OWNER may award other contracts for additional work on this project, and the CONTRACTOR shall fully cooperate with such other contractors and shall coordinate and fit its work to be done hereunder to such additional work as may be contracted by the OWNER. At the time of bidding, prospective bidders shall be advised of other planned contract work, which is expected to affect the work area. The CONTRACTOR shall not commit or permit any act, which shall interfere with the performance of work by any other contractor.

Upon receiving written notice from the CONTRACTOR that another contractor is failing to coordinate its work with the work under this Contract as directed by the OWNER, the OWNER shall promptly investigate the charge and take such necessary action as the situation may require.

However, the OWNER shall not be liable to the CONTRACTOR for damages suffered by the CONTRACTOR due to the fault or negligence of another contractor or through failure of another contractor to carry out the directions of the OWNER. Should any interference occur between contractors, the Engineer may furnish the CONTRACTOR with written instructions designating priority of effort or change in methods, whereupon the CONTRACTOR shall immediately comply with such direction. In such event, the CONTRACTOR shall be entitled to an extension of working time only for unavoidable delays verified by the Engineer; however, no increase in the Contract price shall be due the CONTRACTOR.

#### **109.5 EMPLOYEES**

The CONTRACTOR shall employ only competent, efficient workpeople and shall not use on the work any unfit person or one not skilled in the work assigned to him or her and shall at all times maintain good order among its employees. Whenever the OWNER shall inform the CONTRACTOR in writing that, in its opinion, any employee is unfit, unskilled, disobedient, or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

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

#### **109.6 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.

Nothing contained in the Contract Documents shall create any contractual relation between Owner and any Subcontractor or supplier or any party with whom Owner or any of its Subcontractors or suppliers contracts.

Each subcontract agreement for a portion of the Work is hereby assigned by the Contractor to the Owner and the Surety; provided, however, that such assignment shall be effective as to Owner only after Owner's written

termination of the Contract or Contractor's right to proceed under terms of the Contract, and acceptance in writing by Owner of the particular subcontract.

#### **109.5.A. Approval of Subcontractor**

The CONTRACTOR must submit, with the request for approval of a SUBCONTRACTOR, the location, within the Highland Lakes area, of at least three contracts where the SUBCONTRACTOR has performed construction similar to the construction outlined in the CONTRACT. If required by the OWNER, the SUBCONTRACTOR'S representative will accompany the OWNER'S representative on examination of the referenced work. The CONTRACTOR must also submit to the OWNER a revised Schedule of Work and SUBCONTRACTOR/SUPPLIER Payment form anytime there is a change in the SUBCONTRACTOR/SUPPLIER participation on the CONTRACT.

#### **109.5.B. Subcontractor Replacement**

If the OWNER determines that any proposed SUBCONTRACTOR is unacceptable, it shall so notify the CONTRACTOR, who may thereupon submit another proposed SUBCONTRACTOR unless the CONTRACTOR decides to do the work itself. Disapproval by the OWNER of any proposed SUBCONTRACTOR shall not provide a basis for any time extension claim or additional compensation of any nature, including but not limited to anticipated profit, overhead, or delay, by the CONTRACTOR. If an approved SUBCONTRACTOR fails to perform properly the work undertaken, it 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 therefore. Each subcontract entered into shall provide that the provisions of this CONTRACT shall apply to all SUBCONTRACTORS and their officers and employees in all respects as if they were employees of the CONTRACTOR. The OWNER'S decision not to disapprove of any subcontract shall not relieve the CONTRACTOR of any of its responsibilities, duties, and liabilities hereunder. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence, or defaults of its 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 its 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 its respective 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 provisions contained herein shall likewise apply to any sub-subcontracts.

#### **109.5.C. Sub-Contractual Relations**

The CONTRACTOR is solely responsible for making payments properly to his SUBCONTRACTORS and SUPPLIERS on the Project. During construction of the Project, the CONTRACTOR shall submit each month a CONTRACTOR'S Report of SUBCONTRACTOR/SUPPLIER Payment (the "Report"). The Report shall show all payments made to date by the CONTRACTOR (plus existing retainage) to each SUBCONTRACTOR and SUPPLIER involved in the Project. The Report shall be made on a form approved and supplied by the OWNER. As an alternative to the Report, the CONTRACTOR may furnish Affidavits of Payment Received, which affidavits shall be executed by each SUBCONTRACTOR and SUPPLIER owed money and paid during the previous progress payment period for work or materials furnished on the Project. If, for any reason, the CONTRACTOR is withholding payment to a SUBCONTRACTOR or SUPPLIER due to a dispute or other problem with performance, the CONTRACTOR shall note on the Report form the amount withheld and that payment is in dispute. The OWNER may require the CONTRACTOR to document and verify the dispute or other problem in question. Receipt by the OWNER of the Report or Affidavits of Payment Received shall be a condition precedent to payment on any invoice or estimate.

The OWNER reserves the right in its sole discretion to withhold payment to the CONTRACTOR should it appear from the Report or other information furnished to the OWNER that the Report has not been properly completed.

#### 109.5.D. Sub-Contractual Claims

When submitting a bid proposal, the CONTRACTOR thereby assigns to the City any and all claims for overcharges associated with this contract or any subcontracts directly or indirectly related to the work, which overcharges may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1, et seq (1973). The CONTRACTOR shall include in all his subcontracts a clause that requires his SUBCONTRACTORS to assign to the City all claims for overcharges on purchases and supplies, which may arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Section 1 et seq (1973). The CONTRACTOR shall require his SUBCONTRACTORS to execute a notarized assignment on or before the date of the City's approval of the respective SUBCONTRACTORS for the work, which assignment shall become a part of the prime contract and made a part hereof for all purposes.

The CONTRACTOR agrees to thoroughly review and analyze any claim for additional time, additional compensation, or other damages filed by a SUBCONTRACTOR, in good faith, as to its merits and amount. CONTRACTOR also agrees that it will not present or pass the claim through to the OWNER as if it were the CONTRACTOR'S claim, if the claim is subject to any valid legal or equitable defenses available to either OWNER or CONTRACTOR under the CONTRACT documents, the terms of the Subcontract, or applicable statutory or case law, which defenses include, but are not limited to, any and all notice and claim defenses arising under the Subcontract or the CONTRACT documents. If the SUBCONTRACTOR'S claim is subject to any valid legal or equitable defense under the CONTRACT documents, the Subcontract, or applicable statutory or case law, CONTRACTOR shall, as a condition precedent to the filing of any claim against the OWNER by virtue of any derivative liability of the OWNER under the CONTRACT documents or applicable law, defend against the invalid SUBCONTRACTOR claim in a court of competent jurisdiction, at CONTRACTOR'S sole cost and expense. Failure of CONTRACTOR to defend against invalid SUBCONTRACTOR claims as required in this paragraph shall constitute a complete and unequivocal waiver of any right of CONTRACTOR to seek reimbursement from OWNER. Further, if the CONTRACTOR fails to provide the defense required above, CONTRACTOR shall be obligated to indemnify and reimburse OWNER for all expenses and costs, including but not limited to attorney's fees and expert witness costs, incurred by OWNER in defending any lawsuit based upon a SUBCONTRACTOR claim, in which lawsuit a valid legal or equitable defense was available under the CONTRACT documents, the Subcontract or applicable statutory or case law.

#### 109.6 ASSIGNMENTS

The CONTRACTOR shall not assign, transfer, convey, or otherwise dispose of this Contract, or its right to execute it, or its 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 its claim thereto without the prior written consent of the Surety company and the written approval of the OWNER. Nothing in this paragraph is intended to conflict with Texas Business and Commerce Code.

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 its assignees, its agents and employees, as if they were its own. Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations.

If the CONTRACTOR does, without the consent of the OWNER, assign, transfer, convey, or otherwise dispose of the contract or of the CONTRACTOR'S right, title or interest therein, or any part thereof to any person or persons, partnership, company, firm or corporation, or by bankruptcy, voluntary or involuntary, or by assignment under the insolvency laws of any state, attempt to dispose of the contract or make default in or abandon said contract, then the contract may, at the option of the OWNER, be revoked and annulled, unless the sureties shall successfully complete said contract, and any monies due or to become due under this contract shall be retained by the OWNER as liquidated damages for the reason that it would be Impracticable and difficult to fix the actual damage.

### 109.7 TEMPORARY WORK SUSPENSION

The OWNER shall have the right by written order to suspend the work temporarily, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required.

#### 109.7.A. Reasons for Suspension

1. Because it is in the interest of the OWNER generally;
2. Due to government or judicial controls or orders which make performance of this CONTRACT temporarily impossible or illegal;
3. To coordinate the work of separate contractors at the job site;
4. To expedite the completion of a separate contract even though the completion of this particular CONTRACT may be thereby delayed;
5. Because of weather conditions unsuitable for performance of the work, including of designated ozone alerts as determined by the National Weather Bureau or other authorized agency; or
6. Because the CONTRACTOR is proceeding contrary to CONTRACT provisions or has failed to correct conditions considered unsafe for workers.
7. Because of certain events and activities occurring in proximity to the construction where it would be in the best interest of the public and the CONTRACTOR for such work to be suspended.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the provision of suitable drainage about the work and the erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written order from the OWNER and shall proceed with the work promptly when notified by the OWNER to resume operations.

#### 109.7.B. No Additional Compensation

No additional compensation shall be paid to the CONTRACTOR for any suspension under Item for Reasons for Suspension, above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, or as a result of a designated Ozone Alert Period, it shall be entitled to:

1. an equitable extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and
2. the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the CONTRACT requirements, such costs, if any, to be determined on the basis set forth in Item for Payment for Extra Work, herein; and
3. where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item of Payment for Extra Work; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.
4. Where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

#### 109.7.C. Emergency Contract Termination Clause

Whenever, because of a national emergency, so declared by the President of the United States, or other lawful authority, it shall be impossible for the CONTRACTOR to obtain all labor, materials, and equipment necessary for the prosecution of the work with reasonable continuity, the CONTRACTOR shall notify the OWNER. If the

OWNER cannot, after a reasonable time, help obtain priorities for the materials and equipment within a reasonable effort, then the Contract shall be considered as terminated, and the CONTRACTOR shall be entitled to payment for work performed that is acceptable to OWNER based upon unit prices contained in the bid or, if the Contract is lump sum, then based upon the schedule of values submitted by the CONTRACTOR. CONTRACTOR shall not be entitled to any compensation for anticipated profit, overhead, delay damages or any other compensation for work that has not been performed.

**109.8 DELAYS AND LIQUIDATED DAMAGES**

The CONTRACTOR may be entitled to an extension of working time under this CONTRACT only when all details supporting the claims for such extension are submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension. In adjusting the CONTRACT time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely made and materials are not available from other sources, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, ozone alerts as determined by the National Weather Bureau or other authorized agency, or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the CONTRACT should require work and materials in greater amounts or quantities than those set forth in the CONTRACT, requiring more time for completion than the anticipated time, then the CONTRACT time may be equitably increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

**109.8.A. Delays**

No adjustment of the CONTRACT time shall be made if, concurrently with the equitable cause for delay, hindrance, disruption, force majeure, impact, or interference, there existed a cause for delay due to the fault or negligence of the CONTRACTOR or CONTRACTOR'S agents, employees or SUBCONTRACTORS. Notwithstanding any other provisions of the CONTRACT Documents, including the General and Special Provisions, no adjustment shall be made to the CONTRACT price and the CONTRACTOR may not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment of the CONTRACT time, including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, servants or employees. Delays; Extension of Time; Liquidated Damages, and no act of the OWNER shall be deemed a waiver or entitlement of such extension.

**109.8.B. Liquidated Damages**

For each day that any work shall remain uncompleted after the time specified in the proposal and the Contract, or the increased time granted by the OWNER, or as equitably increased by additional work or materials ordered after the Contract is signed, the sum per day given in the Schedule 009.8.B.1 **Liquidated Damages**, unless otherwise specified in the special provisions, shall be deducted from the monies due the CONTRACTOR.

**Schedule 109.8.B.1 Liquidated Damages**

Amount of Contract (\$)	Amount of Liquidated Damages (\$)
Less than 25,000	100 Per Day
25,000 to 99,999.99	160 Per Day
100,000 to 999,999.99	240 Per Day
1,000,000 or More	500 Per Day

The sum of money thus deducted for such delay, failure or non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this Contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or its surety shall pay any additional amounts due. In the event that the actual damages incurred by the OWNER exceed the amount of liquidated damages, OWNER shall be entitled to recover its actual damages.

### **109.9 CONTRACTOR DEFAULT**

The work or any portion of the work under this 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 terminated by the OWNER for any good cause or causes, among others of which special reference is made to either the following:

1. Failure of the CONTRACTOR to start the work within 10 days from date specified in the written work order issued by the OWNER to begin the work.
2. Substantial evidence that the progress of the work being made by the CONTRACTOR is insufficient to complete the work within the specified working time.
3. Failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the work.
4. Substantial evidence that the CONTRACTOR has abandoned the work or discontinued the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so.
5. Substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the work.
6. Deliberate failure on the part of the CONTRACTOR to observe any requirements of the Contract Documents or to comply with any orders given by the Engineer as provided for in the Contract Documents.
7. 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.
8. Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of work under Contract.
9. Repeated and flagrant violations of safe working procedures.
10. 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.

#### **109.9.A. Surety Compensation**

All monies remaining due the CONTRACTOR at the time of its 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 its 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.

#### **109.9.B. New Contractor Selection**

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 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 its 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.

#### **109.10 TERMINATION AND SUSPENSION**

The performance of the work under this Contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER.

##### **109.10.A. Court Ordered Suspension**

The CONTRACTOR shall suspend such part or parts of the work pursuant to a court order issued against the OWNER and shall not be entitled to additional compensation for anticipated profits, overhead, delay damage or any other form of compensation by virtue of such court order; neither shall the CONTRACTOR be liable to the OWNER in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the CONTRACTOR.

##### **109.10.B. Notice of Termination for Convenience**

Any such termination shall be effected by serving a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.

After receipt of a Notice of Termination, the Contractor shall cooperate fully with Owner in minimizing the cost to Owner of such termination and shall, as directed by the Contracting Officer, protect the Work accomplished and properties acquired for performance of the Work, terminate or cancel incomplete subcontracts and purchase orders, and dispose of surplus materials and other properties.

In the event of such a termination, the Contract Amount shall be equitably adjusted to a sum which shall fairly compensate the Contractor for all Work completed and for all costs incurred (net of salvage) in part performance of the incomplete portions of the Work and for all costs incurred in connection with the termination, but exclusive of profit on the incomplete portions of the Work. In no event shall such sum be less than the portion of the Contract Amount allotted to the completed portion of the Work.

### 109.10.C. Contractor Action

After receipt of a notice of termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:

1. **Stop Work:** Stop work under the CONTRACT on the date and to the extent specified in the notice of termination.
2. **No Further Orders:** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion the work under the CONTRACT as is not terminated.
3. **Deliver and Assign to OWNER:** At the OWNER'S written request, deliver and assign to OWNER, or any person or entity acting on the OWNER'S behalf, any or all subcontracts, purchase orders and options made by CONTRACTOR in the performance of the work, and deliver to the OWNER true and correct originals and copies of such CONTRACT Documents.
4. **Transfer Title to OWNER:** Transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
  - a. **Deliver Fabricated or Un-fabricated Parts:** The fabricated or un-fabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
  - b. **Deliver Completed or Partially Completed Plans:** The completed or partially completed plans, drawings, information, and other property which, if the CONTRACT had been completed, would have been required to be furnished to the OWNER.
5. **Complete Performance:** Complete performance of such part of the work as shall not have been terminated by the notice of termination.
6. **Protect and Preserve Property:** Take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to its CONTRACT which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.

At a time not later than thirty (30) Calendar Days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the OWNER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the OWNER. Not later than fifteen (15) Calendar Days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the OWNER upon removal of the items, or, if the items are stored, within forty-five (45) Calendar Days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

### 109.10.D. Termination Claim

Within 60 days after notice of termination, the CONTRACTOR shall submit its termination claim to the Engineer in the form and with the certification prescribed by the Engineer. Unless one or more extensions in writing are granted by the Engineer upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

### 109.10.E. Claim and Action Against Owner

No claim against the OWNER under the Contract or for breach of the Contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the Contract or in any court action except pursuant to the provisions of Item for Payment of Extra Work, Item for Disputed Work and Claims for Additional Compensation, and Item for Performance of Extra or Disputed Work, and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections.

### 109.10.F. Termination Compensation

Subject to the provisions of Item for Termination Claim, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto, provided that such agreed amount or amounts shall never exceed the total



Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item for Failure to Agree hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

#### **109.10.G. Failure to Agree**

In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Item for Termination Compensation, upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits.

#### **109.10.H. Deductions**

In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:

1. All unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Contract.
2. Any claim which the OWNER may have against the CONTRACTOR in connection with this Contract
3. The agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

#### **109.10.I. Adjustment**

If the termination hereunder be partial prior to the settlement of the terminated portion of this Contract, the CONTRACTOR may file with the Engineer a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

#### **109.10.J. No Limitation of Rights**

Nothing contained in this section shall limit or alter the rights, which the OWNER may have for termination of this Contract or any other right which OWNER may have for default or breach of Contract by CONTRACTOR.

#### **109.11 USE OF COMPLETED PORTIONS OF WORK**

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the Contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice. Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER.

The provisions in the paragraph above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the Contract work. Neither such usage, as performed under this section, nor the written statement of work still to be done shall be held in any way an acceptance of

said work or structure or any part thereof, nor as a waiver of any of the provisions of these specifications or other Contract Documents pending final completion and acceptance of the work; all necessary repairs and removals of any section of the work so put into use, due to the defective materials or workmanship or to operations of the CONTRACTOR, shall be performed by the CONTRACTOR at its own expense. In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Item for Delays; Extension of Time; Liquidated Damages; no additional compensation or delay damages will be paid.

## 110 MEASUREMENT AND PAYMENT

### 110.1 INTRODUCTION

The Engineer will measure all completed work using United States standard measures, unless otherwise specified.

### 110.2 PAYMENT FOR LABOR AND MATERIAL

The CONTRACTOR shall furnish payrolls and personnel records, which pertain to current construction contracts with the OWNER for the purpose of ascertaining compliance with minimum wage rates published by the OWNER. Monthly and final estimates for payment will not be processed unless the CONTRACTOR complies with this requirement in a timely manner.

The CONTRACTOR for itself or any of its SUBCONTRACTORS shall pay all indebtedness, which may become due to any person, firm, or corporation having furnished labor, material or both in the performance of this CONTRACT. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this CONTRACT, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any SUBCONTRACTOR shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

#### 110.2.A. Payment for Materials

1. **Materials On-Hand:** Materials purchased and stored more than 30 days before use shall be considered materials on-hand. Payment for such materials shall be made as materials are consumed.
2. **Materials Stored Off-Site:** Off-site storage of such materials and payment for off-site storage shall be accomplished according to Item for Off-Site Storage.

#### 110.2.B. Payment for Extra Work

Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other subcontractors and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final.

1. **Distinguishing Extra Work:** For purposes of this Item or any other provision of the Contract documents that allows a claim for Extra Work, the term "Extra Work" means work that is not reasonably within the scope of the Contract Documents and not otherwise incidental or necessary to performance of the Contract. The term does not include any change by the CONTRACTOR in the means and methods of performing the Work from that anticipated or bid (even if such change in means or methods is requested or directed by the OWNER), whether or not the change is due to foreseeable or

unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. The OWNER shall not be liable for any claim due to a change in the means or methods of construction by the CONTRACTOR, resulting in additional costs, if the OWNER has not changed the plans or specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract Documents remains the same. The OWNER shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be completed, notwithstanding that the CONTRACTOR did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost the CONTRACTOR more to complete the Contract work than the original Contract price.

2. **Method of Determination:** The method of determination and payment of cost, or credit to the OWNER, for any Extra Work shall be one of the following:
  - a. Unit prices agreed on in writing by the Engineer and approved by the OWNER and executed by the OWNER and CONTRACTOR before the Extra Work is commenced or unit prices already included in the Contract documents, subject to all other conditions of the Contract. Mutual acceptance of a not-to-exceed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation before the Extra Work is commenced, subject to all other conditions of the Contract.
  - b. A not-to-exceed cost to be determined in a manner agreed upon by the parties plus a mutually acceptable fixed or percentage fee, agreed upon before the Extra Work is commenced and subject to all other conditions of the Contract.
  - c. The force account method provided in Item for Force Account Work.
3. **Force Account Work:** If the CONTRACTOR and the OWNER cannot agree to one of the methods of calculating cost provided in Item for Method of Determination above, or if the parties agree to a method but cannot agree to a final dollar figure, or if the CONTRACTOR for whatever reason fails or refuses to sign the Change Order in question, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the work involved. Nothing in this paragraph shall be construed to relieve the CONTRACTOR of any obligations it has under the disputed work provisions of Item for Disputed Work and Claims for Additional Compensation, and Item for Performance of Extra or Disputed Work, and where applicable the CONTRACTOR is still obligated to abide with those Items as well as this Item for Force Account Work. The cost of the work involved shall then be calculated on a force account basis, on the basis of the actual, reasonable field cost of the work attributable to the changes, plus a reasonable allowance for overhead, profit, markups of other subcontractors and suppliers, general supervision, field office expense and other elements of cost not embraced within the actual field cost as specified herein, such allowance in any case never to exceed 15%. In such case, the CONTRACTOR shall keep a detailed itemized account of the work involved and the actual field cost incurred, in a format acceptable to the Engineer and with such appropriate supporting data as the Engineer or the OWNER may prescribe. Sworn copies of the itemized accounting shall be directed to the Engineer each day during the performance of the force account work. Failure of the CONTRACTOR to submit the sworn-to itemized accounting daily as required herein shall constitute a waiver by the CONTRACTOR of any right to dispute the OWNER'S determination of the amount due the CONTRACTOR for force account work. Actual, reasonable field cost of the work to be charged under this Item of Force Account Work for force account work is limited to the following:
  - a. The reasonable wages of all workmen, foremen, timekeepers, mechanics and laborers, plus costs of social security, old age and unemployment insurance, fringe benefits required by agreement or custom (excluding employee or executive bonuses), and worker's compensation insurance, for the time such labor is actually employed or used on force account work.
  - b. Reasonable costs of materials, tools, supplies and equipment (but not to include off-site storage unless so approved and directed in writing by the OWNER), whether incorporated or consumed into the force account work.
  - c. Reasonable rental costs of machinery and equipment, exclusive of hand tools, only for the time actually employed or used on force account work, whether rented from the CONTRACTOR or others.

- d. A pro rata portion of premium expenses for all bonds and insurance to the extent force account work would cause an increase in such bond or insurance premiums.
- Pending final determination of the cost to the OWNER, payment of undisputed amounts on force account shall be included on the monthly estimate as work is completed unless otherwise expressly provided in the written order signed by the OWNER to perform the work. Nothing in this Item for Force Account Work shall be construed as directing the CONTRACTOR's means and methods of performing the work in question.

### **110.3 PAYMENT WITHHELD**

In addition to express provisions elsewhere contained in the Contract, the OWNER may withhold or nullify 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 payment or refund payment on account of either of the following:

1. Unsatisfactory progress of the work not caused by conditions beyond the CONTRACTOR'S control.
2. Defective work or not corrected defective work.
3. CONTRACTOR'S failure to carry out instructions or orders of the OWNER or its representative.
4. 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 any subcontractor or suppliers for material or labor used in the performance of the Work.
8. Damage to another CONTRACTOR.
9. Unsafe working conditions allowed persisting by the CONTRACTOR.
10. Failure of the CONTRACTOR to provide work schedules as required by the OWNER.
11. Use of subcontractors without the Engineer's approval.
12. Failure of the CONTRACTOR to keep current as-built record drawings at the job site or to turn same over in completed form to the OWNER.

When the grounds for withholding payment 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. To the greatest extent permitted by applicable law, Owner shall not be deemed to be in breach of the Contract Documents by reason of the withholding of any payment which Owner is entitled to withhold pursuant to, or which it withholds in good faith in reliance on, any provision of the Contract Documents, and no interest shall accrue in connection with the withheld payment(s) determined to have been properly withheld. In determining whether amounts claimed for payment by Contractor, or any subcontractor, are in dispute, Owner shall have the right to consider amounts withheld under this provision, due to Contractor fault or in an attempt to protect the public from loss or overpayment of public funds, to be amounts in dispute. Nothing in this Section or in the Contract Documents shall limit or reduce any right of the Owner to offset amounts owed to Contractor by amounts owed to Owner by Contractor, or to exercise any other rights or remedies provided by law or equity.

### **110.4 MONTHLY ESTIMATES AND PAYMENTS**

This Item is not intended to contradict previous sections pertaining to MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENTS.

#### **110.4.A. Monthly Estimates**

Between the 25th day and the last day of each month, the OWNER shall make an approximate estimate of the value of the work done during the month under the specifications. Whenever the said estimate or estimates of work done since the last previous estimate exceeds \$100 in amount, a percentage of such estimated sum shall be paid the CONTRACTOR on the next following month. Payment of the monthly estimate is determined at the Contract Item prices less any withholdings or deductions in accordance with the Contract. The monthly estimate may include acceptable nonperishable materials delivered to the work; such payment shall be allowed on the

same percentage basis of the net invoice value as provided hereinafter. The percent retained by the owner shall normally be up to the amount noted under the Item for Retainage, unless otherwise stated elsewhere in the contract documents. At the midpoint, or at any subsequent time, if the owner determines that the progress on the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The owner shall make the sole determination in this matter.

Except as otherwise provided by the Contract, between the 25th day and the last day of each month the CONTRACTOR shall make an estimate of the value of work done during this month under the specifications. The CONTRACTOR shall prepare the estimate on a form approved by the Engineer. The CONTRACTOR shall forward the estimate required above to the OWNER by not later than the last day of the month. The monthly estimate may include acceptable nonperishable materials delivered to and stored at the work site or a storage facility accessible to the OWNER; payment for such stored materials shall be allowed on the same percentage basis of the value as provided hereinafter. The monthly estimate shall also provide such supporting documentation as the Engineer or the other applicable provisions of the specifications may require. The OWNER shall verify that the CONTRACTOR's estimate matches the total value of work done and acceptable non-perishable materials delivered to the work site or storage facility, based upon the bid proposal prices and quantities measured or verified by OWNER. In the event of a discrepancy between quantities of work as shown in the CONTRACTOR'S estimate and measured quantities as shown in the OWNER'S verification, the OWNER's determination or measurement shall be final, and the CONTRACTOR's estimate shall be adjusted to reflect the quantities of work as shown by the OWNER'S verification. Payment shall be made by OWNER about thirty (30) days after receipt of the estimate from CONTRACTOR. OWNER shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any discrepancy in quantities as described above, any failure to provide supporting documentation or other information required with the estimate or as a precondition to payment under the Contract, or due to any payment the OWNER has a right to withhold under the Contract. Measurement and payment shall be done per the design documents as designed by the Engineer.

The CONTRACTOR shall complete installation proposed improvements as shown on the drawings. Payment each month shall be done for a percentage complete of such items as measured in Square Yards, Cubic Yards, and Linear Feet of the total amount installed. All items paid per EACH will be paid per each individual item installed. Any approved deviation from the design documents will be paid per individual unit price shown. The OWNER provided unit measurements take into account small discrepancies up to 10% for all volume and weight measurements, 7% for all area measurements, and 5% for all linear measurements, compared to what may be found in the field. If CONTRACTOR notices considerable change then a change proposal request may be submitted for approval as noted herein.

The CONTRACTOR shall submit to the Engineer a Schedule of Values for each Lump Sum item of work for review and approval 20 days before the work is scheduled to be performed. The CONTRACTOR shall itemize in the Schedule of Values the actual costs to the CONTRACTOR to perform the various parts of the Lump Sum item work which shall include a reasonable overhead and profit cost item. Partial payment for Lump Sum items shall be made based on the value and percentage of the work in the bid item completed, as approved by the OWNER and as reflected in the Schedule of Values. The CONTRACTOR shall furnish to the OWNER such detailed information as OWNER may request to assist 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 its responsibility under the Contract.

Owner shall not be obligated to make any progress payment or the final payment if the Surety objects to such payment or refuses to consent to such payment, or withdraws its consent to such payment. If requested by the Surety, or if Owner determines that it is advisable to do so, Owner shall have the right to make payments jointly to Contractor and Surety, or to Contractor and any subcontractor, supplier, or other person claiming payment for labor or materials. In the event of a dispute between Contractor and/or the Surety or persons

performing labor or supplying materials, as to whom payment of amounts held by Owner should be made, Owner shall have the right to interplead the funds held by it in the registry of a court having appropriate jurisdiction, and to withhold from the amounts held by it all attorney's fees and other costs incurred by Owner in connection with such dispute.

#### **110.4.B. Retainage**

As security for the faithful completion of the work by the CONTRACTOR, the OWNER shall retain 15-percent of the total dollar amount of work done on all contracts \$25,000 and less; 10 a-percent of the total dollar amount of work done on all contracts in excess of \$25,000 and less than \$400,000; five-percent of the total dollar amount of work done on all contracts of \$400,000 or more. On all contracts in excess of \$400,000, either of the following shall apply:

1. On all contracts in excess when work progress is 80-percent complete, retainage may, at the OWNER'S option, be reduced to two percent of the dollar value of all work satisfactorily completed to date (not to include material on hand), provided that the CONTRACTOR is making satisfactory progress and there is no cause of greater retainage as determined by the Engineer.
2. When work progress is substantially complete, the retainage may be further reduced to only that amount necessary to assure completion as determined by the Engineer.
3. If the OWNER determines that the CONTRACTOR is not making satisfactory progress or if there is other specific cause, the OWNER may, at its discretion, reinstate up to the five percent retainage.

#### **110.4.C. Final Contractor's Report**

The final CONTRACTOR'S Report of SUBCONTRACTOR / SUPPLIER Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment. The OWNER may reasonably require other documentation, including but not limited to, additional affidavits, lien waivers, and other such documentation needed to protect the OWNER'S interest. In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment. The acceptance by 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.

#### **110.4.D. Acceptance**

The Contractor shall notify the ENGINEER when the list of outstanding items and Work are complete, and the Project Manager will arrange a final inspection with the Contractor and the Owner. If work completed is to the OWNER's satisfaction, then OWNER shall issue a letter or certificate of acceptance to the CONTRACTOR.

Upon completion of the Work in full and strict conformity to the Contract Documents and within 30 days after final acceptance of the Work by a Contracting Officer and Contractor's satisfaction of its obligations for final payment, Owner shall pay the unpaid balance of the Contract Amount less any sum that may be necessary to settle any claim Owner may have against the Contractor or that may be necessary to settle any outstanding obligations of the Contractor or of its Subcontractors arising out of or incident to the performance of the Contract or which is otherwise withheld pursuant to the terms of the Contract Documents.

Neither the Certificate of Substantial Completion, nor final acceptance payment, nor any other provisions in the Contract Documents, shall relieve the Contractor of its obligations under the Contract Documents or under any warranty.

#### 110.4.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 obtained according to Item 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 the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this Contract, shall be paid to the CONTRACTOR within a reasonable period of time after final acceptance, provided that the CONTRACTOR has first furnished the OWNER:

1. Consent of surety to final payment.
2. The final CONTRACTOR's notarized Report of Subcontractor/Supplier Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment.
3. Other affidavits, lien waivers and other documentation as the OWNER may reasonably require protecting its interests.
4. All warranties, instructions, documents and other submittals required by the Contract Documents, or otherwise required by Owner.
5. Furnish a release of all claims against Owner, in form satisfactory to Owner, whether of Contractor, Subcontractors or of others, arising under and by virtue of the Contract.
6. Deliver to Owner all As-Built Drawings and three Owner's Manuals containing all Contractor and Subcontractor names, addresses and phone numbers; all plumbing, electrical, and communication equipment/fixture product data; all special equipment product data; and all parts lists and operating, maintenance, and service manuals.
7. The Contractor shall arrange for a reasonable amount of instruction for the Owner's employees and representatives to insure proper operation of all equipment furnished. The Contractor shall not assume that the Owner's employees possess special expertise or have had any previous experience whatsoever in the operation and maintenance of equipment installed as part of the Project.

In addition, the CONTRACTOR shall be required to execute the OWNER's standard Affidavit of Final Payment and Release as a precondition to receipt of final payment. The acceptance by 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.

#### 110.4.F. Wire Transfer Payments

Payments to the CONTRACTOR may, at the discretion of the OWNER, be made by wire transfer to a bank of the CONTRACTOR'S choice. The CONTRACTOR must furnish the following information:

1. The ABA number of the bank.
2. The CONTRACTOR'S account number.

The request must be on the CONTRACTOR'S letterhead and signed by an authorized representative of the CONTRACTOR (cannot be a copy).