SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR THE CONSTRUCTION OF

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS

From: Juliet Place
To: Cimarron Trail

FEDERAL AID PROJECT
NH 2014(668)
CSJ: 0364-01-141

CITY of
HURST, TEXAS

DEPARTMENT OF PARKS AND RECREATION

MAY 2014

PREPARED BY

DAVIS AND DAVIS INC.,
RECREATIONAL PLANNING CONSULTANTS

DO NOT DISASSEMBLE
"The enclosed specifications, special provisions, general notes and specification data in this document have been issued by me or under my responsible supervision."

NOTE: Federal and TxDot specifications shall govern City Specifications.
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Texas Department of Transportation

General Notes

Specification List—Includes TxDot Standard Specifications, Special Provisions, Special Specifications and Special Provisions to Specifications as follows:

Standard Specifications

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Special Provisions

Special provisions will govern and take precedence over the specifications enumerated hereon wherever in conflict therewith.

Required Contract Provisions, Federal –Aid Construction Contracts
(Revised May 2012)

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006-030  Control of Materials
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007-918  Legal Responsibilities
008-119  Prosecution and Progress
009-009  Measurement and Payment
009-015  Measurement and Payment
100-002  Preparing Right of Way
161-006  Compost
166-001  Fertilizer
500-011  Mobilization
502-033  Barricades, Signs and Traffic Handling

Special Specifications:

1003  Landscape Boulders
1013  Trash Receptacles
1014  Landscape Amenity (Bench)
1016  Loose Aggregate for Ground Cover
1122  Temp Erosion, Sedimentation and Environmental Controls

Special Provision to Specification:

S1122-001  Temporary Erosion, Sedimentation, and Environmental Controls

General: The above listed specification items are those under which payment is to be made. These, together with such other pertinent items, if any, as may be referred to in the above-listed specification items, and including the special provisions listed above, constitute the complete specifications for this project.
ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

The undersigned Bidder hereby acknowledges receipt of the following Addenda:

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<thead>
<tr>
<th>Addendum Number</th>
<th>Dated</th>
<th>Acknowledge Receipt (initial)</th>
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☐ No addenda were received:

Acknowledged for: ______________________________________________________
                  (Name of Bidder)

By: ________________________________________________________________
    (Signature of Authorized Representative)

Name: _____________________________________________________________
      (Print or Type)

Title: _____________________________________________________________

Date: _____________________________________________________________

AA - 1
NOTICE TO BIDDERS

FROM

THE CITY OF HURST

The City of Hurst, Tarrant County, Texas, will receive sealed bids in the office of Risk/Purchasing, City Hall, 1505 Precinct Line Road, Hurst, TX 76054 until 2:00 pm. May 29, 2014, and then publicly read aloud for the construction of:

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENT

CSJ: 0364-01-141

HURST PROJECT NO: PVD01-2014

HURST BID NO: 14 - 011

This project consists of approximately 4,000 linear feet of landscape improvements along primarily the south side of Plainview Drive, between Cimarron Trail and Juliet Place, Hurst, Texas. The project will last approximately three (4) months and start in September 2014.

5% Disadvantage Business Enterprise goal is established on this project.

A pre-bid conference will be held at 2pm on May 20, 2014 at the City of Hurst Parks Administration building located at 2003 Precinct Line Road, Hurst, TX 76054, followed by a site visit walk through. All prospective bidders are strongly encouraged to attend both the pre-bid conference and the site walk through.

Complete Plans, Specifications, and Bidding Documents may be obtained from the offices of Davis & Davis, Inc. Recreational Planning Consultants, 1805-A West Park Row Drive, Arlington, TX 76013, between the hours of 9:00am to 4:00pm Monday – Friday, upon posting a non-refundable cashier check with Davis & Davis, Inc. in the amount of $150.00, payable to the City of Hurst. The plans, specifications and bidding documents can be reviewed at no charge in the Hurst Office of Facilities Services, 2003 Precinct Line Road, Hurst, TX 76054, or the plans, specifications and bidding documents can be downloaded at no charge at the following address: www.hursttx.gov/index.aspx?page=57
Questions regarding this project should be directed to the following:

Kim Davis, Landscape Architect, Davis & Davis Inc., at 817-274-3871, or : kdavis@ddirpc.com.

Eric Starnes, City of Hurst Project Manager at 817-788-7218 or estarnes@hursttx.gov.

The City reserves the right to accept or reject, in part or in whole, any bids submitted and to waive any technicalities or formalities that are in the best interest of the City.

**Advertisement Dates**

Initial Advertisement – May 7, 2014

2\(^{nd}\) Advertisement – May 14, 2014

3\(^{rd}\) Advertisement – May 21, 2014
INVITATION TO BID:

Sealed bids identified on the envelope for “Plainview Drive Landscape Enhancements” in accordance with Drawings, Specifications, and Contract Documents adopted by the City of Hurst will be received at the office of Risk/Purchasing, City Hall, 1505 Precinct Line Road, Hurst, TX 76054 until 2:00 p.m. (local time) on May 29, 2014 and then publicly opened and read aloud. Late bids will be returned unopened.

Drawings and Specifications may be purchased at the office of Davis & Davis, Inc. Recreational Planning Consultants, 1805–A West Park Row Drive, Arlington, TX 76013, between the hours of 9:00am to 4:00pm Monday – Friday, upon posting a non-refundable cashier check with Davis & Davis, Inc. in the amount of $150.00, payable to the City of Hurst, additionally refer to Obtaining Forms, Drawings and Specifications.

Cashier’s check or acceptable bidders bond, payable to the City of Hurst for a total proposal in an amount not less than five percent of the total bid submitted must accompany the bid.

The City of Hurst reserve the right to reject any and all bids (and to waive informalities in any bid except the date and time of submittals).

LOCATION AND DESCRIPTION OF PROJECT:

The work to be performed under the provisions of these Contract Documents consists of furnishing all materials, equipment, supplies and appurtenances; providing all construction plant equipment, and tools; performing all necessary labor and supervision; and the construction complete, including all work appurtenant thereto for Plainview Drive Landscape Enhancement for the City of Hurst.

The site of the work is in Tarrant County, Texas. The project consists of approximately 4,000 linear feet of landscape improvements along primarily the south side of Plainview Drive, between Cimarron Trail and Juliet Place, Hurst, Texas.

PROPOSAL:

No original oral, telephonic, or telegraphic proposal will be considered. Corrections, deletions, or additions to bids may be made by wire, provided such wire are received in correct and comprehensive form prior to the opening time of bids, and confirmed by letter. No telephone corrections, deletions or additions will be accepted.

Proposals will be accepted only for the entire portion of the project described in these Drawings. Each proposal shall be submitted on the CONTRACTOR's Proposal Form enclosed herein or one a computer-generated form, provided that the following condition are met. All blanks shall be fully and legibly filled; all signatures shall be in longhand. An authorized member of the contracting firm must sign the CONTRACTOR’S Proposal Form. The completed form shall show no erasures, alterations, qualifications, or additional material of any kind whatsoever.
Each bidder will be held to have studied the Drawings and Specifications, or other proposed contract Documents. He may submit to the ENGINEER a written request for interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Interpretation of the proposed Contract Documents will be made only by Addendum. A copy of each Addendum will be mailed, delivered, or transmitted via facsimile to each person obtaining a set of Contract Documents from the ENGINEER. The OWNER will not be responsible for any other explanations or interpretations of the proposed Contract Documents.

Any addenda or letter of clarification issued in writing by the ENGINEER during the period of bidding shall be included in the proposal and in the executed Contract; such addenda or letter of clarifications shall become a part thereof and modify the specifications and/or the Drawings accordingly.

QUALIFICATION OF BIDDERS:

The apparent low bidder will be required to submit, within five working days evidence that he has practical knowledge of the particular work bid upon and that he has the financial resources to complete the proposed work.

In determining the Bidder's qualifications, the following factors will be considered: Work previously completed by the Bidder and whether the Bidder (a) maintains a permanent place of business, (b) has adequate plant and equipment to do the work properly and expeditiously, (c) has the financial resources to meet all obligations incidental to the work, and (d) has appropriate technical experience.

Each Bidder may be required to show that he has handled former work so that no just claims or judgments are pending against such work. No bid will be accepted from a Bidder who is or has been engaged on any work that would impair his ability to perform or finance this work.

OBTAINING FORMS, DRAWINGS, AND SPECIFICATIONS:

Forms of the Proposal, Contract, Bonds, Drawings and Specifications for the work may be obtained from the office of Davis & Davis, Inc. Recreational Planning Consultants, 1805-A West Park Row Drive, Arlington, TX 76013 on the following basis:

A. Bidders may obtain one set of Specifications and one set of Drawings for One Hundred Fifty Dollars ($150.00) (non-refundable).

B. Bidders may purchase extra sets of Specifications and Drawings at One Hundred Fifty Dollars ($150.00) per set.

C. After award of the Contract, the successful Bidder will be furnished, free of charge, five (5) sets of Specifications and five (5) sets of Drawings. Additional sets of
Specifications and Drawings will be furnished at One Hundred Fifty Dollars ($150.00) per set, and a set of pdf files.

D. Subcontractors and Suppliers may purchase Specifications and Drawings at One Hundred Fifty Dollars ($150.00) per set. There is no refund for return of Specifications and Drawings.

E. As an option, the plans, specifications and bid documents can be reviewed at no charge in the City of Hurst office of Facilities Services, 2003 Precinct Line Road, Hurst, TX 76054 or the documents can be downloaded at no charge at the following address: www.hursttx.gov/index.aspx?page=57

SUBMISSION OF BIDS AND AWARD OF CONTRACT:

Bidders shall submit bids for the Total Base Bid. Failure to submit such bids shall result in rejection of bid as non-responsive. The City reserves the right to award the contract to the lowest responsive bidder for either the Total Base Bid. The City reserves the right to accept the bid that, in its judgment, is the best bid received from a qualified Bidder; to reject any or all bids; and to waive informalities in any bid, except time of submittal. Bids received after the specified time of submittal will not be considered and will be returned unopened.

BONDING:

Each proposal must be accompanied by one (1) Bid Bond, one certified and/or Cashier’s Check (on a solvent bank in the State of Texas, drawn to order of the City of Hurst) in the sum of not less than five percent (5%) of the greatest amount of the proposal. No other form of security will be accepted. Said security shall be satisfactory to the OWNER, and its amount shall be agreed upon to the measure of liquidated damages that the OWNER will sustain by the failure, neglect, or refusal of the Bidder to execute and deliver the Contract, should the Contract be awarded to him. If the Bidder defaults in the execution of the Contract to him, then the said Bid Bond, Certified Check, or Cashier's Check will not be returned.

Upon awarding of the contract, the successful CONTRACTOR will be required to furnish the OWNER with Performance and Payment Bonds in the amount of 100 percent of the contract price for the proposed construction. The cost of such bonds shall be included in the prices bid for various construction items. The surety issuing Performance and Payment Bonds shall have a "Best's Rating Guide" rating of XIV or better.

QUESTIONS CONCERNING PROJECT:

Questions concerning this project should be directed to one of the following persons at Davis & Davis, Inc Recreational Planning Consultants.:

1. Mr. Kim Davis, L.A. (817) 274-3871
BIDDERS QUALIFICATION STATEMENT

Project: PLAINVEIW DRIVE LANDSCAPE ENHANCEMENTS

Contractor: ________________________________________________________________

Indicate One: _______Sole Proprietor ______Partnership _____Other

 _______Corporation ______Joint Venture

Name:__________________________ Partner:_______________________________

Title:__________________________ Title:_______________________________

Address:_______________________ Address:____________________________

City:__________________________ City:_______________________________

State & Zip:____________________ State &Zip:__________________________

Phone:_________________________ Phone:_____________________________

State and Date of Incorporation, Partnership, Ownership, Etc.____________________

Location of Principal Office:_______________________________________________

Contact and Phone at Principal Office:________________________________________

Liability Insurance Provider ad Limits of Coverage:____________________________

Workers Compensation Insurance Provider:____________________________________

Surety (Performance and Payment):___________________________________________

Address:_______________________________________________________________

Contact and Phone:_______________________________________________________
Superintendent and Backup Superintendent: (Work Resume - attach additional sheets.) (Safety Record – attached additional sheets; if needed show all verified safety violations.) The superintendent shall be able to communicate in English and not operate any equipment and have not had any verified job safety violations in the past five years. Any variations shall be reviewed by the OWNER for approval or denial. A job site shall be shut down if proper supervision is not provided.

Superintendent Name

______________________________

Backup Superintendent Name

______________________________

Safety Record – List ALL Verified Violations for Superintendent and Backup Superintendent with explanation, date and action taken to correct future safety violations:

Superintendent

______________________________

______________________________

______________________________

______________________________

______________________________

Backup Superintendent

______________________________

______________________________

______________________________

______________________________

______________________________

Total Number of Employees to be Associated with this Job:

Managerial_______ Administrative_______ Professional_______

Skilled_______ Semi-Skilled_______ Other_______

Percentage of work to be done by Bidder’s Employees (Based on Dollars Bid): _______
Type(s) of work to be done by Bidder's Employees (examples: concrete paving, structural concrete, waterlines, sanitary sewer lines, storm pipe, storm inlets, excavation, lime, bridge fencing, etc.)

Access to Tools and Equipment: Percent Owned ___ Percent Rented ___

Number of Years in Business as a Contractor on Above Types of Works: ______

Type(s) of Work to be done by Sub-Contractors
   Include Name, Address, and Phone Number of Sub-Contractor.
   Use additional sheets if needed.

<table>
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<th>Type of Work</th>
<th>Sub-Contractor</th>
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List Equipment to be used on this project (Make/Model/Age of Major Equipment) Any Equipment not listed shall be reviewed by the OWNER for approval or rejection prior to use of Equipment on this project. (Use additional sheets if necessary)

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<th>Type of Equipment</th>
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I-7
List of ALL Municipal and Similar Non-Municipal current and completed projects for the past three (3) years. (Use additional sheets if necessary.)

1. Project: __________________________

   Current Status: ____________________

   Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _______________ _______________ _______________ _______________ _______________ _______________ _______________ _______________

   Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: _______________ _______________ _______________ _______________ _______________ _______________ _______________ _______________

   Project Description: __________________________

   Owner/Agency: __________________________

   Year Built: __________________________ Contract Price: __________________________

   Contact Person: __________________________ Phone: __________________________

2. Project: __________________________

   Current Status: __________________________

   Any Litigation Issues: Yes or No (Circle One) If Yes, explain: _______________ _______________ _______________ _______________ _______________ _______________ _______________ _______________
Any Verified Safety Violations: Yes or No  (Circle One)  If Yes, explain:

Project Description:

Owner/Agency:

Year Built:  Contract Price:

Contact Person:  Phone:

3. Project:

Current Status:

Any Litigation Issues: Yes or No  (Circle One)  If Yes, explain:

Any Verified Safety Violations: Yes or No  (Circle One)  If Yes, explain:

Project Description:

Owner/Agency:

Year Built:  Contract Price:

Contact Person:  Phone:

4. Project:
Current Status: ____________________________________________

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ____________________________

__________________________________________

__________________________________________

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: ____________________________

__________________________________________

__________________________________________

Project Description: ____________________________________________

Owner/Agency: ________________________________________________

Year Built: ___________________ Contract Price: ______________________

Contact Person: ___________________________ Phone: ____________________

5. Project: _________________________________________________

Current Status: ____________________________________________

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ____________________________

__________________________________________

__________________________________________

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: ____________________________

__________________________________________

__________________________________________
Project Description: 

Owner/Agency: 

Year Built: ___________ Contract Price: ___________ 

Contact Person: ___________________ Phone: 

6. Project: 

Current Status: 

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ________________

________________________________________

________________________________________

________________________________________

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: __________

________________________________________

________________________________________

Project Description: 

Owner/Agency: 

Year Built: ___________ Contract Price: ___________ 

Contact Person: ___________________ Phone: 

7. Project: 

Current Status: 

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ________________

________________________________________

________________________________________

________________________________________

I-11
Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain:


Project Description: 

Owner/Agency: 

Year Built: ______________ Contract Price: 

Contact Person: ____________________ Phone: ____________________

8. Project:

Current Status: ____________________

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: 


Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: 


Project Description: 

Owner/Agency: 

Year Built: ______________ Contract Price: 

Contact Person: ____________________ Phone: ____________________
9. Project: ________________________________

Current Status: __________________________________________

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ________________________________

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: ________________________________

Project Description: ________________________________

Owner/Agency: ______________________________________

Year Built: ___________ Contract Price: ________________

Contact Person: ______________________ Phone: _____________

10. Project: ________________________________

Current Status: ________________________________

Any Litigation Issues: Yes or No (Circle One) If Yes, explain: ________________________________

Any Verified Safety Violations: Yes or No (Circle One) If Yes, explain: ________________________________

I-13
Project Description: ________________________________

Owner/Agency: ________________________________

Year Built: ___________ Contract Price: ________________________________

Contact Person: ________________________________ Phone: ________________________________

Trade references (List Company, Address, Contact Person, and Phone):

________________________________________________________________

________________________________________________________________

________________________________________________________________

Bank References (List Institution, Address, Contact Person, and Phone)

________________________________________________________________

________________________________________________________________

________________________________________________________________
Claims and Suits (if the answer to any of the following questions is yes, please attach detailed information):

1. Has your organization ever failed to complete any work awarded to it?____________________

2. Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or officers?____________________

3. Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?____________________

4. Within the last five (5) years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?____________________

I, being duly sworn deposes and says that the information provided herein is true and sufficiently complete so as not to be misleading.

Date this _____ day of ___________, 20 ___.

Name of Organization: ________________________________

By: ________________________________

Title: ________________________________

STATE OF TEXAS

COUNTY OF TARRANT

BEFORE ME the undersigned authority, on this day personally appeared _____ ___________________________, known to me to be the person whose name subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ___ day of ______ 20 ___.

______________________________

Notary Public in and for ___________ County, Texas
BID PROPOSAL FOR

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS

for the

CITY OF HURST, TEXAS

( THIS PROPOSAL MUST NOT BE REMOVED FROM THE CONTRACT DOCUMENTS )

Date: __________________________

TO: CITY of HURST, TEXAS
1505 PRECINCT LINE ROAD
HURST, TEXAS 76054

FOR: PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS

Pursuant to the foregoing “NOTICE TO BIDDERS”, the undersigned bidder, having thoroughly examined the Contract Documents, the site of the project and understanding the amount of work to be done and the prevailing conditions, hereby proposes to fully complete all of the work and requirements as provided in the plans and Contract Documents and binds himself / herself upon acceptance of this proposal to execute a contract and furnish such bonds as required and proposes to complete the work within the time stated and for the following price:
## Proposal:
Plainview Drive Landscape Enhancements
City of Hurst
Project No. NH 2014(668)

<table>
<thead>
<tr>
<th>ITEMD</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>QTY</th>
<th>UNIT COST</th>
<th>TOTAL COST</th>
</tr>
</thead>
<tbody>
<tr>
<td>0100 2002</td>
<td>PREPARING ROW</td>
<td>STA</td>
<td>24</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0110 2003</td>
<td>EXCAVATION</td>
<td>CY</td>
<td>250</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>(Beds, Sidewalk, LE)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0161 2005</td>
<td>COMPOST MANUF TOPSOIL</td>
<td>SY</td>
<td>880</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>(PB) (4&quot;)</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>0162 2002</td>
<td>BLOCK SODDING</td>
<td>SY</td>
<td>1,100</td>
<td>$</td>
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<tr>
<td>0170 2001</td>
<td>IRRIGATION SYSTEM</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2003</td>
<td>PLANT MATERIAL (3-GAL)</td>
<td>EA</td>
<td>185</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2004</td>
<td>PLANT MATERIAL (5-GAL)</td>
<td>EA</td>
<td>315</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2015</td>
<td>LANDSCAPE EDGE</td>
<td>LF</td>
<td>3,100</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2025</td>
<td>PLANT MATERIAL (45 GAL) (TREE)</td>
<td>EA</td>
<td>59</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2039</td>
<td>PLANT MATERIAL (MIN 10' HT) (B&amp;B)</td>
<td>EA</td>
<td>22</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0192 2044</td>
<td>PLANT MATERIAL (MIN 2&quot; CAL) (B&amp;B)</td>
<td>EA</td>
<td>13</td>
<td>$</td>
<td>$</td>
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<tr>
<td>0192 2064</td>
<td>PLANT BED PREP (TYPE II)</td>
<td>SY</td>
<td>880</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>(Planting groups &amp; Sitting Areas)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4” depth)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0192 2084</td>
<td>PLANT MATERIAL (200 GAL) (TREE)</td>
<td>EA</td>
<td>8</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0193 2001</td>
<td>PLANT MAINTENANCE</td>
<td>MO</td>
<td>12</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0193 2007</td>
<td>IRRIGATION SYSTEM</td>
<td>MO</td>
<td>12</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0402 2001</td>
<td>TRENCH EXCAVATION PROTECTION</td>
<td>LF</td>
<td>80</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0500 2001</td>
<td>MOBILIZATION</td>
<td>LS</td>
<td>1</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0502 2001</td>
<td>BARRICADES, SIGNS AND TRAFFIC HANDLING</td>
<td>MO</td>
<td>4</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>0531 2024</td>
<td>CONC SIDEWALK (5&quot;)</td>
<td>SY</td>
<td>50</td>
<td>$</td>
<td>$</td>
</tr>
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</table>

P-2
<table>
<thead>
<tr>
<th>Item Number</th>
<th>Description</th>
<th>Quantity</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1003 2001</td>
<td>LANDSCAPE BOULDERS</td>
<td>EA 70</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>1013 2001</td>
<td>TRASH RECEPTACLES</td>
<td>EA 2</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>1014 2022</td>
<td>LANDSCAPE AMENITY (BENCH)</td>
<td>EA 4</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>1016 2001</td>
<td>LOOSE AGGREGATE FOR GROUNDCOVER (DG 2)</td>
<td>CY 105</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>1122 2048</td>
<td>BIOGRD EROSION CONT LOGS (12&quot;DIA) INSTALLED</td>
<td>LF 640</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>1122 2056</td>
<td>BIODEGRADBLE EROSION CONTROL LOGS REMOVAL</td>
<td>LF 640</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

**BASE BID**

$ ____________________

**CONTINGENCY ALLOWANCE**

5% $ ____________________

**TOTAL BID**

$ ____________________
The undersigned bidder agrees to execute and file with the Owner a contract and bonds on the forms provided within ten (10) days after written notification of award of the contract to him/her and to begin work to be performed under the contract within ten (10) days after written authorization to begin the work (Work Order) and to complete the work in full within 85 Consecutive Calendar Days after the date specified in the “Notice to Proceed / Work Order”.

Enclosed with this proposal is a certified check or cashier’s check or bid bond payable to the CITY OF HURST in the amount of five percent (5%) of the total bid, which is to become the property of the CITY OF HURST, or the attached Bidder’s Bond is to be forfeited in the event the contract and bond are not executed within the time set forth, as liquidated damages for delay and additional work caused thereby.

SIGNED:  

COMPANY:  

ADDRESS:  

EMAIL:  

PHONE:  

FAX:  

SUBMITTED BY:  

(Corporation), (Co-Partnership), (Individual), (Other)

DOING BUSINESS AS:  

SEAL IF BIDDER IS A CORPORATION
CITY OF HURST REQUIREMENT
for

INSURANCE

SECTION A. Prior to the approval of this agreement/contract by the City, the successful Bidder/Contractor shall furnish a completed Insurance Certificate to the City, which shall be completed by an agent authorized to bind the named underwriters/insurance carriers to the coverages, limits, and termination provisions shown thereon. THE CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY.

INSURANCE COVERAGE REQUIRED

SECTION B. The City reserves the right to review the insurance requirements of this section during the effective period of the contract and to require adjustment of insurance coverages and their limits when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Contractor.

SECTION C. Subject to the Contractor’s right to maintain reasonable deductibles in such amounts as are approved by the City, the Contractor shall obtain and maintain in full force and effect for the duration of this contract, and any extension hereof, at the Contractor’s sole expense, insurance coverage written by companies approved by the State of Texas and acceptable to the City, in the following types and amounts:

<table>
<thead>
<tr>
<th>TYPE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Workers’ Compensation and Employer’s Liability</td>
<td>Statutory</td>
</tr>
<tr>
<td></td>
<td>$100,000/500,000/100,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TYPE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Commercial General (Public) Liability insurance including coverage for the following: a. Premises Operations b. Independent contractors c. Products/completed operations d. Personal injury e. Advertising injury f. Contractual liability g. Medical payments</td>
<td>Combined single limit for bodily injury and property damage in the amount of $500,000 per occurrence or its equivalent.</td>
</tr>
<tr>
<td>TYPE</td>
<td>AMOUNT</td>
</tr>
<tr>
<td>------</td>
<td>--------</td>
</tr>
<tr>
<td>3. <strong>Comprehensive Automobile</strong> insurance, including coverage for loading and unloading hazards, for:</td>
<td>Combined single limit for bodily injury and property damage in the amount of $500,000 per accident or its equivalent.</td>
</tr>
<tr>
<td>a. Owned/leased vehicles</td>
<td></td>
</tr>
<tr>
<td>b. Non-owned vehicles</td>
<td></td>
</tr>
<tr>
<td>c. Hired vehicles</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TYPE</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. <strong>Builder’s Risk</strong> insurance (required when constructing a building structure), including coverage for:</td>
<td>Replacement Cost of the completed structure with blanket, all-risk coverage.</td>
</tr>
<tr>
<td>a. Owner occupancy while construction is in progress</td>
<td></td>
</tr>
<tr>
<td>b. Equipment, machinery, fixtures, and materials not yet installed, but intended to become part of the structure.</td>
<td></td>
</tr>
</tbody>
</table>

**ADDITIONAL POLICY ENDORSEMENTS**

The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any of such policies). Upon such request by the City, the Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

**REQUIRED PROVISIONS**

The successful Contractor agrees that with respect to the above required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, on the certificate, or its attachment, the following required provisions:
A. Name the City of Hurst and its officer, employees, and elected representatives as additional insureds, (as the interest of each insured may appear) as to all applicable coverage;

B. Provide for 30 days notice to the City for cancellation, nonrenewal, or material change; 10 days notice for workers’ compensation coverage;

C. The Contractor agrees to waive subrogation against the City of Hurst, its officers, employees, and elected representatives for injuries, including death, property damage, or any other loss to the extent same may be covered by the proceeds of insurance;

D. All copies of the certificates of insurance shall reference the project name or bid number for which the insurance applies;

E. Provide that all provisions of this agreement concerning liability, duty, and standard of care, together with the indemnification provision, shall be underwritten by contractual liability sufficient to include such obligations within applicable policies;

F. For coverages that are only available with claims made policies, the required period of coverage will be determined by the following formula: Continuous coverage for the life of the contract, plus one year (to provide coverage for the warranty period) and an extended discovery period for a minimum of 5 years which shall begin at the end of the warranty period;

G. Provide for notice to the City of Hurst at the two addresses shown below by registered mail.

NOTICES

The Contractor shall notify the City in the event of any change in coverage and shall give such notices not less than 30 days prior to the change. The notice must be accompanied by a replacement Certificate of Insurance.

All notices shall be given to the City at the following two addresses:

City of Hurst Parks Department
2003 Precinct Line Road
Hurst, TX  76054

Risk/Purchasing
City Hall
1505 Precinct Line Road
Hurst, TX  76054

SECTION D. Approval, disapproval, or failure to act by the City of Hurst regarding any insurance supplied by the Contractor 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.
WORKERS’ COMPENSATION INSURANCE
FOR
BUILDING OR CONSTRUCTION PROJECTS

TEXAS WORKERS’ COMPENSATION COMMISSION RULE 28, §110.110

As required by the Texas Workers’ Compensation Commission Rule 28, §110.110, the Contractor shall accept the following definitions and comply with the following provisions:

Workers’ Compensation Insurance Coverage

A. Definitions:

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

Duration of the Project – includes the time from the beginning of the work on the project until the Contractor’s/Person’s work on the project has been completed and accepted by the City of Hurst.

Persons providing services on the project (“Subcontractor” in §406.096) – includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employee of any such entity, or employees of any entity which furnishes persons to provide services on the project. “Services” include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. “Services” does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

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

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

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

E. The Contractor shall obtain from each person providing services on a project, and provide to the City of Hurst:
(1) A certificate of coverage, prior to that person beginning work on the project, so the City of Hurst will have on file certificates of coverage showing coverage for all persons providing services on the project; and

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

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

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

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

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

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

(2) Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) Obtain from each other person with whom it contracts, and provide to the Contractor:

   (a) A Certificate of coverage prior to the other person beginning work on the project; and

   (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) Retain all required certificates of coverage on file for the duration of the project, and for one year thereafter;
(6) Notify the City of Hurst in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

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

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

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

As defined by the Texas Labor Code, Chapter 269, Section 406.096 (e), building or construction is defined as:

1. Erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

2. Remodeling, extending, repairing, or demolishing a structure; or

3. Otherwise improving real property or an appurtenance to real property through similar activities.

The employment of a maintenance employee who is not engaging in building or construction as the employer’s primary business does not constitute engaging in building or construction.
CERTIFICATE OF INSURANCE

TO: 

CITY OF HURST

OWNER

DATE:

ADDRESS:  

1505 PRECINCT LINE RD.

HURST, TX 76054

PROJECT NO:

TYPE OF PROJECT:

LANDSCAPE ENHANCEMENTS

THIS IS TO CERTIFY THAT:

(NAME AND ADDRESS OF INSURED)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further herinafter described. Provide Certificate of Insurance.
PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS

STATE RECIPROCAL REQUIREMENT

The City of Hurst, as a governmental agency of the State of Texas, may not award a contract for
general construction, improvements, services or public works projects or purchases of supplies,
materials, or equipment to a non-resident bidder unless the non-resident’s bid is lower than the
lowest bid submitted by a responsible Texas resident bidder by the same amount that a Texas
resident bidder would be required to underbid a non-resident bidder to obtain a comparable contract
in the state in which the non-resident’s principal place of business is located (Tex. Gov’t Code Ann.
§ 2252.002 (Vernon 2000)). Bidder shall answer all the following questions by encircling the
appropriate response or completing the blank provided.

1. Where is your principal place of business? _____________________________

2. Only if your principal place of business is not in the State of Texas, please indicate:

   A. In which state is your principal place of business located? _____________

   B. Does that state favor resident bidders (bidders in your state) by some dollar increment or
      percentage? YES: ________ NO: ________

   C. If “YES,” what is that dollar increment or percentage? ________

FIRM NAME: _______________________

SIGNATURE OF PERSON AUTHORIZED TO SIGN BID:

_________________________________________ DATE _____________

SIGNER’S NAME AND TITLE:

_________________________________________
(Please print or type)
STATE OF TEXAS
COUNTY OF TARRANT

BEFORE ME, the undersigned authority, on this day personally appeared _______________________
_____________________, (hereinafter referred to as (Affiant), who, after being by me duly sworn,
(Name)
deposes and says that he/she is the _______________________
>Title)
of ____________________________________________________________________________________
(Name of Company, Corp., Partnership, Trade Name)
of Tarrant County, State of Texas) hereinafter referred to as (Contractor), which said Contractor was
awarded the contract dated the _______ day of _______, 20____ for the construction of the
PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS (hereinafter referred to as the “Work), for a total
consideration of __________________________________________________(________________) to be
paid to the said Contractor (the Contract), and that Affiant has full power of authority to make this
affidavit.

That THE CITY OF HURST, ( hereinafter referred to as “Owner”), ahhs approved the final estimate on
said Work, and that the said Contractor has fully satisfied and paid any and all claims that may be
covered by Chapter 53 of the Texas Property Code, and Chapter 2253 of the Texas Government
Code, or any other applicable statutes or charter provisions, and that all just bills for labor and
materials have been paid and discharged by said Contractor insofar as they pertain to the Work in
question.

That in addition to any funds which may have been previously paid by the Owner, the Contractor
hereby accepts the amount of _____________________________________________(____________)
as FULL AND FINAL PAYMENT under the aforementioned Contract, and hereby waives and releases
any right Affiant and/or the Contractor may have to pursue claims of any nature against the Owner
arising out of or in any manner connected with the performance of the Work and/or the Contract,
including but not limited to claims of third parties that supplied material and /or labor for the Work
for or through the Contractor (hereinafter referred to as “Subcontractors”), as well as claims for delay,
additional compensation or for recovery of liquidated damages which may have been withheld by
the Owner. The Contractor shall defend, old harmless and indemnify the Owner from any such
claims of such Subcontractors. The Contractor further releases the Owner from any claim or liability arising from any act or neglect of the Owner related to or connected with the
Contract. This affidavit is given pursuant to the final payment provisions of the Contract, and shall
not be deemed to alter or modify the terms and provisions of said Contract.

This affidavit is made in compliance with the law and in compliance especially wit Chapter 2253 of
the Texas Government Code and that the undersigned, upon his/her oath, states that he facts
indicated in the above instrument of writing are true and correct and that he/she is not incapacitated
an any way from making this affidavit.
WITNESS my hand this the ___________day of ____________________, 20__________

__________________________________________

(Affiant)

__________________________________________

(Printed Name)

SUBSCRIBED AND SWORN TO BEFORE ME, this the ________________ day of 
__________________________, 20________

_____________________________________

(Notary Public in and for State of TX) (Type or Print Notary’s Name)

My Commission Expires:___________________________
STANDARD FORM OF AGREEMENT  
BETWEEN THE CITY OF HURST 
AND THE CONTRACTOR

THIS AGREEMENT is dated as of the __________ day of _______ in the year 2014 by and between the City of Hurst (hereinafter called OWNERS) and;

______________________________________________________________

(hereinafter called CONTRACTOR).

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

Article 1. WORK.

The PROJECT for the Work detailed under the Contract Documents (see the Table of Contents for items included in the "Contract Documents") is generally identified as following:

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENTS

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

Installation of planting, irrigation, erosion control, traffic control, paving, and benches generally along the south side of Plainview Drive between Cimarron Trail and Juliet Place.

Article 2. ENGINEER.

The Project has been designed by:

Davis & Davis, Inc., Recreational Planning Consultants

but the term ENGINEER in these Contract Documents shall refer to the City of Hurst Parks Division, or their authorized representatives, who shall exercise the rights and authority assigned to ENGINEER in the Contract Documents and in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

3.1. The Work will be completed and ready for final payment in accordance with paragraph 14.07. of the General Conditions in 66 working days based on a standard 5 day work week, Monday – Friday.

3.2. Liquidated damages. OWNERS and CONTRACTOR recognize that time is of the essence of this agreement and that the OWNERS will suffer financial loss if the Work is not completed within the time specified in paragraph 3.1. above, plus extensions thereof allowed in accordance with Article 12 of the General Conditions. Accordingly, instead of requiring proof of such loss, OWNERS and CONTRACTOR agree that liquidated damages for delay (but not as a penalty) OWNERS shall deduct from the amount due from the amount due to the CONTRACTOR, the amount(s) shown in Special Provision 000-2332 Schedule of Liquidated Damages, for each day that expires after the time specified in paragraph 3.1.
Article 4. CONTRACT PRICE.

4.1. OWNER shall Pay the CONTRACTOR according to in place quantities multiplied times the price or prices shown in the Proposal, which form a part of this contract, or according to an approved Schedule of Values, plus (or minus) any approved extra work or change orders.

Article 5. PAYMENT PROCEDURES.

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

5.1. Progress Payments. OWNER shall make progress payments on the basis of CONTRACTOR'S Applications for payment as recommended and approved by ENGINEER. On or above the last day of each month during the construction CONTRACTOR shall meet with ENGINEER'S representative to determine number of units completed and/or value of completed work. All progress payments will be on the basis of the progress of the Work measured by the number of units completed or, if applicable, by the schedule of values established in Article 2 of the General Conditions, or as provided in the General or Supplementary Conditions.

5.1.1. Prior to completion, in accordance with paragraph 14.07. of the General Conditions, progress payments will be subject to a retainage in an amount equal to the percentage indicated in paragraph 14.02 of Supplementary Conditions and less the aggregate of payments previously made.

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

Article 6. CONTRACTOR'S REPRESENTATIONS.

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

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

6.2. CONTRACTOR has studied carefully all reports of explorations and test of subsurface conditions and drawings of physical conditions that are identified in the Supplementary Conditions as provided in paragraph 4.02. of the General Conditions, and accepts the determination set forth in the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to reply.

6.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, test, reports and studies (in addition to or supplement those referred to in paragraph 6.2. above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may effect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work of the Work at the Contract Price, within the Contract Time and in accordance with the other terms of and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02. of the General Conditions; and no additional examinations, investigations, explorations, test, studies or similar information or date are or will be require by the CONTRACTOR for such purposes.

6.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and
assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, exploration, test, reports studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03. of the General Conditions.

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

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

Article 7. MISCELLANEOUS.

7.1. Terms in this agreement are defined in Article 1 of the General conditions will have the meanings indicated in the General Conditions.

7.2. No assignments by a party hereto of any rights under or interest in the Contract Documents will be binding on another party hereto without written consent of the party sought to be bound; and specifically but without limitation moneys that may come due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between the OWNER and CONTRACTOR concerning the work consists of the items listed in the Table of Contents.

The Drawings and Plans, consisting of a cover sheet and sheets numbered 1 to 70 inclusive with each sheet bearing the following general title: (may not be attached).

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Other published specifications and standard drawings manuals (including, but not limited to: City of Hurst Engineering Design Manual, North Central Texas Council of Governments Standard Specifications for Public Works Construction, and Texas State Department of Highways and Public Transportation Standard Specifications for Construction) as may be referenced in other portions of the Contract Documents.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.04. and 3.05. of the General Conditions.

**Article 9B. OTHER PROVISIONS (CITY OF HURST).**

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement.

This Agreement will be effective on the ________ day of ____________, 2014.

---

**CITY OF HURST**  
2003 PRECINCT LINE ROAD  
HURST, TEXAS  76054

By: ____________________________  
Signature

---

**CONTRACTOR:**  
______________________________

By: ____________________________  
Signature

---

Print Name and Title

Attest

Address

City, State & Zip

Phone Number

Seal (if corporation)

Approved as to Form and Legality this _____ day of ________________, 2014.

______________________________  
City Attorney
PERFORMANCE BOND

STATE OF TEXAS
COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS: That _____________________________
of the City of ________________, County of ________________ and State of
________________, as principal, and ____________________________________
authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound
unto the City of Hurst (Owner), in the penal sum of ____________________________ Dollars ($_________)
for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, dated the __________ day of ________________________, 2014 to construct:

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENT
(SOUTH SIDE OF PLAINVIEW DRIVE BETWEEN CIMARRON TRAIL AND JULIET PLACE)
FEDERAL AID PROJECT NO. – NH 2014(668)

which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

"PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of the Texas Government Code, Chapter 2253 for Public Work of the revised Civil Statutes of Texas as amended and all liabilities on this bond shall be determined in accordance with the provisions of said Article to the same extent as if it were copied at length herein".

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

PB-H1
IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this __________ day of ______________________, 2014.

Principal

By:

Title:

Address:

Surety

By

Title

Address:

The name and address of the Resident Agent of Surety is:

______________________________________________________________

______________________________________________________________

______________________________________________________________

PB-H2
PB-H3

PAYMENT BOND

STATE OF TEXAS
COUNTY OF TARRANT

KNOW ALL MEN BY THESE PRESENTS: That _____________________________
of the City of ____________, County of ____________, and State of
__________________, as principal, and __________________________________ authorized under
the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound
unto the City of Hurst (Owner), in the penal sum of __________________________________ Dollars ($___________)
for the payment whereof, the said Principal and surety bind themselves and their heirs,
administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner,
dated the __________ day of _______________________, 2014 to construct:

PLAINVIEW DRIVE LANDSCAPE ENHANCEMENT
(SOUTH SIDE OF PLAINVIEW DRIVE BETWEEN CIMARRON TRAIL AND JULIET PLACE)
FEDERAL AID PROJECT NO. – NH 2014(668)

which contract is hereby referred to and made a part hereof as fully and to the same extent as if
copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if
the said Principal shall pay all claimants supplying labor and material to him or a subcontractor in
the prosecution of the work provided for in said contract, then, this obligation shall be void;
otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of the
Texas Government Code, Chapter 2253 of the Revised Civil Statutes of Texas as amended and all
liabilities on this bond shall be determined in accordance with the provisions of said Article to the
same extent as if it were copied at length herein.

Surety, for value received, stipulates and agrees that no change, extension of time,
alteration or addition to the terms of the contract, or to the work performed thereunder, or the
plans, specifications or drawings accompanying the same, shall in anyway affect its obligation on
this bond, and it does hereby waive notice of any such change, extension of time, alteration or
addition to the terms of the contract, or to the work to be performed thereunder.
IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this __________ day of ______________________, 2014.

Principal

By: 

Title:

Address:

Surety

By

Title

Address:

The name and address of the Resident Agent of Surety is:
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The license is effective until terminated. You may terminate it at any time by destroying EJCDC Design and Construction Related Documents altogether with all copies, modifications and merged portions in any form. It will also terminate upon conditions set forth elsewhere in this Agreement or if you fail to comply with any term or condition of this Agreement. You agree upon such termination to destroy EJCDC Design and Construction Related Documents along with all copies, modifications and merged portions in any form.
**Limited Warranty:**
EJCDC warrants the CDs and diskettes on which EJCDC Design and Construction Related Documents is furnished to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery to you as evidenced by a copy of your receipt.

There is no other warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state.

EJCDC does not warrant that the functions contained in EJCDC Design and Construction Related Documents will meet your requirements or that the operation of EJCDC Design and Construction Related Documents will be uninterrupted or error free.

**Limitations of Remedies:**
EJCDC’s entire liability and your exclusive remedy shall be:

1. the replacement of any document not meeting EJCDC’s “Limited Warranty” which is returned to EJCDC’s selling agent with a copy of your receipt, or

2. if EJCDC’s selling agent is unable to deliver a replacement CD or diskette which is free of defects in materials and workmanship, you may terminate this Agreement by returning EJCDC Document and your money will be refunded.

In no event will EJCDC be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use EJCDC Design and Construction Related Documents even if EJCDC has been advised of the possibility of such damages, or for any claim by any other party.

Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.

**General:**
You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement. Any attempt otherwise to sublicense, assign, or transfer any of the rights, duties, or obligations hereunder is void.

This Agreement shall be governed by the laws of the State of Virginia. Should you have any questions concerning this Agreement, you may contact EJCDC by writing to:

Arthur Schwartz, Esq.
STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE

A Practice Division of the

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

Endorsed by

CONSTRUCTION SPECIFICATIONS INSTITUTE
These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor (EJCDC C-520 or C-525, 2007 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the Narrative Guide to the EJCDC Construction Documents (EJCDC C-001, 2007 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (EJCDC C-800, 2007 Edition).
STANDARD GENERAL CONDITIONS OF THE
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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

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

2. Agreement—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.

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

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

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

6. Bidder—The individual or entity who submits a Bid directly to Owner.


8. Bidding Requirements—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.

9. Change Order—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

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

11. Contract—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
12. **Contract Documents**—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

13. **Contract Price**—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).

14. **Contract Times**—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer’s written recommendation of final payment.

15. **Contractor**—The individual or entity with whom Owner has entered into the Agreement.

16. **Cost of the Work**—See Paragraph 11.01 for definition.

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

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

19. **Engineer**—The individual or entity named as such in the Agreement.

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

21. **General Requirements**—Sections of Division 1 of the Specifications.

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

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

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

25. **Liens**—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

26. **Milestone**—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
27. Notice of Award—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

28. Notice to Proceed—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.

29. Owner—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.

30. PCBs—Polychlorinated biphenyls.

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

32. Progress Schedule—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.

33. Project—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

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

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

36. Resident Project Representative—The authorized representative of Engineer who may be assigned to the Site or any part thereof.

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

38. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

39. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
40. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

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

42. Specifications—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

43. Subcontractor—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

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

45. Successful Bidder—The Bidder submitting a responsive Bid to whom Owner makes an award.

46. Supplementary Conditions—That part of the Contract Documents which amends or supplements these General Conditions.

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

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

49. Unit Price Work—Work to be paid for on the basis of unit prices.

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

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

1.02 Terminology

A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.

B. Intent of Certain Terms or Adjectives:

1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

   a. does not conform to the Contract Documents; or

   b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

   c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

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

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

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

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

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

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds and Evidence of Insurance

A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.

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

2.02 Copies of Documents

A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

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

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

2.05 **Before Starting Construction**

A. **Preliminary Schedules:** Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), Contractor shall submit to Engineer for timely review:

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

2. a preliminary Schedule of Submittals; and

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

2.06 **Preconstruction Conference; Designation of Authorized Representatives**

A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 **Initial Acceptance of Schedules**

A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of
the Work, nor interfere with or relieve Contractor from Contractor’s full responsibility therefor.

2. Contractor’s Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.

3. Contractor’s Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

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

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

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

3.02 Reference Standards

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

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

2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies:
1. **Contractor’s Review of Contract Documents Before Starting Work**: Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.

2. **Contractor’s Review of Contract Documents During Performance of Work**: If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.

3. 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 had actual knowledge thereof.

B. **Resolving Discrepancies**:

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

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

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

3.04 **Amending and Supplementing Contract Documents**

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:

1. A Field Order;

2. Engineer’s approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer’s written interpretation or clarification.

3.05 Reuse of Documents

A. Contractor and any Subcontractor or Supplier shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or

2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user’s sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data’s creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data’s creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

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

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

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

4.02 Subsurface and Physical Conditions

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and

2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. Notice: If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

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

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

B. Engineer’s Review: After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. Possible Price and Times Adjustments:

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

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

   b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

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

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

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

   c. Contractor failed to give the written notice as required by Paragraph 4.03.A.

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other
professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

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

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and

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

   a. reviewing and checking all such information and data;

   b. locating all Underground Facilities shown or indicated in the Contract Documents;

   c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and

   d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. Not Shown or Indicated:

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

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

4.05 Reference Points

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

4.06 Hazardous Environmental Condition at Site

A. Reports and Drawings: The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.

B. Limited Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the “technical data” contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

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

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions or information.

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

D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by
Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.

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

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

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

H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment, and Other Bonds

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor’s obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.

C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located or it meets the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.03 Certificates of Insurance

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

C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance.

D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.

E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor’s Insurance

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

1. claims under workers’ compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor’s employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor’s employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
   a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
   b. by any other person for any other reason;

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

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

B. The policies of insurance required by this Paragraph 5.04 shall:
1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

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

3. include contractual liability insurance covering Contractor’s indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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

6. include completed operations coverage:
   a. Such insurance shall remain in effect for two years after final payment.
   b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner’s Liability Insurance

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

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;

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

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

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

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

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.

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

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

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

5.07 Waiver of Rights

A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner’s property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery
against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

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

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

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party’s interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.
ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

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

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

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

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

6.03 Services, Materials, and Equipment

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

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
6.04 **Progress Schedule**

A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.

1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 **Substitutes and “Or-Equals”**

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

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

   a. in the exercise of reasonable judgment Engineer determines that:

      1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;

      2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and

      3) it has a proven record of performance and availability of responsive service.

   b. Contractor certifies that, if approved and incorporated into the Work:

      1) there will be no increase in cost to the Owner or increase in Contract Times; and

      2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
2. **Substitute Items:**

   a. If in Engineer’s sole discretion an item of material or equipment proposed by Contractor does not qualify as an “or-equal” item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.

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

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

   d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

      1) shall certify that the proposed substitute item will:

         a) perform adequately the functions and achieve the results called for by the general design,

         b) be similar in substance to that specified, and

         c) be suited to the same use as that specified;

      2) will state:

         a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor’s achievement of Substantial Completion on time,

         b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

         c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

      3) will identify:

         a) all variations of the proposed substitute item from that specified, and

         b) available engineering, sales, maintenance, repair, and replacement services; and
4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

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

C. Engineer’s Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No “or equal” or substitute will be ordered, installed or utilized until Engineer’s review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an “or equal.” Engineer will advise Contractor in writing of any negative determination.

D. Special Guarantee: Owner may require Contractor to furnish at Contractor’s expense a special performance guarantee or other surety with respect to any substitute.

E. Engineer’s Cost Reimbursement: Engineer will record Engineer’s costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

F. Contractor’s Expense: Contractor shall provide all data in support of any proposed substitute or “or-equal” at Contractor’s expense.

6.06 Concerning Subcontractors, Suppliers, and Others

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

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

C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor

2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08  Permits

A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09  Laws and Regulations

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

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

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

6.10 Taxes

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

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

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

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

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

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

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

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

### 6.12 Record Documents

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

### 6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

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

C. Contractor shall comply with the applicable requirements of Owner’s safety programs, if any. The Supplementary Conditions identify any Owner’s safety programs that are applicable to the Work.
D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor’s safety program with which Owner’s and Engineer’s employees and representatives must comply while at the Site.

E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

F. Contractor’s duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

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

6.15 Hazard Communication Programs

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

6.16 Emergencies

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

6.17 Shop Drawings and Samples

A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
1. **Shop Drawings:**

   a. Submit number of copies specified in the General Requirements.

   b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.

2. **Samples:**

   a. Submit number of Samples specified in the Specifications.

   b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, 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.

C. **Submittal Procedures:**

   1. Before submitting each Shop Drawing or Sample, Contractor shall have:

      a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

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

      c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and

      d. determined and verified all information relative to Contractor’s responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.

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

   3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop
Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer’s Review:

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

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

3. Engineer’s review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer’s review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

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

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor’s General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor’s warranty and guarantee.

B. Contractor’s warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;

4. use or occupancy of the Work or any part thereof by Owner;

5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;

6. any inspection, test, or approval by others; or

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

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

C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer’s officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 Delegation of Professional Design Services

A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to Engineer.

C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

D. Pursuant to this Paragraph 6.21, Engineer’s review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer’s review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.
ARTICLE 7 – OTHER WORK AT THE SITE

7.01  Related Work at Site

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

1. written notice thereof will be given to Contractor prior to starting any such other work; and

2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner’s employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

7.02  Coordination

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

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.
7.03 Legal Relationships

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor’s wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor’s wrongful action or inactions.

ARTICLE 8 – OWNER’S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 Replacement of Engineer

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

8.03 Furnish Data

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

8.04 Pay When Due

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. Owner’s duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

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

8.07 Change Orders

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.
8.08 **Inspections, Tests, and Approvals**

A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 **Limitations on Owner’s Responsibilities**

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

8.10 **Undisclosed Hazardous Environmental Condition**

A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 **Evidence of Financial Arrangements**

A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents.

8.12 **Compliance with Safety Program**

A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

**ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION**

9.01 **Owner’s Representative**

A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents.

9.02 **Visits to Site**

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

B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

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

9.06 Shop Drawings, Change Orders and Payments

A. In connection with Engineer’s authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
B. In connection with Engineer’s authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.

C. In connection with Engineer’s authority as to Change Orders, see Articles 10, 11, and 12.

D. In connection with Engineer’s authority as to Applications for Payment, see Article 14.

9.07 *Determinations for Unit Price Work*

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

9.08 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.

B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer’s decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.

C. Engineer’s written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer’s Authority and Responsibilities*

A. Neither Engineer’s authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

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

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

E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

A. While at the Site, Engineer’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

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

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

10.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.
10.03 **Execution of Change Orders**

A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner’s correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 **Notification to Surety**

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

10.05 **Claims**

A. **Engineer’s Decision Required:** All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.

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

C. **Engineer’s Action:** Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part;
2. approve the Claim; or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer’s sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer’s written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05.D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 **Cost of the Work**

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

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on
Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

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

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

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

5. Supplemental costs including the following:
   a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor’s employees incurred in discharge of duties connected with the Work.
   b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
   c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
   d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
   e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor’s fee.

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

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

i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

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

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

2. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.

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

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

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

C. **Contractor’s Fee:** When all the Work is performed on the basis of cost-plus, Contractor’s fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor’s fee shall be determined as set forth in Paragraph 12.01.C.
D. **Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 **Allowances**

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. **Cash Allowances:**

1. Contractor agrees that:
   a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
   b. Contractor’s costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. **Contingency Allowance:**

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

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

11.03 **Unit Price Work**

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

B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor’s overhead and profit for each separately identified item.
D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

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

3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

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

12.01 Change of Contract Price

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

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

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor’s fee for overhead and profit (determined as provided in Paragraph 12.01.C).

C. Contractor’s Fee: The Contractor’s fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

   a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor’s fee shall be 15 percent;

   b. for costs incurred under Paragraph 11.01.A.3, the Contractor’s fee shall be five percent;
c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor’s fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in Contractor’s fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

12.03 Delays

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

B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor’s entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor’s ability to complete the Work within the Contract Times.

C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the
control of Owner, or other causes not the fault of and beyond control of Owner and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor’s ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor’s sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

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

13.01 Notice of Defects

A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and government agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor’s safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

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

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

1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and

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

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

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.

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

13.04 Uncovering Work

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

B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer’s request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.

C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
13.05 Owner May Stop the Work

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

13.06 Correction or Removal of Defective Work

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

B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner’s special warranty and guarantee, if any, on said Work.

13.07 Correction Period

A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor’s use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions:

1. repair such defective land or areas; or

2. correct such defective Work; or

3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

B. If Contractor does not promptly comply with the terms of Owner’s written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute
resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.

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

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

E. Contractor’s obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer’s recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner’s evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer’s recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

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

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor’s services related thereto, take possession of Contractor’s tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and
C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor’s defective Work.

D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner’s rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

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

14.02 Progress Payments

A. Applications for Payments:

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

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

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

B. Review of Applications:

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

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

   a. the Work has progressed to the point indicated;

   b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and

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

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:

   a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or

   b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer’s review of Contractor’s Work for the purposes of recommending payments nor Engineer’s recommendation of any payment, including final payment, will impose responsibility on Engineer:

   a. to supervise, direct, or control the Work, or
b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

c. for Contractor’s failure to comply with Laws and Regulations applicable to Contractor’s performance of the Work, or

d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or

e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.

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

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

b. the Contract Price has been reduced by Change Orders;

c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or

d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

1. Ten days after presentation of the Application for Payment to Owner with Engineer’s recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

1. Owner may refuse to make payment of the full amount recommended by Engineer because:

a. claims have been made against Owner on account of Contractor’s performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;

c. there are other items entitling Owner to a set-off against the amount recommended; or
d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.

3. Upon a subsequent determination that Owner’s refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor’s Warranty of Title

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

14.04 Substantial Completion

A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.

B. Promptly after Contractor’s notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.

C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner’s objections, Engineer considers the Work substantially complete, Engineer will, within said 14 days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities
pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer’s issuing the definitive certificate of Substantial Completion, Engineer’s aforesaid recommendation will be binding on Owner and Contractor until final payment.

E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor’s performance of the remainder of the Work, subject to the following conditions:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.

2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

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

14.06 Final Inspection

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

A. Application for Payment:

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
   a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
   b. consent of the surety, if any, to final payment;
   c. a list of all Claims against Owner that Contractor believes are unsettled; and
   d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

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

B. Engineer’s Review of Application and Acceptance:

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

C. Payment Becomes Due:
1. Thirty days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer’s recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor’s final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

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

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor’s continuing obligations under the Contract Documents; and

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

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

15.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:
1. Contractor’s persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

2. Contractor’s disregard of Laws or Regulations of any public body having jurisdiction;

3. Contractor’s repeated disregard of the authority of Engineer; or


B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:

1. exclude Contractor from the Site, and take possession of the Work and of all Contractor’s tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and

3. complete the Work as Owner may deem expedient.

C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor’s services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

E. Where Contractor’s services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

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

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. reasonable expenses directly attributable to termination.

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

15.04 Contractor May Stop Work or Terminate

A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.

B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor’s stopping the Work as permitted by this Paragraph.
ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.

C. If the Claim is not resolved by mediation, Engineer’s action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:

1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or

2. agrees with the other party to submit the Claim to another dispute resolution process; or

3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:

1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

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

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.
Under Family Code, Section 231.006, ______________________________________ (name of individual) certifies that ______________________________________ (name of business) __________________________ (vendor #) as of __________________, 20___ (date) is eligible to receive a grant, loan, or payment and acknowledges that any contract may be terminated and payment may be withheld if this certification is inaccurate.

List below the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25% of the business entity submitting the bid or application. This form must be updated whenever any party obtains a 25% ownership interest in the business entity.

<table>
<thead>
<tr>
<th>Name (Please Print Legibly)</th>
<th>Social Security Number</th>
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Family Code, Section 231.006, specifies that a child support obligor who is more than thirty (30) days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25% percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services; or receive a state-funded grant or loan.

A child support obligor or business entity ineligible to receive payments described above remains ineligible until all arrearage have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency.

Except as provided by Family Code, Section 231.302(d), a social security number is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provisions of Subchapters A and D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 651 et seq.)

The Texas Department of Transportation maintains the information collected through this article. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under Sections 552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under Section 559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

- Please send this form to Texas Department of Transportation, Office of General Counsel (OGC) - Contract Services Section, 125 E. 11th Street, Austin, Texas 78701-2483.
DISADVANTAGED BUSINESS ENTERPRISES (DBE) REQUIREMENTS

**Project:** For the construction of landscape enhancements including landscape planting, irrigation, sidewalks, and landscape amenities.

**Highway:** SH 121

**County:** Tarrant

**TxDot CSJ:** 0364-01-141

The following goal for disadvantaged business enterprises is established as:

DBE: 5.00%

Based on the Federal funding and cost estimates for this project, the number and types of certified DBE firms in the vicinity of the project location, the types of bid items listed with estimated values and the total size of the project; the Office of Civil Rights recommends race conscious DBE goal of Five percent (5%) for this project proposal.

Race neutral participation is encouraged and suggest and can possibly be achieved through various opportunities such as hauling, material supplier, etc.
Disadvantaged Business Enterprise (DBE) Program
Commitment Agreement Form

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

<table>
<thead>
<tr>
<th>Project #:</th>
<th>County:</th>
<th>Contract-CSJ:</th>
</tr>
</thead>
</table>

Items of work to be performed (attach a list of work items if more room is required):

<table>
<thead>
<tr>
<th>Bid Item #</th>
<th>Item Description</th>
<th>Unit of Measure</th>
<th>Unit Price</th>
<th>Quantity</th>
<th>Total Per Item</th>
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Total

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

**IMPORTANT:** The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.

<table>
<thead>
<tr>
<th>Prime Contractor:</th>
<th>Name/Title (please print):</th>
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<tbody>
<tr>
<td>Address:</td>
<td>Signature:</td>
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<tr>
<td>Phone:</td>
<td>Date:</td>
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<tr>
<td>E-mail:</td>
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<table>
<thead>
<tr>
<th>DBE:</th>
<th>Name/Title (please print):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vendor No.:</td>
<td>Signature:</td>
</tr>
<tr>
<td>Address:</td>
<td>Date:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Date:</td>
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<tr>
<td>E-mail:</td>
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</table>

<table>
<thead>
<tr>
<th>Subcontractor (if the DBE will be a second tier sub):</th>
<th>Name/Title (please print):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>Signature:</td>
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<td>Phone:</td>
<td>Date:</td>
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The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.
§ 635.410 Buy America requirements.

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials
used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or $2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if;

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the Federal Register for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

Instructions For Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION--LOWER TIER COVERED TRANSACTIONS

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

____________________________________ _______________________________
Signature/Authorized Certifying Official Typed Name and Title

____________________________________ ________________________________
Applicant/Organization Date Signed
CERTIFICATION REGARDING LOBBYING

Certification For Contracts, Grants, Loans, And Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____________________________________ _______________________________
Signature/Authorized Certifying Official Typed Name and Title

____________________________________ ________________________________
Applicant/Organization Date Signed
Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

____________________________________ _______________________________
Signature/Authorized Certifying Official Typed Name and Title

____________________________________ ________________________________
Applicant/Organization Date Signed
## APPENDIX B TO PART 20—DISCLOSURE FORM TO REPORT LOBBYING

**DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1353.

(See reverse for public burden disclosure.)

<table>
<thead>
<tr>
<th>1. Type of Federal Action:</th>
<th>2. Status of Federal Action:</th>
<th>3. Report Type:</th>
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</thead>
<tbody>
<tr>
<td>a. contract</td>
<td>a. bid/proposal</td>
<td>a. initial filing</td>
</tr>
<tr>
<td>b. grant</td>
<td>b. initial award</td>
<td>b. material change</td>
</tr>
<tr>
<td>c. cooperative agreement</td>
<td>c. post-award</td>
<td>For Material Change Only:</td>
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<tr>
<td>d. loan</td>
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<td>year: quarter:</td>
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<td>e. loan guarantee</td>
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<td>date of last report:</td>
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<td>f. loan insurance</td>
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<tr>
<th>4. Name and Address of Reporting Entity:</th>
<th>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ Prime</td>
<td>Congressional District, if known:</td>
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<td>☐ Subawardee</td>
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<td>Tint: if known</td>
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<th>6. Federal Department/Agency:</th>
<th>7. Federal Program Name/Description:</th>
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<td>CFDA Number, if applicable:</td>
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<th>8. Federal Action Number, if known:</th>
<th>9. Award Amount, if known:</th>
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<td>$</td>
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<table>
<thead>
<tr>
<th>10. a. Name and Address of Lobbying Entity</th>
<th>b. Individuals Performing Services (including address if different from No. 10a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>of individual, last name, first name, Mls.</td>
<td>last name, first name, Mls.</td>
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<tr>
<th>11. Amount of Payment (check all that apply):</th>
<th>13. Type of Payment (check all that apply):</th>
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<tr>
<td>$</td>
<td>☐ a. retainer</td>
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<tr>
<td>☐ actual</td>
<td>☐ b. one-time fee</td>
</tr>
<tr>
<td>☐ planned</td>
<td>☐ c. commission</td>
</tr>
</tbody>
</table>

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<tr>
<th>12. Form of Payment (check all that apply):</th>
<th>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ a. cash</td>
<td></td>
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<tr>
<td>☐ b. in-kind; specify nature</td>
<td></td>
</tr>
<tr>
<td>value</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>15. Continuation Sheet(s) SF-LIL-A attached:</th>
<th>16. Information required through the form is authorized by the 31 U.S.C. section 1353. The disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the taxpayer when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1353. The information will be reported to the Congress annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.</th>
</tr>
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<tbody>
<tr>
<td>☐ Yes</td>
<td>☐ No</td>
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<table>
<thead>
<tr>
<th>Signature:</th>
<th>Print Name:</th>
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<tr>
<td>Print:</td>
<td>Title:</td>
</tr>
<tr>
<td>Telephone No.:</td>
<td>Date:</td>
</tr>
</tbody>
</table>

**Federal Use Only:**

Authorized for Local Reproduction
Standard Form—IL-1
This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subawardee recipient. Identify the tier of the subawardee, e.g., the first subawardee or the prime is 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 6 checks “Subawardee”, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., “872-DE-90-001.”

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist engaged, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the official(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.
23 CFR 635.112 NON-COLLUSION STATEMENT

Each bidder shall file a statement executed by, or on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid nonresponsive and not eligible for award consideration.

Authorized Signature

Typed Name and Title

Applicant / Organization

Date Signed
FHWA Federal-aid projects are subject to 23 CFR 635.417, Prison or Convict produced materials. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the last 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987. The undersigned below understand and acknowledges this requirement.

Authorized Signature       Typed Name and Title

Applicant / Organization   Date Signed
CONFLICT OF INTEREST DISCLOSURE STATEMENT

Proposer’s attention is directed to 23 CFR Section 636 Subpart A and in particular to Subsection 636.116 regarding organizational conflicts of interest. Section 636.103 defines “organizational conflict of interest” as follows:

Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Proposers are advised that in accordance with TxDOT’s Conflicts of Interest Policy, certain firms will not be allowed to participate on any Proposer’s team for the Project because of their work with TxDOT in connection with the Project procurement and document preparation and the CDA program.

1. Disclosure Pursuant to Section 636.116(2)(v)

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present, or planned interest(s) of the Proposer’s team (including the Proposer, the Developer, the Major Participants, proposed consultants and proposed subcontractors, and their respective chief executives, directors, and key project personnel) which may result, or could be viewed as, an organizational conflict of interest in connection with this RFP.

Proposer should disclose (a) any current contractual relationships with TxDOT, (b) any past, present, or planned contractual or employment relationships with any TxDOT member, officer, or employee; and (c) any other circumstances that might be considered to create a financial interest in the contract by any TxDOT member, officer, or employee if Proposer is awarded the contract. Proposer shall also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the RFP preparers. Proposer shall also disclose contractual relationships with an RFP preparer in the nature of a joint venture, as well as relationships wherein the RFP preparer is a contractor or consultant (or subcontractor or subconsultant) to Proposer or a member of Proposer’s team. The foregoing is provided by way of example, and shall not constitute a limitation on the disclosure obligations.
2. **Explanation**

In the space provided below, and on supplemental sheets as necessary, identify steps that have been or will be taken to avoid, neutralize, or mitigate any organizational conflicts of interest described herein.
3. **Certification**

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

______________________________
Signature

______________________________
Name

______________________________
Title

______________________________
Company Name

______________________________
Date
e) Standardized Contract Clause Concerning Site Conditions.—
   (1) General rule.— The Secretary shall issue regulations establishing and requiring,
   for inclusion in each contract entered into with respect to any project approved
   under section 106 of this title a contract clause, developed in accordance with
   guidelines established by the Secretary, which equitably addresses each of the
   following:
   (A) Site conditions.
   (B) Suspensions of work ordered by the State (other than a suspension of work
       caused by the fault of the contractor or by weather).
   (C) Material changes in the scope of work specified in the contract.
   The guidelines established by the Secretary shall not require arbitration.
   (2) Limitation on applicability.—
   (A) State law.— Paragraph (1) shall apply in a State except to the extent that such
       State adopts or has adopted by statute a formal procedure for the development of a
       contract clause described in paragraph (1) or adopts or has adopted a statute which
       does not permit inclusion of such a contract clause.
   (B) Design–build contracts.— Paragraph (1) shall not apply to any design–build
       contract approved under subsection (b)(3).
Single lane closures, except as otherwise shown in the plans, will be restricted to off-peak hours as defined in the following table:

<table>
<thead>
<tr>
<th>Peak Hours</th>
<th>Off-Peak Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 to 9 AM Monday through Friday</td>
<td>3 to 7 PM Monday through Friday</td>
</tr>
<tr>
<td>9AM to 3PM and 7PM to 6 AM Monday through Friday</td>
<td>All day Saturday and Sunday</td>
</tr>
</tbody>
</table>

Existing storm sewers and utilities are shown from the best available information. Verify the location of all underground facilities prior to starting work.

For dimensions of R.O.W. not shown on the plans, see R.O.W. map on file at the TxDOT District Office.

Take care that existing curb and curb and gutter and street surfaces are not discolored or damaged during construction operations. In the event of discoloration or damage, clean or repair as directed. Contractor will photograph all work areas to document state of existing conditions prior to beginning construction. The contractor will be responsible for repairing at no cost to the City of Hurst or TxDot any existing condition to remain, this includes all above grade or underground condition that may be encountered. All utilities are to be located prior to beginning construction and locations are to be maintained during construction. All utilities shown on the existing conditions sheets are best estimated locations taken from City of Hurst and TxDot plans and via an as-built above ground survey. Should a conflict between an existing condition and proposed work be encountered notify Engineer prior to beginning work.

All trees shall be located no closer that 4’ clear of an existing utility.

Remove any obstructions to existing drainage due to the contractor's operations, as required, at the Contractor's expense.
The overall project NH 2014 (668) is between sta 0+00 and sta 40+29.74. The actual work scope area is from sta 0+00 to sta 24+24.5, outside of this area is to be others.

Item 2. Instructions to Bidders

Proposals with a bid of more than 66 working days for the substantial completion of the project will be considered non-responsive.

Item 8. Prosecution and Progress

Working days will be computed and charged in accordance with Article 8.3.A.1 Five-Day Workweek. No work prior to 7:00 am or after dusk. Work on Saturdays will require written approval by the Engineer, with a minimum of three (3) days written request by the contractor. No work on Sundays. Do not leave any equipment on site over night. Access all work areas perpendicular to the street within a common work path to reduce impact on existing turf cover. Do not impede access to the elevated ramp entrance approximately at station 24+24.5

Item 100. Preparing Right of Way

Measurement for this item shall be along the centerline of the project with the limits of measurements as shown on the plans. Take necessary precautions to retain and impact as little as possible the existing turf cover between the proposed planting and sitting areas.

Item 104. Removing Concrete

Removing of existing concrete sidewalk and/or curb is an incidental cost associated with installation of sidewalks.

Item 161. Compost

Where “pre-blended” CMT is specified, amend suitable soil material, as determined by the Engineer, with 25% compost, by volume, to produce the compost manufactured topsoil. Place the compost manufactured topsoil in a loose layer approximately 4” thick, as shown in the plans. Coordinate installation with section 192.

Item 170. Irrigation System

Contact the City of Hurst Director of Public Works, Mark Obercash (817-788-7204), regarding water line locations and tap and meter fees.
Costs for water applied through the irrigation system will be subsidiary to Item 170 – Irrigation System and Item 193 – Irrigation System Operation and Maintenance. See Irrigation specifications sheet for details.

The drawings are generally diagrammatic and indicative of work to be installed. Due to the scale of the drawings, it is not possible to indicate all offsets, fittings, and sleeves which may be required. Carefully investigate the site conditions affecting all work and plan work accordingly, furnishing such offsets, fittings, and sleeves as may be required to meet site conditions.

Unless otherwise noted on the plans, all materials shall be new and unused. The irrigation equipment and materials shall be delivered to the jobsite in unbroken reels, cartons, or other packaging to demonstrate that such material is new and of quality and grade according to the specifications.

Provide two individually bound manuals detailing operation and maintenance requirements for the irrigation systems. Manuals shall be delivered to the Engineer no later than 10 days prior to final acceptance of the work.

Item 192. Landscape Planting

Neither work subsoil for planting operations when moisture content is so great that excessive compaction will occur, nor when it is so dry that the clods will not break readily. Apply water if necessary. These conditions will be determined by the Engineer as planting operations begin. It may be necessary to suspend planting operations if the Engineer determines that unusually hot, dry weather or water restrictions will affect thriving growth of plant material. If planting operations are suspended, time charges will also be suspended until the Engineer determines that planting operations can begin again. Continue to maintain previously planted plants during time suspension. No extra compensation will be allowed due to such suspensions.

Stake trees for support during the same day as planted. Ensure plants stand plumb after staking. Ensure material remains plumb and straight for all given conditions throughout the contract period. Staking method must allow trunk to sway with the wind while remaining plumb.

Planting beds shall be prepared in the following manner:

The planting bed area shall be laid out in the field in such a manner that the configuration may be examined and approved by the Engineer prior to application of weed killer or excavation. The Engineer may make adjustments which will be considered incidental and at no additional charge.

Excavation: After approval of Engineer of successful vegetation kill, remove the top 6” layer of organic matter and soil. Till existing subsoil to a depth at 4” to 6”. Prepare beds by placing a bed mix of composted topsoil as per section 161 and fertilizer as per 166 to a
uniform depth of 4”. Water for settlement after dry apply additional bed mix to produce a uniform depth of 4”.

Planting: Place 3 and 5 gallon plant material as shown on the plans after the concrete landscape bed edge has been installed and the primary irrigation system components. Hand water as needed until irrigation system is completely functional. Secure approval of Engineer of plantig layout prior to placing loose aggregate. Install necessary irrigation components prior to placing loose aggregate. When planting trees the backfill mix will consist of ½ existing removed soil from plant hole, ½ composted topsoil and fertilizer, blended together prior to backfilling. Install tree staking prior to placing loose aggregate.

Loose Aggregate Installation: Place a 4” layer of loose aggregate in 2-3” lifts wetting between lifts. Take care not to damage plants or irrigation. Do not compact. The finish grade should be 2” higher than original grade. Install boulders prior to placing loose aggregate so that the boulders will be installed approximately 1/3 height into the loose aggregate. Secure approval of Engineer prior to placing loose aggregate.

Solid Block Sod Installation: After concrete, landscape bed, plant material, boulders, and loose aggregate has been installed installation of solid block sod may occur. Remove existing turf/weeds that may be existing and install sod to be flush with edge of existing turf. Wet and roll smooth fill joints with composted topsoil as needed. Provide a final rolling to produce a smooth surface. No additional watering is required.

Landscape Bed Edge Installation: Layout to be approved by Engineer prior to installation. Install prior to installation of plant material. Properly dispose of any excess concrete.

No planting shall occur before September 15th without written approval from the Engineer. Begin the 90-day maintenance period only after all live plant material and functional irrigation systems have been installed as shown on plans.

Item 502. Barricades, Signs, and Traffic Handling

Existing signs are to remain as long as they do not interfere with construction and they do not conflict with the traffic control plan.

Any temporary stockpiles placed within the street barricade areas must be removed at the end of each work day. Pavement must be protected. Do not stock pile on on existing sod or turf areas.

Do not place barricades, signs, or any other traffic control device where they may interfere with driving sight lines at driveways or side streets.

All lanes are to remain open when work is not being done.
Traffic control devices shall be required during the project installation phase only and not during maintenance period.

When traffic is obstructed, arrange warning devices in accordance with arrangements indicated in the latest edition of the "Texas Manual on Uniform Traffic Control Devices".

Cover or remove any work zone signs when work or condition referenced is not occurring.

In addition to providing a Contractor’s Responsible Person and a phone number for emergency contact, have an employee available to respond on the project for emergencies and for taking corrective measures within 2 hours or within a reasonable time frame as specified by the Engineer.

**Item 1122. Temporary Erosion, Sedimentation, and Environmental Controls**

The SW3P for this project shall consist of using the following items as directed:

a. Temporary erosion control logs.

Remove accumulated sediment and/or replace SW3P controls when the capacity has been reduced by 50% or when the depth of sediment at the control structure exceeds one foot.

**1013-2001 Trash Receptacles**

Refer to plan sheet 45 for referenced product, install surface mount as per manufacturer recommendation after installation of all sitting areas and planting has occurred. Secure approval of location from Engineer prior to installation.

**1014 – 2022 Landscape Amenity (Bench)**

Refer to plan sheet 45 for referenced product, install surface mount as per manufacturer recommendation after installation of all sitting areas and planting has occurred. Secure approval of location from Engineer prior to installation.

**Item 1016-2001 Loose Aggregate for Ground Cover (DG 2)**

Shall consist of:

The material shall consist of Decomposed Granite with color range from tan to golden brown. The material shall range from tan to golden brown.
The contractor shall submit a one gallon container of the proposed Decomposed Granite mixture to the Engineer, prior to purchase or delivery of the Decomposed Granite material, for approval of the color mix.

The gradation of the Decomposed Granite, as determined in accordance with Test Method Tex-110-E, shall be as follows:

- Retained on 5/8” Sieve: 0%
- Retained on 3/8” Sieve: 15% to 25%
- Retained on No. 4 Sieve: 40% to 55%
- Retained on No. 10 Sieve: 65% to 80%

END
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS
A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with, and the contracting agency and the FHWA have the authority and the responsibility to ensure compliance with, Executive Order 11246 and the Rehabilitation Act of 1973, as amended (29 USC 794) and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under
this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

“It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training.”

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor’s staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: “An Equal Opportunity Employer.” All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are
applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor’s work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor’s association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualified minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT’s U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA 1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor
will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

(a) All laborers and mechanics employed or working upon the site or on any portion thereof, and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or
will notify the contracting officer within the 30-day period that additional time is necessary.

4. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof) of the types described in section 1(b)(2)(B) of the Davis-Bacon Act, daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/w347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular program. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.
VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

   (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
   (2) the prime contractor remains responsible for the quality of the work of the leased employees;
   (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
   (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. “Specialty Items” shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws and regulations governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. If a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:
"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more — as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:
   a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
   c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
   d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
   e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
   f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
   g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.
   h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epis.gov/), which is compiled by the General Services Administration.
i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

   (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

   (2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

   (4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless it knows that the certification is erroneous.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epis.gov), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the
department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

   a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

   b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.
ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

   a. To the extent that qualified persons regularly residing in the area are not available.

   b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

   c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor’s permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.
DAVIS BACON WAGE RATES

General Decision Number: TX140035 01/03/2014  TX35

Superseded General Decision Number: TX20130035

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Modification Number     Publication Date
0             01/03/2014
*  SUTX2011-007 08/03/2011

Rates          Fringes

CONCRETE FINISHER (Paving and Structures)...............$ 14.12

ELECTRICIAN.................$ 19.80

FORM BUILDER/FORM SETTER
  Paving & Curb.............$ 13.16
  Structures...............$ 13.84

LABORER
  Asphalt Raker.............$ 12.69
  Flagger....................$ 10.06
  Laborer, Common...........$ 10.72
  Laborer, Utility..........$ 12.32
  Pipelayer................$ 13.24
  Work Zone Barricade Servicer.................$ 11.68
POWER EQUIPMENT OPERATOR:

- Asphalt Distributor: $15.32
- Broom or Sweeper: $11.74
- Concrete Pavement Finishing Machine: $16.05
- Concrete Saw: $14.48
- Crane Operator, Lattice Boom 80 Tons or Less: $17.27
- Crane Operator, Lattice Boom over 80 Tons: $20.52
- Crane, Hydraulic 80 Tons or Less: $18.12
- Crawler Tractor: $14.07
- Excavator, 50,000 pounds or less: $17.19
- Excavator, over 50,000 pounds: $16.99
- Foundation Drill, Truck Mounted: $21.07
- Foundation Drill, Crawler Mounted: $17.99
- Front End Loader 3 CY or Less: $13.69
- Front End Loader, over 3 CY: $14.72
- Loader/Backhoe: $15.18
- Mechanic: $17.68
- Milling Machine: $14.32
- Motor Grader, Fine Grade: $17.19
- Motor Grader, Rough: $16.02
- Pavement Marking Machine: $13.63
- Reclaimer/Pulverizer: $11.01
- Roller, Asphalt: $13.08
- Roller, Other: $11.51
- Scraper: $12.96
- Small Slipform Machine: $15.96
- Spreader Box: $14.73
- Servicer: $14.58
- Steel Worker (Reinforcing): $16.18

TRUCK DRIVER

- Lowboy-Float: $16.24
- Off Road Hauler: $12.25
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<tr>
<td>Single Axle</td>
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<td>Single or Tandem Axle Dump Truck</td>
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<tr>
<td>Transit-Mix</td>
<td>$ 14.14</td>
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<tr>
<td>WELDER</td>
<td>$ 14.84</td>
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</table>

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

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

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

**Union Identifiers**

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters, PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the
effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

---------------------------------------------------------------

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted.
because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

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

==================================================================================================

END OF GENERAL DECISION
SPECIAL PROVISION
000---003
Notice to All Bidders

To report bid rigging activities call:

1-800-424-9071

The U.S. Department of Transportation (DOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of the DOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.
SPECIAL PROVISION
000---004
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. General. In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. Goals.
   a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
   b. The goals for minority and female participation expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:

      | Goals for minority participation in each trade (percent) | Goals for female participation in each trade (percent) |
      |---------------------------------------------------------|--------------------------------------------------------|
      | See Table 1                                             | 6.9                                                   |

   c. These goals are applicable to all the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor’s or subcontractor’s failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. Subcontracting. The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. Covered Area. As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

5. Reports. The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.
<table>
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<tr>
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<th>Goals for Minority Participation</th>
<th>County</th>
<th>Goals for Minority Participation</th>
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SPECIAL PROVISION
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Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
   d. "Minority" includes:
      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its
obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of
applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both
minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.
SPECIAL PROVISION

000---009

Certification of Nondiscrimination in Employment

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.
SPECIAL PROVISION

000---011

Department Division Mailing and Physical Addresses

For this project, Item 000, “Department Division Mailing and Physical Addresses,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Use the information in Table 1 to contact the Department Divisions referenced in the Standard Specifications or Special Provisions and Special Specifications in the Contract. This listing is for the purposes of providing addresses for transmission of information in accordance with the specifications. Unless otherwise stated in the specifications, address all correspondence and transmission of information to the Engineer responsible for the oversight of construction. Submit bidding documents to the location shown in the official advertisement. Address changes will be posted on the Department’s Internet site at http://www.txdot.gov/.

Table 1
Department Division Mailing and Physical Addresses

<table>
<thead>
<tr>
<th>Division/Section Name</th>
<th>U.S. Post Office Address</th>
<th>Physical Address</th>
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<tbody>
<tr>
<td><strong>Bridge Division</strong></td>
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<tr>
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<tr>
<td>Transportation</td>
<td>Branch</td>
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<tr>
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<td>118 E. Riverside Dr.</td>
<td>Austin, Texas 78704</td>
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<tr>
<td>125 E 11th Street</td>
<td>(512) 416-2187</td>
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<td>Austin TX 78701-2483</td>
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<tr>
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<td>Construction Division</td>
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<tr>
<td><strong>Materials &amp; Pavements Section</strong></td>
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<td>(512) 416-3118</td>
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SPECIAL PROVISION

001---015

Definition of Terms

For this project, Item 001, “Definition of Terms,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

The following Articles are voided and replaced by the following:

1.50. Disadvantaged Business Enterprise (DBE). A small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of a publicly owned business, in which is at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and whose management and daily business operations are controlled by one or more of the individuals who own it.

1.128. Subcontractor. A Subcontractor is defined as an individual, partnership, limited liability company, corporation, or any combination thereof that the Contractor sublets, or proposes to sublet, any portion of a Contract, excluding a material supplier, a hauling firm hauling only from a commercial source to the project, truck owner-operator, wholly owned subsidiary, or specialty-type businesses such as security companies and rental companies.

The following Articles are voided and not replaced.

1.97. Proposal.

1.98. Proposal Form.


This Item is supplemented by the following:

1.148. Additive Alternate. A bid item contained in a proposal that is not a regular item or a designated alternate bid item. The additive alternate item(s) include work that may be added to the base bid work.

1.149. Base Bid. The total bid (includes regular bid items or corresponding alternate bid items if lower) amount without additive alternates.

1.150. Affiliates. Two or more firms are affiliated if:

- they share common officers, directors, or stockholders;
• a family member of an officer, director, or stockholder of one firm serves in a similar capacity in another of the firms;

• an individual who has an interest in, or controls a part of, one firm either directly or indirectly also has an interest in, or controls a part of, another of the firms;

• the firms are so closely connected or associated that one of the firms, either directly or indirectly, controls or has the power to control another firm;

• one firm controls or has the power to control another of the firms; or,

• the firms are closely allied through an established course of dealings, including but not limited to the lending of financial assistance.

1.151. Bid. The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

1.152. Bid Guaranty. The security furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded.

1.153. Electronic Bid Form. The bid form contained in the Department’s Electronic Bidding System.

1.154. Electronic Bidding System (EBS). The Department's automated system that allows bidders to enter and submit their bid information electronically.

1.155. Electronic Vault. The secure location where electronic bids are stored prior to bid opening.

1.156. Family Member. A family member of an individual is the individual’s parent, parent’s spouse, step-parent, step-parent’s spouse, sibling, sibling’s spouse, spouse, child, child’s spouse, spouse’s child, spouse’s child’s spouse, grandchild, grandparent, uncle, uncle’s spouse, aunt, aunt’s spouse, first cousin, or first cousin’s spouse.

1.157. Printed Bid Form. The bidding form printed and sent to the bidder by the department or printed by the bidder from the department’s Electronic Bidding System.

1.158. Bid Form. The form provided by the Department used by the bidder to submit a bid. The bid form is a Department mailed bidder’s form (traditional proposal submitted manually), a Department EBS printed bid form (submitted manually), or the bid form submitted electronically through the Department’s EBS.
SPECIAL PROVISION
000--1483
Notice of Changes to
U.S. Department of Labor Required Payroll Information

Do not include employee addresses and social security numbers on the payroll submissions to the department. In lieu of the social security number, include an individually identifying number for each employee (Example: last four digits of the individual’s social security number).

Maintain the full social security number and current address of each covered employee in files for 3 years after project completion and make the information available upon the Department’s request.

Form FHWA 1273 and optional form WH-347 will be revised in the future to reflect these changes.
SPECIAL PROVISION

000--1966

Disadvantaged Business Enterprise in Federal Aid Contracts

1. Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, “Disadvantaged Business Enterprise in Federal Aid Contracts”, of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, “Race-Neutral DBE Participation”, of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

A. Article A. Disadvantaged Business Enterprise in Federal Aid Contracts.

1. Policy. It is the policy of the DOT and the Texas Department of Transportation (henceforth the “Department”) that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department’s DBE Program, apply to this contract as follows:

a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

c. The requirements of this Special Provision shall be physically included in any subcontract.

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days,
excluding national holidays, from receipt of the information outlined in this Special Provision under Section 1.A.3, “Contractor's Responsibilities.” If the requirements of Section 1.A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

2. Definitions.

a. “Broker” is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

b. “Disadvantaged Business Enterprise” or “DBE” is defined in the standard specifications, Article 1, Definition of Terms.

c. “DBE Joint Venture” means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

d. “DOT” means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

e. “Federal Aid Contract” is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

f. “Good Faith Effort” means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. “Manufacturer” is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.”

h. “Race-conscious” means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

i. “Race-neutral DBE Participation” means any participation by a DBE through customary competitive procurement procedures.

j. “Regular Dealer” is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.
A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

k. “Texas Unified Certification Program” or “TUCP” provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

3. **Contractor’s Responsibilities.** These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall submit a completed Form SMS.4901 “DBE Commitment Agreement”, From SMS 4901-T “DBE Trucking Commitment Agreement”, or Form SMS.4901-MS “DBE Material & Supplier Commitment Agreement” for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.

b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
• Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

• Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

• Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

• A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

• Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.

• Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

• Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

• Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
• If the Program Manager of the OCR determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the OCR.

d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

e. The preceding information shall be submitted directly to the Office of Civil Rights, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a, of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form 4901 “DBE Commitment Agreement”, From SMS 4901-T “DBE Trucking Commitment Agreement”, or Form SMS.4901-MS “DBE Material & Supplier Commitment Agreement” for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

h. The Contractor shall designate a DBE liaison officer who will administer the Contractor’s DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE’s on DOT financially assisted contracts. This Directory is available from the Department’s OCR. An update of the Directory can be found on the Internet at http://www.dot.state.tx.us/business/tucp/default.htm.
c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

5. **Determination of DBE Participation.** When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

In all cases, prime or other non-DBE subcontractor assistance will not be credited toward the DBE goal.
A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

Consistent with industry practices and the DOT/Department’s DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

A DBE trucking firm (including an owner operator who is certified as a DBE) is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

(b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement.

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

Project materials or supplies acquired from an affiliate of the prime contractor can not directly or indirectly (2nd or lower tier subcontractor) be used for DBE goal credit.
c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

1. If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at 1A.c.(1) of this provision.)

   For purposes of this Section (1.A.c.(1)), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2. If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

   For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

   A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

   B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

   C) Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

3. With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.
Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

6. Records and Reports.

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form SMS.4903, “DBE Progress Report,” is to be used for monthly reporting. Form. SMS.4904, “DBE Final Report,” is to be used as a final summary of DBE payments submitted upon completion of the project.
The original final report must be submitted to the OCR and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department’s project number.

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, “DBE Final Report”. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c of this Special Provision, must be submitted with the “DBE Final Report.”

e. Provide a certification of prompt payment in accordance with the Department’s prompt payment procedure to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

7. **Compliance of Contractor.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor’s efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

Contractors’ requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.
The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

When a DBE subcontractor named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal.

A Contractor’s failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

Forward Form 2371, “DBE Trucking Credit Worksheet,” completed by the DBE trucker every month DBE credit is used.

B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation. It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form SMS.4903, “DBE or HUB Progress Report” and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, “Determination of DBE Participation.”

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.
SPECIAL PROVISION

002---017

Instructions to Bidders

For this project, Item 002, “Instruction to Bidders,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Except for Article 2.1 the remainder of Item 2 is voided and replaced by the following:

2.2. Eligibility of Bidders. Submit for approval a Confidential Questionnaire Form and an audited financial statement or a Bidder’s Questionnaire Form at least 10 days before the date that bids are to be opened. Once approved, the eligibility is valid for a period of one year. Bidders prequalified with a Bidder’s Questionnaire Form are not eligible to bid on a project that requires the Confidential Questionnaire Form and audited financial statements. Comply with all technical prequalification requirements in the bid form. Obtain prequalification forms from the Construction Division.

2.3. Issuing Bid Forms. The Department will issue a bid form to a prequalified Bidder meeting the requirements of the bid form on request if the estimated cost of the proposed Contract is within that Bidder’s available bidding capacity. Request bid forms orally, in writing, or electronically.

In the case of a joint venture, all joint venture participants must be prequalified. An equally divided portion of the Engineer’s estimate must be within each participant’s available bidding capacity.

The Department will not issue a bid form for a proposed Contract if one or more of the following apply:

- the Bidder is disqualified by an agency of the federal government.
- the Bidder is suspended or debarred by the Commission, or is prohibited from rebidding a specific proposal because of bid error or failure to enter into a Contract of the first awarded bid.
- the Bidder has not fulfilled the requirements for prequalification.
- the Bidder or a subsidiary or affiliate of the Bidder has received compensation from the Department to participate in the preparation of the plans or specifications on which the bid or Contract is based.
- the Bidder did not attend an advertised mandatory pre-bid conference.
2.4. Interpreting Estimated Quantities. The quantities listed in the bid form are approximate and will be used for the comparison of bids. Payments will be made for the work performed in accordance with the Contract.

2.5. Examining Documents and Work Locations. Examine the bid form, plans, specifications, and specified work locations before submitting a bid for the work contemplated. Submitting a bid will be considered evidence that the Bidder has performed this examination. Borings, soil profiles, water elevations, and underground utilities shown on the plans were obtained for use of the Department in the preparation of plans. This information is provided for the Bidder’s information only and the Department makes no representation as to the accuracy of the data. Be aware of the difficulty of accurately classifying all material encountered in making foundation investigations, the possible erosion of stream channels and banks after survey data have been obtained, and the unreliability of water elevations other than for the date recorded.

Oral explanations, instructions, or consideration for contractor-proposed changes in the Items of work, specifications, plans or bid forms given during the bidding process are not binding. Only requirements included in the bid form, associated specifications, plans and Department-issued addenda are binding. Request explanations of documents in adequate time to allow the Department to reply before the bid opening date.

Immediately notify the Department of any error, omission, or ambiguity discovered in any part of the bid form, specifications or plans. The Department will issue an addendum when appropriate.

2.6. Preparing the Bid. Prepare the bid on the form furnished by the Department. Bid forms may be printed or electronic. Informational forms will not be accepted.

Specify a unit price in dollars and cents for each Item for which an estimated quantity is given. When “Working Days” is an Item, submit the number of working days to be used to complete the Contract, or phases of the Contract shown on the plans.

An Item left blank will constitute an incomplete bid and will be handled as prescribed in Article 2.14, “Tabulating Bids.” Include unit bid prices for each Item in the Item group or alternate Item group, except for instances when alternate Items pertain to foreign steel or iron materials.

If a bid form contains both regular bid Items for domestic and alternate bid Items pertaining to foreign steel or iron materials the bidder must either:

- submit unit bid prices for domestic bid items only, or
- submit unit bid prices for both the alternate foreign bid items and domestic bid items.

Verify whether addenda have been issued on a proposed Contract. Acknowledge all addenda.

A. Printed Bid Forms. Make all entries and execute the bid form in ink. Acknowledge all addenda by checking the appropriate box on the addendum acknowledgement page. Provide the complete and correct name of the Bidder submitting the bid. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. The bid form must be signed by person(s) authorized to bind the Bidder(s).
As an alternative to hand writing the unit prices in the bid form, submit a computer printout signed by the person authorized to bind the Bidder or for a joint venture the persons authorized to bind the Bidders. As a minimum, computer printouts must contain the information in the format shown on the “Example of Bid Prices Submitted by Computer Printout” form in the bid form.

As an additional alternative, the bidder may prepare the bid using EBS and print out the bid form. Execute the bid form. A person authorized to bind the Bidder must sign the bid form. In the case of a joint venture, provide the complete and correct name of all Bidders submitting the bid. The bid form must be signed by persons authorized to bind the Bidders.

**B. Electronic Bid Forms.** Use the electronic bid form in EBS. Acknowledge an addendum by initialing each addendum listed under the addenda tab in EBS. Digitally sign the bid form using a digital certificate issued by the department. In the case of a joint venture, the person signing the bid form must be authorized to bind all joint venture participants.

2.7. **Nonresponsive Bids.** A bid that has one or more of the deficiencies listed below is nonresponsive and will not be considered.

- **A.** The person or, in the case of a manually submitted joint venture bid, persons did not sign the bid form.

- **B.** The proposal guaranty did not comply with the requirements contained in Article 2.8, “Bid Guaranty.”

- **C.** The bid was in a form other than the official bid form issued to the Bidder or Bidders.

- **D.** The bid was not in the hands of the letting official at the time and location specified in the advertisement. For electronic bids, “in the hands of the letting official” means EBS vault acknowledgement.

- **E.** The bid form submitted had the incorrect number of Items.

- **F.** A computer printout, when used, was not signed in the name of the Bidder (or joint Bidders, in the case of a joint venture), or omitted required Items or included an Item or Items not shown in the bid form.

- **G.** The Bidder was not authorized to receive a bid form under Article 2.3, “Issuing Bid Forms.”

- **H.** The Bidder failed to acknowledge receipt of all addenda issued.

- **I.** The Bidder bid more than the maximum or less than the minimum number of allowable working days shown on the plans when working days was an Item.

- **J.** The Bidder modified the bid in a manner that altered the conditions or requirements for work as stated in the bid form.

- **K.** The Bidder did not attend a specified mandatory pre-bid conference.

The department will not accept or read any of the bids submitted on the same project by:

- a joint venture and one or more of its partners, or
affiliated bidders.

2.8. Bid Guaranty. The bid guaranty amount is fixed at the amount indicated on the bid form on the date the bid form is released to the public. Provide a bid guaranty in the amount indicated on the bid form as follows:

- For printed bids, use either a guaranty check or a bid bond. An electronic bid bond may be used as the guaranty for a bid form printed from EBS. (The bid bond number is printed on the form printed from EBS and the Department verifies the bond through EBS at the letting.)

- For electronic bids, use an electronic bid bond. Do not use guaranty checks or printed bid bonds on electronic bids.

A. Guaranty Check. The guaranty check must be payable to the Texas Transportation Commission and must be a cashier’s check, money order, or teller’s check drawn by or on a state or national bank, a savings and loan association, or a state or federally chartered credit union (collectively referred to as “bank”). The check must be dated on or before the date of the bid opening. Post dated checks will not be accepted. 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. A check must be made payable at or through the institution issuing the instrument; be drawn by a bank and on a bank; or be payable at or through a bank. The Department will not accept personal checks, certified checks, or other types of money orders as a bid guaranty.

B. Bid Bond. The bid bond must be on the form provided by the Department, with powers of attorney attached, and in the amount specified on the bid bond form. The bond form must be dated on or before the date of the bid opening, bear the impressed seal of the Surety and be signed by the Bidder or Bidders, in the case of a joint venture, and an authorized individual of the Surety. As an alternative for joint venture Bidders, each of the Bidders may submit a separate bid bond, completed as outlined in this Subarticle. Bid bonds will only be accepted from Sureties authorized to execute a bond under and in accordance with state law.

C. Electronic Bid Bond. Use the most current version of the electronic bond issued by the department. For a joint venture, the bond must be in the name of all joint venture participants. Enter the bond authorization code into EBS. Use bond authorization codes issued by the companies listed in most recent version of EBS.

2.9. Submittal of Bid. Bids may be submitted either manually or electronically.

A. Manually Submitted Bids.

Place the completed bid form and the bid guaranty in a sealed envelope marked to indicate the contents.

When submitting by mail or delivery service, place the envelope in another sealed envelope and address as indicated in the official advertisement. It is the bidder’s responsibility to ensure that the sealed bid arrives at the location described in the official advertisement of the project on or before the time and date set for the opening. The bid must be in the hands of the Letting Official by that time, regardless of the method chosen for delivery, in order to be accepted.
In addition to the requirements above, all pages of a bid form printed from EBS must be submitted.

**B. Electronically Submitted Bids.** Submit the electronic bid to the electronic vault using EBS. It is the bidder’s responsibility to ensure that the bid is received by the electronic vault on or before the time and date set for the opening.

**2.10. Revising Bid Forms.** Revisions to bids will be handled as follows:

**A. Manually Submitted Bids.**

1. **Before Submission.** Make desired changes to the printed bid form in ink and initial the changes.

2. **After Submission.** Withdraw the bid in accordance with Article 2.11, “Withdrawing Bids.” Make desired changes to the printed bid form in ink and initial the changes. Resubmit to the Letting Official in accordance with Article 2.9, “Delivery of Bid.” The Department will not make revisions to a bid on behalf of a Bidder.

**B. Electronically Submitted Bids.** Make desired changes up until the time and date set for the opening of bids using EBS. The electronically submitted bid with the latest time stamp by the electronic vault will be used for tabulation purposes.

**C. After Bid Opening.** Revisions to bids are not allowed after the time and date set for the opening.

**2.11. Withdrawing Bids.**

**A. Manually Submitted Bids.** Submit a signed written request to the Letting Official. The Department will not accept telephone or electronic requests, but will accept a properly signed telefacsimile request. The request must be made by a person authorized to bind the Bidder, and must be in the hands of the Letting Official before the time and date set for the opening. In the case of joint venture, the department will accept a request from any person authorized to bind a party to the joint venture to withdrawal a bid.

**B. Electronically Submitted Bids.** Submit an electronic or written request to withdraw the bid. The electronic request must be made using EBS. For a written request, submit a signed request to the Letting Official. A request to withdraw an electronic bid must be made by a person authorized to bind the Bidder and must be made prior to the time and date set for the opening. For written request for withdrawals of electronic bids and in the case of joint venture, the department will accept a request from any person authorized to bind a party to the joint venture to withdrawal a bid.

**2.12. Opening and Reading of Bids.** At the time, date and location specified in the official advertisement, the Letting Official will publicly:

- open and read manually submitted bids; and
- read electronically submitted bids.
2.13. Gratuities. Do not offer Department employees benefits, gifts, or favors. The only exceptions allowed are ordinary business lunches. Failure to honor this policy may result in the termination of the Contract and sanctions under the Texas Administrative Code. Termination of the Contract will be in accordance with Article 8.7, “Termination of Contract.”


A. Official Total Bid Amount. The Department will sum the products of the quantities and the unit prices bid in the bid form to determine the official total bid amount. Except as provided in Section 2.14.G, “Special Item Considerations,” the official total bid amount is the basis for determining the apparent low Bidder. The total bid amounts will be compared and the results made public.

B. Consideration of Bid Format. When a Bidder submits both an electronic bid and a properly completed manual bid, the unit bid prices in the manual bid will be used to determine the total bid amount. If a bidder submits an electronic bid and an incomplete manual bid, the electronic bid will be used in the tabulation of the total bid amount.

If a bidder submits two or more manual bids, all responsive bids will be tabulated. The bid with the lowest tabulation will be used to determine the total bid amount.

C. Rounding of Unit Prices. The Department will round off all unit bids involving fractional parts of a cent to the nearest one-tenth cent ($0.001) in determining the amount of the bid as well as computing the amount due for payment of each Item under the Contract. For rounding purposes, entries of five-hundredths of a cent ($0.0005) or more will be rounded up to the next highest tenth of a cent, while entries less than five-hundredths of a cent will be rounded down to the next lowest tenth of a cent.

D. Interpretation of Unit Prices. The Department will make a documented determination of the unit bid price for tabulation purposes if a unit bid price is illegible. The Department’s determination will be final.

E. Consideration of Unit Prices. Unit bid price entries such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00, will be tabulated as one-tenth of a cent ($0.001).

The Department will consider proposals where unit bid prices have been left blank incomplete and nonresponsive. If a proposal has a regular and a corresponding alternate Item or group of Items, the bid will be considered complete if:

- the regular Item or group of regular Items has unit prices entered, or
- the alternate Item or group of alternate Items has unit prices entered.

The bid will be considered incomplete and nonresponsive if:

- a regular Item or group of regular Items is left blank, and
- a corresponding alternate Item or group of alternate Items is left blank.
F. Consideration of Alternate Items. The Department will make two calculations using one-tenth of a cent ($0.001) for each Item if:

- a regular Item or a group of Items have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00, and
- a corresponding alternate Item or group of Items, have an entry such as no dollars and no cents, zero dollars and zero cents, or numerical entries of $0.00.

The Department will select the regular Item or Items or the alternate Item or Items at the Department’s discretion if both the regular and alternate bid results in the same cost to the State.

The Department will use the unit price that is greater than zero for bid tabulation if:

- a unit price greater than zero has been entered for either a regular bid or a corresponding alternate Item or group of Items, and
- an entry of no dollars and no cents, zero dollars and zero cents, or a numerical entry of $0.00 has been entered for the other corresponding Item or group of Items.

If a unit price has been entered for both the regular Item and a corresponding alternate Item, the Department will select the option (regular or alternate) that results in the lowest cost to the State. The Department will select the regular Item or Items or the alternate Item or Items at the Department’s discretion if both the regular and alternate bid results in the same cost to the State.

G. Special Item Considerations.

1. Rubber Additives. For proposed Contracts without federal funds, if an alternate Item for “Hot Asphalt-Rubber Surface Treatments” or “Hot Mix Asphalt Concrete Pavement” which contains ground tire rubber is shown in the bid form and the Bidder bids that alternate Item, the amounts bid for “Hot Asphalt-Rubber” and “Aggregate” or “Hot Mix Asphalt Concrete” will be reduced to 85% of the amounts actually bid. This reduction will only be used for the purposes of determining the lowest Bidder. To qualify, the ground tire rubber used must be produced from scrap tire ground in a facility in Texas. Payment for “Hot Asphalt-Rubber” and “Aggregate” or “Hot Mix Asphalt Concrete” will be at the actual unit prices bid.

2. “Buy America.” For proposed Contracts where unit bid prices are submitted for both domestic and foreign steel or iron materials, the total bid amount will be calculated using both the domestic and foreign steel unit bid prices. If the total bid amount using the foreign steel or iron materials is the low bid, and the lowest bid using domestic steel or iron materials exceeds the low bid using foreign steel or iron materials by 25% or more, the apparent low Bidder will be the bid using foreign steel or iron materials. If the difference between the low bid using foreign steel or iron materials and the lowest bid using domestic steel or iron materials is less than 25%, the apparent low Bidder will be the bid using domestic steel or iron materials.

3. Home State Bidding Preference. For the purpose of determining the apparent low Bidder on proposed Contracts without federal funds, the total bid amount will be based upon the reverse application of the non-resident Bidder’s home state bidding preference, if any.

2.15. Consideration of Bid Errors. The Department will consider a claim of a bid error by the apparent low Bidder if the following requirements have been met:
• Submit written notification to the Department within 5 business days after the date the bid is opened.

• Identify the Items of work involved and include bidding documentation. The Department may request clarification of submitted documentation.

The Department will evaluate the claim of an error by the apparent low Bidder by considering the following:

• The bid error relates to a material Item of work.
• The bid error amount is a significant portion of the total bid.
• The bid error occurred despite the exercise of ordinary care.
• The delay of the proposed work will not impact cost and safety to the public.

Acceptance of the bid error claim by the Department will result in the rejection of all bids. The erring Contractor will not be allowed to bid the project when it is relet. Rejection of bids due to the Contractor’s bid error may result in the application of sanctions by the Department.

2.17. Electronic Bidding. Take responsibility for correctly installing the EBS software. Secure the digital certificate issued by the department at all times. Promptly report compromised digital certificates to the Department. Select an Internet Service Provider. The Department will not be responsible for Internet unavailability. The Department will not provide a computer for preparing, submitting, revising or withdrawing an electronic bid.

2.18. Bid Form Content. The electronic and the EBS printed bid form do not contain such things as the special provisions, special specifications, and general notes. These documents are included by reference. Manual bid forms (traditional proposals) will include such provisions.
1. General. It is the intent of this provision to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Department and the Contractor.

2. Definitions.

A. Informal Partnering. Partnering that does not make use of a facilitator.

B. Formal Partnering. Partnering where the services of a facilitator (internal or external) are utilized.

3. Procedures for Partnering Meetings and Format. Informal Partnering is required for this project, unless Formal Partnering is mutually agreed to in lieu of the Informal Partnering.

Facilitators. The facilitator is to act as a neutral party seeking to initiate cooperative working relationships. This individual must have the technical knowledge and ability to lead and guide discussions. Choose either an internal or external facilitator. The facilitator must be acceptable to the Engineer.

(1) Internal Facilitators. A Department or Contractor internal (staff) facilitator may be selected as the facilitator at no additional cost to either party.

(2) External Facilitators. A private firm or individual that is independent of the Contractor and the Department may be selected as the facilitator. Submit the facilitator’s name and estimated fees for approval prior to contracting with the facilitator.

Meetings and Arrangements. Coordinate with the Engineer for meeting dates and times, locations including third party facilities, and other needs and appurtenances including but not limited to audio/visual equipment. Make all meeting arrangements for Formal Partnering. Use Department facilities or facilities in the vicinity of the project if available. Submit the estimated meeting costs for approval prior to finalizing arrangements.

Coordinate facilitator discussions prior to the partnering meeting to allow the facilitator time to prepare an appropriate agenda. Prepare a list of attendees with job titles and include critical contractor, subcontractor, and supplier staff in the list. Provide the facilitator the list of attendees and invite the attendees listed.

The Department will invite and provide a list of attendees that includes but is not limited to Department, City, County, law enforcement, railroad, and utility representatives.

Participate in additional partnering meetings as mutually agreed.
4. Payment. Expenses for employee time, contractor equipment, or overhead will not be allowed. Markups will not be allowed.

Informal Partnering will be conducted with each party responsible for their own costs.

For Formal Partnering using internal facilitators, the Contractor will be responsible for arrangements and for expenses incurred by its internal facilitator, including but not limited to meals, travel, and lodging. Department facilitators may be used at no additional cost.

For Formal Partnering using external facilitators, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved. For external facilitators not approved by the Department but used at the Contractor’s option, the Contractor will be responsible for all costs of the external facilitator.

For meeting facilities and appurtenances, submit an invoice to the Engineer for reimbursement. The Department will reimburse the Contractor for half of the eligible expenses as approved.
SPECIAL PROVISION
000--2332

Schedule of Liquidated Damages

<table>
<thead>
<tr>
<th>For Dollar Amount of Original Contract</th>
<th>Dollar Amount of Daily Contract Administration Liquidated</th>
</tr>
</thead>
<tbody>
<tr>
<td>From More Than</td>
<td>To and Including</td>
</tr>
<tr>
<td>0</td>
<td>100,000</td>
</tr>
<tr>
<td>100,000</td>
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<td>20,000,000</td>
</tr>
<tr>
<td>20,000,000</td>
<td>Over 20,000,000</td>
</tr>
</tbody>
</table>
SPECIAL PROVISION

000---2607

Nondiscrimination

Description. All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

Definition of Terms. Where the term “contractor” appears in the following six nondiscrimination clauses, the term “contractor” is understood to include all parties to contracts or agreements with the Texas Department of Transportation.

Nondiscrimination Provisions. During the performance of this contract, the contractor agrees as follows:

(1) Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
(4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
SPECIAL PROVISION
000--2638
On-the-Job Training Program

1. **Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

2. **Trainee Assignment.** Training assignments are based on the past volume of state-let highway construction contracts awarded with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department’s Office of Civil Rights.

3. **Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker’s rate specified in the contract for the first half of the training period, 75% for the third quarter, and 90% for the last quarter, respectively.

4. **Reimbursement.** If requested, contractors may be reimbursed $0.80 per training hour at no additional cost to the Department. Training may occur on this project, all other Department contracts, or local-administered federal-aid projects with concurrence of the local government entity. However, reimbursement for training is not available on projects to the extent that such projects do not contain federal funds.

5. **Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., “Abandonment of Work or Default of Contract,” which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.
SPECIAL PROVISION
000--2839

Important Notice to Contractors

By the 20\textsuperscript{th} day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor-related incidents and injuries that involved a third party.

An “incident” is defined as any work-related occurrence that caused damage only to vehicles, equipment, materials, etc.

An “injury” is defined as an OSHA recordable injury.

Acquire an Electronic Project Records System (EPRS) account to report incidents and injuries. Submit an EPRS User Access Request Form (Form 2451) to request an account. This form can be found at http://www.txdot.gov/business/resources/doing-business/prequalification.html.


Failure to submit this information to the Engineers by the 20\textsuperscript{th} day of each month will result in the Department taking actions including, but not limited to withholding estimates and suspending the work. This report will not be paid for directly, but will be considered subsidiary to Items of the contract.
SPECIAL PROVISION

000--2839

Important Notice to Contractors

By the 20th day of each month, report to the Engineer the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
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SPECIAL PROVISION

003---033

Award and Execution of Contract

For this project, Item 003, “Award and Execution of Contract,” of the Standard Specifications, is amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed.

Article 3.4. Execution of Contract, Section B, Bonds. The first paragraph is supplemented by the following:

Sample versions of the standard performance and payment bonds may be viewed on the department’s Internet site at:

SPECIAL PROVISION

004---017

Scope of Work

For this project, Item 4, “Scope of Work,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 4.2. Changes in the Work. The first paragraph is supplemented by the following:

The Contractor is responsible for notifying the sureties of any changes to the contract.

Article 4.2. Changes in the Work. The sixth paragraph is voided and replaced by the following:

When the quantity of work to be done under any major item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price. When mutually agreed, the unit price may be adjusted by multiplying the Contract unit price by the factor in Table 1. If an adjusted unit price cannot be agreed upon, the Engineer may determine the unit price by multiplying the Contract unit price by the factor in Table 1.

<table>
<thead>
<tr>
<th>% of Original Quantity</th>
<th>Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>≥ 50 and &lt; 75</td>
<td>1.05</td>
</tr>
<tr>
<td>≥ 25 and &lt; 50</td>
<td>1.15</td>
</tr>
<tr>
<td>&lt; 25</td>
<td>1.25</td>
</tr>
</tbody>
</table>

Article 4.4. Requests and Claims for Additional Compensation, Section A., Delay Claims is voided and replaced by the following:

A. Damages. Damages occur when impacts that are the responsibility of the Department result in additional costs to the contractor that could not have been reasonably anticipated at the time of letting. Costs of performing additional work are not considered damages. For contractor damages, the intent is to reimburse the Contractor for actual expenses arising out of a compensable impact. No profit or markups, other than labor burden, will be allowed. For damages, labor burden will be reimbursed at 35% unless the Contractor can justify higher actual cost. Justification for a higher percentage must be in accordance with the methodology provided by the Department, submitted separately for project overhead labor and direct labor, and determined and submitted by a Certified Public Accountant (CPA). Submit CPA-prepared labor burden rates directly to the Contract Letting and Contractor Prequalification Branch of the Construction Division.
1. **Delay Damages.** If the Contractor requests compensation for delay damages and the delay is determined to be compensable, then standby equipment costs and project overhead compensation will be based on the duration of the compensable delay and will be limited as follows:

a. **Standby Equipment Costs.**
   - Standby costs will not be allowed during periods when the equipment would have otherwise been idle.
   - No more than 8 hr. of standby will be paid during a 24-hr. day, nor more than 40 hr. per week, nor more than 176 hr. per month.
   - For Contractor-owned equipment, standby will be paid at 50% of the rental rates found in the Rental Rate Blue Book for Construction Equipment and calculated by dividing the monthly rate by 176 and multiplying by the regional adjustment factor and the rate adjustment factor. For leased equipment on standby, 100% of the invoice cost of the leased equipment will be paid. Operating costs will not be allowed.

b. **Project Overhead.** Project overhead is defined as the administrative and supervisory expenses incurred at the work locations. When delay to project completion occurs, reimbursement for project overhead for the prime contractor will be made using the following options:
   - reimbursed at 6% (computed as daily cost by dividing 6% of the original contract amount by the as-let number of working days) or
   - actual documented costs for the impacted period.

Project overhead for delays impacting sub-contractors will be determined from actual documented costs submitted by the Contractor.

The granting of time extensions and suspensions alone will not be justification for reimbursement for project overhead.

c. **Home Office Overhead.** The Department will not compensate the Contractor for home office overhead.

**Article 4.4. Requests and Claims for Additional Compensation, Section B., Dispute or Claims Procedure** is voided and replaced by the following:

B. **Dispute or Claims Procedure.** Work with the Engineer to resolve or escalate all issues in accordance with the procedures outlined at the pre-construction conference. Establish with the Engineer an issue escalation ladder and adhere to the following:

1. **Project Pledge.** At a minimum, Contractor representatives at the level of foreman and above will certify in writing they will approach the construction of this project in a manner consistent with delivering a high quality project in a safe, cost-effective, and timely manner, and they will be committed to not allowing personality conflicts or personal interests to interfere with providing the public with a quality project. Failure to uphold this commitment may result in grounds for removal from the project by the District Engineer.
2. **Issue Resolution Process.** An issue is any aspect of the contract where representatives of the participants in the contract do not agree. The individuals identified at the lowest level of the issue escalation ladder will initiate the issue resolution process by escalating any issue that remains unresolved within the time frame outlined in the issue escalation ladder.

Use the Department’s automated issue tracking system to submit and track issues escalated to the area engineer or above. Do not use the automated issue tracking system for routine issues resolved on the project.

Once the issue is recorded in the automated issue tracking system, the issue will be escalated to the district engineer within 15 calendar days.

The district engineer will issue written direction within 7 calendar days.

Work with the district to resolve all issues during the course of the contract. In the event the district and the Contractor cannot resolve an issue, the Contractor may file a contract claim after the completion of the contract to be handled in accordance with the Department’s contract claim procedure. Contract claims will not be presented to the Contract Claims Committee for consideration prior to the final payment to the Contractor. It is the Contractor’s responsibility to prove or justify all claims and requests in a timely manner.

The deadline for filing a claim in accordance with 43 TAC Section 9.2, is the earlier of 1 year after the date of final acceptance, date of default, or date of termination except that claims for warranty enforcement can be made up to 1 year after expiration of the warranty period.
For this project, Item 005, “Control of the Work,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 5.2 Plans and Working Drawings**, is supplemented with the following:

Submit shop drawings electronically for the fabrication of structural items as documented in the “Guide to Electronic Shop Drawing Submittal” available on the internet at ftp://ftp.dot.state.tx.us/pub/txdot-info/library/pubs/bus/bridge/e_submit_guide.pdf and as directed by the Engineer for other items required by the standard specifications. References to 11 x 17 sheets in individual specifications for structural items imply electronic CAD sheets.
For this project, Item, Item 006, “Control of Materials,” of the Standard Specifications is amended hereby with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 6.9. Recycled Materials** is voided and replaced by the following:

The Department will not allow hazardous wastes, as defined in 30 TAC 335, proposed for recycling. Use nonhazardous recyclable materials (NRM)s only if the Specification for the Item does not disallow or restrict use. Determine if NRMs are regulated under 30 TAC 312, 330, 332, 334, or 335, and comply with all general prohibitions and requirements. Use NRMs in accordance with DMS-11000, “Evaluating and Using Nonhazardous Recyclable Materials Guidelines,” and furnish all documentation required by that Specification.

**Article 6.10. Hazardous Materials** is voided and replaced by the following:

Use materials that are free of hazardous materials as defined in Item 1, “Definition of Terms.”

Notify the Engineer immediately when a visual observation or odor indicates that materials in required material sources or on sites owned or controlled by the Department may contain hazardous materials. Except in the case of Section 6.10.A.1.a, “Cleaning and Painting Steel” below, the Department is responsible for testing and removing or disposing of hazardous materials not introduced by the Contractor on sites owned or controlled by the Department as indicated below. The plans will indicate locations where paint on steel is suspected to contain hazardous materials and where regulated asbestos containing materials have been found. The Engineer may suspend work wholly or in part during the testing, removal, or disposition of hazardous materials on sites owned or controlled by the Department, except in the case of Section 6.10.A.1.a.

When a visual observation or odor indicates that materials delivered to the work locations by the Contractor may contain hazardous materials, have an approved commercial laboratory test the materials for contamination. Remove, remediate, and dispose of any of these materials found to be contaminated. Testing, removal, and disposition of hazardous materials introduced onto the work locations by the Contractor will be at the Contractor’s expense. Working day charges will not be suspended and extensions of working days will not be granted for activities related to handling hazardous material delivered by the Contractor.

**A. Painted Steel Requirements.** As shown on the plans, existing paint on steel may contain hazardous materials. Perform work in accordance with the following:

1. **Removing Paint from Steel.**
a. **Cleaning and Painting Steel.** For contracts that are primarily for painting existing steel, perform the work in accordance with Item 446, “Cleaning and Painting Steel.”

b. **Other Contracts.** For all other projects when an existing paint must be removed to perform other work, perform paint removal work in accordance with Item 446, “Cleaning and Painting Steel” unless the paint is shown or determined to contain hazardous materials. If the paint is shown or determined to contain hazardous materials, the Department will provide for a separate contractor to remove paint prior to or during the Contract to allow dismantling of the steel for the Contractor’s salvaging, reuse, or recycling or where paint must be removed to perform other work. For steel that is dismantled by unbolting, no paint stripping will be required. Use care to not damage existing paint. When dismantling is performed using flame or saw-cutting methods to remove steel elements coated with paint containing hazardous materials, the plans will show stripping locations. Coordinate with the separate contractor for stripping work to be performed during the Contract.

2. **Removal and Disposal of Painted Steel.** For Contracts where painted steel is to be removed and disposed of by the Contractor, painted steel may be reused or disposed of at a steel recycling or smelting facility. If the paint is shown or determined to contain hazardous materials, maintain and make available to the Engineer invoices and other records showing the reuse owner or for recycling, records obtained from the recycling or smelting facility showing the received weight of the steel and the facility name. Painted steel to be retained by the Department will be shown on the plans.

B. **Asbestos Requirements.** The plans will indicate locations or elements where asbestos containing materials (ACM) have been found. At these locations or at locations where previously unknown ACM has been found, the Department will arrange for abatement by a separate contractor during the Contract. For work at these locations, notify the Engineer of proposed dates of demolition or removal of structural elements with ACM at least 60 days before work is to begin to allow the Department sufficient time to abate the asbestos.

When the work by a separate contractor for removal of paint or asbestos abatement is to be performed during the Contract, provide traffic control as shown on the plans and coordinate and cooperate with the separate contractor. Continue other work detailed in the plans not directly involved in the paint removal or asbestos abatement work. Coordinate with the Department the timing of the separate contractor’s work in advance in order to allow the Department to schedule work with the separate contractor. Work for the traffic control and other work will not be paid for directly but will be subsidiary to pertinent Items.
SPECIAL PROVISION

006---047

Control of Materials

For this project, Item 006, “Control of Materials,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 6.4. Sampling, Testing and Inspection is supplemented by the following:

Meet with the Engineer and choose either the Department or a Department-selected Commercial Lab (CL) for conducting the subset of project-level sampling and testing shown in Table 1, “Select Guide Schedule Sampling and Testing.” Selection may be made on a test by test basis. CLs will meet the testing turnaround times shown (includes test time and time for travel/sampling and reporting) and in all cases issue test reports as soon as possible.

If the Contractor chooses a Department-selected CL for any Table 1 sampling and testing:

- notify the Engineer, District Lab, and the CL of project scheduling that may require CL testing;
- provide the Engineer, District Lab, and CL at least 24 hours notice by phone and e-mail;
- reimburse the Department for CL Table 1 testing using the contract fee schedule for the CL (including mileage and travel/standby time) at the minimum guide schedule testing frequencies;
- reimburse the Department for CL Table 1 testing above the minimum guide schedule frequencies for retesting when minimum frequency testing results in failures to meet specification limits;
- agree with the Engineer and CL upon a policy regarding notification for testing services;
- give any cancellation notice to the Engineer, District Lab, and CL by phone and e-mail;
- reimburse the Department a $150 cancellation fee to cover technician time and mileage charges for previously scheduled work cancelled without adequate notice, which resulted in mobilization of technician and/or equipment by the CL; and
- all CL charges will be reimbursed to the Department by a deduction from the Contractor's monthly pay estimate.

If the CL does not meet the Table 1 turnaround times, testing charge to the Contractor will be reduced by 50% for the first late day and an additional 5% for each succeeding late day.

Approved CL project testing above the minimum testing frequencies in the Guide Schedule of Sampling and Testing, and not as the result of failing tests, will be paid by the Department.

Other project-level Guide Schedule sampling and testing not shown on Table 1 will be the responsibility of the Department.
### 2004 Specifications

#### Table 1

Select Guide Schedule Sampling and Testing (Note 1)

<table>
<thead>
<tr>
<th>TxDOT Test</th>
<th>Test Description</th>
<th>Turn-Around Time (Calendar days)</th>
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<tbody>
<tr>
<td><strong>SOILS/BASE</strong></td>
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</tr>
<tr>
<td>Tex-101-E</td>
<td>Preparation of Soil and Flexible Base Materials for Testing (included in other tests)</td>
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</tr>
<tr>
<td>Tex-104-E</td>
<td>Liquid Limit of Soils (included in 106-E)</td>
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<tr>
<td>Tex-105-E</td>
<td>Plastic Limit of Soils (included in 106-E)</td>
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<tr>
<td>Tex-106-E</td>
<td>Calculating the Plasticity Index of Soils</td>
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<tr>
<td>Tex-110-E</td>
<td>Particle Size Analysis of Soils</td>
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</tr>
<tr>
<td>Tex-113-E</td>
<td>Moisture-Density Relationship of Base Materials</td>
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</tr>
<tr>
<td>Tex-114-E</td>
<td>Moisture-Density Relationship of Subgrade and Embankment Soil</td>
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<tr>
<td>Tex-115-E</td>
<td>Field Method for In-Place Density of Soils and Base Materials</td>
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<tr>
<td>Tex-116-E</td>
<td>Ball Mill Method for the Disintegration of Flexible Base Material</td>
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<tr>
<td>Tex-117-E, Part II</td>
<td>Triaxial Compression Tests For Disturbed Soils and Base Materials (Part II)</td>
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<tr>
<td>Tex-113-E w/ Tex-117-E</td>
<td>Moisture-Density Relationship of Base Materials with Triaxial Compression Tests For Disturbed Soils and Base Materials (Part II)</td>
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<tr>
<td>Tex-140-E</td>
<td>Measuring Thickness of Pavement Layer</td>
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<tr>
<td>Tex-145-E</td>
<td>Determining Sulfate Content in Soils - Colorimetric Method</td>
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<tr>
<td><strong>HOT MIX ASPHALT</strong></td>
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</tr>
<tr>
<td>Tex-200-F</td>
<td>Sieve Analysis of Fine and Coarse Aggregate (dry, from ignition oven with known correction factors)</td>
<td>1 (Note 2)</td>
</tr>
<tr>
<td>Tex-203-F</td>
<td>Sand Equivalent Test</td>
<td></td>
</tr>
<tr>
<td>Tex-206-F w/ Tex-207-F, Part I, w/ Tex-227-F</td>
<td>(Lab-Molded Density of Production Mixture – Texas Gyratory) Method of Compacting Test Specimens of Bituminous Mixtures with Density of Compacted Bituminous Mixtures, Part I - Bulk Specific Gravity of Compacted Bituminous Mixtures, with Theoretical Maximum Specific Gravity of Bituminous Mixtures</td>
<td>1 (Note 2)</td>
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<tr>
<td>Tex-207-F, Part I &amp;/or Part VI</td>
<td>Density of Compacted Bituminous Mixtures, Part I- Bulk Specific Gravity of Compacted Bituminous Mixtures &amp;/or Part VI - Bulk Specific Gravity of Compacted Bituminous Mixtures Using the Vacuum Method</td>
<td>1 (Note 2)</td>
</tr>
<tr>
<td>Tex-212-F</td>
<td>Moisture Content of Bituminous Mixtures</td>
<td></td>
</tr>
<tr>
<td>Tex-217-F</td>
<td>Deleterious Material and Decantation Test for Coarse Aggregate</td>
<td></td>
</tr>
<tr>
<td>Tex-221-F</td>
<td>Sampling Aggregate for Bituminous Mixtures, Surface Treatments, and LRA (included in other tests)</td>
<td></td>
</tr>
<tr>
<td>Tex-222-F</td>
<td>Sampling Bituminous Mixtures (included in other tests)</td>
<td></td>
</tr>
<tr>
<td>Tex-224-F</td>
<td>Determination of Flakiness Index</td>
<td></td>
</tr>
<tr>
<td>Tex-226-F</td>
<td>Indirect Tensile Strength Test (production mix)</td>
<td></td>
</tr>
<tr>
<td>Tex-235-F</td>
<td>Determining Draindown Characteristics in Bituminous Materials</td>
<td></td>
</tr>
<tr>
<td>Tex-236-F</td>
<td>Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Determining Correction Factors)</td>
<td>4</td>
</tr>
<tr>
<td>Tex-236-F</td>
<td>Asphalt Content from Asphalt Paving Mixtures by the Ignition Method (Production Mixture)</td>
<td>1 (Note 2)</td>
</tr>
<tr>
<td>Tex-241-F w/ Tex-207-F, Part I, w/ Tex-227-F</td>
<td>(Lab-Molded Density of Production Mixture – Superpave Gyratory) Superpave Gyratory Compacting of Specimens of Bituminous Mixtures (production mixture with Density of Compacted Bituminous Mixtures, Part I - Bulk Specific Gravity of Compacted Bituminous Mixtures, with Theoretical Maximum Specific Gravity of Bituminous Mixtures</td>
<td>1 (Note 2)</td>
</tr>
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### 2004 Specifications

<table>
<thead>
<tr>
<th>Test Code</th>
<th>Test Description</th>
<th>Score</th>
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</thead>
<tbody>
<tr>
<td>Tex-242-F</td>
<td>Hamburg Wheel-Tracking Test (production mix, molded samples)</td>
<td>3</td>
</tr>
<tr>
<td>Tex-244-F</td>
<td>Thermal Profile of Hot Mix Asphalt</td>
<td>1</td>
</tr>
<tr>
<td>Tex-246-F</td>
<td>Permeability of Water Flow of Hot Mix Asphalt</td>
<td>3</td>
</tr>
<tr>
<td>Tex-280-F</td>
<td>Flat and Elongated Particles</td>
<td>3</td>
</tr>
<tr>
<td>Tex-530-C</td>
<td>Effect of Water on Bituminous Paving Mixtures (production mix)</td>
<td>4</td>
</tr>
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</table>

#### AGGREGATES

<table>
<thead>
<tr>
<th>Test Code</th>
<th>Test Description</th>
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<tbody>
<tr>
<td>Tex-400-A</td>
<td>Sampling Flexible Base, Stone, Gravel, Sand, and Mineral Aggregates</td>
<td>3</td>
</tr>
<tr>
<td>Tex-410-A</td>
<td>Abrasion of Coarse Aggregate Using the Los Angeles Machine</td>
<td>5</td>
</tr>
<tr>
<td>Tex-411-A</td>
<td>Soundness of Aggregate by Use of Sodium Sulfate or Magnesium Sulfate</td>
<td>12</td>
</tr>
<tr>
<td>Tex-461-A</td>
<td>Degradation of Coarse Aggregate by Micro-Deval Abrasion</td>
<td>5</td>
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#### CHEMICAL

<table>
<thead>
<tr>
<th>Test Code</th>
<th>Test Description</th>
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</thead>
<tbody>
<tr>
<td>Tex-612-J</td>
<td>Acid Insoluble Residue for Fine Aggregate</td>
<td>4</td>
</tr>
</tbody>
</table>

### GENERAL

- HMA Production Specialist [TxAPA – Level 1-A] ($/hr)
- HMA Roadway Specialist [TxAPA – Level 1-B] ($/hr)
- Technician Travel/Standby Time ($/hr)
- Per Diem ($/day – meals and lodging)
- Mileage Rate ($/mile from closest CL location)

**Note 1** – Turn-Around Time includes test time and time for travel/sampling and reporting.

**Note 2** – These tests require turn-around times meeting the governing specifications. Provide test results within the stated turn-around time. CL is allowed one additional day to provide the signed and sealed report.
SPECIAL PROVISION
007---918
Legal Relations and Responsibilities

For this project, Item 7, “Legal Relations and Responsibilities” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 7.4. Insurance and Bonds is voided and replaced by the following:

As specified in Article 3.4, “Execution of Contract,” provide the Department with a Certificate of Insurance verifying the types and amounts of coverage shown in Table 1. The Certificate of Insurance must be in a form approved by the Texas Department of Insurance. Any Certificate of Insurance provided shall be available for public inspection.

| Table 1
| Insurance Requirements |
|---------------------------------|--------------------------|
| Type of Insurance               | Amount of Coverage        |
| Commercial General Liability Insurance | Not Less Than:           |
|                                 | $600,000 each occurrence  |
| Business Automobile Policy      | Not Less Than:           |
|                                 | $600,000 combined single limit |
| Workers’ Compensation           | Not Less Than:           |
|                                 | Statutory                |
| All Risk Builder’s Risk Insurance (For building-facilities contracts only) | 100% of Contract Price |

By signing the Contract, the Contractor certifies compliance with all applicable laws, rules, and regulations pertaining to workers’ compensation insurance or legitimate alternates. This certification includes all subcontractors. Pay all deductibles stated in the policy. Subcontractors must meet the requirements of Table 1 either through their own coverage or through the Contractor’s coverage.

Insurances must cover the contracted work for the duration of the Contract and must remain in effect until final acceptance. Failure to obtain and maintain insurance for the contracted work may result in suspension of work or default of the Contract. If the insurance expires and coverage lapses for any reason, stop all work until the Department receives an acceptable Certificate of Insurance.

The Workers’ Compensation policy must include a waiver of subrogation endorsement in favor of the State.
For building-facilities contracts, provide All Risk Builder's Risk Insurance to protect the Department against loss by storm, fire or extended coverage perils on work and materials intended for use on the project including the adjacent structure. Name the Department under the Lost Payable Clause.

Provide a substitute Surety on the Contract bonds in the original full Contract amount within 15 days of notification if the Surety is declared bankrupt or insolvent, the Surety’s underwriting limitation drops below the Contract amount or the Surety’s right to do business is terminated by the State. The substitute Surety must be authorized by the laws of the State and acceptable to the Department. Work will be suspended until a substitute Surety is provided. Working day charges will be suspended for 15 days or until an acceptable Surety is provided, whichever is sooner.

**Article 7.8. Hauling and Loads on Roadways and Structures** is supplemented by the following:

**D. Stockpiling of Materials.** Do not store or stockpile material on bridge structures without written permission. If required, submit a structural analysis and supporting documentation by a licensed professional engineer for review by the Engineer. Permission may be granted if the Engineer finds that no damage or overstresses in excess of those normally allowed for occasional overweight loads will result to structures that will remain in use after Contract completion. Provide temporary matting or other protective measures as directed.

**Article 7.14. Contractor’s Responsibility for Work, Section B. Appurtenances** is voided and replaced by the following:

**B. Appurtenances.**

1. **Unreimbursed Repair.** Except for destruction (not reusable) due to hurricanes, reimbursement will not be made for repair of damage to the following temporary appurtenances, regardless of cause:
   - signs,
   - barricades,
   - changeable message signs, and
   - other work zone traffic control devices.

   Crash cushion attenuators and guardrail end treatments are the exception to the above listing and are to be reimbursed in accordance with Section 7.14.B.2, “Reimbursed Repair.”

   For the devices listed in this section, reimbursement may be made for damage due to hurricanes. Where the contractor retains replaced appurtenances after completion of the project, the Department will limit the reimbursement to the cost that is above the salvage value at the end of the project.

2. **Reimbursed Repair.** Reimbursement will be made for repair of damage due to the causes listed in Section 7.14.A, “Reimbursable Repair,” to appurtenances (including temporary and permanent crash cushion attenuators and guardrail end treatments).
Article 7.15. Electrical Requirements, Section A. Definitions, Section 3. Certified Person is voided and replaced by the following:

3. Certified Person. A certified person is a person who has passed the test from the TxDOT course TRF450, “TxDOT Roadway Illumination and Electrical Installations” or other courses as approved by the Traffic Operations Division. Submit a current and valid TRF certification upon request. On June 1, 2011, Texas Engineering Extension Service (TEEX) certifications for “TxDOT Electrical Systems” course will no longer be accepted. All TRF 450 certifications that have been issued for “TxDOT Roadway Illumination and Electrical Installations” course that expire before June 1, 2011 will be accepted until June 1, 2011.

Article 7.15. Electrical Requirements, Section A. Definitions, Section 4. Licensed Electrician is voided and replaced by the following:

4. Licensed Electrician. A licensed electrician is a person with a current and valid unrestricted master electrical license, or unrestricted journeyman electrical license that is supervised or directed by an unrestricted master electrician. An unrestricted master electrician need not be on the work locations at all times electrical work is being done, but the unrestricted master electrician must approve work performed by the unrestricted journeyman. Licensed electrician requirements by city ordinances do not apply to on state system work.

The unrestricted journeyman and unrestricted master electrical licenses must be issued by the Texas Department of Licensing and Regulation or by a city in Texas with a population of 50,000 or greater that issues licenses based on passing a written test and demonstrating experience.

The Engineer may accept other states’ electrical licenses. Submit documentation of the requirements for obtaining that license. Acceptance of the license will be based on sufficient evidence that the license was issued based on:

- passing a test based on the NEC similar to that used by Texas licensing officials, and
- sufficient electrical experience commensurate with general standards for an unrestricted master and unrestricted journeyman electrician in the State of Texas.

Article 7.19. Preservation of Cultural and Natural Resources and the Environment is supplemented by the following:

G. Asbestos Containing Material. In Texas, the Department of State Health Services (DSHS), Asbestos Programs Branch, is responsible for administering the requirements of the National Emissions Standards for Hazardous Air Pollutants, 40 CFR, Subpart M (NESHAP) and the Texas Asbestos Health Protection Rules (TAHPR). Based on EPA guidance and regulatory background information, bridges are considered to be a regulated “facility” under NESHAP. Therefore, federal standards for demolition and renovation apply.

Provide notice to the Department of demolition or renovation to the structures listed in the plans at least 30 calendar days prior to initiating demolition or renovation of each structure or load bearing member. Provide the scheduled start and completion date of structure demolition, renovation, or removal.
When demolition, renovation, or removal of load bearing members is planned for several phases, provide the start and completion dates identified by separate phases.

DSHS requires that notifications be postmarked at least 10 working days prior to initiating demolition or renovation. If the date of actual demolition, renovation, or removal is changed, the Department will be required to notify DSHS at least 10 days in advance of the work. This notification is also required when a previously scheduled (notification sent to DSHS) demolition, renovation or removal is delayed. Therefore, if the date of actual demolition, renovation, or removal is changed, provide the Engineer, in writing, the revised dates in sufficient time to allow for the Department’s notification to DSHS to be postmarked at least 10 days in advance of the actual work.

Failure to provide the above information may require the temporary suspension of work under Article 8.4, “Temporary Suspension of Work or Working Day Charges,” due to reasons under the control of the Contractor. The Department retains the right to determine the actual advance notice needed for the change in date to address post office business days and staff availability.

**Article 7.20, Agricultural Irrigation.** This Item is supplemented by the following:

Regulate the sequence of work and make provisions as necessary to provide for agricultural irrigation or drainage during the work. Meet with the Irrigation District or land owner to determine the proper time and sequence when irrigation demands will permit shutting-off water flows to perform work.

Unless otherwise provided on the plans, the work required by these provisions will not be paid for directly but shall be considered as subsidiary work pertaining to the various bid items of this contract.
For this project, Item 8, “Prosecution and Progress,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 8.8. Subcontracting**, is supplemented with the following:

For all DBE subcontracts including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.
2004 Specifications

SPECIAL PROVISION

009---009

Measurement and Payment

For this project, Item 009, “Measurement and Payment,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.6. Progress Payments, Section A, Retainage is voided and replaced by the following:

A. Retainage. Retainage will not be withheld on this project.

Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors is voided and replaced by the following:

B. Payment Provisions for Subcontractors. For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor’s work within 10 days after satisfactory completion of all of the subcontractor’s work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

• the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and

• the work done by the subcontractor has been inspected, approved, and paid by the Department.

The inspection and approval of a subcontractor’s work does not eliminate the Contractor’s responsibilities for all the work as defined in Article 7.14, “Contractor’s Responsibility for Work.”

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.
SPECIAL PROVISION
009---015
Measurement and Payment

For this project, Item 9, “Measurement and Payment,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.5. Force Account, B. Insurance and Taxes is replaced by the following:

B. Labor Burden. An additional 55% of the labor cost, excluding the 25% compensation provided in Section 9.5.A, “Labor,” will be paid as compensation for labor insurance and labor taxes including the cost of premiums on non-project specific liability (excluding vehicular) insurance, workers compensation insurance, Social Security, unemployment insurance taxes, and fringe benefits.
SPECIAL PROVISION
100---002
Preparing Right of Way

For this project, Item 100, “Preparing Right of Way,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 100.4. Payment. The second paragraph is voided and replaced by the following:

Total payment of this Item will not exceed 10% of the original contract amount until final acceptance. The remainder will be paid on the estimate after the final acceptance under Article 5.8, “Final Acceptance.”
2004 Specifications

SPECIAL PROVISION

161---006

Compost

For this project, Item 161, “Compost,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 161.2. Materials. Table 1 and following two paragraphs are voided and replaced by the following:

<table>
<thead>
<tr>
<th>Property</th>
<th>Test Method</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Particle Size</td>
<td>TMECC' 02.02-B, “Sample Sieving for Aggregate Size Classification”</td>
<td>95% passing 5/8 in. 70% passing 3/8 in.</td>
</tr>
<tr>
<td>Heavy Metals Content</td>
<td>TMECC 04.06, “Heavy Metals and Hazardous Elements”: 04.06-As, Arsenic 04.06-Cd, Cadmium 04.06-Cu, Copper 04.06-Pb, Lead 04.06-Hg, Mercury 04.06-Mo, Molybdenum 04.06-Ni, Nickel 04.06-Se, Selenium 04.06-Zn, Zinc</td>
<td>Pass</td>
</tr>
<tr>
<td>Salinity</td>
<td>TMECC 04.10-A, “1:5 Slurry Method, Mass Basis”</td>
<td>5.0 dS/m Max²</td>
</tr>
<tr>
<td>pH</td>
<td>TMECC 04.11-A, “1:5 Slurry pH”</td>
<td>5.5-8.5</td>
</tr>
<tr>
<td>Maturity</td>
<td>TMECC 05.05-A, “% Emergence and Relative Seedling Vigor”</td>
<td>&gt; 80%</td>
</tr>
<tr>
<td>Stability</td>
<td>TMECC 05.08-B, “Carbon Dioxide Evolution Rate”</td>
<td>≤ 8</td>
</tr>
<tr>
<td>Fecal Coliform</td>
<td>TMECC 07.01-B, “Fecal Coliforms”</td>
<td>1,000 MPN/g Max</td>
</tr>
</tbody>
</table>

1. “Test Methods for the Examination of Composting and Compost,” published by the United States Department of Agriculture and the USCC.
2. A soluble salt content up to 10.0 dS/m for compost used in compost-manufactured topsoil will be acceptable.

Maintain compost in designated stockpiles at the producer’s site. The Department reserves the right to sample compost at the jobsite. Material may be tested to verify compliance with this Specification by an STA-certified lab. Make payment to the STA-certified lab approved by the Department. Submit lab invoices for passing tests to the Department for reimbursement. Maintain a complete record of all test reports for the previous and current calendar year.
SPECIAL PROVISION

166---001

Fertilizer

Item 166, “Fertilizer,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 166.2. Materials** is voided and replaced by the following:

Use a complete fertilizer containing nitrogen (N), phosphoric acid (P), and potash (K) nutrients unless otherwise specified on the plans. At least 50% of the nitrogen component must be a slow-release sulfur coated urea. Ensure that fertilizer is in an acceptable condition for distribution in containers labeled with the analysis. Fertilizer is subject to testing by the Texas A&M Feed and Fertilizer Control Service in accordance with the Texas Fertilizer Law.

**Article 166.3. Construction** is voided and replaced by the following:

Deliver and apply the complete fertilizer uniformly at a rate equal to 60 lb. of nitrogen per acre or at the analysis and rate specified on the plans.

Apply fertilizer as a dry material and do not mix with water to form a slurry.

Incorporate fertilizer during seedbed preparation as specified in the plans.
SPECIAL PROVISION

500---011

Mobilization

For this project, Item 500, “Mobilization,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 500.1. Description is supplemented by the following:

Work for this Item includes submissions required by the Contract.

Article 500.3. Payment, Section A is voided and replaced by the following:

A. Payment will be made upon presentation of a paid invoice for the payment or performance bonds and required insurance. The combined payment for bonds and insurance will be no more than 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less. However, payment will be made for the actual cost of the paid invoice when the combined payment for bonds and insurance exceeds 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less.

Article 500.3. Payment, Section F is voided and replaced by the following:

F. Upon final acceptance, 97% of the mobilization lump sum bid will be paid. Previous payments under this Item will be deducted from this amount.

Article 500.3. Payment is supplemented by the following:

G. Payment for the remainder of the lump sum bid for “Mobilization” will be made after all submittals are received, final quantities have been determined and when any separate vegetative establishment and maintenance, test and performance periods provided for in the Contract have been successfully completed.
SPECIAL PROVISION
502--033
Barricades, Signs, and Traffic Handling

For this project, Item 502, “Barricades, Signs, and Traffic Handling,” of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 502.4. Payment, Section C. Maximum Total Payment Prior to Acceptance is voided and replaced by the following:

C. Maximum Total Payment Prior to Acceptance. The total payment for this Item will not exceed 10% of the total Contract amount before final acceptance in accordance with Article 5.8, “Final Acceptance.” The remaining balance will be paid in accordance with Section 502.4.E, “Balance Due.”
SPECIAL SPECIFICATION

1003

Landscape Boulders

1. **Description.** Provide and install landscape boulders.

2. **Materials.** Landscape boulders will be limestone, sandstone, granite, or other native rock material as shown on the plans and furnished in the approximate dimensioned sizes as shown on the plans. Boulders to be dense, sound and natural in form. No synthetic or man-made boulders are allowed.

3. **Measurement.** This Item will be measured by the ton (2,000 pounds), or each, complete in place.

4. **Payment.** The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Landscape Boulders". This price shall be full compensation for furnishing and placing boulders and for all labor, tools, equipment and incidentals necessary to complete the work.
SPECIAL SPECIFICATION
1013
Trash Receptacles

1. **Description.** Furnish and install trash receptacles.

2. **Materials.** Furnish trash receptacles as shown on the plans.

3. **Construction.** Install trash receptacles in accordance with the manufacturer’s specifications and as shown in the plan details.

4. **Measurement.** This Item will be measured as each trash receptacle complete in place.

5. **Payment.** The work performed and materials furnished in accordance with this Item and measured as provided for under “Measurement” will be paid for at the unit price for “Trash Receptacles”. This price shall be full compensation for furnishing all materials, equipment, labor and incidentals necessary to complete the work.
SPECIAL SPECIFICATION

1014

Landscape Amenity

1. **Description.** Install landscape amenity as shown on the plans or as directed.

2. **Materials and Construction Methods.** Furnish materials and use construction methods in accordance with the plans.

3. **Measurement.** This Item will be measured by the each.

4. **Payment.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Landscape Amenity” or “Landscape Amenity” of type specified. This price is full compensation for furnishing all materials, equipment, labor, and incidentals.
SPECIAL SPECIFICATION

1016

Loose Aggregate for Groundcover

1. **Description.** Install loose aggregate for groundcover as shown on the plans or as directed.

2. **Materials and Construction Methods.** Furnish materials and use construction methods in accordance with the plans.

3. **Measurement.** This Item will be measured by the cubic yard.

4. **Payment.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Loose Aggregate for Groundcover” or “Loose Aggregate for Groundcover” of type specified. This price is full compensation for furnishing all materials, equipment, labor, and incidentals.
SPECIAL SPECIFICATION

1122

Temporary Erosion, Sedimentation, and Environmental Controls

1. Description. Install, maintain, and remove erosion, sedimentation, and environmental control measures to prevent or reduce the discharge of pollutants in accordance with the Storm Water Pollution Prevention Plan (SWP3) as provided in the plans and the Texas Pollutant Discharge Elimination System (TPDES) General Permit TXR150000. Control measures are defined as Best Management Practices used to prevent or reduce the discharge of pollutants. Control measures include but are not limited to rock filter dams, temporary pipe slope drains, temporary paved flumes, construction exits, earthwork for erosion control, pipe, construction perimeter fence, sandbags, temporary sediment control fence, biodegradable erosion control logs, vertical tracking, temporary or permanent seeding, and other measures. Perform work in a manner to prevent degradation of receiving waters, facilitate project construction, and comply with applicable federal, state, and local regulations. Ensure the installation and maintenance of control measures is performed in accordance with the manufacturer’s or designer’s specifications.

By signing the Contractor Certification of Compliance, the Contractor certifies they have read and understand the requirements applicable to this project pertaining to the SWP3, the plans, and the TPDES General Permit TXR150000. The Contractor is responsible for any penalties associated with non-performance of installation or maintenance activities required for compliance. Provide the Contractor Certification of Compliance to the Engineer prior to performing earthwork operations. The most current version of the Contractor Certification of Compliance can be found at: http://www.txdot.gov/inside-txdot/division/environmental/programs/ems-courses.html. A sample of the language has been attached to this specification. Ensure the most current version of the certificate is executed for this project.

2. Materials. Furnish materials in accordance with the following:
   • Item 161, “Compost”
   • Item 432, “Riprap”
   • Item 556, “Pipe Underdrains”

A. Rock Filter Dams.
   1. Aggregate. Furnish aggregate with hardness, durability, cleanliness, and resistance to crumbling, flaking, and eroding acceptable to the Engineer. Provide the following:
      • Types 1, 2, and 4 Rock Filter Dams. Use 3 to 6 in. aggregate.
      • Type 3 Rock Filter Dams. Use 4 to 8 in. aggregate.

   2. Wire. Provide minimum 20 gauge galvanized wire for the steel wire mesh and tie wires for Types 2 and 3 rock filter dams. Type 4 dams require:
• A double-twisted, hexagonal weave with a nominal mesh opening of 2-1/2 in. x 3-1/4 in.;
• Minimum 0.0866 in. steel wire for netting;
• Minimum 0.1063 in. steel wire for selvages and corners; and minimum 0.0866 in. for binding or tie wire.

3. **Sandbag Material.** Furnish sandbags meeting “Sandbags for Erosion Control,” except that any gradation of aggregate may be used to fill the sandbags.

**B. Temporary Pipe Slope Drains.** Provide corrugated metal pipe, polyvinyl chloride (PVC) pipe, flexible tubing, watertight connection bands, grommet materials, prefabricated fittings, and flared entrance sections that conform to the plans. Recycled and other materials meeting these requirements are allowed if approved.

Furnish concrete in accordance with Item 432, “Riprap.”

**C. Temporary Paved Flumes.** Furnish asphalt concrete, hydraulic cement concrete, or other comparable non-erodible material that conforms to the plans. Provide rock or rubble with a minimum diameter of 6 in. and a maximum volume of 1/2 cu. ft. for the construction of energy dissipaters.

**D. Construction Exits.** Provide materials that meet the details shown on the plans and this Section.

1. **Rock Construction Exit.** Provide crushed aggregate for long and short-term construction exits. Furnish aggregates that are clean, hard, durable, and free from adherent coatings such as salt, alkali, dirt, clay, loam, shale, soft or flaky materials and organic and injurious matter. Use 4- to 8-in. aggregate for Type 1 and 2- to 4-in. aggregate for Type 3.

2. **Timber Construction Exit.** Furnish No. 2 quality or better railroad ties and timbers for long-term construction exits, free of large and loose knots and treated to control rot. Fasten timbers with nuts and bolts or lag bolts, of at least 1/2 in. diameter, unless otherwise shown on the plans or allowed. For short-term exits, provide plywood or pressed wafer board at least 1/2 in. thick.

3. **Foundation Course.** Provide a foundation course consisting of flexible base, bituminous concrete, hydraulic cement concrete, or other materials as shown on the plans or directed.

**E. Embankment for Erosion Control.** Provide rock, loam, clay, topsoil, or other earth materials that will form a stable embankment to meet the intended use.

**F. Pipe.** Provide pipe outlet material in accordance with Item 556, “Pipe Underdrains,” and details shown on the plans.
G. Construction Perimeter Fence.

1. **Posts.** Provide essentially straight wood or steel posts that are at least 60 in. long. Furnish soft wood posts with a minimum diameter of 3 in. or use 2 x 4 boards. Furnish hardwood posts with a minimum cross-section of 1-1/2 x 1-1/5 in. Furnish T- or L-shaped steel posts with a minimum weight of 1.3 lb. per foot.

2. **Fence.** Provide orange construction fencing as approved by the Engineer.

3. **Fence Wire.** Provide 12-1/2 gauge or larger galvanized smooth or twisted wire. Provide 16 gauge or larger tie wire.

4. **Flagging.** Provide brightly-colored flagging that is fade-resistant and at least 3/4 in. wide to provide maximum visibility both day and night.

5. **Staples.** Provide staples with a crown at least 1/2 in. wide and legs at least 1/2 in. long.

6. **Used Materials.** Previously used materials meeting the applicable requirements may be used if accepted by the Engineer.

H. Sandbags. Provide sandbag material of polypropylene, polyethylene, or polyamide woven fabric with a minimum unit weight of 4 oz. per square yard, a Mullen burst-strength exceeding 300 psi, and an ultraviolet stability exceeding 70%.

Use natural coarse sand or manufactured sand meeting the gradation given in Table 1 to fill sandbags. Filled sandbags must be 24 to 30 in. long, 16 to 18 in. wide, and 6 to 8 in. thick.

<table>
<thead>
<tr>
<th>Sieve #</th>
<th>Retained (% by Weight)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>MAXIMUM 3%</td>
</tr>
<tr>
<td>100</td>
<td>MINIMUM 80%</td>
</tr>
<tr>
<td>200</td>
<td>MINIMUM 95%</td>
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</tbody>
</table>

Table 1 Sand Gradation

Aggregate may be used in lieu of sand for situations where sandbags are not adjacent to traffic. The aggregate size shall not exceed 3/8 in.

I. **Temporary Sediment Control Fence.** Provide a net-reinforced fence using woven geotextile fabric. Logos visible to the traveling public will not be allowed.

1. **Fabric.** Provide fabric materials in accordance with DMS-6230, “Temporary Sediment Control Fence Fabric.”

2. **Posts.** Provide essentially straight wood or steel posts with a minimum length of 48 in., unless otherwise shown on the plans. Soft wood posts must be at least 3 in. in diameter or nominal 2 x 4in. Hardwood posts must have a minimum cross-section of 1-1/2 x 1-1/2 in. T- or L-shaped steel posts must have a minimum weight of 1.3 lb. per foot.
3. **Net Reinforcement.** Provide net reinforcement of at least 12-1/2 gauge galvanized welded wire mesh, with a maximum opening size of 2 x 4 in., at least 24 in. wide, unless otherwise shown on the plans.

4. **Staples.** Provide staples with a crown at least 3/4 in. wide and legs 1/2 in. long.

5. **Used Materials.** Use recycled material meeting the applicable requirements if accepted by the Engineer.

J. **Biodegradable Erosion Control Logs.**

1. **Core Material.** Furnish core material that is biodegradable or recyclable. Except where specifically called out in plans, material may be compost, mulch, aspen excelsior wood fibers, chipped site vegetation, agricultural rice or wheat straw, coconut fiber, 100% recyclable fibers, or any other acceptable material. No more than 5% of the material is permitted to escape from the containment mesh. Furnish compost meeting the requirements of Item 161, “Compost.”

2. **Containment Mesh.** Furnish containment mesh that is 100% biodegradable, photodegradable or recyclable such as burlap, twine, UV photodegradable plastic, polyester, or any other acceptable material.
   
   a. Furnish biodegradable or photodegradable containment mesh when log will remain in place as part of a vegetative system.

   b. Furnish recyclable containment mesh for temporary installations.

3. **Size.** Furnish biodegradable erosion control logs with diameters shown on the plans or as directed. Stuff containment mesh densely so logs do not deform.

3. **Qualifications, Training, and Employee Requirements.**

A. **Contractor Responsible Person Environmental (CRPe) Qualifications and Responsibilities.** Provide and designate in writing at the preconstruction conference a CRPe who has overall responsibility for the storm water management program. The CRPe will identify and implement storm water and erosion control practices; will oversee and observe storm water control measure monitoring and management; will monitor the project site daily to ensure compliance with the SWP3 and TPDES General Permit TXR150000; and will document daily monitoring reports and provide the reports to the Department within 48 hours. The CRPe will provide recommendations to the Engineer on how to improve the effectiveness of control measures. Attend the Department’s preconstruction conference for the project. Administer the training identified in Article 3.C. Training. Document and submit a list to the Engineer of employees who have completed the training. The list should include the employee’s name, the training course name, and date the employee completed the training. Provide the most current list to the Engineer at the preconstruction conference or prior to earth disturbing activities. Maintain the list as needed and make available for inspection.
B. Contractor Superintendent Qualifications and Responsibilities. Provide a superintendent that is competent and has experience with and knowledge of storm water management and is knowledgeable of the requirements and the conditions of the TPDES General Permit TXR150000. The superintendent is responsible for managing and overseeing the day to day operations and activities at the project site; working with the CRPe to provide effective storm water management at the project site; representing and acting on behalf of the Contractor; and attending the Department’s preconstruction conference for the project.

C. Training. All Contractor and subcontractor employees directly involved in the earthwork activities, small or large structures, storm water control measures, and seeding activities are required to complete the training identified by the Department prior to working in the right of way. Training may take place at a location at the discretion of the Contractor.

4. Construction.

A. Contractor Responsibilities. Implement the SWP3 for the project site in accordance with the plans and specifications, TPDES General Permit TXR150000, and as directed by the Engineer. Coordinate storm water management with all other work on the project. Develop and implement an SWP3 for project-specific material supply plants within and outside of the Department’s right of way in accordance with the specific or general storm water permit requirements. Prevent water pollution from storm water associated with construction activity from entering any surface water or private property on or adjacent to the project site.

B. Implementation. The CRPe, or an alternate, must be accessible by phone and able to respond to storm water management emergencies 24 hours per day.

1. Commencement. Implement the SWP3 as shown and as directed. Contractor proposed recommendations for changes will be allowed as approved. Conform to the established guidelines in the TPDES General Permit TXR150000 to make changes. Do not implement changes until approval has been received and changes have been incorporated into the plans by the Engineer. Minor adjustments to meet field conditions are allowed and will be recorded by the Engineer in the SWP3.

2. Phasing. Implement control measures prior to the commencement of activities that result in soil disturbance. Phase and minimize the soil disturbance to the areas shown on the plans. Coordinate temporary control measures with permanent control measures and all other work activities on the project to assure economical, effective, safe, continuous water pollution prevention. Provide control measures that are appropriate to the construction means, methods, and sequencing allowed by the Contract. Exercise precaution throughout the life of the project to prevent pollution of ground waters and surface waters. Schedule and perform clearing and grubbing operations so that stabilization measures will follow immediately thereafter if project conditions permit. Bring all grading sections to final grade as soon as possible and implement temporary and permanent control measures at the earliest time possible. Implement temporary control measures when required by the TPDES General Permit TXR150000 or otherwise necessitated by project conditions.
Do not prolong final grading and shaping. Preserve vegetation where possible throughout the project and minimize clearing, grubbing, and excavation within stream banks, bed, and approach sections.

C. General.

1. Temporary Alterations or Control Measure Removal. Altering or removal of control measures is allowed when control measures are restored within the same working day.

2. Stabilization. Initiate stabilization for disturbed areas no more than 14 days after the construction activities in that portion of the site has temporarily or permanently ceased. Establish a uniform vegetative cover or utilize another stabilization practice in accordance with the TPDES General Permit TXR150000.

3. Finished Work. Upon the Engineer’s acceptance of vegetative cover or other stabilization practice, remove and dispose of all temporary control measures unless otherwise directed. Complete soil disturbing activities and establish a uniform perennial vegetative cover. A project will not be considered for acceptance until a vegetative cover of 70% density of existing adjacent undisturbed areas is obtained or equivalent permanent stabilization is obtained in accordance with the TPDES General Permit TXR150000. An exception will be allowed in arid areas as defined in the TPDES General Permit TXR150000.

4. Restricted Activities and Required Precautions. Do not discharge onto the ground or surface waters any pollutants such as chemicals, raw sewage, fuels, lubricants, coolants, hydraulic fluids, bitumens, or any other petroleum product. Operate and maintain equipment on site in a manner as to prevent actual or potential water pollution. Manage, control, and dispose of litter on site such that no adverse impacts to water quality occur. Prevent dust from creating a potential or actual unsafe condition, public nuisance, or condition endangering the value, utility, or appearance of any property. Wash out concrete trucks only as described in the TPDES General Permit TXR150000. Utilize appropriate controls to minimize the offsite transport of suspended sediments and other pollutants if it is necessary to pump or channel standing water (i.e. dewatering). Prevent discharges that would contribute to a violation of Edwards Aquifer Rules, water quality standards, the impairment of a listed water body, or other state or federal law.

D. Installation, Maintenance, and Removal Work. Perform work in accordance with the SWP3, according to manufacturers’ guidelines, and in accordance with the TPDES General Permit TXR150000. Install and maintain the integrity of temporary erosion and sedimentation control devices to accumulate silt and debris until earthwork construction and permanent erosion control features are in place or the disturbed area has been adequately stabilized as determined by the Engineer.

The Department will inspect and document the condition of the control measures at the frequency shown on the plans and will provide the Construction SWP3 Field Inspection and Maintenance Reports to the Contractor. Make corrections as soon as possible before the next anticipated rain event or within 7 calendar days after being able to enter the work site for each control measure.
The only acceptable reason for not accomplishing the corrections with the time frame specified is when site conditions are "Too Wet to Work". If a correction is deemed critical by the Engineer, immediate action is required. When corrections are not made within the established time frame, all work will cease on the project and time charges will continue while the control measures are brought into compliance. Once the Engineer reviews and documents the project is in compliance, work may commence. Commencing work does not release the contractor of the liability for noncompliance of the SWP3, plans, or TPDES General Permit TXR150000.

The Engineer may limit the disturbed area if in the opinion of the Engineer the Contractor cannot control soil erosion and sedimentation resulting from the Contractor’s operations. Implement additional controls as directed.

Remove devices upon approval or as directed. Upon removal, finish-grade and dress the area. Stabilize disturbed areas in accordance with the permit, and as shown on the plans or directed. The Contractor retains ownership of stockpiled material and must remove it from the project when new installations or replacements are no longer required.

1. **Rock Filter Dams for Erosion Control.** Remove trees, brush, stumps, and other objectionable material that may interfere with the construction of rock filter dams. Place sandbags as a foundation when required or at the Contractor’s option.

   For Types 1, 2, 3, and 5, place the aggregate to the lines, height, and slopes specified, without undue voids. For Types 2 and 3, place the aggregate on the mesh and then fold the mesh at the upstream side over the aggregate and secure it to itself on the downstream side with wire ties, or hog rings, or as directed. Place rock filter dams perpendicular to the flow of the stream or channel unless otherwise directed. Construct filter dams according to the following criteria, unless otherwise shown on the plans:

   a. **Type 1 (Non-reinforced).**

      (1) **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.

      (2) **Top Width.** At least 2 ft.

      (3) **Slopes.** At most 2:1.

   b. **Type 2 (Reinforced).**

      (1) **Height.** At least 18 in. measured vertically from existing ground to top of filter dam.

      (2) **Top Width.** At least 2 ft.

      (3) **Slopes.** At most 2:1.
c. Type 3 (Reinforced).

(1) **Height.** At least 36 in. measured vertically from existing ground to top of filter dam.

(2) **Top Width.** At least 2 ft.

(3) **Slopes.** At most 2:1.

d. Type 4 (Sack Gabions). Unfold sack gabions and smooth out kinks and bends. For vertical filling, connect the sides by lacing in a single loop–double loop pattern on 4-to 5-in. spacing. At one end, pull the end lacing rod until tight, wrap around the end, and twist 4 times. At the filling end, fill with stone, pull the rod tight, cut the wire with approximately 6 in. remaining, and twist wires 4 times.

For horizontal filling, place sack flat in a filling trough, fill with stone, and connect sides and secure ends as described above.

Lift and place without damaging the gabion. Shape sack gabions to existing contours.

e. Type 5. Provide rock filter dams as shown on the plans.

2. **Temporary Pipe Slope Drains.** Install pipe with a slope as shown on the plans or as directed. Construct embankment for the drainage system in 8-in. lifts to the required elevations. Hand-tamp the soil around and under the entrance section to the top of the embankment as shown on the plans or as directed. Form the top of the embankment or earth dike over the pipe slope drain at least 1 ft. higher than the top of the inlet pipe at all points. Secure the pipe with hold-downs or hold-down grommets spaced a maximum of 10 ft. on center. Construct the energy dissipaters or sediment traps as shown on the plans or as directed. Construct the sediment trap using concrete or rubble riprap in accordance with Item 432, “Riprap,” when designated on the plans.

3. **Temporary Paved Flumes.** Construct paved flumes as shown on the plans or as directed. Provide excavation and embankment (including compaction of the subgrade) of material to the dimensions shown on the plans, unless otherwise indicated. Install a rock or rubble riprap energy dissipater, constructed from the materials specified above to a minimum depth of 9 in. at the flume outlet to the limits shown on the plans or as directed.

4. **Construction Exits.** When tracking conditions exist, prevent traffic from crossing or exiting the construction site or moving directly onto a public roadway, alley, sidewalk, parking area, or other right of way areas other than at the location of construction exits. Construct exits for either long or short-term use.

   a. **Long-Term.** Place the exit over a foundation course, if necessary. Grade the foundation course or compacted subgrade to direct runoff from the construction exits to a sediment trap as shown on the plans or as directed. Construct exits with a
width of at least 14 ft. for one-way and 20 ft. for two-way traffic for the full width of the exit, or as directed.

(1) **Type 1.** Construct to a depth of at least 8 in. using crushed aggregate as shown on the plans or as directed.

(2) **Type 2.** Construct using railroad ties and timbers as shown on the plans or as directed.

b. **Short-Term.**

(1) **Type 3.** Construct using crushed aggregate, plywood, or wafer board. This type of exit may be used for daily operations where long-term exits are not practical.

(2) **Type 4.** Construct as shown on the plans or as directed.

5. **Earthwork for Erosion Control.** Perform excavation and embankment operations to minimize erosion and to remove collected sediments from other erosion control devices.

a. **Excavation and Embankment for Erosion Control Features.** Place earth dikes, swales, or combinations of both along the low crown of daily lift placement, or as directed, to prevent runoff spillover. Place swales and dikes at other locations as shown on the plans or as directed to prevent runoff spillover or to divert runoff. Construct cuts with the low end blocked with undisturbed earth to prevent erosion of hillsides. Construct sediment traps at drainage structures in conjunction with other erosion control measures as shown on the plans or as directed.

Where required, create a sediment basin providing 3,600 cu. ft. of storage per acre drained, or equivalent control measures for drainage locations that serve an area with 10 or more disturbed acres at one time, not including offsite areas.

b. **Excavation of Sediment and Debris.** Remove sediment and debris when accumulation affects the performance of the devices, after a rain, and when directed.

6. **Construction Perimeter Fence.** Construct, align, and locate fencing as shown on the plans or as directed.

a. **Installation of Posts.** Embed posts 18 in. deep or adequately anchor in rock, with a spacing of 8 to 10 ft.

b. **Wire Attachment.** Attach the top wire to the posts at least 3 ft. from the ground. Attach the lower wire midway between the ground and the top wire.

c. **Flag Attachment.** Attach flagging to both wire strands midway between each post. Use flagging at least 18 in. long. Tie flagging to the wire using a square knot.

7. **Sandbags for Erosion Control.** Construct a berm or dam of sandbags that will intercept sediment-laden storm water runoff from disturbed areas, create a retention pond, detain
sediment, and release water in sheet flow. Fill each bag with sand so that at least the top 6 in. of the bag is unfilled to allow for proper tying of the open end. Place the sandbags with their tied ends in the same direction. Offset subsequent rows of sandbags 1/2 the length of the preceding row. Place a single layer of sandbags downstream as a secondary debris trap. Place additional sandbags as necessary or as directed for supplementary support to berms or dams of sandbags or earth.

8. **Temporary Sediment-Control Fence.** Provide temporary sediment-control fence near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the fence into erosion-control measures used to control sediment in areas of higher flow. Install the fence as shown on the plans, as specified in this Section, or as directed.

   a. **Installation of Posts.** Embed posts at least 18 in. deep, or adequately anchor, if in rock, with a spacing of 6 to 8 ft. and install on a slight angle toward the run-off source.

   b. **Fabric Anchoring.** Dig trenches along the uphill side of the fence to anchor 6 to 8 in. of fabric. Provide a minimum trench cross-section of 6 x 6 in. Place the fabric against the side of the trench and align approximately 2 in of fabric along the bottom in the upstream direction. Backfill the trench, then hand-tamp.

   c. **Fabric and Net Reinforcement Attachment.** Unless otherwise shown under the plans, attach the reinforcement to wooden posts with staples, or to steel posts with T-clips, in at least 4 places equally spaced. Sewn vertical pockets may be used to attach reinforcement to end posts. Fasten the fabric to the top strand of reinforcement by hog rings or cord every 15 in. or less.

   d. **Fabric and Net Splices.** Locate splices at a fence post with a minimum lap of 6 in. attached in at least 6 places equally spaced, unless otherwise shown under the plans. Do not locate splices in concentrated flow areas.

Requirements for installation of used temporary sediment-control fence include the following:

- fabric with minimal or no visible signs of biodegradation (weak fibers),
- fabric without excessive patching (more than 1 patch every 15 to 20 ft.),
- posts without bends, and
- backing without holes.

9. **Biodegradable Erosion Control Logs.** Install biodegradable erosion control logs near the downstream perimeter of a disturbed area to intercept sediment from sheet flow. Incorporate the biodegradable erosion control logs into the erosion measures used to control sediment in areas of higher flow. Install, align and locate the biodegradable erosion control logs as specified below, as shown in plans or as directed.
Secure biodegradable erosion control logs in a method adequate to prevent displacement as a result of normal rain events, prevent damage to the logs, and to the satisfaction of the Engineer such that flow is not allowed under the logs. Temporarily removing and replacing biodegradable erosion logs as to facilitate daily work is allowed at the Contractor’s expense.

10. **Vertical Tracking.** Perform vertical tracking on slopes to temporarily stabilize soil. Provide equipment with a track undercarriage capable of producing a linear soil impression measuring a minimum of 12 inches in length by 2 to 4 inches in width by 1/2 to 2 inches in depth. Do not exceed 12 inches between track impressions. Install continuous linear track impressions where the 12 inch length impressions are perpendicular to the slope.

E. **Monitoring and Documentation.** Monitor the control measures on a daily basis. Monitoring will consist of, but is not limited to, observing, inspecting, and documenting site locations with control measures and discharge points to provide maintenance and inspection of controls as described in the SWP3. Keep written records of daily monitoring. Document in the daily monitoring report the control measure condition, the date of inspection, required corrective actions, responsible person for making the corrections, and the date corrective actions were completed. Maintain records of all monitoring reports at the project site or at a place approved by the Engineer. Provide copies to the Engineer. Together, the CRPe and an Engineer’s representative will complete the Construction Stage Gate Checklist on a periodic basis as determined by the Engineer.

5. **Measurement.**

A. **Rock Filter Dams.** Installation or removal of rock filter dams will be measured by the foot or by the cubic yard. The measured volume will include sandbags, when used.

1. **Linear Measurement.** When rock filter dams are measured by the foot, measurement will be along the centerline of the top of the dam.

2. **Volume Measurement.** When rock filter dams are measured by the cubic yard, measurement will be based on the volume of rock computed by the method of average end areas.

   a. **Installation.** Measurement will be made in final position.

   b. **Removal.** Measurement will be made at the point of removal.

B. **Temporary Pipe Slope Drains.** Temporary pipe slope drains will be measured by the foot.

C. **Temporary Paved Flumes.** Temporary paved flumes will be measured by the square yard of surface area. The measured area will include the energy dissipater at the flume outlet.

D. **Construction Exits.** Construction exits will be measured by the square yard of surface area.
E. Earthwork for Erosion and Sediment Control.

1. Equipment and Labor Measurement. Equipment and labor used will be measured by the actual number of hours the equipment is operated and the labor is engaged in the work.

2. Volume Measurement.
   a. In Place.
      (1) Excavation. Excavation will be measured by the cubic yard in its original position and the volume computed by the method of average end areas.

      (2) Embankment. Embankment will be measured by the cubic yard in its final position by the method of average end areas. The volume of embankment will be determined between:
         • the original ground surfaces or the surface upon that the embankment is to be constructed for the feature and
         • the lines, grades and slopes of the accepted embankment for the feature.

   b. In Vehicles. Excavation and embankment quantities will be combined and paid for under “Earthwork (Erosion and Sediment Control, In Vehicle).” Excavation will be measured by the cubic yard in vehicles at the point of removal. Embankment will be measured by the cubic yard in vehicles measured at the point of delivery. Shrinkage or swelling factors will not be considered in determining the calculated quantities.

F. Construction Perimeter Fence. Construction perimeter fence will be measured by the foot.

G. Sandbags for Erosion Control. Sandbags will be measured as each sandbag or by the foot along the top of sandbag berms or dams.

H. Temporary Sediment-Control Fence. Installation or removal of temporary sediment-control fence will be measured by the foot.

I. Biodegradable Erosion Control Logs. Installation or removal of biodegradable erosion control logs will be measured by the linear foot along the centerline of the top of the control logs.

J. Vertical Tracking. Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.

6. Payment. The following will not be paid for directly but are subsidiary to pertinent Items:
   • erosion-control measures for Contractor project-specific locations (PSLs) inside and outside the right of way (such as construction and haul roads, field offices, equipment and supply areas, plants, and material sources);
The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid as follows:

1. **Installation.** Installation will be paid for as “Rock Filter Dams (Install)” of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

2. **Removal.** Removal will be paid for as “Rock Filter Dams (Remove).” This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.

When the Engineer directs that the rock filter dam installation or portions thereof be replaced, payment will be made at the unit price bid for “Rock Filter Dams (Remove)” and for “Rock Filter Dams (Install)” of the type specified. This price is full compensation for furnishing and operating equipment, finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

**B. Temporary Pipe Slope Drains.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Temporary Pipe Slope Drains” of the size specified. This price is full compensation for furnishing materials, removal and disposal, furnishing and operating equipment, labor, tools, and incidentals.

Removal of temporary pipe slope drains will not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the pipe slope drain installation or portions thereof be replaced, payment will be made at the unit price bid for “Temporary Pipe Slope Drains” of the size specified, which is full compensation for the removal and reinstallation of the pipe drain.
Earthwork required for the pipe slope drain installation, including construction of the sediment trap, will be measured and paid for under “Earthwork for Erosion and Sediment Control.”

Riprap concrete or stone, when used as an energy dissipater or as a stabilized sediment trap, will be measured and paid for in accordance with Item 432, “Riprap.”

C. **Temporary Paved Flumes.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Temporary Paved Flume (Install)” or “Temporary Paved Flume (Remove).” This price is full compensation for furnishing and placing materials, removal and disposal, equipment, labor, tools, and incidentals.

When the Engineer directs that the paved flume installation or portions thereof be replaced, payment will be made at the unit prices bid for “Temporary Paved Flume (Remove)” and “Temporary Paved Flume (Install).” These prices are full compensation for the removal and replacement of the paved flume and for equipment, labor, tools, and incidentals.

Earthwork required for the paved flume installation, including construction of a sediment trap, will be measured and paid for under “Earthwork for Erosion and Sediment Control.”

D. **Construction Exits.** Contractor-required construction exits from off right of way locations or on-right of way PSLs will not be paid for directly but are subsidiary to pertinent Items.

The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” for construction exits needed on right of way access to work areas required by the Department will be paid for at the unit price bid for “Construction Exits (Install)” of the type specified or “Construction Exits (Remove).” This price is full compensation for furnishing and placing materials, excavating, removal and disposal, cleaning vehicles, labor, tools, and incidentals.

When the Engineer directs that a construction exit or portion thereof be removed and replaced, payment will be made at the unit prices bid for “Construction Exit (Remove)” and “Construction Exit (Install)” of the type specified. These prices are full compensation for the removal and replacement of the construction exit and for equipment, labor, tools, and incidentals.

Construction of sediment traps used in conjunction with the construction exit will be measured and paid for under “Earthwork for Erosion and Sediment Control.”

E. **Earthwork for Erosion and Sediment Control.**

1. **Initial Earthwork for Erosion and Sediment Control.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Excavation (Erosion and Sediment Control, In Place)”, “Embankment (Erosion and Sediment Control, In Place)”, “Excavation (Erosion and Sediment Control, In Vehicle)”, “Embankment (Erosion and Sediment Control, In Vehicle)”.
Sediment Control, In Vehicle”), or “Earthwork (Erosion and Sediment Control, In Vehicle)”.

This price is full compensation for excavation and embankment including hauling, disposal of material not used elsewhere on the project; embankments including furnishing material from approved sources and construction of erosion-control features; equipment, labor; tools, and incidentals.

Sprinkling and rolling required by this Item will not be paid for directly, but will be subsidiary to this Item.

2. **Maintenance Earthwork for Erosion and Sediment Control for Cleaning and/or Restoring Control Measures.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for by a Contractor Force Account Item.

This price is full compensation for excavation, embankment, and re-grading including removal of accumulated sediment in various erosion control installations as directed, hauling, and disposal of material not used elsewhere on the project; excavation for construction of erosion-control features; embankments including furnishing material from approved sources and construction of erosion-control features; and equipment, labor; tools, and incidentals.

Earthwork needed to remove and obliterate of erosion-control features will not be paid for directly but is subsidiary to pertinent Items unless otherwise shown on the plans.

Sprinkling and rolling required by this Item will not be paid for directly, but will be subsidiary to this Item.

F. **Construction Perimeter Fence.** The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid for “Construction Perimeter Fence.” This price is full compensation for furnishing and placing the fence; digging, fence posts, wire, and flagging; removal and disposal; and materials, equipment, labor, tools, and incidentals.

Removal of construction perimeter fence will be not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the perimeter fence installation or portions thereof be removed and replaced, payment will be made at the unit price bid for “Construction Perimeter Fence,” which is full compensation for the removal and reinstallation of the construction perimeter fence.

G. **Sandbags for Erosion Control.** Sandbags will be paid for at the unit price bid for “Sandbags for Erosion Control” (of the height specified when measurement is by the foot). This price is full compensation for materials, placing sandbags, removal and disposal, equipment, labor, tools, and incidentals.

Removal of sandbags will not be paid for directly but is subsidiary to the installation Item. When the Engineer directs that the sandbag installation or portions thereof be replaced,
payment will be made at the unit price bid for “Sandbags for Erosion Control,” which is full compensation for the reinstallation of the sandbags.

H. Temporary Sediment-Control Fence. The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid as follows:

1. **Installation.** Installation will be paid for as “Temporary Sediment-Control Fence (Install).” This price is full compensation for furnishing and operating equipment finish backfill and grading, lacing, proper disposal, labor, materials, tools, and incidentals.

2. **Removal.** Removal will be paid for as “Temporary Sediment-Control Fence (Remove).” This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.

I. Biodegradable Erosion Control Logs. The work performed and materials furnished in accordance with this Item and measured as provided under “Measurement” will be paid for at the unit price bid as follows:

1. **Installation.** Installation will be paid for as “Biodegradable Erosion Control Logs (Install)” of the size specified. This price is full compensation for furnishing and operating equipment finish backfill and grading, staking, proper disposal, labor, materials, tools, and incidentals.

2. **Removal.** Removal will be paid for as “Biodegradable Erosion Control Logs (Remove).” This price is full compensation for furnishing and operating equipment, proper disposal, labor, materials, tools, and incidentals.

J. Vertical Tracking. Vertical tracking will not be measured or paid for directly but is considered subsidiary to this Item.
CONTRACTOR CERTIFICATION OF COMPLIANCE
WITH STORM WATER REQUIREMENTS

I, _________________________________________ certify that I am the duly appointed representative of the Contractor with authority to make this Contractor certification. I have read and understand the requirements applicable to this project pertaining to storm water discharge authorization under Texas Pollutant Discharge Elimination System (TPDES) General Permit (GP) TXR150000. The Contractor agrees to comply with the terms of the permit that are expressly stated in the contract documents as being the responsibility of the Contractor. I have read and understand the Storm Water Pollution Prevention Plan (SWP3) developed by the Department for this project. The Contractor agrees it will be implemented prior to construction according to permit requirements and the contract documents. I understand that failure to comply with the terms of the permit that are expressly stated in the contract documents, plans, and specifications as being the responsibility of the Contractor may result in civil penalties.

The Contractor acknowledges its responsibility to satisfy the following requirements:

- Implement the SWP3 for the project in accordance with the plans and specifications and the TPDES GP TXR150000.
- Install and maintain control measures on the project in accordance with the manufacturer’s or designer’s specifications.
- Collaborate with the Department for joint monitoring of best management practices (BMPs) on a regular basis to verify that BMPs are performing as intended in accordance with the plans and specifications and with TPDES GP TXR150000.
- Collaborate with the Department for joint identification of BMP maintenance needs and carry out such maintenance in accordance with the plans and specifications, TPDES GP TXR150000 and as directed by the Engineer.
- Repair the integrity of any BMP as directed by the Engineer as soon as reasonably possible.
- If appropriate, recommend changes needed in the SWP3 to the Engineer in order to prevent, to the extent practicable, water pollution associated with construction activities from entering any surface water or private property on or adjacent to the project site by storm water discharges.
- Stabilize disturbed areas, as soon as practicable, in accordance with the TPDES GP TXR150000 and as directed by the Engineer.
- If applicable, obtain appropriate authorizations for activities associated with any Project Specific Location under the authority of the Contractor and provide appropriate documentation of compliance to the Engineer.
- Satisfy any other responsibility indicated in the contract documents that are expressly stated as the responsibility of the Contractor.

Signature and Title: ______________________________________________________

Date: ____________________________
SPECIAL PROVISION
TO
SPECIAL SPECIFICATION
1122--001
Temporary Erosion, Sedimentation, and Environmental Controls

For this project, Special Specification Item 1122, “Temporary Erosion, Sedimentation, and Environmental Controls” is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 3.C. Training is supplemented by the following:

The Environmental Management System (EMS) eLearning Courses and Department’s EMS Policy Statement can be found at http://txdot.gov/business/ems_courses.htm. The following training has been developed in compliance with the Department’s EMS program.

All Contractor and subcontractor employee’s involved in the earthwork activities, small or large structures, storm water control measures, and seeding activities must complete the following training located at to https://www.txdot.gov/inside-txdot/division/environmental/programs/ems-courses.html. Training is provided by the Department at no cost to the Contractor and is valid for 3 years from the date of completion. The Engineer may require training at a frequency less than 3 years based on environmental needs.

- “Environmental Management System: Awareness Training for the Contractor (English and Spanish) (Approximate running time 20 minutes),” and
- “Storm Water: Environmental Requirements During Construction (English and Spanish) (Approximate running time 20 minutes).”

The CRPe, alternate CRPe designated for emergencies, Contractor’s superintendent, and Contractor and subcontractor lead personnel involved in SWP3 activities must enroll and complete the training located at http://www.dedtraining.com/. Training is provided by a third party and is valid for 3 years from the date shown on the Certificate of Completion. Coordinate enrollment through the third party and pay associated fees for the following training:

- “Revegetation During Construction,”
- “Construction General Permit Compliance,” and
- “Construction Stage Gate Checklist (CSGC).”

Training and associated fees will not be measured or paid for directly but are considered subsidiary to this Item.