

DocuSign City Council Transmittal Coversheet

IFB	7413
File Name	2019 Intersection Improvements
Purchasing Contact	Laura Hermosillo
City Council Target Date	December 1, 2020
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	20-2201

SECTION 00 52 43**AGREEMENT**

THIS AGREEMENT, authorized on 12/2/2020 is made by and between the City of Denton, a Texas home rule municipality, acting by and through its duly authorized City Manager, (“City”), and Quality Excavation, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, (“Contractor”).

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

Article 2. PROJECT

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

2019 Intersection Improvements

Contract No: 7413

Article 3. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of One million seven hundred twenty-three thousand four hundred Dollars and 60/100 cents (\$1,723,400.60). At the sole option of the City, five (5) percent contingency in the amount of Eighty-six thousand one hundred and seventy Dollars and 3/100 cents (\$86,170.03) may be used for a total not-to-exceed amount of One million eight hundred nine thousand five hundred seventy Dollars and 63/100 cents (\$1,809,570.63).

Article 4. CONTRACT TIME**4.1 Final Acceptance.**

The Work will be complete for Final Acceptance within 120 days after the date when the Contract Time commences to run, as provided in Paragraph 2.03 of the General Conditions, plus any extension thereof allowed in accordance with Article 12 of the General Conditions.

4.2 Liquidated Damages

Contractor recognizes that *time is of the essence* for completion of Milestones, if any, and to achieve Final Acceptance of the Work and City will suffer financial loss if the Work is not completed within the time(s) specified in Paragraph 4.1 above. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding, the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that as liquidated damages for delay (but not as a penalty), Contractor shall pay City One thousand two-hundred and fifty Dollars (\$1,250.00) for each day that expires after the time specified in Paragraph 4.1 for Final Acceptance until the City issues the Final Letter of Acceptance.

1 **Article 5. CONTRACT DOCUMENTS**

2 5.1 CONTENTS:

3 A.The Contract Documents which comprise the entire agreement between City and
4 Contractor concerning the Work consist of the following:

- 5 1. This Agreement.
- 6 2. Attachments to this Agreement:
 - 7 a. Bid Form
 - 8 1) Proposal Form
 - 9 2) Vendor Compliance to State Law Non-Resident Bidder
 - 10 b. Current Prevailing Wage Rate Table
 - 11 c. Worker’s Compensation Affidavit
 - 12 d. General Conditions.
 - 13 e. Supplementary Conditions.
- 14 3. The following located in File 7413 at:
15 [https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?startid=19](https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?startid=19&row=1&dbid=0)
16 [&row=1&dbid=0](https://lfpubweb.cityofdenton.com/MaterialsManagement/Browse.aspx?startid=19&row=1&dbid=0):
 - 17 a. Specifications described in the Table of Contents of the Project’s Contract
18 Documents.
 - 19 b. North Central Texas Council of Governments Standard Specifications for Public
20 Works Construction – Fourth Edition, Divisions 200-800, and as amended by
21 City, and described in the Table of Contents of the Project’s Contract Documents.
 - 22 c. Drawings.
 - 23 d. Addenda.
 - 24 e. Documentation submitted by Contractor prior to Notice of Award.
- 25 4. The following which shall be issued after the Effective Date and delivered to the City
26 within ten (10) days of the Effective Date and before beginning Work:
 - 27 a. Payment Bond
 - 28 b. Performance Bond
 - 29 c. Maintenance Bond
 - 30 d. Power of Attorney for the Bonds
 - 31 e. Form 1295 – Certificate of Interested Parties (email to purchasing)
 - 32 f. Insurance Certificate
- 33 5. The following which may be delivered or issued after the Effective Date and, if
34 issued, become an incorporated part of the Contract Documents:
 - 35 a. Notice to Proceed.
 - 36 b. Field Orders.
 - 37 c. Change Orders.
 - 38 d. Letter of Final Acceptance.
 - 39
 - 40

1 **Article 6. INDEMNIFICATION**

2 **6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own**
3 **expense, the city, its officers, servants and employees, from and against any and all**
4 **claims arising out of, or alleged to arise out of, the work and services to be performed**
5 **by the contractor, its officers, agents, employees, subcontractors, licensees or invitees**
6 **under this contract. This indemnification provision is specifically intended to operate**
7 **and be effective even if it is alleged or proven that all or some of the damages being**
8 **sought were caused, in whole or in part, by any act, omission or negligence of the city.**
9 **This indemnity provision is intended to include, without limitation, indemnity for any**
10 **and all costs, expenses and legal fees incurred by the city in defending against such**
11 **claims and causes of actions.**

12
13 **6.2 Contractor covenants and agrees to indemnify and hold harmless, at its own expense,**
14 **the city, its officers, servants and employees, from and against any and all loss of,**
15 **damage to, or destruction of, property of the city, arising out of, or alleged to arise out**
16 **of, the work and services to be performed by the contractor, its officers, agents,**
17 **employees, subcontractors, licensees or invitees under this contract. This**
18 **indemnification provision is specifically intended to operate and be effective even if it is**
19 **alleged or proven that all or some of the damages being sought were caused, in whole or**
20 **in part, by any act, omission or negligence of the city.**

21
22 **Article 7. MISCELLANEOUS**

23 **7.1 Terms.**

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

26 **7.2 Assignment of Contract.**

27 This Agreement, including all of the Contract Documents may not be assigned by the
28 Contractor without the advanced express written consent of the City.

29 **7.3 Successors and Assigns.**

30 City and Contractor each binds itself, its partners, successors, assigns and legal
31 representatives to the other party hereto, in respect to all covenants, agreements and
32 obligations contained in the Contract Documents.

33 **7.4 Severability.**

34 Any provision or part of the Contract Documents held to be unconstitutional, void or
35 unenforceable by a court of competent jurisdiction shall be deemed stricken, and all
36 remaining provisions shall continue to be valid and binding upon City and Contractor.

37 **7.5 Governing Law and Venue.**

38 This Agreement, including all of the Contract Documents is performable in the State of
39 Texas. Venue shall be Denton County, Texas, or the United States District Court for the
40 Eastern District of Texas, Sherman Division.

1 7.6 Authority to Sign.

2 Contractor shall attach evidence of authority to sign Agreement if signed by someone other
3 than the duly authorized signatory of the Contractor.

4

5 7.7 Prohibition On Contracts With Companies Boycotting Israel.

6 Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government
7 Code, the City is prohibited from entering into a contract with a company for goods or
8 services unless the contract contains a written verification from the company that it: (1)
9 does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

10 The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms
11 in Section 808.001 of the Texas Government Code. ***By signing this contract, Contractor***
12 ***certifies that Contractor's signature provides written verification to the City that***
13 ***Contractor: (1) does not boycott Israel; and (2) will not boycott Israel during the term of***
14 ***the contract.***

15

16 7.8 Immigration Nationality Act.

17 Contractor shall verify the identity and employment eligibility of its employees who perform
18 work under this Agreement, including completing the Employment Eligibility Verification
19 Form (I-9). Upon request by City, Contractor shall provide City with copies of all I-9 forms
20 and supporting eligibility documentation for each employee who performs work under this
21 Agreement. Contractor shall adhere to all Federal and State laws as well as establish
22 appropriate procedures and controls so that no services will be performed by any Contractor
23 employee who is not legally eligible to perform such services. **CONTRACTOR SHALL**
24 **INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES,**
25 **LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY**
26 **CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS,**
27 **AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right
28 to immediately terminate this Agreement for violations of this provision by Contractor.

29

30 7.9 No Third-Party Beneficiaries.

31 This Agreement gives no rights or benefits to anyone other than the City and the Contractor
32 and there are no third-party beneficiaries.

33

34

1 7.10 No Cause of Action Against Engineer.
2 Contractor, its subcontractors and equipment and materials suppliers on the Project or their
3 sureties, shall maintain no direct action against the Engineer, its officers, employees, and
4 subcontractors, for any claim arising out of, in connection with, or resulting from the engineering
5 services performed. Only the City will be the beneficiary of any undertaking by the Engineer.
6 The presence or duties of the Engineer's personnel at a construction site, whether as on-site
7 representatives or otherwise, do not make the Engineer or its personnel in any way
8 responsible for those duties that belong to the City and/or the City's Contractors or other
9 entities, and do not relieve the Contractors or any other entity of their obligations, duties, and
10 responsibilities, including, but not limited to, all construction methods, means, techniques,
11 sequences, and procedures necessary for coordinating and completing all portions of the
12 construction work in accordance with the Contract Documents and any health or safety
13 precautions required by such construction work. The Engineer and its personnel have no
14 authority to exercise any control over any construction contractor or other entity or their
15 employees in connection with their work or any health or safety precautions.

16
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18

SIGNATURE PAGE TO FOLLOW

1 IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective
2 as of the date subscribed by the City's designated City Manager ("Effective Date").
3

4 CITY OF DENTON

5
6 DocuSigned by:
7 *Todd Hileman*
8 BY _____
9 E776C711BA0D454...
10 CITY MANAGER

11 CONTRACTOR
12 QUALITY EXCAVATION, LLC

13 DocuSigned by:
14 *Rob Mallon*
15 BY _____
16 5E50B82418EA4CF...
17 AUTHORIZED AGENT

18 Rob Mallon
19 _____
20 NAME

21 Operations Manager
22 _____
23 TITLE

24 940 365 0800
25 _____
26 PHONE NUMBER

27 rob@qualityexcavationltd.com
28 _____
29 EMAIL ADDRESS

30 THIS AGREEMENT HAS BEEN
31 BOTH REVIEWED AND APPROVED
32 as to financial and operational obligations and
33 business terms.

34 ATTEST:
35 ROSA RIOS, CITY SECRETARY

36 DocuSigned by:
37 *Rosa Rios*
38 _____
39 1C5CA8C5E175493...

40 DocuSigned by:
41 *Rebecca Diviney* Rebecca Diviney
42 _____
43 CE9F2B4E4B8745F...
44 DIRECTOR'S PRINTED NAME

45 APPROVED AS TO LEGAL FORM:
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CITY ATTORNEY

DocuSigned by:
Mack Peinwand

7F9D328BF0204E5...

Director of Capital Projects/City Engineer

TITLE
Capital Projects and Engineering

DEPARTMENT

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SECTION 00 41 00
BID FORM

TO: *Laura Hermosillo*
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *2019 Various Intersections*

1 Enter Into Agreement

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with City in the form included in the Bidding Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Contract Time indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.

2 BIDDER Acknowledgements and Certification

- 2.1 In submitting this Bid, Bidder accepts all of the terms and conditions of the INVITATION TO BIDDERS and INSTRUCTIONS TO BIDDERS, including without limitation those dealing with the disposition of Bid Bond.
- 2.2 Bidder is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.
- 2.3 Bidder certifies that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.
- 2.4 Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid.
- 2.5 Bidder has not solicited or induced any individual or entity to refrain from bidding.
- 2.6 Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:
- a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process.
 - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of City (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.
 - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of City, a purpose of which is to establish Bid prices at artificial, non-competitive levels.
 - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

1
2 2.7 The Bidder acknowledges and agrees to comply with the requirements of City Ethics
3 Ordinance No. 18-757.
4

5 **3 Time of Completion**
6

7 3.1 The Work will be complete for Final Acceptance within 120 days after the date when the
8 Contract Time commences to run as provided in Paragraph 2.03 of the General Conditions.
9 3.2 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of
10 failure to complete the Work {and/or achievement of Milestones} within the times
11 specified in the Agreement.
12

13 **4 Attached to this Bid**
14

15 The following documents are attached to and made a part of this Bid:

- 16 a. This Bid Form
17 b. Required Bid Bond, Section 00 43 13 issued by a surety meeting the requirements of
18 Paragraph 5.01 of the General Conditions.
19 c. Proposal Form Section – Hard Copy
20 d. **Proposal Form Section – Electronic Copy (either included in the Bid, or**
21 **submitted prior to bid opening via <http://dentontx.ionwave.net>**
22 e. Vendor Compliance to State Law Non-Resident Bidder, Section 00 43 37
23 f. Conflict of Interest Affidavit, Section 00 35 13
24 g. Proposed Subcontractors Form, Section 00 43 36
25 h. Bidders Minimum Qualification Statement, Section 00 45 13
26 i. Corporate Resolution of Authorized Signatories, Section 00 45 43
27 j. Any additional documents that may be required by Section 12 of the Instructions to
28 Bidders
29

30 **5 Total Bid Amount**
31


32 5.1 Bidder will complete the Work in accordance with the Contract Documents for the
33 following bid amount. In the space provided below, please enter the total bid amount for
34 this project. Only this figure will be read publicly by the City at the bid opening.
35 5.2 It is understood and agreed by the Bidder in signing this proposal that the total bid amount
36 entered below is subject to verification and/or modification by multiplying the unit bid
37 prices for each pay item by the respective estimated quantities shown in this proposal and
38 then totaling all of the extended amounts.
39

40 Total Bid Amount: \$ 1,723,400.60
41

1 **6 Bid Submittal**

2
 3 This Bid is submitted on September 15th, 20²⁰ by the entity named below.

4
 5
 6 Respectfully submitted,
 7
 8 By: 
 9 (Signature)

Receipt is acknowledged of the following Addenda:	Initial
Addendum No. 1:	
Addendum No. 2:	
Addendum No. 3:	
Addendum No. 4:	

10
 11 Doug Murphy
 12 (Printed Name)

13
 14 Title: Sr. Estimator/Project Manager

15
 16 Company: Quality Excavation, LLC

17
 18 Address: 5580 US Hwy 377
 19 Aubrey, Tx 76227

20 State of Incorporation: _____

21 Email: doug@qualityexcavationltd.com

22 Phone: (940)365-0800



To:

City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Laura Hermosillo/Purchasing Dept.

From: Quality Excavation, LLC
5580 US Hwy 377
Aubrey, Texas 76227
Doug Murphy
(940)365-0800
doug@qualityexcavationltd.com

PROJ.: 2019 Intersection Improvements

IFB: 7413

ENG

PMO:

SECTION 00 42 43

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
1	*100 - 6001	PREPARING ROW	SY	31	\$ 800.00	\$ 24,800.00
2	104 - 6001	REMOVING CONC (PAV)	SY	100	\$ 14.00	\$ 1,400.00
3	104 - 6009	REMOVING CONC (RIPRAP)	SY	552	\$ 8.00	\$ 4,416.00
4	104 - 6015	REMOVING CONC (SIDEWALKS)	SY	277	\$ 9.00	\$ 2,493.00
5	104 - 6017	REMOVING CONC (DRIVEWAYS)	SY	138	\$ 14.00	\$ 1,932.00
6	104 - 6022	REMOVING CONC (CURB AND GUTTER)	LF	902	\$ 7.00	\$ 6,314.00
7	104 - 6037	REMOVE CONC (RAIL)	LF	516	\$ 16.00	\$ 8,256.00
8	104 - 6067	REMOVING CONC (SAWCUT)	LF	4661	\$ 2.00	\$ 9,322.00
9	110 - 6001	EXCAVATION (ROADWAY)	CY	2300	\$ 16.00	\$ 36,800.00
10	132 - 6004	EMBANKMENT (FINAL)(DENS CONT)(TY B)	CY	1622	\$ 20.00	\$ 32,440.00
11	160 - 6003	FURNISHING AND PLACING TOPSOIL (4")	SY	3111	\$ 7.00	\$ 21,777.00
12	247 - 6231	FL BS (CMP IN PLACE)(TY A GR 1-2)(10")	SY	4390	\$ 20.00	\$ 87,800.00
13	260 - 6006	LIME TRT (EXST MATL) (6")	SY	1759	\$ 8.00	\$ 14,072.00
14	260 - 6009	LIME TRT (EXST MATL)(10")	SY	463	\$ 10.00	\$ 4,630.00
15	260 - 6016	LIME (HYD, COM, OR QK(SLURRY))	TON	7	\$ 350.00	\$ 2,544.50
16	260 - 6027	LIME TRT (EXST MATL)(8")	SY	4802	\$ 9.00	\$ 43,218.00
17	*305 - 6003	SALV, HAUL & STKPL RCL APH PV (VAR DEPTH)	SY	4723	\$ 6.00	\$ 28,338.00
18	*340 - 6070	1.5" D-GR HMA(SQ) TY-C	SY	7970	\$ 11.00	\$ 87,670.00
19	*340 - 6142	1.5" D-GR HMA(SQ) TY-D	SY	1351	\$ 11.00	\$ 14,861.00
20	*341 - 6003	3" D-GR HMA TY A	SY	4145	\$ 19.00	\$ 78,755.00
21	*341 - 6004	6.5" D-GR HMA TY A	SY	44	\$ 44.00	\$ 1,936.00
22	*341 - 6008	6.5" D-GR HMA TY-B	SY	1615	\$ 38.00	\$ 61,370.00
23	*341 - 6009	4" D-GR HMA TY-B	SY	463	\$ 25.00	\$ 11,575.00
24	360 - 6018	CONC PVMT (JOINTED - CPCD) (8")	SY	216	\$ 68.00	\$ 14,688.00
25	360 - 6021	CONC PVMT (JOINTED - CPCD) (11")	SY	463	\$ 77.00	\$ 35,651.00
26	420 - 6062	CL C CONC (RETAINING WALL)	CY	4	\$ 1,100.00	\$ 4,400.00
27	420 - 6066	CL C CONC (RAIL FOUNDATION)	CY	107	\$ 236.00	\$ 25,252.00
28	432 - 6045	RIPRAP (MOW STRIP)(4 IN)	CY	7	\$ 580.00	\$ 4,060.00
29	432 - 6047	RIPRAP (MOW STRIP)(6 IN)	CY	17	\$ 570.00	\$ 9,690.00
30	464 - 6003	RC PIPE (CL III)(18 IN)	LF	37	\$ 92.00	\$ 3,404.00
31	464 - 6005	RC PIPE (CL III)(24 IN)	LF	48	\$ 100.00	\$ 4,800.00
32	464 - 6008	RC PIPE (CL III)(36 IN)	LF	8	\$ 147.00	\$ 1,176.00
33	464 - 6018	RC PIPE (CL IV)(24 IN)	LF	7	\$ 95.00	\$ 665.00
34	464 - 6020	RC PIPE (CL IV)(36 IN)	LF	14	\$ 155.00	\$ 2,170.00
35	*465 - 6209	JUNCTION BOXES, MANHOLES, AND INLETS (10' INLET)	EA	1	\$ 6,200.00	\$ 6,200.00
36	*465 - 6225	JUNCTION BOXES, MANHOLES, AND INLETS (8'x8' JUNCTION BOX)	EA	1	\$ 14,000.00	\$ 14,000.00
37	*465 - 6226	JUNCTION BOXES, MANHOLES, AND INLETS (8'x8' JUNCTION BOX)	EA	1	\$ 15,000.00	\$ 15,000.00
38	465 - 6393	INLET(COMPL)(RECESS CURB)(10')	EA	1	\$ 6,200.00	\$ 6,200.00
39	465 - 6399	INLET(COMPL)(CURB)(20')	EA	1	\$ 9,200.00	\$ 9,200.00
40	479 - 6001	ADJUSTING MANHOLES	EA	0		\$ -
41	496 - 6002	REMOV STR (INLET)	EA	2	\$ 1,000.00	\$ 2,000.00
42	496 - 6007	REMOV STR (PIPE)	LF	4	\$ 77.00	\$ 308.00
43	500 - 6001	MOBILIZATION	LS	1	\$ 159,744.00	\$ 159,744.00
44	502 - 6001	BARRICADES, SIGNS AND TRAFFIC HANDLING	MO	4	\$ 5,500.00	\$ 22,000.00
45	506 - 6002	ROCK FILTER DAMS (INSTALL) (TY 2)	LF	50	\$ 50.00	\$ 2,500.00
46	506 - 6011	ROCK FILTER DAMS (REMOVE)	LF	50	\$ 25.00	\$ 1,250.00
47	506 - 6020	CONSTRUCTION EXITS (INSTALL) (TY 1)	SY	390	\$ 19.00	\$ 7,410.00
48	506 - 6024	CONSTRUCTION EXITS (REMOVE)	SY	390	\$ 8.00	\$ 3,120.00
49	506 - 6041	BIODEG EROSN CONT LOGS (INSL) (12")	LF	3571	\$ 4.00	\$ 14,284.00
50	506 - 6043	BIODEG EROSN CONT LOGS (REMOVE)	LF	3571	\$ 0.50	\$ 1,785.50
51	512 - 6029	PORT CTB (MOVE)(F-SHAPE)(TY 1)	LF	1139	\$ 47.00	\$ 53,533.00
52	512 - 6089	PTB(FRN&INSL)(SSCB OR CSB)(TY1)OR(STL)	LF	761	\$ 17.00	\$ 12,937.00
53	529 - 6008	CONC CURB & GUTTER (TY II)	LF	1089	\$ 31.00	\$ 33,759.00



PROJ.: 2019 Intersection Improvements

IFB: 7413

ENG

PMO:

City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Laura Hermosillo/Purchasing Dept.

From: Quality Excavation, LLC
5580 US Hwy 377
Aubrey, Texas 76227
Doug Murphy
(940)365-0800
doug@qualityexcavationltd.com

SECTION 00 42 43

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
54	530 - 6004	DRIVEWAYS (CONC)	SY	138	\$ 61.00	\$ 8,418.00
55	531 - 6001	CONC SIDEWALKS (4")	SY	317	\$ 49.00	\$ 15,533.00
56	540 - 6006	MTL BEAM GD FEN TRANS (THRIE-BEAM)	EA	2	\$ 2,200.00	\$ 4,400.00
57	544 - 6001	GUARDRAIL END TREATMENT (INSTALL)	EA	2	\$ 2,900.00	\$ 5,800.00
58	545 - 6019	CRASH CUSH ATTEN (INSTL)(S)(N)(TL3)	EA	2	\$ 7,700.00	\$ 15,400.00
59	636 - 6001	ALUMINUM SIGNS (TY A)	SF	73	\$ 16.00	\$ 1,168.00
60	644 - 6001	IN SM RD SN SUP&AM TY10BWG(1)SA(P)	EA	6	\$ 615.00	\$ 3,690.00
61	644 - 6028	IN SM RD SN SUP&AM TYS80(1)SA(P-BM)	EA	2	\$ 670.00	\$ 1,340.00
62	644 - 6068	RELOCATE SM RD SN SUP&AM TY 10BWG	EA	5	\$ 590.00	\$ 2,950.00
63	644 - 6070	RELOCATE SM RD SN SUP&AM TY S80	EA	5	\$ 644.00	\$ 3,220.00
64	644 - 6075	RELOCATE SM RD SN SUP&AM(SIGN ONLY)	EA	3	\$ 277.00	\$ 831.00
65	644 - 6076	REMOVE SM RD SN SUP&AM	EA	10	\$ 177.00	\$ 1,770.00
66	666 - 6011	REFL PAV MRK TY I (W)4"(SLD)(090MIL)	LF	7781	\$ 1.00	\$ 7,781.00
67	666 - 6029	REFL PAV MRK TY I (W)8"(DOT)(090MIL)	LF	334	\$ 2.00	\$ 668.00
68	666 - 6035	REFL PAV MRK TY I (W)8"(SLD)(090MIL)	LF	1503	\$ 2.00	\$ 3,006.00
69	666 - 6041	REFL PAV MRK TY I (W)12"(SLD)(090MIL)	LF	849	\$ 4.00	\$ 3,396.00
70	666 - 6047	REFL PAV MRK TY I (W)24"(SLD)(090MIL)	LF	472	\$ 7.00	\$ 3,304.00
71	666 - 6053	REFL PAV MRK TY I (W)(ARROW)(090MIL)	EA	15	\$ 140.00	\$ 2,100.00
72	666 - 6077	REFL PAV MRK TY I (W)(WORD)(090MIL)	EA	15	\$ 140.00	\$ 2,100.00
73	666 - 6098	REF PAV MRK TY I(W)18"(YLD TRI)(090MIL)	EA	24	\$ 50.00	\$ 1,200.00
74	666 - 6125	REFL PAV MRK TY I (Y)4"(SLD)(090MIL)	LF	1087	\$ 1.00	\$ 1,087.00
75	*666 - 6131	REFL PAV MRK TY I (Y)(DBL)4"(SLD)(090MIL)	LF	5161	\$ 2.00	\$ 10,322.00
76	666 - 6146	REFL PAV MRK TY I (Y)24"(SLD)(090MIL)	LF	1144	\$ 7.00	\$ 8,008.00
77	672 - 6007	REFL PAV MRKR TY I-C	EA	6	\$ 23.00	\$ 138.00
78	677 - 6001	ELIM EXT PAV MRK & MRKS (4")	LF	17731	\$ 1.00	\$ 17,731.00
79	677 - 6003	ELIM EXT PAV MRK & MRKS (8")	LF	1306	\$ 2.00	\$ 2,612.00
80	677 - 6005	ELIM EXT PAV MRK & MRKS (12")	LF	665	\$ 3.00	\$ 1,995.00
81	677 - 6007	ELIM EXT PAV MRK & MRKS (24")	LF	689	\$ 4.00	\$ 2,756.00
82	677 - 6008	ELIM EXT PAV MRK & MRKS (ARROW)	EA	8	\$ 105.00	\$ 840.00
83	677 - 6012	ELIM EXT PAV MRK & MRKS (WORD)	EA	3	\$ 105.00	\$ 315.00
84	678 - 6001	PAV SURF PREP FOR MRK (4")	LF	19484	\$ 0.05	\$ 974.20
85	678 - 6004	PAV SURF PREP FOR MRK (8")	LF	1543	\$ 0.05	\$ 77.15
86	678 - 6006	PAV SURF PREP FOR MRK (12")	LF	849	\$ 0.05	\$ 42.45
87	678 - 6008	PAV SURF PREP FOR MRK (24")	LF	1616	\$ 0.05	\$ 80.80
88	678 - 6009	PAV SURF PREP FOR MRK (ARROW)	EA	15	\$ 11.00	\$ 165.00
89	678 - 6016	PAV SURF PREP FOR MRK (WORD)	EA	15	\$ 11.00	\$ 165.00
90	*7049 - 6024	PLUG 24" RCP PIPE	EA	1	\$ 1,000.00	\$ 1,000.00
91	416-6003	DRILL SHAFT (30 IN)	LF	44	\$ 390.00	\$ 17,160.00
92	416-6004	DRILL SHAFT (36 IN)	LF	39	\$ 445.00	\$ 17,355.00
93	416-6006	DRILL SHAFT (48 IN)	LF	22	\$ 475.00	\$ 10,450.00
94	618-6023	CONDT (PVC) (SCH 40) (2")	LF	160	\$ 14.00	\$ 2,240.00
95	618-6029	CONDT (PVC) (SCH 40) (3")	LF	551	\$ 15.00	\$ 8,265.00
96	618-6030	CONDT (PVC) (SCH 40) (3") (BORE)	LF	580	\$ 38.00	\$ 22,040.00
97	618-6033	CONDT (PVC) (SCH 40) (4")	LF	525	\$ 16.00	\$ 8,400.00
98	618-6034	CONDT (PVC) (SCH 40) (4") (BORE)	LF	385	\$ 40.00	\$ 15,400.00
99	618-6037	CONDT (PVC) (SCH 40) (6")	LF	5	\$ 23.00	\$ 115.00
100	620-6009	ELEC CONDR (NO.6) BARE	LF	2220	\$ 1.00	\$ 2,220.00
101	620-6010	ELEC CONDR (NO.6) INSULATED	LF	380	\$ 1.00	\$ 380.00
102	621-6001	TRAY CABLE (3 CONDR) (14 AWG) - LUMINAIRE AND ILSN	LF	6080	\$ 2.00	\$ 12,160.00
103	621-6002	TRAY CABLE (3 CONDR) (12 AWG) - APS PUSHBUTTONS	LF	1800	\$ 2.00	\$ 3,600.00
104	624-6009	GROUND BOX TY D (162922)	EA	3	\$ 1,150.00	\$ 3,450.00
105	624-6010	GROUND BOX TY D (162922) W/ARPN	EA	8	\$ 1,450.00	\$ 11,600.00
106	680-6002	INSTALL HWY TRF SIG (ISOLATED)	EA	2	\$ 23,000.00	\$ 46,000.00



To:

City of Denton - Capital Projects
901-B Texas Street
Denton, TX 76209
Laura Hermosillo/Purchasing Dept.

From: Quality Excavation, LLC
5580 US Hwy 377
Aubrey, Texas 76227
Doug Murphy
(940)365-0800
doug@qualityexcavationltd.com

PROJ.: 2019 Intersection Improvements

IFB: 7413

ENG

PMO:

SECTION 00 42 43

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description of work	UOM	BID QTY	Unit Price	Extended Price
107	*	INSTALL LUMINAIRE HEAD LED (400 W EQUIVALENT) (FULL CUTOFF)	EA	2	\$ 650.00	\$ 1,300.00
108	*	INSTALL LUMINAIRE HEAD LED (240 W EQUIVALENT)	EA	6	\$ 650.00	\$ 3,900.00
109	*	ALUMINUM SIGNS	SF	120	\$ 23.00	\$ 2,760.00
110	*	WIND DAMPNER	EA	2	\$ 650.00	\$ 1,300.00
111	*	INSTALLATION OF MESH RADIO ASSEMBLY WITH ANTENNA(S)	EA	1	\$ 4,100.00	\$ 4,100.00
112	682-6001	VEHICLE SIGNAL SECTION (12 IN) LED (GREEN)	EA	18	\$ 470.00	\$ 8,460.00
113	682-6002	VEHICLE SIGNAL SECTION (12 IN) LED (GREEN ARROW)	EA	6	\$ 470.00	\$ 2,820.00
114	682-6003	VEHICLE SIGNAL SECTION (12 IN) LED (YELLOW)	EA	18	\$ 470.00	\$ 8,460.00
115	682-6004	VEHICLE SIGNAL SECTION (12 IN) LED (YELLOW ARROW)	EA	12	\$ 470.00	\$ 5,640.00
116	682-6005	VEHICLE SIGNAL SECTION (12 IN) LED (RED)	EA	18	\$ 470.00	\$ 8,460.00
117	682-6006	VEHICLE SIGNAL SECTION (12 IN) LED (RED ARROW)	EA	6	\$ 470.00	\$ 2,820.00
118	682-6018	PED SIG SEC (LED)(COUNTDOWN)	EA	8	\$ 1,000.00	\$ 8,000.00
119	682-6023	BACKPLATE (12 IN) (3 SEC)	EA	18	\$ 170.00	\$ 3,060.00
120	682-6024	BACKPLATE (12 IN) (4 SEC)	EA	6	\$ 180.00	\$ 1,080.00
121	684-6033	TRF CBL (TY A) (14 AWG) (7 CONDR)	LF	2970	\$ 2.00	\$ 5,940.00
122	684-6047	TRF CBL (TY A) (14 AWG) (21 CONDR)	LF	2620	\$ 4.00	\$ 10,480.00
123	686-6036	INS TRF SIG PL AM(S)1 ARM(32")LUM&ILSN	EA	4	\$ 11,200.00	\$ 44,800.00
124	686-6048	INS TRF SIG PL AM(S)1 ARM(44")LUM&ILSN	EA	2	\$ 12,900.00	\$ 25,800.00
125	686-6052	INS TRF SIG PL AM(S)1 ARM(48")LUM&ILSN	EA	1	\$ 13,500.00	\$ 13,500.00
126	686-6060	INS TRF SIG PL AM(S)1 ARM(55")LUM&ILSN	EA	1	\$ 27,600.00	\$ 27,600.00
127	687-6001	PED POLE ASSEMBLY	EA	6	\$ 1,800.00	\$ 10,800.00
128	**	DRILL SHAFT (TRF SIG POLE) (24 IN)	LF	30	\$ 270.00	\$ 8,100.00
129	690-6007	REPLACE OF GROUND BOXES	EA	3	\$ 1,800.00	\$ 5,400.00
130	690-6024	REMOVAL OF SIGNAL HEAD ASSM	EA	2	\$ 145.00	\$ 290.00
131	690-6025	REPLACE OF SIGNAL HEAD ASSM	EA	3	\$ 2,200.00	\$ 6,600.00
132	690-6028	REPLACE OF SIGNAL RELATED SIGNS	EA	2	\$ 590.00	\$ 1,180.00
133	690-6030	REMOVAL OF PEDESTRIAN PUSH BUTTONS	EA	2	\$ 58.00	\$ 116.00
134	690-6031	REPLACE OF PEDESTRIAN PUSH BUTTONS	EA	1	\$ 470.00	\$ 470.00
135	690-6100	REMOVE TRAFFIC SIGNAL	EA	2	\$ 3,400.00	\$ 6,800.00
136	690-6136	REMOVE RADAR VEHICLE DETECTION SYSTEM	EA	1	\$ 1,100.00	\$ 1,100.00
137	6058-6001	BBU SYSTEM (EXTERNAL BATT CABINET)	EA	1	\$ 7,200.00	\$ 7,200.00
138	6292-6002	RVDS(ADVANCE DETECTION ONLY)	EA	8	\$ 10,600.00	\$ 84,800.00
139	6292-6005	RVDS(ADVANCE DET ONLY)(INSTALL ONLY)	EA	8	\$ 1,770.00	\$ 14,160.00
140	***	RADAR ADVANCE DETECTION CABLE	LF	1830	\$ 6.00	\$ 10,980.00
Total Base Bid						\$ 1,723,400.60

Alternate Bid

2019 Intersection Improvements

TOTAL PROJECT BID:

\$1,723,400.60

Quality Excavation, LLC

SECTION 00 43 37

VENDOR COMPLIANCE TO STATE LAW NON- RESIDENT BIDDER

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident bidders. This law provides that, in order to be awarded a contract as low bidder, nonresident bidders (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident bidder by the same amount that a Texas resident bidder would be required to underbid a nonresident bidder in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident bidders in order for your bid to meet specifications. The failure of nonresident bidders to do so will automatically disqualify that bidder. Resident bidders must check the box in Section B.

A. Nonresident bidders in the State of N/A, our principal place of business, are required to be N/A percent lower than resident bidders by State Law. A copy of the statute is attached.

Nonresident bidders in the State of N/A, our principal place of business, are not required to underbid resident bidders.

B. The principal place of business of our company or our parent company or majority owner is in the State of Texas.

BIDDER:

Quality Excavation, LLC
Company

By: Doug Murphy
(Please Print)

5580 US Hwy 377
Address

Signature: 

Aubrey, Texas 76227
City/State/Zip

Title: Sr. Estimator/Project Manager
(Please Print)

Date: September 15th, 2020

END OF SECTION

"General Decision Number: TX20200025 01/03/2020

Superseded General Decision Number: TX20190025

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).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2020. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject

to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/03/2020

* 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	
Asphalt Paving Machine.....	\$ 13.99	
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
Single Axle.....\$ 12.31
Single or Tandem Axle Dump
Truck.....\$ 12.62
Tandem Axle Tractor with
Semi Trailer.....\$ 12.86
Transit-Mix.....\$ 14.14

WELDER.....\$ 14.84

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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 a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or

""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 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. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage

determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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

"

SECTION 00 45 26

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *Denton Various Intersections*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

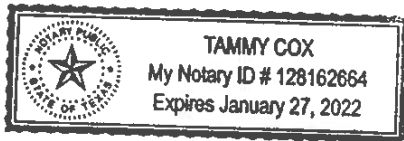
CONTRACTOR:

Quality Excavation, LLC By: Doug Murphy
Company (Please Print)
5580 US Hwy 377 Signature: *[Signature]*
Address
Aubrey, Texas 76227 Title: Sr. Estimator/Project Manager
City/State/Zip (Please Print)

THE STATE OF TEXAS §
COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Doug Murphy, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Quality Excavation LLC for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of September, 2020



Tammy Cox
Notary Public in and for the State of Texas

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in these General Conditions or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. Said terms are generally capitalized or written in italics, but not always. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. 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 City and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to City 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. *Award* – Authorization by the City Council for the City to enter into an Agreement.
 6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 7. *Bidder*—The individual or entity who submits a Bid directly to City.
 8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 9. *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.
 10. *Business Day* – A business day is defined as a day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
 11. *Calendar Day* – A day consisting of 24 hours measured from midnight to the next midnight.

12. *Change Order*—A document, which is prepared and approved by the City, which is signed by Contractor and City and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*— The City of Denton is a Texas home-rule municipal corporation acting by its City Council through its City Manager or his designee.
14. *City Attorney* – The officially appointed City Attorney of the City of Denton, Texas, or his duly authorized representative.
15. *City Council* - The duly elected and qualified governing body of the City of Denton, Texas.
16. *City Manager* – The officially appointed and authorized City Manager of the City of Denton, Texas, or his duly authorized representative.
17. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, 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 Contract Claim.
18. *Contract*—The entire and integrated written document between the City and Contractor concerning the Work. The Contract contains the Agreement and all Contract Documents and supersedes prior negotiations, representations, or agreements, whether written or oral.
19. *Contract Documents*—Those items so designated in the Agreement. All items listed in the Agreement are Contract Documents. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City 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).
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any and (ii) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 11.01 of these General Conditions for definition.

24. *Damage Claims* – A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day* – A day, unless otherwise defined, shall mean a Calendar Day.
26. *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. Submittals are not Drawings as so defined.
27. *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.
28. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
29. *Extra Work* – Additional work made necessary by changes or alterations of the Contract Documents or quantities; or for other reasons for which no prices are provided in the Contract Documents. Extra work shall be part of the Work.
30. *Field Order* — A written order issued by City which requires changes in the Work but which does not involve a change in the Contract Price, Contract Time, or the intent of the Engineer.
31. *Final Acceptance* – The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
32. *Final Inspection* – Inspection carried out by the City to verify that the Contractor has completed the Work, and each and every part or appurtenance thereof, fully, entirely, and in conformance with the Contract Documents.
33. *General Requirements*—Sections of Division 1 of the Contract Documents.
34. *Hazardous Environmental Condition* — The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, or other materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
35. *Hazardous Waste*—Hazardous waste is defined as any solid waste listed as hazardous or possesses one or more hazardous characteristics as defined in the federal waste regulations, as amended from time to time.
36. *Incidental* – Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.

37. *Laws and Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
38. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
39. *Major Item* – An Item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price or \$25,000 whichever is less.
40. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate Contract Time prior to Final Acceptance of the Work.
41. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, City will sign and deliver the Agreement.
42. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
43. *PCBs*—Polychlorinated biphenyls.
44. *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.
45. *Plans* – See definition of Drawings.
46. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Time.
47. *Project*—The Work to be performed under the Contract Documents.
48. *Project Manager* —The authorized representative of the City who will be assigned to the Project.
49. *Project Manual* – The documentary information prepared for bidding and furnishing the Work. A listing of the contents of the Project Manual is contained in its Table of Contents.
50. *Public Meeting* – An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.

51. *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.
52. *Regular Working Hours* – Excluding legal holidays, regular working hours shall be Monday thru Friday between 6:00 a.m. and 8:30 p.m. from June 1 to September 30 and between 7:00 a.m. and 8:30 p.m. from October 1 to May 31.
53. *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.
54. *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.
55. *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.
56. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
57. *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. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Division 00 00 00) of each Project.
58. *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.
59. *Submittals*—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.
60. *Subsidiary* – See definition of Incidental.
61. *Successful Bidder*—The Bidder submitting the lowest and most responsive Bid to whom City makes an Award.
62. *Superintendent* – The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.

63. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
64. *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.
65. *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 but not limited to, 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.
66. *Unit Price Work*—See Paragraph 11.03 of these General Conditions for definition.
67. *Weekend Working Hours* – Hours between 8:00 a.m. and 8:30 p.m., Saturday, and between 1:00 p.m. and 8:30 p.m. Sunday or legal holiday, as approved in advance by the City.
68. *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 including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
69. *Working Day* – A working day is defined as a day, not including Saturdays, Sundays, or legal holidays authorized by the City for contract purposes, in which weather or other conditions not under the control of the Contractor will permit the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7 a.m. and 8 p.m.

1.02 *Terminology*

- A. The words and terms discussed in Paragraph 1.02.B through E 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 judgment by City. 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 City 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).

C. *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 City’s written acceptance.

D. *Furnish, Install, Perform, Provide:*

1. The word “Furnish” or the word “Install” or the word “Perform” or the word “Provide” or the word “Supply,” or any combination or similar directive or usage thereof, shall mean furnishing and incorporating in the Work including all necessary labor, materials, equipment, and everything necessary to perform the Work indicated, unless specifically limited in the context used.

- E. 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 *Copies of Documents*

City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract Documents, and three (3) additional copies of the Drawings. Additional copies will be furnished upon request at the cost of reproduction.

2.02 *Commencement of Contract Time; Notice to Proceed*

The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement.

2.03 *Starting the Work*

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

2.04 *Before Starting Construction*

Baseline Schedules: Submit in accordance with the Contract Documents, and prior to starting the Work.

2.05 *Preconstruction Conference*

Before any Work at the Site is started, the Contractor shall attend a Preconstruction Conference as specified in the Contract Documents.

2.06 *Public Meeting*

Contractor may not mobilize any equipment, materials or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

2.07 *Initial Acceptance of Schedules*

No progress payment shall be made to Contractor until acceptable schedules are submitted to City in accordance with the Schedule Specification as provided in the Contract Documents.

2.08 *Electronic Submittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format.
- B. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

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 City.
- C. Clarifications and interpretations of the Contract Documents shall be issued by City.
- D. The Specifications may vary in form, format and style. Some Specification sections may be written in varying degrees of streamlined or declarative style and some sections may be

relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims.

- E. The cross referencing of specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.

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 City, Contractor, 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 City, or any of its 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 against all applicable field measurements and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City 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 City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.17.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 City 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 the provisions of any standard, specification, manual, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

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 a Change Order.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one or more of the following ways:
 1. A Field Order;
 2. City's review of a Submittal (subject to the provisions of Paragraph 6.18.C); or
 3. City'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, 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 City 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 City or Engineer to Contractor, or by Contractor to City or Engineer, that may be relied upon are limited to the printed copies included in the Contract Documents (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. 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. City shall furnish the Site. City 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. City will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities.
1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
 2. The City has or anticipates removing and/or relocating utilities, and obstructions to the Site. Any outstanding removal or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be removed, adjusted, and/or relocated by others.
- B. Upon reasonable written request, City 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.

- C. Contractor shall provide for all additional lands and access thereto that may be required for 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 City of explorations and tests of subsurface conditions at or contiguous to the Site; and
2. those drawings known to City 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. Contractor may not make any Contract Claim against City, 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 6.17.A), notify City in writing about such condition.

B. *Possible Price and Time Adjustments*

Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:

1. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under a negotiated contract; or
2. the existence of such condition could reasonably have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
3. Contractor failed to give the written notice as required by Paragraph 4.03.A.

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 City or Engineer by the owners of such Underground Facilities, including City, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. City 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 and adjustment of the Work with the owners of such Underground Facilities, including City, 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 which conflicts with the Work 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 6.17.A),

identify the owner of such Underground Facility and give notice to that owner and to City. City will review the discovered Underground Facility and determine the extent, if any, to which a change may be required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.

2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences.
3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

4.05 *Hazardous Environmental Condition at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to City 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. Contractor may not make any Contract Claim against City, 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 6.17.A); and (iii) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City 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 suitable for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed.
- 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 City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. City may have such deleted portion of the Work performed by City's own forces or others.
- G. *To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, 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.G shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.***
- H. 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 *Licensed Sureties and Insurers*

All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish performance and payment bonds, in accordance with Texas Government Code Chapter 2253 or successor statute, each in an amount equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents.
- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security

to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City.

- C. 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 sealed and dated power of attorney which shall show that it is effective on the date the agent or attorney-in-fact signed each bond. The bonds must be dated on, or after, the date of the Contract.
- D. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the State of Texas or it ceases to meet the requirements of Paragraph 5.02.C, Contractor shall promptly notify City and shall, within 30 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 and 5.02.C.

5.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by City or any other additional insured) which Contractor is required to purchase and maintain.
 - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “Additional Insured” on all liability policies.
 - 2. The Contractor’s general liability insurance shall include a, “per project” or “per location”, endorsement, which shall be identified in the certificate of insurance provided to the City.
 - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide
 - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of City is required.
 - 5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions

6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance provided under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements, which, neither nullify or amend, the required lines of coverage, nor decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Contract has been bid or executed and the exclusions are determined to be unacceptable or the City desires additional insurance coverage, and the City desires the contractor/engineer to obtain such coverage, the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. Any self-insured retention (SIR), in excess of \$25,000.00, affecting required insurance coverage shall be approved by the City in regards to asset value and stockholders' equity. In lieu of traditional insurance, alternative coverage maintained through insurance pools or risk retention groups, or self-funding, must also be approved by City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis, must be acceptable to and approved by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverage's and their limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City shall be required to provide prior notice of 90 days, and the insurance adjustments shall be incorporated into the Work by Change Order.
13. City shall be entitled, upon written request and without expense, to receive copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by

law or regulations binding upon either party or the underwriter on any such policies.

14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

5.04 *Contractor's Insurance*

A. *Workers Compensation and Employers' Liability.* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability 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.

B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the City. The Commercial General Liability policy, shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, which are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions).

C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because bodily injury or death of any person and or property damage arising out of the work, maintenance or use of any motor vehicle by the 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.

- D. *Railroad Protective Liability.* If any of the work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop work until replacement insurance has been procured. There shall be no time credit for days not worked pursuant to this section.

5.05 *Acceptance of Bonds and Insurance; Option to Replace*

If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

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.
- B. At all times during the progress of the Work, Contractor shall assign a competent Superintendent, who is proficient in English, and who shall not be replaced without written notice to City. If at any time the Superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the Superintendent with another satisfactory to City.
- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

6.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to 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 beyond Regular Working Hours or for Weekend Working Hours without City's written consent (which will not be unreasonably withheld). Written request (by letter or electronic communication) to perform Work:

1. for beyond Regular Working Hours, request must be made by noon at least two (2) Business Days prior
2. for Weekend Working Hours, request must be made by noon of the preceding Wednesday
3. for legal holidays, request must be made by noon seven Days prior to the legal holiday.

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, Contractor required testing, start-up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work 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 City. If required by City, 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 to be incorporated into the Work 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.
- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

6.04 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.07 and the General Requirements as it may be adjusted from time to time as provided below.
 1. Contractor shall submit to City for acceptance (to the extent indicated in Paragraph 2.07 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments will comply with any provisions of the General Requirements applicable thereto.
 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment

for the duration of the Contract in accordance with the schedule specification 01 32 16.

3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Time 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 of other Suppliers may be submitted to City for review under the circumstances described below.

1. *"Or-Equal" Items:* If in City'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 City as an "or-equal" item, in which case review and approval of the proposed item may, in City'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. the City 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; and
- 4) it is not objectionable to the City.

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

- 1) there will be no increase in cost to the City or increase in Contract Time; and
- 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

a. If in City'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 may be submitted as a

proposed substitute item.

- b. Contractor shall submit sufficient information as provided below to allow City 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 City from anyone other than Contractor.
- c. Contractor shall make written application to City for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - 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;
 - c) be suited to the same use as that specified; and
 - 2) will state:
 - a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of final 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 City for other work on the Project) to adapt the design to the proposed substitute item;
 - 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; and
 - 3) will identify:
 - a) all variations of the proposed substitute item from that specified;
 - 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 Damage 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 City. Contractor shall submit sufficient information to allow City, in City's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. Contractor shall make written application to City for review in the same manner as those provided in Paragraph 6.05.A.2.

- C. *City's Evaluation:* City 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. City may require Contractor to furnish additional data about the proposed substitute. City will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until City's review is complete, which will be evidenced by a Change Order in the case of a substitute and an accepted Submittal for an "or-equal." City will advise Contractor in writing of its determination.
- D. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee, warranty, or other surety with respect to any substitute. ***Contractor shall indemnify and hold harmless City and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorneys fees) arising out of the use of substituted materials or equipment.***
- E. *City's Cost Reimbursement:* City will record City'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 City approves a substitute so proposed or submitted by Contractor, Contractor may be required to reimburse City for evaluating each such proposed substitute. Contractor may also be required to reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) 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.
- G. *City Substitute Reimbursement:* Costs (savings or charges) attributable to acceptance of a substitute shall be incorporated to the Contract by Change Order.
- H. *Time Extensions:* No additional time will be granted for substitutions.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall perform with his own organization, work of a value not less than 35% of the value embraced on the Contract, unless otherwise approved by the City.
- B. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City 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 (excluding those acceptable to City as indicated in Paragraph 6.06.C).
- C. The City may from time to time require the use of certain Subcontractors, Suppliers, or other

individuals or entities on the project, and will provide such requirements in the Supplementary Conditions.

- D. Contractor shall be fully responsible to City 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 City and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of City 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.
- E. 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.
- F. All Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work shall communicate with City through Contractor.
- 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 City.

6.07 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates.* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. Such prevailing wage rates are included in these Contract Documents.
- B. *Penalty for Violation.* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause.* On receipt of information, including a complaint by a worker, concerning an alleged violation of 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether

good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being subtracted from successive progress payments pending a final determination of the violation.

- D. *Arbitration Required if Violation Not Resolved.* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph C above. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.
- E. *Records to be Maintained.* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of acceptance of the work, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be open at all reasonable hours for inspection by the City. The provisions of Paragraph 6.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments.* With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates.* The Contractor shall post prevailing wage rates in a conspicuous place at all times.
- H. *Subcontractor Compliance.* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs A through G above.

6.08 *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 City, 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 City in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay for the

use of said fees or royalties to others.

- B. *To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless City, 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.***

6.09 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Contractor shall obtain and pay for all construction permits and licenses except those provided for in the Supplementary Conditions or Contract Documents. City 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, except for permits provided by the City as specified in 6.09.B. City shall pay all charges of utility owners for connections for providing permanent service to the Work.
- B. *City obtained permits and licenses.* City will obtain and pay for all permits and licenses as provided for in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency. The City will not reimburse the Contractor for any cost associated with these requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
 2. U.S. Army Corps of Engineers Permits
 3. Texas Commission on Environmental Quality Permits
 4. Railroad Company Permits
 5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* The City anticipates acquisition of and/or access to permits and licenses. Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

6.10 *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, the City shall not 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 3.02.
- C. Changes in Laws or Regulations not known at the time of opening of Bids having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

6.11 *Taxes*

- A. On a contract awarded by the City, an organization which qualifies for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to his supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas Tax permits and information may be obtained from:
 - 1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 - 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

6.12 *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. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to finish the section on which operations are in progress before work is commenced on any additional area of the Site.
 3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
 4. Should any Damage Claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
 5. ***Pursuant to Paragraph 6.21, Contractor shall indemnify and hold harmless City, from and against all claims, costs, losses, and damages arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against City.***
- 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. *Site Maintenance Cleaning:* 24 hours after written notice is given to the Contractor that the clean-up on the job site is proceeding in a manner unsatisfactory to the City, if the Contractor fails to correct the unsatisfactory procedure, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice (by letter or electronic communication), and the costs of such direct action, plus 25% of such costs, shall be deducted from the monies due or to become due to the Contractor.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City or adjacent property 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 or better all property disturbed by the Work.
- E. *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.

6.13 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site or in a place designated by the Contractor and approved by the City, one (1) record copy of all Drawings, Specifications, Addenda, Change Orders, 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 accepted Submittals will be available to City for reference. Upon completion of the Work, these record documents, any operation and maintenance manuals, and Submittals will be delivered to City prior to Final Inspection. Contractor shall include accurate locations for buried and embedded items.

6.14 *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 City's safety programs, if any.
- D. Contractor shall inform City of the specific requirements of Contractor's safety program, if any, with which City's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.14.A.2 or 6.14.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.
- 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 City has accepted the Work.

6.15 *Safety Representative*

Contractor shall inform City in writing of Contractor's designated safety representative at the Site.

6.16 *Hazard Communication Programs*

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

6.17 *Emergencies and/or Rectification*

- 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 City 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 City determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take positive steps to fulfill this written request, or does not show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire costs for such remedial action, plus 25%, from any funds due or become due the Contractor on the Project.

6.18 *Submittals*

- A. Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as City may require.
 1. Submit in accordance with the General Requirements.
 2. Data shown on the Submittals will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data, to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 6.18.C.
 3. Submittals submitted as herein provided by Contractor and reviewed by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.

5. For-Information-Only submittals upon which the City is not expected to conduct review or take responsive action may be so identified in the Contract Documents.
 6. Submit required number of Samples specified in the Specifications.
 7. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as City may require to enable City to review the submittal for the limited purposes required by Paragraph 6.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *City's Review:*
1. City will provide timely review of required Submittals in accordance with the Schedule of Submittals acceptable to City. City's review and acceptance 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. City's review and acceptance 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 acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
 3. City's review and acceptance shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal. City's review and acceptance shall not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.

6.19 *Continuing the Work*

Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

6.20 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City 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 City;
 2. recommendation or payment by City of any progress or final payment;
 3. the issuance of a certificate of Final Acceptance by City or any payment related thereto by City;
 4. use or occupancy of the Work or any part thereof by City;
 5. any review and acceptance of a Submittal by City;
 6. any inspection, test, or approval by others; or
 7. any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified and shall furnish a good and sufficient maintenance bond, complying with the requirements of Article 5.02.B. The City will give notice of observed defects with reasonable promptness.

6.21 Indemnification

- A. **Contractor covenants and agrees to indemnify, hold harmless and defend, at its own expense, the City, its officers, servants and employees, from and against any and all claims arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licenses or invitees under this**

Contract. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. This indemnity provision is intended to include, without limitation, indemnity for costs, expenses and legal fees incurred by the City in defending against such claims and causes of actions.

- B. Contractor covenants and agrees to indemnify and hold harmless, at its own expense, the City, its officers, servants and employees, from and against any and all loss, damage or destruction of property of the City, arising out of, or alleged to arise out of, the work and services to be performed by the Contractor, its officers, agents, employees, subcontractors, licensees or invitees under this Contract. **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY.**

6.22 *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.
- 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, City 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, and Submittals prepared by such professional. 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 City.
- C. City shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City has specified to Contractor performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.22, City's review and acceptance 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. City's review and acceptance of Submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.18.C.

6.23 *Right to Audit*

- A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.
- B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

6.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, which are funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. *Title VI, Civil Rights Act of 1964 as amended:* Contractor shall comply with the requirements of the Act and the Regulations as further defined in the Supplementary Conditions for any project receiving Federal assistance.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. City may perform other work related to the Project at the Site with City's employees, or other City contractors, 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 written notice thereof will be given to Contractor prior to starting any such other work; and
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and City, if City is performing other work with City's employees or other City contractors, 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 City and the others whose work will be affected.

- 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 City 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 in the work provided by others.

7.02 *Coordination*

- A. If City 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, City shall have authority for such coordination.

ARTICLE 8 – CITY'S RESPONSIBILITIES

8.01 *Communications to Contractor*

Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

8.02 *Furnish Data*

City shall timely furnish the data required under the Contract Documents.

8.03 *Pay When Due*

City shall make payments to Contractor in accordance with Article 14.

8.04 *Lands and Easements; Reports and Tests*

City'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 City'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 or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

8.05 *Change Orders*

City shall execute Change Orders in accordance with Paragraph 10.03.

8.06 *Inspections, Tests, and Approvals*

City's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.

8.07 *Limitations on City's Responsibilities*

A. The City 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. City will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

B. City will notify the Contractor of applicable safety plans pursuant to Paragraph 6.14.

8.08 *Undisclosed Hazardous Environmental Condition*

City's responsibility with respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.09 *Compliance with Safety Program*

While at the Site, City's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which City has been informed pursuant to Paragraph 6.14.

ARTICLE 9 – CITY'S OBSERVATION STATUS DURING CONSTRUCTION

9.01 *City's Project Manager or Duly Authorized Representative*

City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City's Project Manager or duly appointed representative during construction are set forth in the Contract Documents. City's Project Manager for this Contract is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19.

9.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe 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, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City's efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City's visits and observations are subject to all the limitations on authority and responsibility set forth in Paragraph 8.07. Particularly, but without limitation, during or as a result of City's visits or observations of Contractor's Work, City 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 *Authorized Variations in Work*

City's Project Manager or duly authorized representative may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are 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 City and also on Contractor, who shall perform the Work involved promptly.

9.04 *Rejecting Defective Work*

City will have authority to reject Work which City's Project Manager or duly authorized representative believes to be defective, or 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. City will have authority to conduct special inspection or testing of the Work as provided in Article 13, whether or not the Work is fabricated, installed, or completed.

9.05 *Determinations for Work Performed*

Contractor will determine the actual quantities and classifications of Work performed. City's Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City's written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

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

- A. City will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City's written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 10.06.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK

10.01 *Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by the City.

10.02 *Unauthorized Changes in the Work*

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.17.

10.03 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
 - 1. changes in the Work which are: (i) ordered by City pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08 or City's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
 - 2. changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed.

10.04 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment thereof, and the City insists upon its performance, the Contractor shall proceed with the work after making written request for written orders and shall keep accurate account of the actual

reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 10.06.

- B. The Contractor shall furnish the City such installation records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual installation.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be a full, complete and final payment for all costs Contractor incurs as a result or relating to the change or Extra Work, whether said costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the change or Extra Work.

10.05 *Notification to Surety*

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 Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

10.06 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
 - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
 - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City on or before 45 days from the start of the event giving rise thereto (unless the City allows additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
 - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.
 - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 12.02.

5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.
 6. The City shall submit any response to the Contractor within 30 days after receipt of the claimant's last submittal (unless Contract allows additional time).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor, if any, take one of the following actions in writing:
1. deny the Contract Claim in whole or in part;
 2. approve the Contract Claim; or
 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under Paragraph 10.06.C will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 10.06.
- F. If the City fails to take any action pursuant to Paragraph 10.06 (C) the contract Claim is considered to have been denied by the City.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT

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, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall not include any of the costs itemized in Paragraph 11.01.B, and shall include but not be limited to 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 City 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;

- a. 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, Weekend Working Hours, or legal holidays, shall be included in the above to the extent authorized by City.
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.
3. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by City, 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.
4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City and Contractor and shall deliver such bids to City, who will then determine, 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.
5. 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.
6. 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. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable not covered under Paragraph 6.11, as imposed by Laws and Regulations.

- d. 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.
- e. 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, 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 City. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- f. The cost of utilities, fuel, and sanitary facilities at the Site.
- g. Minor expenses such as telegrams, long distance telephone calls, telephone and communication services at the Site, express and courier services, and similar petty cash items in connection with the Work.
- h. 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, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

- 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 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 City an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. *Specified Allowance:* 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 City.
- 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 allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued 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

City subject to the provisions of Paragraph 9.05.

- 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. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to unit price work listed and the cost of incidental work included as part of the unit price.
- D. City may make an adjustment in the Contract Price in accordance with Paragraph 12.01 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.
- E. *Increased or Decreased Quantities:* The City reserves the right to order Extra Work in accordance with Paragraph 10.01.
1. If the changes in quantities or the alterations do not significantly change the character of work under the Contract Documents, the altered work will be paid for at the Contract unit price.
 2. If the changes in quantities or alterations significantly change the character of work, the Contract will be amended by a Change Order.
 3. If no unit prices exist, this will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 12.
 4. A significant change in the character of work occurs when:
 - a. the character of work for any Item as altered differs materially in kind or nature from that in the Contract or
 - b. a Major Item of work varies by more than 25% from the original Contract quantity.
 5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
 6. 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.

11.04 *Plans Quantity Measurement for Unclassified Excavation or Embankment*

- A. Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised by the governing Section or this Article.
- B. If the quantity measured as outlined under “Price and Payment Procedures” varies by more than 25% (or as stipulated under “Price and Payment Procedures” for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 10.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 25% variance will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.
- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

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

12.01 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. The value of any Work covered by a Change Order 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 or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents

and agreement to a lump sum or unit price 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 additional 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, 11.01.A.2. and 11.01.A.3, the Contractor's additional fee shall be 15 percent except for:
 - 1) rental fees for Contractor's own equipment using standard rental rates;
 - 2) bonds and insurance;
 - b. for costs incurred under Paragraph 11.01.A.4 and 11.01.A.5, the Contractor's fee shall be five percent (5%);
 - 1) 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 (5%) of the amount paid to the next lower tier Subcontractor, however in no case shall the cumulative total of fees paid be in excess of 25%;
 - c. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.6, and 11.01.B;
 - d. the amount of credit to be allowed by Contractor to City 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 (5%) of such net decrease.

12.02 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by Critical Path Method analysis how the Extra Work or claimed delay adversely affects the critical path.

12.03 *Delays*

- A. Where Contractor is reasonably delayed in the performance or completion of any part of the Work within the Contract Time due to delay beyond the control of Contractor, the Contract Time may be extended in an amount equal to the time lost due to such delay if a Contract Claim is made therefor. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by City, 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. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph.
- B. If Contractor is delayed, City 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.
- C. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time 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.
- D. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, which is to be furnished by the City.

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

13.01 *Notice of Defects*

Notice of all defective Work of which City 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*

City, independent testing laboratories, and governmental 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 City 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. If Contract Documents, Laws or Regulations of any public body having jurisdiction require any

of the Work (or part thereof) to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such independent inspections, tests, retests or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection or approval; excepting, however, those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall be paid as described in the Supplementary Conditions.

- C. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, re-tests, or approvals required for City'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, re-tests, or approvals shall be performed by organizations acceptable to City.
- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
 - 1. City will coordinate such Testing to the extent possible, with Contractor;
 - 2. Should any Testing under this Section 13.03 D result in a "fail", "did not pass" or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor's cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
 - 3. Any amounts owed for any retest under this Section 13.03 D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
 - 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- 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 City, Contractor shall, if requested by City, uncover such Work for observation.
- F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense.
- G. Contractor shall have the right to make a Contract Claim regarding any retest or invoice issued under Section 13.03 D.

13.04 *Uncovering Work*

- A. If any Work is covered contrary to the Contract Documents or specific instructions by the City, it must, if requested by City, be uncovered for City's observation and replaced at Contractor's expense.
- B. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
 1. 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 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); or City shall be entitled to accept defective Work in accordance with Paragraph 13.08 in which case Contractor shall still be responsible for all costs associated with exposing, observing, and testing the defective Work.
 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.05 *City May Stop the Work*

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, City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of City to stop the Work shall not give rise to any duty on the part of City 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 pursuant to an acceptable schedule, whether or not fabricated, installed, or completed, or, if the Work has been rejected by City, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, additional testing, 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). Failure to require the removal of any defective Work shall not constitute acceptance of such Work.

- 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 City's special warranty and guarantee, if any, on said Work.

13.07 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by 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 City or permitted by Laws and Regulations as contemplated in Paragraph 6.10.A is found to be defective, Contractor shall promptly, without cost to City and in accordance with City'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 City, 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 City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City 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 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 Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Contract Documents.
- 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 may be required to be extended for an additional period of one year after the end of the initial correction period. City shall provide 30 days written notice to Contractor should such additional warranty coverage be required. Contractor may dispute this requirement by filing a Contract Claim, pursuant to Paragraph 10.06.
- 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*

If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City 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 other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted.

13.09 *City May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace rejected Work as required by City 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, City may, after seven (7) days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, City shall proceed expeditiously. In connection with such corrective or remedial action, City 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, and incorporate in the Work all materials and equipment incorporated in the Work, stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents, consultants, employees, and City's other contractors, access to the Site to enable City to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs) incurred or sustained by City 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 City shall be entitled to an appropriate decrease in the Contract Price.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise of City's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

The Schedule of Values for lump sum contracts established as provided in Paragraph 2.07 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment

acceptable to City. 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. Contractor is responsible for providing all information as required to become a vendor of the City.
2. At least 20 days before the date established in the General Requirements for each progress payment, Contractor shall submit to City 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.
3. 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 City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate insurance or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that 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.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

B. *Review of Applications:*

1. City will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that to the best of City's knowledge:
 - 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 Final Acceptance,

the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Work performed under Paragraph 9.05, and any other qualifications stated in the recommendation).

3. Processing any such payment 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 City 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 City or entitle City to withhold payment to Contractor, or
 - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:
 - a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
 - b. discrepancies in quantities contained in previous applications for payment;
 - c. the Contract Price has been reduced by Change Orders;
 - d. City has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - e. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. *Retainage:*

1. For all contracts, retainage shall be five percent (5%).
- D. *Liquidated Damages:* For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement, will be deducted from the monies due the Contractor, not as a penalty, but as liquidated damages suffered by the City.
- E. *Payment:* Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

F. *Reduction in Payment:*

1. City may refuse to make payment of the amount requested because:
 - a. Claims have been made against City 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 City to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling City to a set-off against the amount recommended; or
 - d. City has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.4.a through 14.02.B.4.e or Paragraph 15.02.A.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, when Contractor remedies the reasons for such action.

14.03 *Contractor's Warranty of Title*

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 City no later than the time of payment free and clear of all Liens.

14.04 *Partial Utilization*

A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City, determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to permit City to use or occupy any such part of the Work which City determines to be ready for its intended use, subject to the following conditions:

1. Contractor at any time may notify City in writing that Contractor considers any such part of the Work ready for its intended use.
2. Within a reasonable time after notification as enumerated in Paragraph 14.05.A.1, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
3. Partial Utilization will not constitute Final Acceptance by City.

14.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
1. City will promptly schedule a Final Inspection with Contractor.
 2. City 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.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

14.06 *Final Acceptance*

Upon completion by Contractor to City's satisfaction, of any additional Work identified in the Final Inspection, City will issue to Contractor a letter of Final Acceptance.

14.07 *Final Payment*

A. *Application for Payment:*

1. Upon Final Acceptance, and in the opinion of City, Contractor may make an application for final payment following the procedure for progress payments in accordance with the Contract Documents.
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 5.03;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all pending or released Damage Claims against City that Contractor believes are unsettled; and
 - d. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of or Liens filed in connection with the Work.

B. *Payment Becomes Due:*

1. After City's acceptance of the Application for Payment and accompanying documentation, requested by Contractor, less previous payments made and any sum City is entitled, including but not limited to liquidated damages, will become due and payable.
2. After all Damage Claims have been resolved:
 - a. directly by the Contractor or;
 - b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.
3. The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract Documents which specifically continue thereafter.

14.08 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, 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 City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.02.C, and if bonds have been furnished as required in Paragraph 5.02, 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 City 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 Contract Claims.

- B. *Partial Retainage Release.* For a Contract that provides for a separate vegetative establishment and maintenance, and test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.09 *Waiver of Claims*

The acceptance of final payment will constitute a release of the City from all claims or liabilities under the Contract for anything done or furnished or relating to the work under the Contract Documents or any act or neglect of City related to or connected with the Contract.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor and which may fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. During temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way, and he shall take every precaution to prevent damage or deterioration of the work performed; he shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving his equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the equipment and no profit will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of

limitation, may 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, failure to adhere to the Project 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 City; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents;
or
 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose;
or
 7. Substantial evidence that the Contractor has become insolvent or bankrupt, or otherwise financially unable to carry on the Work satisfactorily; or
 8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02A. occur, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. Conference shall be held not later than 15 days, after receipt of notice.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the construction Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of conference to address Contractor's failure to perform the Work.
 2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
 - a. If City completes the Work, City may exclude Contractor and Surety from the site and take possession of the Work, and all materials and equipment incorporated into the

Work stored at the Site or for which City has paid Contractor or Surety but which are stored elsewhere, and finish the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by City arising out of or resulting from 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 City. Such claims, costs, losses and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph, City shall not be required to obtain the lowest price for the Work performed.
 4. Neither City, nor any of its respective consultants, agents, officers, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
 5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim on account of the method used by City in completing the Contract.
 6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise prescribed by law.
- C. Notwithstanding Paragraphs 15.02.B, 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.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.02, the termination procedures of that bond shall not supersede the provisions of this Article.

15.03 *City May Terminate For Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract. Any termination shall be effected by mailing a notice of the termination to the

Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Receipt of the notice shall be deemed conclusively presumed and established when the letter is placed in the United States Postal Service Mail by the City. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the City regarding such discretionary action.

- B. After receipt of a notice of termination, and except as otherwise directed by the City, the Contractor shall:
1. Stop work under the Contract on the date and to the extent specified in the notice of termination;
 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
 - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to its contract which is in the possession of the Contractor and in which the owner has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days thereafter, the City shall accept title to such items provided, that the list

submitted shall be subject to verification by the City upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.

- E. Not later than 60 days after the notice of termination, the Contractor shall submit his termination claim to the City in the form and with the certification prescribed by the City. Unless an extension is made in writing within such 60 day period by the Contractor, and granted by the City, any and all such claims shall be conclusively deemed waived.
- F. 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; and
 3. reasonable expenses directly attributable to termination.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined. 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.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 10.06 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.06.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 days of filing of the request.
- C. If the Contract Claim is not resolved by mediation, City's action under Paragraph 10.06.C or a denial pursuant to Paragraphs 10.06.C.3 or 10.06.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the

Supplementary Conditions; or

2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
3. gives written notice to the other party of the intent to submit the Contract 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.
 3. delivered by electronic means to or from the Project Manager.
- B. Business address changes must be promptly made in writing to the other party.
- C. Whenever the Contract Documents specifies giving notice by electronic means such electronic notice shall be deemed sufficient upon confirmation of receipt by the receiving party.

17.02 *Computation of Times*

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 the next Working Day shall become the last day of the period.

17.03 *Cumulative Remedies*

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*

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 *Headings*

Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

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SECTION 00 73 00
SUPPLEMENTARY CONDITIONS
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-4.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for bidding. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-4.01A.1., "Availability of Lands"

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of 7/29/2020

Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
------------------	-------	------------------------------

Nottingham intersection to be discussed at Pre-Bid Meeting

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-4.01A.2, "Availability of Lands"

Utilities or obstructions to be removed, adjusted, and/or relocated

1 The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated
2 as of 7/29/2020

3

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

None

4 The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed,
5 and do not bind the City.

6

7 **SC-4.02A., “Subsurface and Physical Conditions”**

8

9 The following are reports of explorations and tests of subsurface conditions at the site of the Work:

10

11 None

12

13 The following are drawings of physical conditions in or relating to existing surface and subsurface
14 structures (except Underground Facilities) which are at or contiguous to the site of the Work:

15

16 None

16

17 **SC-4.06A., “Hazardous Environmental Conditions at Site”**

18

19 The following are reports and drawings of existing hazardous environmental conditions known to the City:

20

21 *None*

21

22 **SC-5.03A., “Certificates of Insurance”**

23

24 The entities listed below are "additional insureds as their interest may appear" including their respective
25 officers, directors, agents and employees.

26

- 27 (1) City
- 28 (2) Consultant: HDR, Binkley & Barfield
- 29 (3) Other: *None*

30

31 **SC-5.04A., “Contractor’s Insurance”**

32

33 The limits of liability for the insurance required by Paragraph GC-5.04 shall provide the following
34 coverages for not less than the following amounts or greater where required by laws and regulations:

35

36 **5.04A.** Workers' Compensation, under Paragraph GC-5.04A.

37

38 *Statutory limits*
39 *Employer's liability*
40 *\$100,000 each accident/occurrence*
41 *\$100,000 Disease - each employee*
42 *\$500,000 Disease - policy limit*

43

44 **SC-5.04B., “Contractor’s Insurance”**

45

46 **5.04B.** Commercial General Liability, under Paragraph GC-5.04B. Contractor's Liability Insurance
47 under Paragraph GC-5.04B., which shall be on a per project basis covering the Contractor with
48 minimum limits of:

49

1 \$1,000,000 each occurrence
 2 \$2,000,000 aggregate limit
 3

4 The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the
 5 General Aggregate Limits apply separately to each job site.
 6

7 The Commercial General Liability Insurance policies shall provide “X”, “C”, and “U” coverage’s.
 8 Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.
 9

10 **SC 5.04C., “Contractor’s Insurance”**

11 **5.04C.** Automobile Liability, under Paragraph GC-5.04C. Contractor’s Liability Insurance under
 12 Paragraph GC-5.04C., which shall be in an amount not less than the following amounts:
 13

- 14 (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto",
 15 defined as autos owned, hired and non-owned.

16
 17 \$1,000,000 each accident on a combined single limit basis. Split limits are acceptable if limits are at
 18 least:

- 19
 20 \$250,000 Bodily Injury per person /
 21 \$500,000 Bodily Injury per accident /
 22 \$100,000 Property Damage
 23

24 **SC-5.04D., “Contractor’s Insurance”**

25
 26 None
 27

28 **SC-6.09., “Permits and Utilities”**

29
 30 **SC-6.09A., “Contractor obtained permits and licenses”**

31 The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:
 32 1. All permits not obtained by the City will be obtained by the Contractor.
 33

34 **SC-6.09B. “City obtained permits and licenses”**

35 The following are known permits and/or licenses required by the Contract to be acquired by the City:
 36 1. All TxDOT permits have been obtained by the City.
 37

38 **SC-6.09C. “Outstanding permits and licenses”**

39
 40 The following is a list of known outstanding permits and/or licenses to be acquired, if any as of 7/29/2020:
 41

42 **Outstanding Permits and/or Licenses to Be Acquired**

OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION
-------	--------------------------------	---------------------------

“None”

43
 44
 45 **SC-7.02., “Coordination”**

46
 47 The individuals or entities listed below have contracts with the City for the performance of other work at
 48 the Site:
 49

Vendor	Scope of Work	Coordination Authority
--------	---------------	------------------------

<i>None</i>		

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SC-8.01, “Communications to Contractor”

None

SC-9.01., “City’s Project Manager”

The City’s Project Manager for this Contract is *Dustin Draper*, or his/her successor pursuant to **written notification from the City Engineer.**

SC-13.03C., “Tests and Inspections”

All required testing will be completed by the contractor.

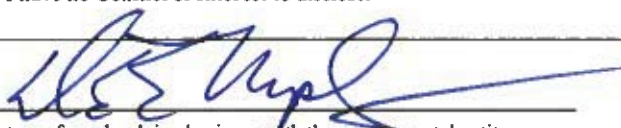
SC-16.01C.1, “Methods and Procedures”

None

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

1
2SECTION 00 35 13
CONFLICT OF INTEREST AFFIDAVIT

	CONFLICT OF INTEREST QUESTIONNAIRE -	FORM CIQ
	For vendor or other person doing business with local governmental entity	
	This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.	
	This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).	
	By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.	
	A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.	
1	Name of vendor who has a business relationship with local governmental entity.	
	Quality Excavation, LLC	
2	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. N/A	
	(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)	
3	Name of local government officer about whom the information in this section is being disclosed.	
	N/A	
	_____ Name of Officer	
	This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.	
	A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?	
	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	
	B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?	
	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	
	C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?	
	<input type="checkbox"/> Yes <input type="checkbox"/> No N/A	
	D. Describe each employment or business and family relationship with the local government officer named in this section. N/A	
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.	
5	 _____ Signature of vendor doing business with the governmental entity Doug Murphy, Sr. Estimator/Project Mgr.	
	_____ Date 9/15/20	

3

END OF SECTION

Certificate Of Completion

Envelope Id: 3E777FD2195C45F793B99A298A5D809A	Status: Completed
Subject: Please DocuSign: City Council Contract 7413 - 2019 Intersection Improvements	
Source Envelope:	
Document Pages: 94	Signatures: 5
Certificate Pages: 6	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Laura Hermosillo
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	laura.hermosillo@cityofdenton.com
	IP Address: 198.49.140.104

Record Tracking

Status: Original	Holder: Laura Hermosillo	Location: DocuSign
10/5/2020 2:16:30 PM	laura.hermosillo@cityofdenton.com	

Signer Events

Signer Events	Signature	Timestamp
Laura Hermosillo laura.hermosillo@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	Completed Using IP Address: 198.49.140.104	Sent: 10/5/2020 2:27:17 PM Viewed: 10/5/2020 2:27:31 PM Signed: 10/5/2020 2:27:31 PM

Lori Hewell lori.hewell@cityofdenton.com Purchasing Manager City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/5/2020 2:27:35 PM Viewed: 10/6/2020 5:58:16 PM Signed: 10/6/2020 5:59:56 PM
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Mack Reinwand mack.reinwand@cityofdenton.com City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104	Sent: 10/5/2020 2:27:35 PM Viewed: 10/9/2020 12:48:12 PM Signed: 10/9/2020 12:49:51 PM
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Rob Mallon rob@qualityexcavationltd.com Operations Manager Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	 Signature Adoption: Pre-selected Style Using IP Address: 173.219.29.14	Sent: 10/9/2020 12:49:56 PM Viewed: 10/9/2020 1:12:56 PM Signed: 10/9/2020 1:15:59 PM
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ID: 88be2371-76b9-4443-9906-f5bc8d00b3f7

Signer Events

Rebecca Diviney
 Rebecca.Diviney@cityofdenton.com
 Director of Capital Projects/City Engineer
 Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Rebecca Diviney
 CE9F2B4E4B6745F...

Signature Adoption: Pre-selected Style
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 Signed: 10/9/2020 3:18:28 PM

Electronic Record and Signature Disclosure:

Accepted: 10/9/2020 1:32:38 PM
 ID: 64667de6-b64b-4b64-842a-73a5abc66691

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Contract Administrator
 City of Denton
 Security Level: Email, Account Authentication (None)

Completed

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Todd Hileman
 Todd.Hileman@cityofdenton.com
 City Manager
 City of Denton
 Security Level: Email, Account Authentication (None)

DocuSigned by:
Todd Hileman
 B776C711BA0D454...

Signature Adoption: Pre-selected Style
 Using IP Address: 47.184.93.41

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 Signed: 12/4/2020 2:11:03 PM

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Accepted: 7/25/2017 11:02:14 AM
 ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

Rosa Rios
 rosa.rios@cityofdenton.com
 City Secretary
 Security Level: Email, Account Authentication (None)

DocuSigned by:
Rosa Rios
 1C5CA8C5E175493...

Signature Adoption: Pre-selected Style
 Using IP Address: 198.49.140.104

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 Signed: 12/4/2020 2:14:40 PM

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Editor Deliver Events	Status	Timestamp
Agent Deliver Events	Status	Timestamp
Intermediar Deliver Events	Status	Timestamp
Certified Deliver Events	Status	Timestamp
Car on Cop Events	Status	Timestamp

Cheyenne Defee
 cheyenne.defee@cityofdenton.com
 Contract Administrator
 City of Denton
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imberlie Padilla
 imberlie@qualityexcavationltd.com
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Sherri Thurman
 sherri.thurman@cityofdenton.com
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Zolaina Parker
 Zolaina.Parker@cityofdenton.com
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Dustin Draper
 Dustin.Draper@cityofdenton.com
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Notar Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	12/4/2020 2:14:22 PM
Signing Complete	Security Checked	12/4/2020 2:14:40 PM
Completed	Security Checked	12/4/2020 2:14:44 PM

Document Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Denton:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: purchasing@cityofdenton.com

To advise City of Denton of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at melissa.kraft@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Denton

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Denton

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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