

# CITY OF LUCAS, TEXAS

SPECIFICATIONS AND CONTRACT DOCUMENTS  
FOR THE CONSTRUCTION OF THE

## STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS



PREPARED BY

**BIRKHOFF, HENDRICKS & CARTER, L.L.P.**  
PROFESSIONAL ENGINEERS  
DALLAS, TEXAS

FEBRUARY 2018

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This project shall be constructed by utilizing the North Central Texas Council of Governments Specifications for Public Works Construction, October 2004 Edition, with Latest Amendments. Any permissible deviation from those standard specifications will be noted in the section of Special Provisions to the NCTCOG Standard Specifications, Special Contract Requirements, Plans and/or these Specifications.

SPECIAL PROVISIONS TO THE GENERAL PROVISIONS

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2/21/18



## ADVERTISEMENT FOR BIDS

Sealed bids addressed to the City of Lucas, Texas for the **Stinson Road Paving & Drainage Improvements (Bid 012-18)**, for the City of Lucas, Texas, hereinafter called the "City" in accordance with the plans, specifications and contract documents prepared by Birkhoff, Hendricks & Carter, L.L.P., will be received at the office of the City Secretary of the City of Lucas, Texas, at 665 Country Club Road, Lucas, Texas, 75002 until **2:00 p.m. on Thursday, March 8, 2018**. Bids received by the appointed time will be opened and read aloud. Any bids received after 2:00 p.m. on Thursday, March 8, 2018, will be returned unopened. There will be a pre-bid conference on Tuesday, February 27, 2018 at 2:00 p.m. at City Hall. Attendance at the pre-bid conference is not mandatory. The Contractor shall identify his bid on the outside of the envelope by writing the words: "City of Lucas, Texas, Stinson Road & Lucas Road Paving & Drainage Improvements (Bid 012-18)."

All questions concerning this project should first be directed to Mr. Joseph Grajewski, P.E., Project Engineer, Birkhoff, Hendricks & Carter, L.L.P. at 214-361-7900. Bidders desiring further information or interpretation of the plans and specifications must make request for such information to the Engineer by closed of business on Friday, March 2, 2018.

Bids shall be accompanied by a cashier's check or certified check upon a national or state bank in an amount not less than five percent (5%) of the total maximum bid price payable without recourse to the City of Lucas or a bid bond in the same amount from a reliable surety company as a guarantee that the bidder will enter into a contract, and Bidder shall execute a Performance Bond within ten (10) days after notice of award of contract to him.

Plans, specifications and bidding documents may be examined at the office of Birkhoff, Hendricks & Carter, L.L.P., Professional Engineers, 11910 Greenville Ave., Suite 600, Dallas, Texas 75243, and purchased for the price of Thirty-five dollars (\$35.00) per set, non-refundable. Plans, specifications and bidding documents are also available for download from the City of Lucas website at the following address:

<https://www.lucastexas.us/bid-postings>

The right is reserved by the Mayor and the City Council, as the interest of the City may require, to reject any and all bids and to waive any informality in bids received. The Bidder (Proposer) must supply all the information required by the Proposal Form. A Performance Bond, Labor and Material Payment Bond and Maintenance Bond will be required by the Owner; each bond shall be in the amount of 100% of the total contract amount. No officer or employee of the City of Lucas shall have a financial interest, direct or indirect, in any contract with the City of Lucas.

Publication Dates:      1<sup>st</sup> Advertisement Thursday, February 22, 2018  
   2<sup>nd</sup> Advertisement Thursday, March 1, 2018

**PROPOSAL  
TO  
CITY OF LUCAS (OWNER)**

**STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS**

**LUCAS, COLLIN COUNTY, TEXAS**

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm, or corporation, that he has carefully examined the Form of Contract, Notice to Contractors, specifications and the plans therein referred to, and has carefully examined the location, conditions, and classes of materials of the proposed work, and agrees that he will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein.

It is understood that the following quantities of work to be done at unit prices are approximate only, and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit prices and material to be furnished may be increased or diminished as may be necessary to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

It is agreed further that lump sum prices may be increased to cover additional work not shown on the plans or required by the specifications, in accordance with the provisions of the General Conditions. Similarly, the price may be decreased to cover deletions of work so ordered.

It is understood and agreed that the work is to be completed in full within the time designated in the Special Conditions of these specifications.

Accompanying this proposal is a (Certified or Cashier's Check payable to the Owner) (Bid Bond) in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ).

The bid security accompanying this proposal shall be returned to the bidder, unless in case of the acceptance of the proposal the bidder shall fail to execute a contract and file a performance and payment bond within ten (10) days after its acceptance, in which case the bid security shall become the property of the Owner and shall be considered as payment for damages due to delay and other inconveniences suffered by the Owner on account of such failure of the bidder. It is understood that the Owner reserves the right to reject any and all bids.



**CITY OF LUCAS, TEXAS**  
**Stinson Road Paving & Drainage Improvements**

**BID SCHEDULE**

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
101	3	Sta.	Prepare Right-of-Way, Insurance, Bonds & Mobilization complete in place, the sum of _____ _____ Dollars and _____ Cents per Station		
102	476	C.Y.	Unclassified Excavation complete in place, the sum of _____ _____ Dollars and _____ Cents per Cubic Yard		
103	748	S.Y.	Remove & Dispose of Asphalt Pavement complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
104	37	L.F.	Remove & Dispose of Existing 18-Inch CMP complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
105	37	L.F.	Remove & Dispose of Existing 36-Inch RCP complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
106	895	S.Y.	Furnish & Install 6-Inch Reinforced Concrete Pavement complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
107	1,165	S.Y.	Furnish & Install 8-Inch Lime Treated Subgrade complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
108	21	Tons	Furnish & Install Hydrated Lime (36 lbs/SY) complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
109	47	Tons	Furnish & Install Type 'B' HMAC complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
110	65	Tons	Furnish & Install Type 'D' HMAC complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
111	62	S.Y.	Wedge Mill Existing Asphalt Pavement complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
112	83	L.F.	Furnish & Install 2-3' x 2' Reinforced Concrete Box Culvert complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
113	2	Ea.	Furnish & Install Safety End Treatment for Box Culverts complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
114	60	L.F.	Furnish & Install 18-Inch Corrugated Metal Pipe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
115	2	Ea.	Furnish & Install 18-Inch Safety End Treatment complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
116	354	L.F.	Furnish & Install 4-Inch Solid White Thermoplastic Stripe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
117	153	L.F.	Furnish & Install 4-Inch Solid Yellow Thermoplastic Stripe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
118	2	Ea.	Furnish & Install White Thermoplastic Turn Arrow & "ONLY" Marking complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
119	1	Ea.	Furnish & Install Sign R3-8b(MOD) complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
120	1	Ea.	Furnish & Install Sign R1-1 complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
121	1	Ea.	Furnish & Install Sign W1-10 complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
122	965	S.Y.	Furnish, Install & Maintain Solid Block Sod complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
123	1	L.S.	Furnish Stormwater Pollution Prevention Plan complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
124	1	L.S.	Furnish, Install, Maintain & Remove Erosion Control Devices complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
125	1	L.S.	Furinsh, Install, Maintin & Remove Traffic Control Devices complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
<b>AMOUNT OF BASE BID (Items 101 Through 125)</b>					

**COUNTRY CLUB ROAD & W. LUCAS ROAD INTERSECTIONS IMPROVEMENTS  
ADDITIVE ALTERNATE NO. 1**

**BID SCHEDULE**

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
201	1	L.S.	Prepare Right-of-Way, Insurance, Bonds & Mobilization complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
202	200	C.Y.	Unclassified Excavation complete in place, the sum of _____ _____ Dollars and _____ Cents per Cubic Yard		
203	230	S.Y.	Remove & Dispose of Asphalt Pavement complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
204	369	L.F.	Remove & Dispose of Metal Beam Guard Fence complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
205	61	L.F.	Remove & Dispose of 2-24" Corrugated Metal Culvert Pipe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
206	20	L.F.	Remove & Dispose of 2-24" Reinforced Concrete Culvert Pipe and Concrete Headwalls complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
207	1	Ea.	Remove & Replace Road Sign Assembly complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
208	1	Ea.	Remove & Dispose of Road Sign Assembly complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
209	2	Ea.	Remove & Dispose of 36-inch Safety End Treatment complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
210	1	Ea.	Remove & Dispose of 24-inch Culvert Headwall complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
211	1	L.S.	Remove, Stockpile & Re-Install Concrete Riprap complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
212	50	Tons	Furnish & Install Type 'B' HMAC complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
213	70	Tons	Furnish & Install Type 'D' HMAC complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
214	125	Tons	Furnish & Install 8-Inch Flex Base complete in place, the sum of _____ _____ Dollars and _____ Cents per Ton		
215	5	L.F.	Furnish & Install 18-Inch Reinforced Concrete Pipe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
216	53	L.F.	Furnish & Install 24-Inch Reinforced Concrete Pipe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		
217	82	L.F.	Furnish & Install 36-Inch Reinforced Concrete Pipe complete in place, the sum of _____ _____ Dollars and _____ Cents per Linear Foot		



Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
218	1	Ea.	Connect to Existing 24-Inch RCP with a Concrete Collar complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
219	2	Ea.	Connect to Existing 36-Inch RCP with a Concrete Collar complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
220	1	Ea.	Furnish & Install 18-Inch TxDOT CH-FW-0 Headwall complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
221	1	Ea.	Furnish & Install 24-Inch TxDOT CH-FW-0 Headwall complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
222	1	Ea.	Furnish & Install 24-Inch Safety End Treatment complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		
223	1	Ea.	Furnish & Install 36-Inch Safety End Treatment complete in place, the sum of _____ _____ Dollars and _____ Cents per Each		

Item No.	Estimated Quantity	Unit	Description and Price in Words	Price in Figures	Extended Amount
224	1	L.S.	Modifications to Pavement Striping on West Lucas Road for Westbound Left Turn Lane complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
225	1,000	S.Y.	Furnish, Install & Maintain Solid Block Sod complete in place, the sum of _____ _____ Dollars and _____ Cents per Square Yard		
226	1	L.S.	Furnish Stormwater Pollution Prevention Plan complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
227	1	L.S.	Furnish, Install, Maintain & Remove Erosion Control Devices complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
228	1	L.S.	Furnish, Install, Maintain & Remove Traffic Control Devices complete in place, the sum of _____ _____ Dollars and _____ Cents per Lump Sum		
<b>AMOUNT OF BID: ADDITIVE ALTERNATE NO. 1 (Items 201 Through 228)</b>					



In the event of the award of a contract to the undersigned, the undersigned will furnish a Performance Bond and a Payment Bond for the full amount of the contract, to secure compliance with the terms and provisions of the Contract Documents.

The work proposed to be done shall be accepted when fully completed and finished in accordance with the plans and specifications.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

NOTE: Unit and lump sum prices must be shown in words and figures for each item listed in the proposal and in the event of discrepancy the words shall control.

Receipt is hereby acknowledged for the following addenda to the contract documents:

Addendum No. 1 dated	_____	Received	_____
Addendum No. 2 dated	_____	Received	_____
Addendum No. 3 dated	_____	Received	_____
Addendum No. 4 dated	_____	Received	_____
Addendum No. 5 dated	_____	Received	_____

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
(please print name)

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Seal and Authorization  
(If a Corporation)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, County, State and Zip

\_\_\_\_\_  
Telephone Fax No.

E-Mail Address: \_\_\_\_\_

## BIDDER'S BOND

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
\_\_\_\_\_ (hereinafter called the Principal(s)), as Principal(s), and  
\_\_\_\_\_ (hereinafter called the  
Surety(s)), as Surety(s), are held and firmly bound unto the CITY OF LUCAS (hereinafter  
called the Obligee), in the amount of: \_\_\_\_\_

\_\_\_\_\_ Dollars (\$\_\_\_\_\_) (an amount equal to five percent of the Total Bid Price, including Cash Allowances and Alternate Bids, if any) lawful money of the United States for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted on or about this day a proposal offering to perform the following project:

### **STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS**

NOW, THEREFORE, if the said Principal's bid as stated in its proposal is accepted by the City, and said Principal executes and returns to the City the number of original counterparts of the Contract Agreement required by the City, on the forms prepared by the City, for the work described herein and also executes and returns the same number of the Performance, Payment and Maintenance Bonds (such bonds to be executed by a Corporate Surety authorized by the State Board of Insurance to conduct insurance business in the State of Texas, and having an underwriting limitation in at least the amount of the bond) in connection with the work described herein, within the time specified, then this obligation shall become null and void; otherwise it is to remain in full force and effect.

In the event that the Principal is unable to or fails to perform the obligations undertaken herein, the undersigned Principal and Surety shall be liable to the City for the full amount of this obligation which is hereby acknowledged as the amount of damages which will be suffered by the City on account of the failure of such Principal to perform such obligations, the actual amount of such damages being difficult to ascertain.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS WHEREOF, the said Principal(s) and Surety(s) have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Principal

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print Name)

Name: \_\_\_\_\_  
(Print Name)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

The undersigned surety company represents that it is duly qualified to do business in **Texas and is listed on the U.S. Department of the Treasury list of approved sureties**, and hereby designates \_\_\_\_\_, an agent resident in \_\_\_\_\_ County, **Texas**, to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such suretyship.

\_\_\_\_\_  
Surety

By: \_\_\_\_\_  
(Signature)

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone/Fax: \_\_\_\_\_

**DRAFTER'S NOTE: If signed by an officer of the Surety Company, there must be on file a certified extract from the by-laws showing that this person has authority to sign such obligation. If signed by an Attorney-in-Fact, we must have a copy of the Power of Attorney for our files, AND ATTACHED TO THIS BOND.**

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }
COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this \_\_\_ day of \_\_\_, A.D. 20 \_\_\_, by and between The City of Lucas, Texas, a municipal corporation, of the County of Collin and State of Texas, acting through Its City Manager thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and

of the City of \_\_\_, County of \_\_\_ and State of \_\_\_, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by Birkhoff, Hendricks & Carter, L.L.P., Professional Engineers, 11910 Greenville Ave., Suite 600, Dallas, Texas 75243 herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, the General Conditions of the Agreement, and the Performance and Payment Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within ninety (90) calendar days (working days) after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

City of Lucas, Texas
Party of the First Part (OWNER)

Party of the Second Part (CONTRACTOR)

By: Joni Clarke, City Manager

By:

Attest:

Attest:

**PERFORMANCE BOND**

STATE OF TEXAS            }  
COUNTY OF COLLIN        }

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

**WHEREAS**, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_, to

**STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS**

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

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

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Texas Government Code, Chapter  
2253, as amended, and Article 7.19-1 of the Insurance Code, as amended, and all liabilities on this bond shall be determined  
in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

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

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

The name and address of the Resident Agent of Surety is \_\_\_\_\_  
\_\_\_\_\_

\* Not applicable for federal work. See "The Miller Act," 40 U.S.C. §270.



**PAYMENT BOND**

STATE OF TEXAS            }  
COUNTY OF COLLIN        }

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

**WHEREAS**, the Principal has entered into a certain written contract with the Owner, dated the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_, to

**STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS**

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

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

**PROVIDED, HOWEVER**, that this bond is executed pursuant to the provisions of Texas Government Code, Chapter  
2253, as amended, and Article 7.19-1 of the Insurance Code, as amended, and all liabilities on this bond shall be determined  
in accordance with the provisions of said Article to the same extent as if it were copied at length herein.

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

**IN WITNESS WHEREOF**, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Principal  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Surety  
**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
\_\_\_\_\_

The name and address of the Resident Agent of Surety is \_\_\_\_\_  
\_\_\_\_\_



***CERTIFICATE OF INSURANCE(S)***



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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

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

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

**COVERAGES**

CERTIFICATE NUMBER:

REVISION NUMBER:

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

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

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

**CERTIFICATE HOLDER****CANCELLATION**

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

AUTHORIZED REPRESENTATIVE



# INSURANCE BINDER

DATE (MM/DD/YYYY)

**THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.**

AGENCY		COMPANY		BINDER #	
PHONE (A/C, No, Ext):		FAX (A/C, No):		THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:	
CODE:		SUB CODE:		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)	
AGENCY CUSTOMER ID:		INSURED			
		DATE EFFECTIVE		TIME	
		DATE		EXPIRATION	
				TIME	
				12:01 AM	
				NOON	

**COVERAGES****LIMITS**

TYPE OF INSURANCE	COVERAGE/FORMS	DEDUCTIBLE	COINS %	AMOUNT
<b>PROPERTY</b> CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR RETRO DATE FOR CLAIMS MADE:	<h1>SAMPLE</h1>	EACH OCCURRENCE		\$
		DAMAGE TO RENTED PREMISES		\$
		MED EXP (Any one person)		\$
		PERSONAL & ADV INJURY		\$
		GENERAL AGGREGATE		\$
		PRODUCTS - COMP/OP AGG		\$
		COMBINED SINGLE LIMIT		\$
		BODILY INJURY (Per person)		\$
		BODILY INJURY (Per accident)		\$
		PROPERTY DAMAGE		\$
	MEDICAL PAYMENTS		\$	
	PERSONAL INJURY PROT		\$	
	UNINSURED MOTORIST		\$	
				\$
<b>VEHICLE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				
<b>VEHICLE PHYSICAL DAMAGE</b> DED <input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES COLLISION: _____ OTHER THAN COL: _____		ACTUAL CASH VALUE		
		STATED AMOUNT		\$
<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT		\$
		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT		\$
		AGGREGATE		\$
<b>EXCESS LIABILITY</b> <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM    RETRO DATE FOR CLAIMS MADE:		EACH OCCURRENCE		\$
		AGGREGATE		\$
		SELF-INSURED RETENTION		\$
<b>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</b>		WC STATUTORY LIMITS		
		E.L. EACH ACCIDENT		\$
		E.L. DISEASE - EA EMPLOYEE		\$
		E.L. DISEASE - POLICY LIMIT		\$
<b>SPECIAL CONDITIONS / OTHER COVERAGES</b>		FEES		\$
		TAXES		\$
		ESTIMATED TOTAL PREMIUM		\$

**NAME & ADDRESS**

	<input type="checkbox"/> MORTGAGEE	<input type="checkbox"/> ADDITIONAL INSURED
	<input type="checkbox"/> LOSS PAYEE	
	LOAN #	
	AUTHORIZED REPRESENTATIVE	

## CONDITIONS

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

### Applicable in California

When this form is used to provide insurance in the amount of one million dollars (\$1,000,000) or more, the title of the form is changed from "Insurance Binder" to "Cover Note".

### Applicable in Colorado

With respect to binders issued to renters of residential premises, home owners, condo unit owners and mobile home owners, the insurer has thirty (30) business days, commencing from the effective date of coverage, to evaluate the issuance of the insurance policy.

### Applicable in Delaware

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

### Applicable in Florida

Except for Auto Insurance coverage, no notice of cancellation or nonrenewal of a binder is required unless the duration of the binder exceeds 60 days. For auto insurance, the insurer must give 5 days prior notice, unless the binder is replaced by a policy or another binder in the same company.

### Applicable in Maryland

The insurer has 45 business days, commencing from the effective date of coverage to confirm eligibility for coverage under the insurance policy.

### Applicable in Michigan

The policy may be cancelled at any time at the request of the insured.

### Applicable in Nevada

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.

### Applicable in the Virgin Islands

This binder is effective for only ninety (90) days. Within thirty (30) days of receipt of this binder, you should request an insurance policy or certificate (if applicable) from your agent and/or insurance company.

**CITY OF LUCAS, TEXAS**

**PUBLIC WORKS CONSTRUCTION PROJECT**

**Stinson Road Curve Paving & Drainage Improvements**

**Vendor Name**

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# City of Lucas, Texas

This Agreement is made by and between the City of Lucas, Texas, a home-rule municipality (hereinafter referred to as the "City") and [ENTER CONTRACTOR LEGAL NAME], (hereinafter referred to as the "Contractor") for construction of Stinson Road Paving & Drainage Improvements, (hereinafter referred to as the "Project"), the City and the Contractor hereby agreeing as follows:

## ARTICLE I

### THE CONTRACT AND THE CONTRACT DOCUMENTS

#### 1.1 THE CONTRACT

1.1.1 The contract between the City and the Contractor, of which this agreement (sometimes referred to herein as the "Contract") is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

#### 1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this agreement, the General Conditions, the Special Conditions, the Invitation to Bid, Requirements and Instructions to Bidders, the Specifications, the Drawings, the Shop Drawings, the Project Manual, all Change Orders and Field Orders issued hereafter, the addenda, exhibits and attachments thereto, any other amendments hereto executed by the parties hereafter, together with the following (if any):

#### 1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the City and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the City and Contractor not expressly made a part hereof.

#### 1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

#### 1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The word "City" includes the City of Lucas, Texas, a municipal corporation, and its public officials, officers, employees, agents and employees. The word "Contractor" includes the Contractor and its officers, employees, agents and representatives. The word "include", "includes", or "including", as used in this subparagraph and in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the City of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the City or the Engineer of the Contract Documents, Shop Drawings or Product Data, shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Engineer to only prepare documents for the Project, including the Drawings, Plans and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. THE CONTRACTOR ASSUMES ALL RISK OF ERRORS, AMBIGUITIES AND INACCURACIES. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## **1.6 OWNERSHIP OF CONTRACT DOCUMENTS**

1.6.1 The Contract Documents, and each of them individually and collectively, shall remain the property of the City. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization.

## **ARTICLE II**

### **THE WORK**

**2.1** The Contractor shall perform all of the Work required, implied or reasonably inferable from this Contract.

## **2.2 WORK**

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, permits and licenses required of the Contractor, power, water, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Approximate quantities for Stinson Road Paving & Drainage Improvements include major bid items and quantities listed in the bid schedule; and other miscellaneous improvements as shown on the plans and in accordance with the specifications.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

## **ARTICLE III**

### **CONTRACT TIME**

#### **3.1 SUBSTANTIAL COMPLETION**

3.1.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

#### **3.2 TIME**

3.2.1 The Contractor shall commence the Work within 10 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than ninety (90) calendar days from the date specified in the Notice to Proceed. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the Contract Time" and the "scheduled completion date." The execution of this Contract by the Contractor constitutes an agreement that adequate time has been allotted for this Contract, given the Contract Price.

3.2.2 Work may proceed on any day of the week, including weekends, and at any time of the day. However, work shall not occur on such days or at such times as, in the City's or Engineer's discretion, may be a violation of noise or environmental regulations or ordinances, or when the presence of workers, equipment or materials may create an abnormally hazardous condition.

3.2.3 The Contractor shall submit and comply with construction schedules establishing completion timelines and deadlines for each component of the Project. Construction schedules shall be submitted to and approved by the Engineer and the City on a regular basis as required by the Contract Documents. If no reference is made to construction schedules in the Contract Documents, then construction schedules shall be submitted with each Application for Payment.

### **3.3 TIME IS OF THE ESSENCE**

3.3.1 The scheduled completion date is based on public necessity. The scheduled completion date is factored into and is a material component of the Contract Price. All limitations of time set forth in the Contract Documents are of the essence of this Contract.

3.3.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THE WORK AND THE COMPLETION OF THE PROJECT ON OR BEFORE THE SCHEDULED COMPLETION DATE. THE SCHEDULED COMPLETION DATE IS A DEADLINE. THE CITY EMPLOYS A ZERO-TOLERANCE POLICY REGARDING THE TIME FOR COMPLETION. The time for completion is an essential and material term of this Contract and the Contractor's failure to achieve substantial completion on the date stated herein, to comply with work schedules, or achieve milestones in approved construction schedules, shall be a material breach and default of this Contract.

3.3.3 The City will assess liquidated damages for late or untimely performance and may, at the City's sole option, elect to allow Contractor to continue with the Work, or may declare Contractor to be in breach and default of the Contract and order Contractor to remove all equipment and personnel from the work site. All remedies for Contractor's late performance shall be nonexclusive and cumulative without waiver of any other, and the City's election of one shall not preclude the City from pursuing any other.

3.3.4 It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and in the contract price and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors or of utilities that may be performing work at the Project site unrelated to this Contract. These delays have been considered and included in the determination of the scheduled completion date and the Contract Price.

### **3.4 LIQUIDATED DAMAGES**

3.4.1 The Contractor shall pay the City the sum of **\$240.00** per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that Substantial Completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. If the Contractor has submitted a Statement of Delay with the appropriate Application for Payment as required by Subparagraph 5.2.3, and/or has complied with the notice and Change Order requirements of this Contract, the Engineer shall have sole discretion to determine whether a delay is excused or unexcused and the Engineer's determination thereof shall be final and binding on the parties.

### **3.5 NO DAMAGES FOR DELAY; NO BACK-CHARGES; DAMAGE WAIVER**

3.5.1 No claim shall be made by the Contractor to the City, and no damages, costs or extra compensation shall be allowed or paid by the City to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance, regardless of cause, shall be to request time extensions by written change orders as provided for hereinafter. The failure to seek or obtain a change order for time extension shall be deemed a waiver thereof and Contractor shall be regarded as having made a determination that the delay will not affect the completion of the Work. Should the Contractor be delayed by an act of the City, or should the City order a stoppage of the Work for sufficient cause unrelated to any act or omission of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.2 The City shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the City or City's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm. The Contractor shall not be compensated for periods of delay caused by a suspension of the work by the City. If work is suspended due to unsuitable conditions through no fault of the Contractor, an extension of time shall be granted by the City by Change Order upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.5.3 The Contractor shall not have or assert any claim against the City for damages or back-charges of any kind for any reason, including but not limited to claims for Extra Work, damages, economic loss, additional costs, unknown latent site conditions, and refusals by the City to grant extensions of time, unless supported and authorized by a written Change Order or separate agreement signed by all parties. The Contractor, in entering into this Contract, hereby waives, releases, quitclaims, discharges and holds harmless the City from and against any and all claims, damages, liabilities and losses, save and except those arising under Paragraph 12.1 of this Contract.

## **ARTICLE IV**

### **CONTRACT PRICE**

#### **4.1 THE CONTRACT PRICE**

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of

**\$(ENTER CONTRACT AMOUNT).**

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract, or the assessment of liquidated damages or the award of an early completion bonus.

## **ARTICLE V**

### **PAYMENT OF THE CONTRACT PRICE**

#### **5.1 SCHEDULE OF VALUES**

5.1.1 The Schedule of Values, submitted to and accepted by the City and Engineer at the time of the Contractor's bid, allocates the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall have been prepared, or at the City's or Engineer's request shall be amended prior to the commencement of construction, in such form, with such detail, and supported by such data as the Engineer or the City may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Engineer and the City.

#### **5.2 PAYMENT PROCEDURE**

5.2.1 The City shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Engineer and upon Certificates for Payment subsequently issued to the City by the Engineer, the City shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 APPLICATION FOR PAYMENT - On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the City or the Engineer may require. The Contractor may request payment for that portion of the Contract Price properly allocable to Contract requirements properly provided and to labor, materials and equipment properly incorporated in the Work, less retainage and less the total amount of previous payments received from the City. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the City the amount properly owing to the Contractor. The City shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the City from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 STATEMENT OF DELAY - Each Application for Payment shall include a Statement of Delay showing the number of days lost due to inclement weather, conflicts with other City contractors, utilities, or design specifications, or other proper reasons. The failure to submit the Statement of Delay shall be a waiver of any claim for additional days or extensions of the scheduled completion date.

5.2.5 RETAINAGE - If the Contract Price set forth in Subparagraph 4.1.1 exceeds \$400,000, the City shall withhold retainage of ten (10) percent from each progress payment to secure performance of the Contract and shall deposit in an interest-bearing account that portion of the retainage withheld that exceeds five (5) percent of the progress payment. If a different percentage is set forth in the Invitation to Bid, then that percentage shall apply.

5.2.6 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the City when installed at the Project site, regardless of the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the City shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.7 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided, the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.8 No progress payment, nor any use or occupancy of the Project by the City, shall be interpreted to constitute an acceptance of any Work not in strict compliance with this Contract.

### **5.3 WITHHELD PAYMENT**

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) defective Work not remedied by the Contractor or, in the opinion of the City, likely to be remedied by the Contractor;
- (b) claims of third parties against the City or the City's property;

- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion (final completion meaning the full and final completion of all work called for by this Contract and final acceptance by the Engineer and the City);
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the City or a third party to whom the City is, or may be, liable.
- (h) failure to submit an updated project schedule in accordance with Subparagraph 3.2.3.
- (i) failure to submit record drawings in accordance with Subparagraph 7.9.1.

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The City shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

#### **5.4 UNEXCUSED FAILURE TO PAY**

5.4.1 If within twenty (20) days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the City and the Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the City have been received. Late payments shall not accrue interest or other late charges.

#### **5.5 CERTIFICATE OF SUBSTANTIAL COMPLETION**

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer a list of items to be completed or corrected. When the Engineer and the City on the basis of an inspection determine that the Work is in fact substantially complete, the Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the City and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. In no event, however, shall the date of Final Completion be delayed. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work; however, the maintenance bond required herein, and the assurances given thereunder, shall commence of and from the date of final acceptance of the work by the City. The Certificate of Substantial Completion shall be submitted to the City and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the City and the Contractor of the Certificate of Substantial Completion, the City shall pay the Contractor for all work completed to date, less retainage.

#### **5.6 COMPLETION AND FINAL PAYMENT**

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the City and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the City that the Project is complete and the



Contractor is entitled to the remainder of the unpaid Contract Price (including retainage and the interest accrued on the retainage in excess of five (5) percent if the Contract Price is in excess of \$400,000), plus an early completion bonus, if any, less any amount withheld pursuant to this Contract. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the City from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the City the sum set forth hereinabove as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that final completion will be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Liquidated damages shall be deducted first from any earned early completion bonus, then from any sums otherwise due to the Contractor.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the City; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or indemnify the City from liability.

5.6.3 The City shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Other than interest on retainage in excess of 5% under Paragraph 5.2.5, under no circumstances shall Contractor be entitled to receive interest on any payments or monies due Contractor by the City, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

## **ARTICLE VI**

### **THE CITY**

#### **6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM CITY**

6.1.1 The City shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The City shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the City shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The City shall furnish the Contractor, free of charge, two copies of the Contract Documents for execution of the Work.

## **6.2 RIGHT TO STOP WORK**

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, if the Contractor fails to meet milestones set forth in approved construction schedules, if the City has sufficient reason to believe that the Contractor is not and will not complete the Project by the scheduled completion date, or if the best interests of the public health, safety or welfare so require, the City may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the City orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

## **6.3 CITY'S RIGHT TO PERFORM WORK**

6.3.1 If the Contractor's Work is stopped by the City under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the City that the cause of such stoppage will be eliminated or corrected, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City.

# **ARTICLE VII**

## **THE CONTRACTOR**

### **7.1 MUST FOLLOW CONTRACT**

7.1.1 The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction. The Contractor shall perform the Work strictly in accordance with this Contract

### **7.2 PROSECUTION OF WORK**

7.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the City for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.2 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.3 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.3.4 The City will not interfere with the Contractor's manner and means of performing the Work. However, the City's insistence on strict compliance with the Contract shall not be regarded as an interference with the

Contractor's manner and means. In the event that any part of the Work is not in strict compliance with the Contract, the Contractor is and shall be estopped from claiming any interference by the City or Engineer with the Contractor's manner and means of performing that part of the Work.

**7.4 WARRANTY**

7.4.1 The Contractor warrants to the City that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective. THE CONTRACTOR WARRANTS AND GUARANTIES THAT IT SHALL COMPLETE THE WORK AND ACHIEVE SUBSTANTIAL COMPLETION BY THE SCHEDULED COMPLETION DATE, STRICTLY IN ACCORDANCE WITH THIS CONTRACT. DEFECTIVE WORK OR MATERIALS SHALL BE FIXED, REPAIRED OR REPLACED FREE OF CHARGE OR COST TO THE CITY.

**7.5 PERMITS; FEES; LICENSES**

The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

**7.6 SUPERVISION**

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the City or the Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

<b>NAME</b>	<b>FUNCTION</b>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the City agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

**7.7 WORK SCHEDULE**

7.7.1 At the pre-construction meeting, the Contractor shall submit to the City and the Engineer for their information, the Contractor's schedule for completing the Work (also referred to herein as the construction schedule). The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the City and the Engineer.

7.7.2 The Contractor's schedule for completing the Work and any revised schedules, shall demonstrate achievement of substantial completion by the scheduled completion date. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a default and a material breach of this Contract.

#### **7.8 ON-SITE DRAWINGS**

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the City and the Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the City and Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the City.

#### **7.9 RECORD DRAWINGS/PLANS, AS-BUILT PLANS, SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

7.9.1 The Contractor shall submit, with each Application for Payment, As-Built plans for any and each part or portion of the Project that varies from the Engineer's plans and specifications and the Contract Documents.

7.9.2 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.3 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms to the requirements of this Contract.

#### **7.10 CLEANING THE SITE AND THE PROJECT**

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. The Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials during construction and, upon completion of construction, shall clean the site and remove all such material together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a landfill approved by the Texas Commission on Environmental Quality. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the City for this work, the compensation having been considered and included in the contract price.

#### **7.11 ACCESS TO WORK AND INSPECTIONS**

7.11.1 The City and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the City or the Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

#### **7.12 INDEMNITY AND DISCLAIMER**

7.12.1 CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES, FOR INJURY OR DEATH TO ANY PERSON, INJURY OR LOSS TO ANY PROPERTY, OR ECONOMIC LOSS, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, DIRECTLY OR INDIRECTLY ARISING OUT OF, OR

OCCASIONED BY THE PERFORMANCE OF CONTRACTOR UNDER THIS CONTRACT, INCLUDING CLAIMS AND DAMAGES ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF CITY, WITHOUT WAIVING THE CITY'S GOVERNMENTAL, SOVEREIGN OR OTHER IMMUNITIES OR DEFENSES AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS CONTRACT THAT THE INDEMNITY PROVIDED FOR HEREIN IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF THE CONTRACTOR'S AS WELL AS THE CITY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

7.12.2 The Contractor will secure and maintain contractual liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the City for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with City a standard form Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **7.13 NONDISCRIMINATION**

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

#### **7.14 PREVAILING WAGE RATES**

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request (or attached to this contract as a part of the exhibits), which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the City, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the City to insure compliance with this provision.

#### **7.15 JOB SITE SAFETY PRECAUTIONS**

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the jobsite and shall comply with all laws, ordinances, regulations, and standards of federal, state and local safety laws and regulations. The Contractor shall provide such

machinery guards, safe walk-ways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure jobsite and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Engineer during the progress of the Work.

#### **7.16 WARNING DEVICES AND BARRICADES**

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Engineer to protect persons or property in, near or adjacent to the jobsite. No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

#### **7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS**

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense. The Contractor shall coordinate any utility conflicts with the owner of the utility and no extension of time will be requested or given if adequate coordination is not provided by Contractor.

7.17.2 The Contractor understands and acknowledges that other contractors of the City or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the scheduled completion date. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

### **ARTICLE VIII**

#### **CONTRACT ADMINISTRATION**

##### **8.1 THE ENGINEER**

8.1.1 When used in this Contract the term "Engineer" does not necessarily denote a duly licensed, trained or certified engineer; as used herein, the term shall be used interchangeably and shall mean a designated Engineer, Engineer, or Contract Administrator (who may not be an architect or engineer) for the City, said person to be designated or re-designated by the City prior to or at any time during the Work hereunder. The Engineer may be an employee of the City or may be retained by the City as an independent contractor but, in either event, the Engineer's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Engineer notwithstanding the contractual relationship between the City and Engineer, the title of Contract Administrator, or the fact that the Engineer is an employee of the City.

In the event the City should find it necessary or convenient to replace the Engineer, the City shall retain a replacement Engineer and the status of the replacement Engineer shall be that of the former Engineer.

## **8.2 ENGINEER'S ADMINISTRATION**

8.2.1 The Engineer, unless otherwise directed by the City in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the City's representative from the effective date of this Contract until final payment has been made.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Engineer.

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Engineer will review the Contractor's Applications for Payment and will certify to the City for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

## **8.3 CLAIMS BY THE CONTRACTOR**

8.3.1 The Engineer shall determine all claims and matters in dispute between the Contractor and City with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute and the Engineer shall render a written decision within a reasonable time thereafter. The Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Engineer and the opposing party within ten (10) days of receipt of the Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the City's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown

condition which may affect the Work. No claims for extra work or additional compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the City and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

#### **8.4 EXTRA WORK**

8.4.1 The Contractor shall not claim, request or demand any sum from the City for Extra Work or for additional costs, and hereby waives all such claims, requests and demands and any right to assert same, unless the conditions of this subparagraph are strictly complied with. "Extra Work" is defined herein to mean any labor, service, materials, equipment, supplies or charges that are directly or indirectly related to the Work, the Project or the Project site, that is not necessarily or fairly required or implied by the Contract Documents.

8.4.2 The parties acknowledge and agree that there shall be no payment made by the City to the Contractor without a written agreement (either a separate contract or a written Change Order) signed by the parties. Should the Contractor perform Extra Work or be requested to perform Extra Work by the Engineer or City, it shall be the Contractor's obligation and duty to first apply for and obtain a written Change Order, approved by the Engineer and executed by the City. The Contractor's failure to obtain a written, signed Change Order prior to commencement of Extra Work shall constitute a complete and final waiver of any right for compensation for the Extra Work.

#### **8.5 CLAIMS FOR ADDITIONAL COSTS OR TIME; CONTRACT PRICE INCREASE**

8.5.1 If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefor, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any right to or claim for additional compensation.

8.5.2 In connection with any claim by the Contractor against the City for compensation in excess of the Contract Price, any liability of the City for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors. The City shall not be liable to the Contractor for any claims based upon delay to the Contractor for any reason whatsoever including any act or neglect on the part of the City.

8.5.3 If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City or someone acting in the City's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the City and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. The procedures and remedies



provided by this provision shall be the sole remedy of Contractor and Contractor shall not assert nor be entitled to any additional delays or damages associated therewith.

## **8.6 FIELD ORDERS**

8.6.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

## **8.7 MEDIATION**

8.7.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.7.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Engineer in accomplishing the timely completion of the Project.

# **ARTICLE IX**

## **SUBCONTRACTORS**

### **9.1 DEFINITION**

9.1.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the City.

### **9.2 AWARD OF SUBCONTRACTS**

9.2.1 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the City has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the City.

9.2.3 The Contractor shall indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the City by or on behalf of any Subcontractor.

## **ARTICLE X**

### **CHANGES IN THE WORK**

#### **10.1 CHANGES PERMITTED**

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

#### **10.2 CHANGE ORDER DEFINED**

10.2.1 Change Order shall mean a written order to the Contractor executed by the City and the Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

#### **10.3 CHANGES IN THE CONTRACT PRICE**

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties, and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the City and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the City or the Engineer require, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, payments on account shall be made to the Contractor on the Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted.

#### **10.4 MINOR CHANGES**

10.4.1 The Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the City and the Contractor. The Contractor shall promptly carry out such written Field Orders.

## **10.5 EFFECT OF EXECUTED CHANGE ORDER**

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

## **10.6 NOTICE TO SURETY; CONSENT**

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the City that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

# **ARTICLE XI**

## **UNCOVERING AND CORRECTING WORK**

### **11.1 UNCOVERING WORK**

11.1.1 If any of the Work is covered contrary to the Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the City, be uncovered for the Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time or Contract Price.

11.1.2 If any of the Work is covered in a manner consistent with the Engineer's request or the provisions of this Contract, it shall, if required by the Engineer or City, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the City. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

### **11.2 CORRECTING WORK**

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the City for the Engineer's services and expenses made necessary thereby.

11.2.2 If within four (4) years after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this four year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the four year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

### **11.3 CITY MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK**

11.3.1 If the City chooses to accept defective or nonconforming Work, the City may do so at its sole discretion. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the City for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the City, pay the City such remaining compensation for accepting defective or nonconforming Work.

## **ARTICLE XII**

### **CONTRACT DEFAULT AND TERMINATION**

#### **12.1 TERMINATION BY THE CONTRACTOR**

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon fifteen (15) days' written notice to the City and the Engineer, terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the City shall have fifteen (15) days to remedy its failure and if not so cured, the Contractor may terminate performance under this Contract by written notice to the Engineer and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

#### **12.2 TERMINATION BY THE CITY**

##### **12.2.1 FOR CONVENIENCE**

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the City such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a) The Contractor shall submit a termination claim to the City and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective

date of termination, the City shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

- (b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:
  - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
  - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
  - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

12.2.1.5 The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly by amounts withheld by the City and reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

#### 12.2.2 FOR CAUSE

12.2.2.1 The following constitute grounds for termination of this Contract by the City:

- (a) the Contractor's failure or refusal to prosecute the Work in a timely manner;
- (b) The Contractor abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the City;
- (c) the Contractor fails to meet milestones or comply with approved construction schedules;
- (d) the Contractor fails to grant or allow access to the jobsite by the City or Engineer;
- (e) the Contractor fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials;
- (f) the Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- (g) the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or,
- (h) the Contractor is otherwise guilty of a violation of a material provision of this Contract.

In the event of the occurrence of any one or more of the above events, the City may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor, exclude the Contractor from the job site, and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

### **12.3 USE OF THIRD-PARTY OVERSIGHT OR CONSTRUCTION MANAGER**

12.3.1 Should the City allow the Contractor to continue its performance of Work notwithstanding an event of default specified in Subparagraph 12.2.2.1, or should there be an imminent potential of default, the City, at its sole option and within its sole discretion, may retain a third-party construction manager to document the events of default and oversee further progress of the Work. The use of a third-party construction manager shall not prevent the City from declaring the Contractor to be in default and the City may, at its sole option and within its sole discretion, terminate this Contract at any time. Should the City retain a third-party construction manager, the costs thereof shall be withheld from any amounts due Contractor upon termination. The City's exercise of this option shall be without prejudice to any other right or remedy available to the City by law or under this Contract.

## **ARTICLE XIII INSURANCE**

### **13.1 CONTRACTOR SHALL MAINTAIN INSURANCE**

13.1.1 The Contractor at its own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this Contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

### **13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE**

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

<b><u>Type of Insurance</u></b>	<b><u>Amount</u></b>
Worker's Compensation	As set forth in the Worker's Compensation Act.
Commercial General	\$1,000,000 Each Accident/Occurrence.
Liability (Public)	\$1,000,000 Aggregate \$1,000,000 Products & Completed Operations Aggregate.
City's Protective	\$600,000 per occurrence

Liability Insurance	\$1,000,000 aggregate
Excess/Umbrella Liability	\$1,000,000 per occurrence w/drop down coverage
Endorsement CG 2503	Amendment Aggregate Limit of Insurance per Project or City's and Contractor's Protective Liability Insurance for the Project.
Automobile Liability	\$500,000 Combined single limit per occurrence.

**13.3 ADDITIONAL INSURED**

13.3.1 The City and the Engineer shall be named as an additional insured on the Commercial General Liability (Public), City's Protective Liability, and Excess/Umbrella Liability Insurance Policies furnished by the Contractor.

**13.4 WRITTEN NOTIFICATION**

13.4.1 Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the City of Lucas, Attention: Mr. Stanton Foerster, P.E., 665 Country Club Road, Lucas, TX 75002-7651.

**13.5 PREMIUMS AND ASSESSMENTS; SUBROGATION**

13.5.1 Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which are at the sole responsibility and risk of the Contractor. Insurance Companies shall have no right of subrogation against the City or the Engineer.

**13.6 CERTIFICATE OF INSURANCE**

13.6.1 Proof that the insurance is in force shall be furnished to the City on Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City, the contractor shall furnish the City proof of identical continued coverage no later than thirty(30) days prior to the expiration date shown on the Certificate of Insurance.

**13.7 PRIMARY COVERAGE**

13.7.1 The coverages provided herein shall be primary and noncontributory with any other insurance maintained by the City, for its benefit, including self-insurance.

**13.8 WORKER'S COMPENSATION INSURANCE COVERAGE**

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;

- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
  - (A) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (B) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the Project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice shall comply with the requirements established by the Division of Workers Compensation of the Texas Department of Insurance, or its successor agency.

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:
  - (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
  - (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
  - (C) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (D) obtain from each other person with whom it contracts, and provide to the Contractor:
    - (i) a certificate of coverage, prior to the other person beginning work on the project; and
    - (ii) prior to the end of the coverage period, a new certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (E) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
  - (F) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and



- (G) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (G) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

## **ARTICLE XIV**

### **MISCELLANEOUS**

#### **14.1 LAWS AND ORDINANCES**

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

#### **14.2 GOVERNING LAW**

14.2.1 The Contract shall be governed by the laws of the State of Texas. Exclusive venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the state courts of Collin County, Texas.

#### **14.3 SUCCESSORS AND ASSIGNS**

14.3.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the City.

#### **14.4 SURETY BONDS**

14.4.1 The Contractor shall furnish separate performance and payment bonds to the City, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract by the Contractor and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the full Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City and authorized to do business in the State of Texas.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the City a two-year maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor.

#### **14.5 FORCE MAJEURE**

14.5.1 As used herein, "force majeure" means an incident, situation, or act of a third party that is beyond a party's reasonable control such as an act of God, an act of the public enemy, strikes or other labor disturbances (other than strikes within such party's own labor force), hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots. The Contractor will not be liable or responsible for its failure to perform any obligation under this Contract because of an event of Force Majeure, provided, however, that the Contractor submits notice thereof to the City and

Engineer within seven (7) days of such an event, obtains a written Change Order, signed by all parties, that allows an extension of the scheduled completion date, and identifies the specific causes and number of days in the Statement of Delay submitted with the next ensuing Application for Payment. Notwithstanding, if the Contractor's failure to perform continues for more than twenty (20) calendar days, the City may at its option terminate this Agreement immediately and pursue such rights and remedies as may be allowed under Subparagraph 12.2.2 of this Contract.

#### **14.6 IMMUNITIES; DEFENSES**

14.6.1 Nothing in this Contract shall be deemed to waive any immunity, sovereign, governmental, official, qualified or otherwise, from liability or suit, which the City may have or assert, except as may be provided by law, all such immunities being hereby expressly retained.

#### **14.7 NO RIGHTS IN THIRD PARTIES**

14.7.1 The indemnification provisions of this Contract and the rights and remedies afforded herein are solely for the benefit of the parties to this Contract. Nothing in this Contract is intended nor shall be construed to grant, create or confer any right, benefit, interest or cause of action in any person not a party to this Contract, or to the public in general.

#### **14.8 SEVERABILITY**

14.8.1 The provisions of this Contract are herein declared to be severable; in the event that any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not been included herein.

#### **14.9 AMENDMENTS; NO WAIVER**

14.9.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the City to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or modification of any term or provision in this Contract, nor shall such failure to object or enforce estop the City from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

#### **14.10 NOTICES**

14.10.1 All notices required by this Contract shall be in writing and presumed received when deposited in the mail properly addressed to the other party or Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Engineer.

EXECUTED in single or multiple originals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LUCAS, TEXAS**

**CONTRACTOR:**

\_\_\_\_\_  
Mayor or City Manager

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Type/Print Name and Title)

ATTEST:

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
City Secretary (Rev. 03/14)

\_\_\_\_\_  
(City/State/Zip)

APPROVED TO FORM

\_\_\_\_\_  
City Attorney

***FORM 1295 INSTRUCTIONS***

***Certificate of Interested Parties***

**[www.ethics.state.tx.us/File](http://www.ethics.state.tx.us/File)**

## Implementation of House Bill 1295

### Certificate of Interested Parties (Form 1295):

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

The Texas Ethics Commission was required to adopt rules necessary to implement that law, prescribe the disclosure of interested parties form, and post a copy of the form on the commission's website. The commission adopted the Certificate of Interested Parties form (Form 1295) on October 5, 2015. The commission also adopted rules (Chapter 46) to implement the law. The commission does not have any additional authority to enforce or interpret House Bill 1295.

### Filing Process:

Starting on January 1, 2016, the commission will make available on its website a new filing application that must be used to file Form 1295. A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

The governmental entity or state agency must notify the commission, using the commission's filing application, of the receipt of the filed Form 1295 with the certification of filing not later than the 30th day after the date the governing body or state agency receives the Form 1295. The commission will post the completed Form 1295 to its website within seven business days after receiving notice from the governmental entity or state agency.

Information regarding how to use the filing application will be available on this site starting on January 1, 2016.

### Additional Information:

HB 1295

Certificate of Interested Parties (Form 1295)\*\*

**\*\*This is a sample form for illustration purposes only. DO NOT FILL OUT THIS SAMPLE FORM. Form 1295 MUST BE FILED ELECTRONICALLY! Paper copies and PDF copies of this sample form are not accepted!**

Chapter 46, Ethics Commission Rules (new rule 46.4, regarding changes to contracts, is in effect as of January 1, 2017)

*Last Revision: January 12, 2017*

# CERTIFICATE OF INTERESTED PARTIES

# FORM 1295

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

### OFFICE USE ONLY

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

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

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

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

**5 Check only if there is NO Interested Party.**

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

\_\_\_\_\_  
 Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

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

\_\_\_\_\_  
 Signature of officer administering oath

\_\_\_\_\_  
 Printed name of officer administering oath

\_\_\_\_\_  
 Title of officer administering oath

**ADD ADDITIONAL PAGES AS NECESSARY**

***CONSTRUCTION STAKING CERTIFICATION***

**CONSTRUCTION STAKING**

Control for the project has been set by the Engineer and control is shown in the Construction Plans.

Contractor shall complete all construction staking. Cut sheets shall be provided to the inspector.

Prior to commencement of the work by the Contractor, the Contractor shall submit a digital file containing a minimum of two Birkhoff, Hendricks & Carter, L.L.P. control points and a certification that the construction staking is tied to the project control points established in the Plans.

The Engineer will review Contractor’s electronic survey file to verify that the survey file is tied to the project control.

I, \_\_\_\_\_ of \_\_\_\_\_ certifies that all  
*(Surveyor’s Name)* *(Company)*  
construction staking is tied to the project control system.

\_\_\_\_\_  
Signature Date Printed Name

**Note: To be submitted when construction staking control and cut sheet staking commences.**



## GENERAL PROVISIONS

### STANDARDS:

All work included as a part of this contract shall be performed in accordance with the Standard Specifications for Public Works Construction, North Central Texas, 4<sup>th</sup> Edition, 2004, except where noted otherwise in the City of Lucas's supplemental Special Provisions, the Special Conditions included in these Specifications and Contract Documents.

**NOTE:** The \* symbol specifies that this item is also covered in the City of Lucas's "Special Provisions" to the "Standard Specifications for Public Works Construction, North Central. Texas". These Special Provisions are additional and modify the "Standard Specifications".

<u>Item #</u>	<u>Subject</u>
---------------	----------------

**DIVISION 100 – GENERAL PROVISIONS**

**101. - Definitions and Abbreviations**

- |        |                            |
|--------|----------------------------|
| 101.1. | Definitions                |
| 101.2. | Abbreviations and Acronyms |

**102. - Proposal Procedures**

- |          |   |
|----------|---|
| 102.1.   | Proposal Form   |
| 102.2.   | Quantities in Proposal Form                               |
| 102.3.   | Examination of Plans, Specifications and Site of the Work |
| 102.4.   | Preparation of Proposal                                   |
| 102.5.   | Proposal Guaranty   |
| 102.6.   | Filing of Proposals                                       |
| 102.7.   | Withdrawing Proposals                                     |
| 102.8.   | Opening Proposals   |
| 102.9.   | Consideration of Proposal                                 |
| 102.10.  | Irregular Proposals                                       |
| 102.11.* | Rejection of Proposals                                    |
| 102.12.* | Disqualification of Bidders                               |
| 102.13.  | Return of Proposal  |

**103. - Award and Execution Contract**

- |         |  |
|---------|--|
| 103.1.  | Contractor's Warranties & Understanding    |
| 103.2.* | Award of Contract                          |
| 103.3.* | Surety Bonds                               |
| 103.4.* | Insurance                                  |
| 103.5.  | Execution of Contract                      |
| 103.6.* | Notice to Proceed and Commencement of Work |
| 103.7.  | Delay of Contract                          |

**104. - Scope of Work**

- |         |   |
|---------|---|
| 104.1.  | Intent of Contract Documents                          |
| 104.2.* | Change of Modification of Contract                    |
| 104.3.  | Disrupted Work and Claims for Additional Compensation |
| 104.4.  | Performance of Extra or Disputed Work                 |

<u>Item #</u>	<u>Subject</u>
---------------	----------------

**105. - Control of Work**

- |          |                                       |
|----------|---------------------------------------|
| 105.1.*  | Contract of Documents                 |
| 105.2.*  | Workmanship, Warranties & Guarantees  |
| 105.3.*  | Shop Drawings, Product Data & Samples |
| 105.4.*  | Construction Stakes                   |
| 105.5.   | Means and Methods of Construction     |
| 105.6.   | Supervision by Contractor             |
| 105.7.   | Owner's Representatives               |
| 105.8.   | Service of Notices                    |
| 105.9.*  | Inspection                            |
| 105.10.* | Acceptance                            |

**106. - Control of Material**

- |        |                                |
|--------|--------------------------------|
| 106.1. | Substitution of Materials      |
| 106.1. | Materials and Equipment        |
| 106.2. | Salvageable Material           |
| 106.3. | Off-Site Storage               |
| 106.4. | Samples and Tests of Materials |

**107. - Legal Relations & Contract Responsibilities**

- |          |  |
|----------|--|
| 107.1.   | Contractor Independence                  |
| 107.2.*  | Indemnification                          |
| 107.3.   | Owner's Officers, Employees or Agents    |
| 107.4.   | Venue and Governing Law                  |
| 107.5.   | No Waiver of Legal Rights                |
| 107.6.   | Severability                             |
| 107.7.   | Headings                                 |
| 107.8.   | Obligation to Perform Functions          |
| 107.9.*  | Performance of the Work                  |
| 107.10.  | Successors and Assigns                   |
| 107.11.  | Supervision & Construction of Procedures |
| 107.12.  | Labor and Materials                      |
| 107.13.* | Equal Employment Opportunity             |
| 107.14.* | State and Local Sales and Use Taxes      |
| 107.15.  | Patents                                  |

<b><u>Item #</u></b>	<b><u>Subject</u></b>
107.16.	Compliance with Laws
107.17.	Sanitary Provisions
107.18.	Public Convenience and Safety
107.19.*	Protection of Work & Persons & Property
107.20.	Project Signs
107.21.	Working Area
107.22.	Railway Crossings
107.23.	Existing Structures, Facilities and Appurtenances
107.24.	Project Clean-Up
107.25.	Disposal of Materials
107.26.	Restoration of Property

**108. - Prosecution and Progress**

108.1.	Progress Schedule
108.2.	Prosecution of the Work
108.3.	Other Contractors; Obligation to Cooperate
108.4.	Employees
108.5.	Subcontracts
108.6.	Assignments

<b><u>Item #</u></b>	<b><u>Subject</u></b>
108.7.	Owner's Right to Temporarily Suspend Work
108.8.	Delays; Extension of Time; Liquidated Damages
108.9.	Contractor Default: Owner's Right to Suspend Work and Annul Contract
108.10.	Suspension by Court Order Against the Owner
108.11.	Termination for Convenience of the Owner
108.12.	Claims Against Owner and Action Thereon
108.13.	Use of Completed Portions of Work

**109. - Measurement and Payment**

109.1.	Payment for Labor and Material; No Liens
109.2.	Payment for Materials
109.3.	Payment for Extra Work
109.4.	Payment Withheld
109.5.*	Monthly Estimate, Partial Payments, Retainage, Final Inspection, Acceptance & Final Payment
109.6.	Wire Transfers

**CITY OF LUCAS, TEXAS**  
**SPECIAL PROVISIONS**  
**TO THE**  
**NORTH CENTRAL TEXAS STANDARD SPECIFICATIONS**  
**FOR PUBLIC WORKS CONSTRUCTION**

**PART I - GENERAL PROVISIONS**

**DIVISION 1: PROPOSAL REQUIREMENTS AND OTHER GENERAL CONDITIONS**

The General Provisions of the North Central Texas Standard Specifications shall be modified and clarified by the addition to the following requirements to the various items. Except when specifically stated, none of the requirements of the General Provisions shall be deleted.

ITEM 102.11. REJECTION OF PROPOSALS

Change the second sentence of Item 102.11 to read: "Proposal shall be rejected for any of the following specific reasons, but not necessarily limited thereto:"

ITEM 102.12. DISQUALIFICATION OF BIDDERS

Change the first sentence of Item 102.12 to read, "Bidders may be disqualified and their proposal not .considered for any of the following specific reasons, but not necessarily limited thereto:"

ITEM 103.2. AWARD OF CONTRACT

It is the intention of the Owner to award a contract for the work included in this project on the basis of the lowest acceptable bid submitted by a qualified bidder, as determined by the Owner.

Within five (5) working days after the bid opening, the low bidder shall submit such evidence as the Owner may require establishing the bidder's qualifications to satisfactorily perform the work included in this project. Information that may be required shall include the following:

- (1) Current Financial Statement.
- (2) Letter of Auditor's opinion.
- (3) Previous years Balance Sheet, Income Statement and Change of Financial Position.
- (4) List of projects that have been satisfactorily completed by the Bidder that are of the same general type as included in this contract, together with names, addresses and phone numbers or persons familiar with this work.
- (5) Other information that may be pertinent to the Bidder's Qualifications.

Should the bidder fail to produce evidence satisfactory to the Owner on any of the foregoing points he may be disqualified and the work awarded to the next bidder so qualifying.

The Owner will notify the successful bidder, in writing, within sixty (60) days after the date of receiving bids, of the acceptance of the proposal. The Contractor or Contractors shall complete execution of the required Bonds and Contract within ten (10) days of such notice.

ITEM 103.3. SURETY BONDS

Performance Payment and Other Bonds

Contractor shall furnish Performance and Payment Bonds as security for the faithful performance and payment of all his obligations under the Contract Documents. These Bonds shall be, at all times, in amounts equal to the total Contract Price (100%), and in such form as set forth in the Contract Documents and with such corporate sureties as are licensed to conduct business in the state where the Project is located and, are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. The Performance and Payment Bonds shall be expanded to include any extension of the Contract Period of total Price.

If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business in terminated in any state where any part of the Project is located in revoked, Contractor shall within five (5) days thereafter substitute another Bond and surety, both of which may be acceptable to the City.

Additional Bonds

Prior to delivery of the executed Contract by City to the Contractor, City may require CONTRACTOR to furnish such other Bonds in such form and with such sureties as the City may require.

ITEM 103.4. INSURANCE

Add the following:

Additional Insurance

Prior to delivery of the executed Contract by City to the Contractor, City may require CONTRACTOR to furnish such additional insurance in such form and with such insurers as the City may require.

ITEM 103.6. NOTICE TO PROCEED AND COMMENCEMENT OF WORK

Upon Owner's receipt of the executed Contract and the required insurance and surety bonds, a Notice to Proceed shall be issued by the Owner indicating the date upon which the Contract time shall start and the projected date of completion. The Owner will attempt to provide the work order within the time specified in the Specifications. The Contractor shall commence work within 10-days from the date specified in the written work order. No work shall commence before the notice to proceed has been issued.

ITEM 104.2. CHANGE OF MODIFICATION OF CONTRACT

Item 104.2.3. Extra Work

No work shall be undertaken which requires extra payment without having an executed change order approved by the Contractor and the Owner, except when so ordered in writing.

ITEM 105.1. CONTRACT OF DOCUMENTS

Item 105.1.1. Priority of Contract Documents

Revise this item to read:

In case of conflict between contract documents, priority of interpretation shall be in the following order: signed agreement, performance and payment bonds, addenda, special conditions, project drawings and specifications, City of Lucas Special Provisions to the Standard Specifications for Public Works Construction - North Central Texas, standard drawings, advertisement for bids, contractor's bid proposal and bid form.

Item 105.1.3. Contract Drawings and Specifications

In general, the number of copies of the plans and specifications furnished to the Contractor shall be limited to five (5). Additional copies may be obtained at cost of reproduction.

ITEM 105.2. WORKMANSHIP, WARRANTIES AND GUARANTEES

Item 105.2.2. Special Warranty

Add the following:

The Contractor shall provide a Maintenance Bond in the amount of one hundred percent (100%) of the total amount of the contract guaranteeing the work in accordance with the plans and specifications for a period of two (2) years after acceptance by the City of Lucas. This bond shall provide for repair and/or replacement of all defects due to faulty material and workmanship that appear within a period of two (2) years from the date of completion and acceptance of the improvements by the City of Lucas.

ITEM 105.3 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Review of Shop Drawings by the Engineer shall be of the sole purpose of determining the sufficiency of the said drawings or schedules to result in finished improvements in conformance with the plans and specifications, and shall not relieve the Contractor of his duty as an independent contractor. It being understood and agreed that the Engineer does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules or any means or methods reflected thereby in relation to the safety of either person or property during the Contractor's performance hereunder.

#### ITEM 105.4 CONSTRUCTION STAKES

Delete in its entirety and substitute therefore the following:

The City of Lucas will furnish and set control stakes to establish the baseline (not layout stakes) for this project as follows:

1. Horizontal Control: Start of project, P.C.'s, P.T.'s, P.I.'s, and end of project.
2. Vertical Control: Temporary benchmarks at 500 foot spacing on each section of the project.

The stakes set by the City of Lucas will be set sufficiently in advance of the work to avoid delay. The Contractor will be held responsible for the preservation of all stakes and marks, and if, in the opinion of the City of Lucas, any of the stakes or marks have been carelessly or willfully disturbed by the Contractor, the cost of replacing them will be charged against him and deducted from the payment for the work.

The Contractor shall 'furnish and set free of charge additional stakes and other materials and templates necessary for making and maintaining points and lines, including layout stakes, line and grade stakes for grading, paving, culverts, utilities, storm sewer lines and appurtenances.

The City of Lucas will perform such checking of the Contractor's stakes as considered necessary by the City of Lucas. Such checking by the City of Lucas will in no way release the Contractor of his responsibility for the correctness of the stakes or the responsibility for checking to insure that the work is constructed to the lines and grades as shown on the plans.

Establishment of the aforementioned lines and grades by the Owner shall in no way release the Contractor of the responsibility of the correctness of the stakes or the responsibility for checking to insure that the work is constructed to the lines and grades as shown on the plans.

#### ITEM 105.9. INSPECTION

##### Item 105.9.2 Final Inspection

Within ten (10) days after the Contractor has given the Engineer written notice that the work has been completed, or substantially completed, the Engineer and the Owner shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract Documents, the Engineer shall issue to the Owner and the Contractor his Certificate of Completion, and there upon it shall be the duty of the Owner within ten (10) days to insure a Certificate of acceptance of the work to the Contractor or to advise the Contractor in writing of the reason for non-acceptance.

#### ITEM 105.10 ACCEPTANCE

Within ten (10) days after the Contractor has given the Engineer written notice that the work has been completed, or substantially completed, the Engineer and

the Owner shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract Documents, the Engineer shall issue to the Owner and the Contractor his Certificate of Completion, and there upon it shall be the duty of the Owner within ten (10) days to insure a Certificate of acceptance of the work to the Contractor or to advise the Contractor in writing of the reason for non-acceptance.

**Definition of Substantially Complete: The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed, in accordance with the contract documents, as modified by any change order agreed to by the parties, so that the Owner can occupy or utilize the project or specified area of the project for the use for which it was intended.**

ITEM 107.2. INDEMNIFICATION

Delete Item 1.22.2 in its entirety and substitute therefore the following:

The Contractor and his sureties shall indemnify, defend and save harmless the OWNER and all of its officers, agents and employees, ENGINEER and all of its officers and employees from all suits, actions or claims of any character, name and description brought for or on account of any injuries, including death or damages received or sustained by any person, persons or property on account of the operations of the Contractor, his agents, employees or subcontractors; or on account of any negligent act or fault of the Contractor, his agents, employees or subcontractors in the execution of said contract; or on account of the failure of the Contractor to provide the necessary barricades, warning lights or signs; and shall be required to pay any judgment, with cost, which may be obtained against the Owner or Engineer growing out of such injury, including death or damage.

ITEM 107.9. PERFORMANCE OF THE WORK

Add the following to the end of the first paragraph: “regardless of the expected completion date set forth in the Contract Documents.”

At such time as actual construction has been started, the work will not be stopped or delayed without written permission of the Owner, excluding delays caused by adverse weather conditions. The Contractor shall maintain at all times sufficient equipment and personnel on the project to produce satisfactory progress during the construction period.

ITEM 107.13. EQUAL EMPLOYMENT OPPORTUNITY

Delete the last paragraph in this item in its entirety (107.13.5. – Reports).

ITEM 107.14. STATE AND LOCAL SALES AND USE TAXES

Delete in its entirety and substitute therefore the following:

Recent legislation has removed the sales tax exemption previously provided by Section 151.311 of the Tax Code covering tangible personal property purchased by a contractor for use in the performance of a contract for the improvement of City-owned realty.

It is still possible, however, for a contractor to make tax-free purchases of tangible personal property that will be incorporated into and become part of a City construction project through the use of a “separated contract” with the City. A “separated contract” is one, which separates charges for materials from charges for labor. Under such a contract, the contractor becomes a “seller” of those materials, which are incorporated into the project, such as bricks, lumber, concrete, paint, etc. The contractor issues a resale certificate in lieu of paying the sales tax at the time such items are purchased. The contractor then receives an exemption certificate from the City for those materials. (This procedure may not be used, however, for materials, which do not become a part of the finished product. For example, equipment rentals, form materials, etc. are not considered as becoming “incorporated” into the project.)

Utilization of this “separated contract” approach eliminates the need for bidders to figure in sales tax for materials, which are to be incorporated into the project. Bid items, which contain non-taxable materials, are identified in the Bid Schedule for this project. The successful bidder will be required to complete a Contract Form provided by the Owner identifying and separating non-taxable materials from the labor and taxable materials which are not incorporated into the finished project. The completed contract form will be used to develop the “separated ‘contract” and will determine ‘the extent of the tax exemption.

#### ITEM 107.19. PROTECTION OF WORK AND OF PERSONS AND PROPERTY

##### Item 107.19.2. Protection of Persons and Property

The Contractor shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the “Manual of Accident Prevention in Construction” of the Associated General Contractors of America except where incompatible with Federal, State, and Municipal laws or regulations. The Contractor shall provide such machinery, guards, safe walkways, ladders, bridges, gangplanks, and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility, of the Contractor, acting at his discretion as an independent contractor.

#### ITEM 109.5. MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT

##### Item 109.5.2. Retainage

On projects where the contract price, at the time of execution, is greater than \$400,000, the Owner may retain ten percent (10%) of the amount due the Contractor, with the retainage above five percent (5%) deposited in an interest bearing account and interest earned on such 5% retained funds shall be paid to the Contractor upon completion of the contract.



**CITY OF LUCAS (OWNER)**  
**STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS**

**SPECIAL CONDITIONS - INDEX**

SC.1	General	SC.28	Sanitary Facilities
SC.2	Engineer	SC.29	Disposal of Waste & Surplus Excavation
SC.3	Location of Project	SC.30	Inspection
SC.4	Scope of Work	SC.31	Lights & Power
SC.5	Forms, Plans & Specifications	SC.32	Insurance Requirements
SC.6	Time & Order of Completion	SC.33	Construction Staking
SC.7	Qualification of Bidder & Award of Contract	SC.34	Superintendence by Contractor
SC.8	Addenda	SC.35	Connections to Existing Facilities
SC.9	Liquidated Damages for Delay by Contractor	SC.36	Construction Schedule & Projection of Payments
SC.10	Copies of Plans & Specifications Furnished	SC.37	Examination of Site of Project
SC.11	State & City Sales Taxes	SC.38	Partial Payments
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SC.13	Trade Names and Materials	SC.40	Protection of Trees
SC.14	Concrete & Hot Mix Asphaltic Concrete Mix Designs	SC.41	Grass Repair
SC.15	Permits and Right-of-Way	SC.42	Antitrust
SC.16	Property Lines & Monuments	SC.43	Compliance with Air & Water Acts
SC.17	Existing Structures	SC.44	Water for Construction
SC.18	Existing Utilities & Service Lines	SC.45	Video of Project Site
SC.19	Public Utilities & Other Property to be Changed	SC.46	Overtime Work
SC.20	Fences, Drainage Channels & Crop Damage	SC.47	Dust Control
SC.21	Project Maintenance	SC.48	Pollution Control
SC.22	Cleanup	SC.49	Construction Data
SC.23	Guaranty Against Defective Work	SC.50	Pre-Construction Conference
SC.24	Testing and Quality Control	SC.51	Shop Drawings & Engineering Data
SC.25	Coordination With Others	SC.52	Additive Alternate
SC.26	Use of Explosives		
SC.27	Barricades, Lights and Watchmen		

CITY OF LUCAS, TEXAS

STINSON ROAD PAVING & DRAINAGE IMPROVEMENTS

SPECIAL CONDITIONS

SC.01 GENERAL

The provisions of this section of the specifications shall govern in the event of any conflict between them and the "General Conditions of Agreement."

SC.02 ENGINEER

The word "Engineer" in these specifications shall be understood as referring to Birkhoff, Hendricks & Carter, L.L.P., Professional Engineers, 11910 Greenville Ave., Suite 600, Dallas, Texas, 75243, Engineer of the Owner, or such other representatives as may be authorized by said Owner to act in any particular position.

SC.03 LOCATION OF PROJECT

This project is located in the City of Lucas, Collin County, Texas. A map showing the work areas is included in the plans.

SC.04 SCOPE OF WORK

The work to be performed under this contract consists of furnishing all materials, labor, tools, equipment, supervision, and all incidentals required and performing all work necessary for the construction of the Stinson Road & Lucas Road Paving & Drainage Improvements; along with all necessary appurtenances.

SC.05 FORMS, PLANS & SPECIFICATIONS

Forms of Proposal, Contract and Bonds, and Plans and Specifications may be obtained from the office of Birkhoff, Hendricks & Carter, L.L.P., Professional Engineers, 11910 Greenville Ave., Suite 600, Dallas, Texas 75243, and purchased for the amount of Thirty-Five Dollars (\$35.00) per set, **non-refundable**.

SC.06 TIME AND ORDER OF COMPLETION

All items of work included under this contract shall be completed within Ninety (90) calendar days. Time shall commence on the tenth (10th) day after the issuance of the work order. The work order shall consist of a written request by the Owner to the Contractor to proceed with the construction of the project.

SC.07 QUALIFICATION OF BIDDER AND AWARD OF CONTRACT

It is the intention of the Owner to award a contract for the work included in this project on the basis of the lowest acceptable bid submitted by a qualified bidder, as determined by the Owner.

Prior to award of the contract, the bidder shall submit such evidence as the Owner may require to establish the bidder's qualifications to satisfactorily perform the work included in this project. Information that may be required shall include (1) the bidder's current financial statement including amount of funds readily available to commence and carry out the work, (2) a list of equipment available for this project, (3) a list of projects that have been satisfactorily completed by the bidder that are of the same general type as included in this contract, together with the names, addresses and phone numbers of persons familiar with this work, and (4) other information that may be pertinent to the bidder's qualifications.

Should the bidder fail to produce evidence satisfactory to the Owner on any of the foregoing points he may be disqualified and the work awarded to the next bidder so qualifying.

SC.08 ADDENDA

Bidders desiring further information or interpretation of the plans and specifications must make request for such information to the Engineer by March 2, 2018. Answers to all such requests will be given in writing to all bidders in addendum form and all addenda will be bound with and made a part of the contract documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from the plans, specifications, or contract documents, or should he be in doubt as to their meaning, he is requested to notify the Engineer in order that a written addendum may be sent to all bidders. Any addenda issued prior to twenty-four (24) hours before the opening of bids will be mailed or delivered to each Contractor contemplating the

submission of a proposal on this work. The proposal as submitted by the Contractor will be so constructed as to include any addenda if such are issued by the Engineer prior to twenty-four (24) hours before the opening of bids.

#### SC.09 LIQUIDATED DAMAGES FOR DELAY BY CONTRACTOR

The Contractor understands and agrees that time is of the essence of this contract and that for each day of delay beyond the date agreed upon for the completion of all items of work herein specified and contracted for (after due allowance of such extension of time as is provided for in the General Conditions of Agreement), the Owner may withhold permanently from the Contractor's total compensation the sum of Two Hundred Forty Dollars (\$240.00) per day as stipulated damages for such delay.

#### SC.10 COPIES OF PLANS AND SPECIFICATIONS FURNISHED

Five (5) sets of plans and specifications shall be furnished to the Contractor, at no charge, for construction purposes. Additional copies may be obtained at cost of reproduction upon request.

#### SC.11 STATE AND CITY SALES TAXES

Recent legislation has removed the sales tax exemption previously provided by Section 151.311 of the Tax Code covering tangible personal property purchased by a contractor for use in the performance of a contract for the improvement of City-owned realty.

It is still possible, however, for a contractor to make tax-free purchases of tangible personal property which will be incorporated into and become part of a City construction project through the use of a "separated contract" with the City. A "separated contract" is one which separates charges for materials from charges for labor. Under such a contract, the contractor becomes a "seller" of those materials which are incorporated into the project, such as bricks, lumber, concrete, paint, etc. The contractor issues a resale certificate in lieu of paying the sales tax at the time such items are purchased. The contractor then receives an exemption certificate from the City for those materials. (This procedure may not be used, however, for materials which do not become a part of the finished product. For example, equipment rentals, form materials, etc. are

not considered as becoming "incorporated" into the project.)

Utilization of this "separated contract" approach eliminates the need for bidders to figure in sales tax for materials which are to be incorporated into the project. The successful bidder will be asked to complete a bid form separating materials and labor. The successful bidder's bid form will be used to develop the "separated contract" and will determine the extent of the tax exemption.

Non-Taxable materials are designated as such in each bid item. All other items are labor and taxable material.

#### SC.12 REFERENCED SPECIFICATIONS

Where reference is made in these specifications to specifications compiled by others, such reference is made for expediency and standardization from the material supplier's point of view, and such specifications referred to are hereby made a part of these specifications.

#### SC.13 TRADE NAMES AND MATERIALS

No material which has been used by the Contractor for any temporary purposes whatever is to be incorporated in the permanent structure without written consent of the Engineer.

Where materials or equipment are specified by a trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance, and to establish an equal basis for the evaluation of bids. Where the words "equivalent", "proper", or "equal to" are used, they shall be understood to mean that the thing referred to shall be proper, the equivalent of, or equal to some other thing, in the opinion of judgment of the Engineer. Unless otherwise specified all materials shall be of the best of their respective kinds, shall be in all cases fully equal to approved samples and shall never have been used for any temporary purpose whatsoever. Notwithstanding that the words "or equal to" or other such expressions may be used in the specifications in connection with a material, manufactured article or process, the material, article or process specifically designated shall be used, unless a substitute shall be approved in writing by the Engineer, and the Engineer shall have the right to require the use of

such specifically designated material, article or process.

SC.14 CONCRETE & HOT MIX ASPHALTIC CONCRETE MIX DESIGNS

The Contractor shall submit proposed concrete and hot mix asphaltic concrete (HMAC) mix designs for each class of concrete and HMAC to the Owner for review and acceptance. Concrete mix designs shall be proportioned according to the requirements of A.C.I. 318-83, and include data from field experience and/or trial mixtures with the results of confirmation cylinders. The mix designs and supporting data shall be submitted and accepted at least fourteen (14) calendar days prior to placing concrete or HMAC.

SC.15 PERMITS AND RIGHT-OF-WAY

The Owner will provide rights-of-way for the purpose of construction without cost to the Contractor by securing permits in areas of public dedication or by obtaining easements across privately owned property. It shall be the responsibility of the Contractor, prior to the initiation of construction through private property, to inform the property owner of his intent to begin construction. Before beginning construction in areas of public dedication, the Contractor shall inform the agency having jurisdiction in the area forty-eight (48) hours prior to initiation of work, unless otherwise specified herein.

SC.16 PROPERTY LINES & MONUMENTS

The Contractor shall protect all property and right-of-way corner markers, and when any such markers or monuments are in danger of being disturbed they shall be properly referenced and if disturbed shall be reset at the expense of the Contractor.

SC.17 EXISTING STRUCTURES

The plans show the location of all known surface and subsurface structures and service lines. However, the Owner assumes no responsibility for failure to show any or all of these structures on the plans, or to show them in their exact location. It is mutually agreed that such failure shall not be considered sufficient basis for claims for additional compensation for extra work or for increasing the pay quantities in any manner whatsoever, unless the obstruction encountered is such as to necessitate changes in the lines or grades, or require the building of such work, provisions for which are not made in

the plans and proposal, in which case the provisions in these specification for extra work shall apply.

SC.18 EXISTING UTILITIES AND SERVICE LINES

The Contractor shall be responsible for the protection of all existing utilities or service lines crossed or exposed by his construction operations. Where existing utilities or service lines are cut, broken or damaged, the Contractor shall replace the utilities or service lines with the same type of original construction, or better, at his own cost and expense. The Contractor shall contact the utility company prior to construction near their services.

SC.19 PUBLIC UTILITIES AND OTHER PROPERTY TO BE CHANGED

In case it is necessary to change or move the property of any owner or of a public utility, such property shall not be moved or interfered with until authorized by the utility company and approved by the Engineer. The right is reserved to the owner of public utilities to enter upon the limits of the project for the purpose of making such changes or repairs to their property that may be made necessary by the performance of this contract.

SC.20 FENCES, DRAINAGE CHANNELS AND CROP DAMAGE

Boundary fences or other improvements removed to permit this construction shall be replaced in the same location and left in a condition as good as or better than that in which they were found. No separate pay item has been established for fence removal and replacement. All work and materials required to remove and replace existing fences shall be considered subsidiary to the appropriate bid items.

Where surface drainage channels are disturbed or blocked during construction, they shall be restored to their original condition of grade and cross section after the work of construction is completed.

In locations where the work site is in or adjacent to fields containing crops, the Contractor shall reimburse the Owner of said crops for all damages thereto as a result of activities of the Contractor, except crops which lie within the permanent or construction easement.

## SC.21 PROJECT MAINTENANCE

The Contractor shall maintain, and keep in good repair, the improvements covered by these plans and specifications during the life of his contract.

## SC.22 CLEANUP

The Contractor shall at all times keep the job site as free from all material, debris and rubbish as is practicable and shall remove same from any portion of the job site as construction of that portion is completed. No item of work will be considered complete for payment purposes until required cleanup has been performed.

Upon completion of the work, the Contractor shall remove from the site all plant, materials, tools and equipment belonging to him and leave the site with an acceptable appearance. The Contractor shall thoroughly clean all equipment and materials installed by him and shall deliver over such materials and equipment in a bright, clean, polished and new-appearing condition.

## SC.23 GUARANTY AGAINST DEFECTIVE WORK

The Contractor shall indemnify the Owner against any repairs which may become necessary to any part of the work performed under the contract, arising from defective workmanship or materials used therein, for a period of two (2) years from the date of final acceptance of the work.

## SC.24 TESTING AND QUALITY CONTROL

### A. Testing Materials

Observation of the Contractor's work to determine compliance with the plans and specifications will include testing of material installed on the project. Testing of work performed and materials furnished shall be done by a commercial laboratory employed by the Owner. The Contractor shall use only materials in the work which meet the requirements of the specifications. The City will employ the services of an Engineering Testing Laboratory to make inspections and to sample and test the materials to be used in the work. The Contractor shall furnish, at his own expense, all necessary specimens for testing of the materials and when requested, shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that

are to be used in the work. All materials not conforming to the requirements of the specifications will be rejected.

### B. Quality Control

During the construction, the Owner will retain the Engineering Testing Laboratory to perform services related to checking the quality of the work being performed by the Contractor to determine if the improvements are being constructed in accordance with the plans and specifications. THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT. If the Contractor fails to meet specified conditions on the first test, further tests to demonstrate compliance with the contract shall be at the expense of the Contractor.

THE CONTRACTOR SHALL GIVE THE ON-SITE REPRESENTATIVE OF THE OWNER SUFFICIENT NOTICE OF HIS INTENTION TO CONSTRUCT PORTLAND CEMENT CONCRETE PAVEMENT, STRUCTURAL CONCRETE, OR HOT MIX ASPHALTIC CONCRETE TO ASSURE THE ADEQUATE QUALITY CONTROL OF CONSTRUCTION MATERIALS AND WORKMANSHIP.

### C. Testing and Quality Control Services

Testing and Quality Control services shall include but are not limited to the following:

#### 1) Reinforced Concrete Pavement

- a) Analysis of Aggregates
- b) Decantation Tests
- c) Inspect Aggregate Stockpiles
- d) Prepare or Check Concrete Batch Design
- e) Slump and Air Content Tests
- f) Flexural or Compressive Strength Tests

#### 2) Lime Treated Subgrade

- a) Liquid and Plastic Limits and Lime Series of Subgrade Soil

- b) Lime Application Control Including Moisture Content Control Gradation and Mixing Depth
  - c) Moisture - Density Curve for Different Soil Classes
  - d) Field Compaction Tests
- 3) Embankment
- a) Moisture - Density Curves
  - b) Field Compaction Tests
- 4) Hot Mix Asphaltic Concrete
- a) Prepare or Check Mix Design
  - b) Provide Full Quality Control at Hot Mix Plant
    - Hot Bin Gradation Tests
    - Air Void
    - Stability and Density Tests
    - Percent Asphalt Content
  - c) Make Tests from Samples of Mix
    - Extraction
    - Gradation
    - Percent Asphalt
    - Stability and Density Tests
    - Make Hot Bin Analysis Every 250 Tons
- 5) Flexible Base
- a) Sieve Analysis
  - b) Liquid and Plastic Limits of Binder Material
  - c) Moisture - Density Curves
  - d) Field Density Tests
- 6) Structural Concrete
- a) Mix Design
  - b) Batch Plant Weight & Moisture Checks
  - c) Slump and Air Tests
  - d) Compressive Strength Tests

#### SC.25 COORDINATION WITH OTHERS

In the event other contractors are doing work in the same area simultaneously with this project, the Contractor shall coordinate his proposed construction with that of the other contractors.

#### SC.26 USE OF EXPLOSIVES

Use of explosives will not be allowed on this project.

#### SC.27 BARRICADES, LIGHTS & WATCHMEN

Where the work is carried on in or adjacent to any street, alley or public place the Contractor shall, at his own cost and expense, furnish and erect such barricades, fences, lights, and danger signals, shall provide such watchmen, and shall provide such other precautionary measures for the protection of persons or property and of the work as are necessary. Barricades shall be painted in a reflective color that will be visible at night. From sunset to sunrise, the Contractor shall furnish and maintain at least one light at each barricade and sufficient numbers of barricades shall be erected to keep vehicles from being driven on or into any work under construction. The Contractor shall furnish watchmen in sufficient numbers to protect the work.

The Contractor will be held responsible for all damage to the work due to failure of barricades, signs, lights and watchmen to protect it and whenever evidence is found of such damage the Contractor shall immediately remove the damage portion and replace it at his cost and expense. The Contractor's responsibility for the maintenance of barricades, signs, and lights, and for providing watchmen shall not cease until the project shall have been accepted by the Owner.

#### SC.28 SANITARY FACILITIES

Contractor shall furnish temporary sanitary facilities at the site, as provided herein, for the needs of all construction workers and others performing work or furnishing services on the project.

Sanitary facilities shall be of reasonable capacity, properly maintained throughout the construction period, and obscured from public view to the greatest practical extent. If toilets of the chemically treated type are used, at least one toilet will be furnished for each 20 men. Contractor shall enforce the use of such sanitary facilities by all personnel at the site.

SC.29 DISPOSAL OF WASTE & SURPLUS EXCAVATION

All trees, stumps, slashings, brush, other debris or deleterious material generated as a part of this work, shall be burned or removed from the property. Any required disposal permits shall be the sole responsibility of the Contractor.

All excavated earth in excess of that required for backfilling shall be removed from the job site and disposed of in a satisfactory manner except in locations where, in the judgment of the Owner, it can be neatly spread over the adjacent area.

SC.30 INSPECTION

The word "Inspection", or other forms of the word, as used in the contract documents for this project shall be understood as meaning the Owner's agent will observe the construction on behalf of the Owner. The Owner's agent will observe and check the construction in sufficient detail to satisfy himself that the work is proceeding in general accordance with the contract documents, but he will not be a guarantor of the Contractor's performance.

SC.31 LIGHTS AND POWER

The Contractor shall provide, at his own expense, temporary lighting and power facilities required for the proper prosecution of the work.

SC.32 INSURANCE REQUIREMENTS

Before the Contractor commences work in connection with this contract, or before he allows any subcontractor to commence any work, he shall purchase Comprehensive General Liability insurance in the amount of \$1,000,000 with Bodily Injury limits of not less than \$300,000 each occurrence and \$500,000 in the aggregate, and property damage limits of not less than \$100,000 each occurrence and \$100,000 in the aggregate.

The Contractor shall purchase and furnish to the Owner, an Owner's and Contractor's Protective Liability policy in the amounts designated above, with the City of Lucas as insured, their agents and employees as additional insureds.

The Contractor shall furnish a Certificate of Insurance for the above coverage with a provision that the Owner will be notified by the insurance company ten (10) days prior to cancellation of the policy during the term of this contract, and if

canceled a new policy must be furnished prior to cancellation. All required insurance shall remain in force through the duration of this contract.

All Subcontractors shall comply with the aforementioned conditions.

Should any person sustain bodily injury or property damage within the limits of this project, the Contractor or his Insurance Agent shall investigate immediately and report his findings in writing to the Owner. If the Contractor fails or refuses to investigate and report such occurrence upon notification of the injured or damaged party or the Owner, then the Owner shall file for coverage under the Owners' and Contractors' Protective Liability policy.

SC.33 CONSTRUCTION STAKING

The contractor shall provide construction staking at his own expense. Refer to Item 105.4 of the General Provisions of this contract (NCTCOG).

SC.34 SUPERINTENDENCE BY CONTRACTOR

The Contractor shall have on the project at all times, as his agent, a competent Superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed. The Superintendent shall have full authority to execute orders or directions and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of the Work subcontracted.

SC.35 CONNECTIONS TO EXISTING FACILITIES

Connections to existing facilities which are in service shall be thoroughly planned in advance, and all required equipment, materials, and labor shall be on hand at the time of undertaking the connections. Work shall proceed continuously (around the clock if necessary) to complete connections in the minimum time. Operations of valves or other appurtenances on existing utilities, when required, shall be by or under the direct supervision of the Owner.

SC.36 CONSTRUCTION SCHEDULE AND PROJECTION OF PAYMENTS

Prior to starting work, the Contractor shall submit a proposed schedule for the work included herein and shall submit any major revisions to this schedule as the project progresses. This schedule shall provide for completion of the project within the time provided in the specifications.

SC.37 EXAMINATION OF SITE OF PROJECT

Prospective bidders shall make a careful examination of the site of the project, soil and water conditions to be encountered, improvements to be protected, disposal sites for surplus materials not designated to be salvaged materials, and as to method of providing ingress and egress to private properties, and methods of handling traffic during construction of the entire project.

SC.38 PARTIAL PAYMENTS

Item 109.5 of the General Provisions of Agreement (NCTCOG) shall be revised with the addition to the following:

On projects where the contract price, at the time of execution, is greater than \$400,000, the Owner shall retain 5% of the amount due the Contractor until final payment, or the Owner may retain 10% of the amount due the Contractor until final payment with the retainage above 5% deposited in an interest bearing account and interest earned on such 5% retained funds shall be paid to the Contractor upon completion of the contract.

SC.39 CONSTRUCTION IN PUBLIC ROADS AND PRIVATE DRIVES

No public road shall be entirely closed overnight. It shall be the responsibility of the Contractor to build and maintain all weather bypasses and detours, if necessary, and to properly light, barricade and mark all bypasses and detours that might be required on and across the roads involved in the work included in this contract.

The Contractor shall make every effort to complete construction and allow immediate access to adjacent property at driveway entrances located along the roads. Owners or tenants of improvements where access and/or entrance drives are located shall be notified at least twenty-four (24) hours prior to the time the construction will be started at their driveways or entrances and informed as to the length of time

driveways will be closed, which period shall not exceed six (6) hours.

The Contractor shall be responsible for all road and entrance reconstruction and repairs and maintenance of same for a period of one year from the date of such reconstruction. In the event the repairs and maintenance are not made immediately to the satisfaction of the Owner, and it becomes necessary for the Owner to make such repairs, the Contractor shall reimburse the Owner for the cost of such repairs.

The Contractor shall, at all times, keep a sufficient width of the roadway clear of dirt and other material to allow the free flow of traffic. The Contractor shall assume any and all responsibility for damage, personal or otherwise, that may be caused by the construction along roads and private drives.

SC.40 PROTECTION OF TREES

The Contractor shall make every reasonable effort to protect all trees along the project right-of-way. When crossing private property no tree outside of the permanent right-of-way of the project, six inches (6") in diameter or larger shall be removed or have limbs trimmed without the approval of the Owner. Clipping or sawing of branches shall be done neatly by an approved method to prevent splitting or tearing of the wood. Pruning paint shall be applied to the newly cut branches. Minor adjustments in alignment will be allowed to protect trees.

SC.41 GRASS REPAIR

Contractor shall obtain a "Stand of Grass" for an area to be considered repaired. A "Stand of Grass" is obtained when an area to be seeded or hydro-mulched has at least 75% of the area covered with grass at least 1-inch high. Areas designated to be seeded or hydro-mulched shall obtain a "Stand of Grass" prior to qualifying for acceptance by the Owner and additional seed, fertilizer and water or hydro-mulch and water shall be applied until a "Stand of Grass" is obtained. No separate pay shall be made for repair of damaged grass areas, unless indicated on the plans, but such work as required shall be subsidiary to the various other items bid.

SC.42 ANTITRUST

The Contractor hereby assigns to the Owner any and all claims for overcharges associated with this contract, which arise under the antitrust laws of the United States 15 U.S.C.A. Sec. 1, et seq. (1973).



SC.43 COMPLIANCE WITH AIR AND WATER ACTS

In compliance with the Clean Air Act, as amended, 41 U.S.C. Sec. 7401 et. seq., and the regulations of the Environmental Protection Agency with respect thereto the Contractor agrees that.

- A. Any facility to be utilized in the performance of this contract or any subcontract shall not be a facility listed on the EPA List of Violating Facilities pursuant to 40 CFR 15.20.
- B. He will comply with all requirements of Section 114 of the Clean Air Act, as amended.

SC.44 WATER FOR CONSTRUCTION

The Contractor shall make the necessary arrangements for securing and transporting water for construction, including water for testing, mixing of concrete, sprinkling, flushing, flooding or jetting.

The Contractor can coordinate with the City to receive a temporary water meter. A deposit of \$1,500.00 will be required for use of the meter.

Any party requesting use of a temporary water meter, to be attached to a City of Lucas fire hydrant for the purpose of receiving water for construction, shall use the meter in a proper manner and maintain the meter in working condition.

Such meter shall be attached to fire hydrants only when water is being discharged from the hydrant. It is unlawful for any party to leave a temporary fire hydrant water meter connected to a fire hydrant at any time when water is not being discharged from said hydrant.

Temporary fire hydrant water meters will be read on a monthly basis by a representative of the Lucas Utility Meter Department. Water volume used will be reported to, and monitored by, the City Inspector.

SC.45 VIDEO OF PROJECT SITE

The Contractor shall provide the City a DVD of the entire project site prior to commencement of construction activities. The contractor shall provide a second DVD to the City of the entire project site once construction is complete and prior to final testing and acceptance by the City. There is no additional pay item for the DVD videos and they are considered subsidiary to the project.

SC.46 OVERTIME WORK

No work shall be scheduled between 7:00 p.m. and 7:00 a.m. or on Saturdays, Sundays, or legal City holidays without permission of Owner. Should Contractor desire to work on these days, he shall contact the Owner, in writing, for approval at least 48 hours in advance. However, emergency work may be done without prior permission. Tie-ins and connections to existing facilities will be made at time authorized by the Owner.

SC.47 DUST CONTROL

Contractor shall take responsible measures to prevent unnecessary dust. Earth surfaces subject to creating dust shall be kept moist with water or by application of a chemical dust suppressant. Dusty materials in piles or in transit shall be covered when practical to prevent blowing. Machinery, motors, instrument panels, or similar equipment, shall be protected by suitable dust screens with proper ventilation included.

SC.48 POLLUTION CONTROL

Contractor shall prevent the release of sanitary wastes, sediment, debris and other substances resulting from construction activities. No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris or other substance will be permitted to enter sanitary sewers and reasonable measures will be taken to prevent such materials from entering any drain or watercourse.

SC.49 CONSTRUCTION DATA

The Contractor shall keep one record copy of all Specifications, Drawings, Addenda, Modifications, and Shop Drawings at the site in good order and annotated to show all changes made during the construction process. These shall be available to Owner and shall be delivered to the Owner upon completion of the work.

SC.50 PRE-CONSTRUCTION CONFERENCE

Prior to the commencement of work at the site, a pre-construction conference will be held at a mutually agreed time and place. The conference shall be attended by:

- Contractor and his superintendent
- Principal Subcontractors together with Principal suppliers and manufacturers representatives
- Representatives of Owner

- Materials Testing Laboratory
- Others as requested by Contractor or Owner

Unless previously submitted to Owner, Contractor shall bring to the conference a tentative schedule for each of the following:

- Progress Schedule
- Cash Flow
- Shop Drawings and other submittals

The purpose of the conference is to designate responsible personnel and establish a working relationship. Matters requiring coordination will be discussed and procedures for handling such matters established.

The agenda will include:

- Contractor's tentative schedules
- Transmittal, review and distribution of Contractor's submittals
- Processing applications for payment
- Maintaining record documents
- Critical work sequencing
- Field decisions and Change Orders
- Use of premises, office and storage areas, security, housekeeping, and Owner's needs
- Major equipment deliveries and priorities
- Materials testing

Owner will preside at the conference and will arrange for keeping the minutes and distributing the minutes to all persons in attendance.

#### SC.51 SHOP DRAWINGS & ENGINEERING DATA

Engineering data covering all equipment and fabricated materials to be furnished under this contract that shall be submitted to Engineer for review and permanently incorporated to the project. This data shall include drawings and descriptive information in sufficient detail to show the kind, size, arrangement, and operation of component materials and devices; the external connections, anchorages, and supports required; performance characteristics; and dimensions needed for installation and correlation with other materials and equipment. Concrete mix designs shall be submitted for review.

All submittals regardless of origin, shall be stamped with the approval of Contractor and identified with the name and number of this contract, Contractor's

name, and references to applicable specification paragraphs and Contract Drawings. Each submittal shall indicate the intended use of the item in the work. When catalog pages are submitted, applicable items shall be clearly identified. The current revision, issue number, and date shall be indicated on all drawings and other descriptive data.

Contractor's stamp of approval is a representation to Owner and Engineer that Contractor accepts full responsibility for determining and verifying all quantities, dimensions, field construction criteria, materials, catalog numbers, and similar data, and that he has reviewed or coordinated each submittal with requirements of the work and Contract Documents.

All deviations from the Contract Documents shall be identified on each submittal and shall be tabulated in Contractor's letter of transmittal. Such submittals shall, as pertinent to the deviation, indicate essential details of all changes proposed by Contractor (including modifications to other facilities that may be required as a result of the deviation) and all required piping and wiring diagrams.

Contractor shall accept full responsibility for the completeness of each submission, and, in the case of a resubmission, shall verify that all exceptions previously noted by Engineer are accounted for.

An electronic copy of each Drawing and necessary data in Adobe Acrobat (.pdf) format, in legible color copies or color scans from original shall be submitted electronically to Engineer. Engineer will not accept submittals from anyone but Contractor.

When the drawings and data are returned marked REJECTED or REVISE AND RESUBMIT, the corrections shall be made as noted thereon and as instructed by Engineer and resubmitted.

When corrected copies are resubmitted, Contractor shall in writing direct specific attention to all revisions and shall list separately any revisions made other than those called for by Engineer on previous submissions.

It will be Contractor's responsibility to schedule the submission of submittals so as not to impede the scheduled construction activities or affect the completion date.

Any need for more than one resubmission, or any other delay in obtaining Engineer's review of

submittals, will not entitle Contractor to extension of the Contract Time unless delay of the work is directly caused by a change in the work authorized by a Change Order or by failure of Engineer to return any submittal within 30-days after its receipt in Engineer's office.

The Engineer's review of drawings and data submitted by Contractor will cover general conformity to the Drawings and Specifications, external connections and dimensions that affect the layout. Engineer's review does not indicate a thorough review of all dimensions, quantities, and details of the material, equipment, device, or items shown. Engineer's review of submittals shall not relieve Contractor from responsibility for errors, omissions, or deviations, or responsibility for compliance with the Contract Documents.

#### SC.52 ADDITIVE ALTERNATE

The City intends to award a construction contract on the base bid or the base bid plus the additive alternate as is in their best interest.

The scope of work for the additive alternate includes demolition of two existing driveways, construction of a new driveway and driveway culvert, installation of storm sewer pipe and relocation of an existing storm sewer headwall. Approximate quantities have been included in the bid schedule. Construction plan sheets for the work will be issued by addendum.

# **Davis-Bacon Wage Determinations**

## **WAGE RATES**

General Decision Number: TX170035 01/06/2017 TX35

Superseded General Decision Number: TX20160035

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 \$10.20 for calendar year 2017 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 \$10.20 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 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/06/2017

\* 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

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

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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](http://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)).

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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.

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#### 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.

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END OF GENERAL DECISION



General Decision Number: TX170028 01/06/2017 TX28

Superseded General Decision Number: TX20160028

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall  
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling  
Where the Tunnel is 48" or Less in Diameter)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 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 \$10.20 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 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number	Publication Date
0	01/06/2017

\* PLUM0100-002 07/01/2016

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 27.11	10.02

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SUTX1991-004 09/23/1991

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25	
Utility.....	\$ 7.467	
Pipelayer.....	\$ 7.828	
Power equipment operators:		
Backhoe.....	\$ 10.804	
Crane.....	\$ 10.942	
Front End Loader.....	\$ 9.163	
Tunneling Machine (48" or less).....	\$ 9.163	
TRUCK DRIVER.....	\$ 8.528	

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

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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](http://www.dol.gov/whd/govcontracts).

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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.

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END OF GENERAL DECISION

