



**City Council Meeting
September 6, 2016**



City of Robinson

111 W. Lyndale, Robinson, TX 76706-5619

Phone (254) 662-1415 ❖ Fax (254) 662-1035

PUBLIC NOTICE

THE ROBINSON CITY COUNCIL WILL MEET ON TUESDAY, SEPTEMBER 6, 2016 AT 6:00 P.M. IN THE COUNCIL ROOM AT ROBINSON CITY HALL, 111 WEST LYNDALE, ROBINSON, TEXAS TO CONSIDER AND ACT ON THE ITEMS ON THE FOLLOWING AGENDA.

1. Call to order
2. Invocation
3. Roll Call.
4. Approve Minutes: August 2, 2016; August 6, 2016; August 12, 2016; and August 30, 2016.
5. Citizen Comments.
6. **PUBLIC HEARING:** Conduct a public hearing and consider action on Ordinance 2016-007 regarding a zoning change from R-1, Single Family Residential to 2F located at 511 S Old Robinson Road.
7. **PUBLIC HEARING:** Conduct the second of two public hearings to receive comments on the proposed tax rate of \$0.499500 cents per \$100 valuation for fiscal year 2017 (2016 tax year), and announce meeting to adopt the proposed tax rate on September 13, 2016.
8. **PUBLIC HEARING:** Conduct a public hearing for the City of Robinson Budget for fiscal year beginning October 1, 2016, and ending September 30, 2017.
9. Consider and possible action on agriculture agreement between the City of Robinson and Behnke Farms.
10. Consider and possible action on Ordinance 2016-008 declaring unopposed candidates elected to office and canceling the November 8, 2016, General Election.
11. Consider and possible action regarding Notice of Joint Election.

City Council Meeting Agenda

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12. Consider and possible action regarding nominations to serve a six-year term on the Texas Municipal League Intergovernmental Risk Pool Board of Trustees.
13. Consider and possible action authorizing staff and the city engineer to go out for bids for the reclamation of Downsville Road.
14. Councilmember requests for items to be placed on future agendas.
15. Adjourn.

**The Governing Body reserves the right to go into Executive Session on any of the above items as provided by Government Code Chapter 551.*

**Public Hearings will be held in accordance with procedures set forth in Resolution R-95-011, adopted by the City Council on June 13, 1995.*

Note: Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services should contact the City Secretary at 254-662-1415 at least twenty-four (24) hours before this meeting so that appropriate arrangements can be made.



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #3

CALL TO ORDER:

INVOCATION:

ROLL CALL:

	PRESENT	ABSENT
ROGERS	_____	_____
STIVENER	_____	_____
LEUSCHNER	_____	_____
ECHTERLING	_____	_____
MASTERGEORGE	_____	_____
JANICS	_____	_____
BAKER	_____	_____



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #4

DEPT./DIVISION SUBMISSION & REVIEW:

Jana Lewellen, City Secretary

ITEM DESCRIPTION: Approve Minutes: August 2, 2016; August 6, 2016; August 12, 2016; and August 30, 2016.

STAFF RECOMMENDATION: Approve minutes as presented in item description.

ITEM SUMMARY: Minutes from the August 2, 2016; August 6, 2016; August 12, 2016; and August 30, 2016 has been provided for review.

FISCAL IMPACT: None

ATTACHMENTS:

August 2, 2016 Regular Meeting Minutes

August 6, 2016 Special Called Meeting Minutes

August 12, 2016 Special Called Meeting Minutes

August 30, 2016 Special Called Meeting Minutes

MINUTES OF CITY COUNCIL MEETING AUGUST 2, 2016

1. **Call to order.** Meeting was called to order at 6:00 P.M. by Mayor Bert Echterling.
2. **Invocation.** Jimmy Rogers provided the Invocation.
3. **Roll Call.** Councilmembers present: Jimmy Rogers, Vernon Leuschner, Bert Echterling, Jim Mastergeorge, and Steve Janics. Councilmembers Jeremy Stivener and Doye Baker were absent.
4. **Approve Minutes from: July 5, 2016 and July 18, 2016:** Steve Janics motioned to approve the minutes from the July 5, 2016, and July 18, 2016 meetings as written. Jim Mastergeorge seconded this motion. Voting in favor; Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.
5. **Citizen Comments.** Sue Loth, 455 Pompano Park, Robinson, Texas 76706, spoke regarding the upcoming General Election, and possible town hall meeting; Randy Vasser, 233 Peevey Lane, Robinson, Texas 76706, spoke regarding street conditions; and Linda Vaughn with the Greater Robinson Chamber of Commerce, reminded Council of the First Responder Reception taking place on Thursday, August 4, 2016, at the Robinson Volunteer Fire Department.
6. **PUBLIC HEARING: Conduct a public hearing and consider possible action regarding a zoning change from R-1, Single Family Residential to 2F located at 110 W Karnes.** The Public Hearing was open at 6:09 PM. Barry Lightfoot, Interim Planning Director, addressed the Council, and provided a brief overview of the zoning change. Mr. Lightfoot noted the Planning and Zoning Commission met on June 19, 2016, and recommended approval by a vote of 4-0. Mike Sanders, 981 Peevey Lane, Robinson, Texas 76706, who is a current member of the Planning and Zoning Commission apologized to Mr. Sweeney for the delay, and recommended approval. Tad Sweeney, 264 E Central, Lorena, Texas 76655, stated he was available for questions, and respectfully requested approval. James Tillery, 901 Cindy, Robinson, Texas 76706, voiced concerns regarding the intended use of the property and requested denial of the zoning change. After no additional comments, the public hearing was closed at 6:15 p.m. Following a brief discussion by Council, Vernon Leuschner motioned to approve the zoning change from R-1 to 2F as presented. Jimmy Rogers seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.
7. **PUBLIC HEARING: Conduct a public hearing and consider possible action regarding a zoning change from R-1, Single Family Residential to SF-2 located at 807 N Old Robinson Road.** Councilmember Vernon Leuschner recused himself from this item and exited the room. The Public Hearing was open at 6:42 PM. Barry Lightfoot, Interim Planning Director, addressed the Council, and provided a brief overview of the zoning change. Mr. Lightfoot noted the Planning and Zoning Commission met on June 19, 2016, and recommended approval by a vote of 4-0. Rusty Steed, 2781 Hillside Drive,

Robinson, Texas 76706, asked for clarification regarding SF-2. City Manager Craig Lemin stated the difference would be the lot size if approved. After no additional comments, the public hearing was closed at 6:45 p.m. Following a brief discussion by Council, Steve Janics motioned to approve the zoning change from R-1 to SF-2 as presented. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Mastergeorge, Janics, and Echterling. Motion carried by a vote of 4-0 with 1 abstention.

- 8. Consider and possible action on agriculture agreement between the City of Robinson and Behnke Farms.** City Manager Craig Lemin presented this item and stated the City of Robinson's current lease agreement with Behnke Farms was set to expire on August 31, 2016. Mr. Lemin noted a new agriculture lease agreement was prepared showing changes to the site plan excluding previous property to allow for the construction of the off-channel reservoir. Following discussion, Jimmy Rogers motioned to approve the lease agreement as presented. Steve Janics seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.
- 9. Consider and possible action on proposal from Walker Partners for engineering services for the clearing and grubbing operations phase for off channel reservoir number 2.** City Manager Craig Lemin presented this item stating this proposal would allow for the initial work to begin construction for the off-channel reservoir. Jed Walker with Walker Partners provided an overview of the proposal to include the scope of services. Mr. Walker noted the deadline to begin work as required by TCEQ is August 18, 2016; therefore, stated an additional meeting awarding the bid would need to take place prior to this date. Mr. Walker stated bids would be received on August 11, 2016. Council agreed to call a Special Meeting on August 12, 2016 to award the bid in order to comply with the deadline. Following discussion, Jim Mastergeorge motioned to approve the proposal from Walker Partners as presented. Steve Janics seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.
- 10. Consider and possible action on Interlocal Cooperation Agreement between the City of Robinson, Texas and McLennan County, Texas for emergency services.** City Manager Craig Lemin presented this item and stated this Interlocal Agreement would allow for street repairs, obstruction removal, and related services when requested by the City. Following discussion, Jimmy Rogers motioned to approve the Interlocal Cooperation Agreement as presented. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.
- 11. Conduct a vote by the City Council to place a proposal to adopt a tax rate of \$0.4995 on Tuesday, September 13, 2016, and call for two public hearings on a proposed tax rate to be held on Tuesday, August 30, 2016 and Tuesday, September 6, 2016, at 6:00 p.m. at Robinson City Hall, 111 W Lyndale Ave, Robinson, Texas 76706.** City Manager Craig Lemin presented this item and stated the proposed tax rate of \$0.4995 will exceed the effective tax rate requiring two public hearings. Following discussion, Steve

Janics motioned to place a proposal to adopt a tax rate of \$0.4995 on Tuesday, September 13, 2016, and call for two public hearings to be held on Tuesday, August 30, 2016 and Tuesday, September 6, 2016. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, and Echterling. Motion carried unanimously.

- 12. *Executive Session:*** A closed meeting will be held pursuant to *Section 551.071 of the Government Code (V.C.T.A.)* so that the City Council can seek and receive legal advice and counsel from its attorneys regarding pending or threatened litigation, settlement offers, claims, or other matters for which the attorneys' duties to their client under the Texas State Bar Disciplinary Rules of Professional Conduct conflicts with the Open Meetings Act (Ch.551, Gov. Code), including, but not limited to: *Thompson v City of Robinson*.

Council entered into Executive Session at 7:19 PM and reconvened from Executive Session at 7:53 PM. No action taken.

- 13. Councilmember requests for items to be placed on future agendas.** None.

- 14. Adjourn.** Meeting adjourned at 7:55 p.m.

Bert Echterling, Mayor

ATTEST:

Jana Lewellen, City Secretary

MINUTES OF SPECIAL CALLED CITY COUNCIL MEETING AUGUST 6, 2016

1. **Call to order.** Breakfast was served at 8:30 A.M. and the meeting was called to order at 9:00 A.M. by Mayor Bert Echterling.
2. **Invocation.** Jimmy Rogers provided the Invocation.
3. **Roll Call.** Councilmembers present: Jimmy Rogers, Jeremy Stivener, Vernon Leuschner, Bert Echterling, Jim Mastergeorge, Steve Janics, and Doye Baker.
4. **Budget Workshop: Discussion regarding proposed budget for FY 2016-2017.** City Manager Craig Lemin provided the proposed budget for FY 2016-2017. Mr. Lemin provided a brief overview of the budget message, budget information and policies, and budget summaries to include a combined summary of revenue and expenditures for FY 2016-2017.

Council and Staff began discussion with the General Fund Budget, going over revenues and expenditures, and department's request to include employee service awards, personnel reorganization, capital outlay, requests, supplies, equipment, and events.

Council and Staff recessed for lunch at 11:45 AM, and reconvened at 12:15 PM.

Council and Staff continued discussions regarding the Debt Service Fund, where Mr. Lemin provided a summary of revenues and expenditures, and a description of accounts.

Discussion continued with the Water Fund Budget, outlining the revenues and expenses, and department's requests to include computer equipment, capital outlay, supplies, and personnel reorganization.

The Wastewater Fund Budget was presented also outlining the revenues and expenses, and department's requests to include capital outlay, and personnel reorganization.

Mr. Lemin wrapped up with a summary regarding Special Purpose Funds, and an overview of capital projects.

Council directed staff to amend the proposed budget as discussed. No action was taken.

5. **Adjourn.** Meeting adjourned at 3:30 p.m.

Bert Echterling, Mayor

ATTEST:

Jana Lewellen, City Secretary

MINUTES OF SPECIAL CALLED CITY COUNCIL MEETING AUGUST 12, 2016

1. **Call to order.** Meeting was called to order at 10:00 A.M. by Mayor Bert Echterling.
2. **Invocation.** Jimmy Rogers provided the Invocation.
3. **Roll Call.** Councilmembers present: Jimmy Rogers, Vernon Leuschner, Bert Echterling, Jim Mastergeorge, Steve Janics, and Doye Baker. Jeremy Stivener was absent.
4. **Consider and possible action on bid award for the clearing and grubbing operations phase for off channel reservoir number 2.** City Manager Craig Lemin presented this item along with Jed Walker with Walker Partners, who provided an overview of the bid summary. Mr. Walker stated two bids were received with the lowest bid from James Construction Group, LLC in the amount of \$357,815.00. Mr. Walker informed Council the amount would decrease upon approval of Change Order No. 01, in the amount of \$156,375.00 leaving the total price of the contract at \$201,440.00. Following discussion, Jimmy Rogers motioned to award the bid received from James Construction Group, LLC, in the amount of \$357,815.00. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics and Echterling. Motion carried by a vote of 5-1 with Councilmember Doye Baker voting in opposition. Jimmy Rogers made a motion to approve Changer Order No. 1 in the amount of \$156,375.00. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics and Echterling. Motion carried by a vote of 5-1 with Councilmember Doye Baker voting in opposition.
5. **Consider and possible action on letter of engagement with the Bojorquez Law Firm to represent the City's interests in all aspects of Land.** City Manager Craig Lemin presented this item. Mr. Lemin stated there are several concerns with the City's current Zoning Ordinance specifically the zoning map and future land use map. Mr. Lemin requested a review of the current ordinance by attorneys with Bojorquez Law Firm who specialize in all aspects of land use law. Senior Associate Linda Sjorgen with Bojorquez Law Firm was present and available for questions. Following discussion, Vernon Leuschner motioned to approve the Letter of Engagement with Bojorquez Law Firm as presented. Jim Mastergeorge seconded this motion. Voting in favor: Rogers, Leuschner, Mastergeorge, Janics, Baker and Echterling. Motion carried unanimously.
6. **Adjourn.** Meeting adjourned at 10:38 a.m.

Bert Echterling, Mayor

ATTEST:

Jana Lewellen, City Secretary

MINUTES OF SPECIAL CALLED CITY COUNCIL MEETING AUGUST 30, 2016

1. **Call to order.** Meeting was called to order at 6:00 P.M. by Mayor Bert Echterling.
2. **Invocation.** Jimmy Rogers provided the Invocation.
3. **Roll Call.** Councilmembers present: Jimmy Rogers, Jeremy Stivener, Vernon Leuschner, Bert Echterling, Jim Mastergeorge, and Steve Janics. Councilmember Doye Baker was absent.
4. **PUBLIC HEARING: Conduct the first of two public hearings to receive comments on the proposed tax rate of \$0.499500 cents per \$100 valuation for fiscal year 2017 (2016 tax year), and announce meeting to adopt the proposed tax rate on September 13, 2016.** City Manager Craig Lemin presented the item, and Mayor Echterling opened the Public Hearing at 6:02 PM. Gary Lee, 1209 Woodcock Drive, Robinson, Texas 76706, spoke regarding the effective tax rate, and appraisal values. After no addition comments, the Public Hearing was closed at 6:11 PM. Mayor Echterling stated the second Public Hearing is scheduled for Tuesday, September 6, 2016, and announced the meeting to adopt the proposed tax rate is September 13, 2016. No action was taken.
5. **Adjourn.** Meeting adjourned at 6:15 p.m.

Bert Echterling, Mayor

ATTEST:

Jana Lewellen, City Secretary



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #5

DEPT./DIVISION SUBMISSION & REVIEW:

Bert Echterling, Mayor

ITEM DESCRIPTION: Citizen Comments.

STAFF RECOMMENDATION:

ITEM SUMMARY: *This is an opportunity for citizens to address the City Council on matters which are not scheduled for consideration. In order to address the Council, please complete a Speaker's Request Form and submit to the City Secretary prior to the start of the Council meeting. All comments must be directed to the Presiding Officer, rather than an individual Council Member or city staff. Comments are limited to three minutes and must pertain to the subject matter listed on the Speaker's Request Form. Council may not comment publicly on issues raised, but may direct the City Manager to resolve or request the matter to be placed on a future agenda. Such public comments shall not include any "deliberation" as defined by Chapter 551 of the Government Code, as now or hereafter amended.*

FISCAL IMPACT: N/A

ATTACHMENTS:



Staff Report – City Council

Date: September 6, 2016
Case No: Z-2016-3
Request: R-1 to 2-F
Applicant: Donald Eskew

Originating Department:

Barry Lightfoot, Interim Planning Director

Item Description: PUBLIC HEARING: Conduct a public hearing and consider action on Ordinance 2016-007 regarding a zoning change from R-1, Single Family Residential to 2F located at 511 S Old Robinson Road.

Case Summary: The applicant has submitted a request to rezone 3.256 acres located at 511 S Old Robinson Rd from R-1 to 2F

Current Zone:

R-1

Proposed Zone:

2-F

Proposed Zone Allowable Uses:

The Proposed zone allowable uses are

- Emergency Vehicle Services
- Electrical substation
- Electrical transmission
- Fire station
- Gas line and regulating station
- Convent or monastery
- Fraternity or sorority
- Home for the aged
- Industrialized housing

- Patio homes
- Single family dwellings
- Two family dwellings
- Townhouse
- College, university or seminary
- Community center
- Place of worship
- Pre school
- School- business, trade elementary or secondary
- Park or playground

Project Analysis: The entire 3.256-acre tract is currently undeveloped except for one house that fronts S Old Robinson Rd.

Recommendation: Recommend approval of zone change from R-1 to 2F located at 511 S Old Robinson Rd (3.256 acres). Water and sewer are available to the proposed site. The existing land use plan shows the property to be residential. The following criteria must be followed.

- A subdivision plat is required.
- Follow The City of Robinson Standard Details for Public Infrastructure.
- Proposed use must conform to the 2F zone district.

The Planning and Zoning Commission met on August 16, 2016 and recommended approval of the zoning change by a vote of 4-0.

Attachments:

- Zoning application
- Property location map
- Notice of Public Hearing
- Property Owner Notification
- Surrounding Property Owner Notifications
- Property owners list
- Existing Zoning Map
- Existing Land Use Map
- Future Land Use Map
- Ordinance

**CITY OF ROBINSON
ZONING & SPECIAL PERMIT
APPLICATION**

1. Case: _____ Applicant: **Strava Const. & Development** Date: **6/7/16**
2. Property Address: **511 S. Old Robinson Rd.**
3. Legal Description: (Submit certified field notes, if not subdivided with lot and block description)
Lot(s): **(See Below)** Block: _____ Addition: _____
- Legal Description: O'CAMPO C Tract 3 Acres 3.256**
MCAD Property ID: 157772
4. Existing Property Use: **3.256 ac. +/- tract with 1 single family home**
5. Proposed Property Use: **To Develop**
6. Existing Zoning: **Residential (R-1)** 7. Proposed Zoning: **Multi-Family (ZF)**
8. Existing Special Permit: _____ 9. Proposed Special Permit: _____
10. Site Plan. All applications for special permits must be accompanied by development plans that includes a site plan, parking layout, existing and proposed utilities, topographic map, building construction plans, and other information about surrounding property developments as required by Section __ of the Zoning Ordinance.
11. Fee paid: **250⁰⁰** Date: **7/13/16** (Make check payable to the City of Robinson)
A) Special permit: \$ _____ B) Zoning: \$ _____
12. The next monthly deadline is 5 p.m. on _____ to be heard at the Planning and Zoning Commission meeting on _____ and at the City Council on _____.
13. I hereby certify that a) the information included in this application is true to the best of my knowledge, and b) I have checked to determine that no deed restrictions apply to this property that conflict with this request.

Applicant/Owner: **Donald Eskew**

Buyer/Agent: _____

Signature



Signature

Applicant Name: _____
(Printed)

Buyer/Agent: _____
(Printed)

Address/Zip: **3825 W. Waco Dr.,
Waco, TX 76710**

Address/Zip: _____

Work Telephone: **254-230-9016 (Office)**

Work Telephone: _____

Hm. Telephone: _____

Hm. Telephone: _____

14. List names of all partners, board members, and officers of companies involved in this case, in order for the Planning and Zoning Commission to determine conflicts of interest they might have in individual cases. Failure to do so may result in delaying action on the case until the following month.
-
-

15. **IT IS IMPERATIVE THAT SOMEONE REPRESENT THE APPLICANT AT EACH PUBLIC HEARING TO ANSWER ANY QUESTIONS WHICH THE PLANNING AND ZONING COMMISSION, CITY COUNCIL OR PUBLIC MAY HAVE!** *The Planning and Zoning Commission holds a public hearing on each request to determine the effect of the proposed uses upon the neighborhood, traffic, utilities, public health and safety and general welfare. After receiving the report and recommendation of the Planning and Zoning Commission, the City Council also holds a public hearing on the application. Such hearings and their notices are given in accordance with State statutes and City ordinances regulating the rezoning of property.*

16. **Mail or deliver this application to:**

Attn. Barry Lightfoot
City of Robinson
111 W. Lyndale
Robinson, Texas 76706
254-662-1415



UNIMPROVED PROPERTY CONTRACT
NOTICE: Not For Use For Condominium Transactions

1. PARTIES: The parties to this contract are Robinson Developers, LLC (Seller) and Strava Const. & Development (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. PROPERTY: Lot _____, Block _____, Addition _____, City of See Special Provisions, County of McLennan, Texas, known as Robinson, County of McLennan, Texas, known as 312 W Tate & 511 S Old Rob. Rd. 76706 (address/zip code), or as described on attached exhibit together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: water rights, claims, permits, strips and gores, easements, and cooperative or association memberships (the Property).

3. SALES PRICE:
A. Cash portion of Sales Price payable by Buyer at closing \$ 60,000.00
B. Sum of all financing described in the attached: Third Party Financing Addendum, Loan Assumption Addendum, Seller Financing Addendum \$ 340,000.00
C. Sales Price (Sum of A and B) \$ 400,000.00

4. LICENSE HOLDER DISCLOSURE: Texas law requires a real estate license holder who is a party to a transaction or acting on behalf of a spouse, parent, child, business entity in which the license holder owns more than 10%, or a trust for which the license holder acts as trustee or of which the license holder or the license holder's spouse, parent or child is a beneficiary, to notify the other party in writing before entering into a contract of sale. Disclose if applicable: Seller is a Licensed Real Estate Agent in Texas

5. EARNEST MONEY: Upon execution of contract by all parties, Buyer shall deposit \$ 1,000.00 as earnest money with First Title of Waco as escrow agent, at 3701 W Waco Dr. Waco, TX 76710 (address). Buyer shall deposit additional earnest money of \$ 9,000.00 with escrow agent within 60 days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. TITLE POLICY AND SURVEY:
A. TITLE POLICY: Seller shall furnish to Buyer at Seller's Buyer's expense an owner's policy of title insurance (Title Policy) issued by First Title Company (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 3.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements: (i) will not be amended or deleted from the title policy; or (ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.
B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or 3 days before the Closing Date, whichever is earlier. If, due to factors beyond Seller's control, the Commitment and Exception Documents are not delivered within the time required, Buyer may terminate this contract and the earnest money will be refunded to Buyer.
C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
 (1) Within _____ days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property

Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date. If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.

- (2) Within 60 days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
- (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to (i) defects, exceptions, or encumbrances to title disclosed on the survey other than items 6A(1) through (7) above; or disclosed in the Commitment other than items 6A(1) through (8) above; (ii) any portion of the Property lying in a special flood hazard area (Zone V or A) as shown on the current Federal Emergency Management Agency map; or (iii) any exceptions which prohibit the following use or activity:

Mult-family OR DATA HOME - Zoning (ZF)

Buyer must object the earlier of (i) the Closing Date or (ii) 3 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S): The Property is is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2 in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and all dedicatory instruments governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instruments may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in enforcement of the association's lien on and the foreclosure of the Property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party, other than lawsuits relating to unpaid ad valorem taxes of an individual member of the association. These documents must be made available to you by the property owners' association or the association's agent on your request.

If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used.

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in

the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) **PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) **PUBLIC IMPROVEMENT DISTRICTS:** If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

(8) **TEXAS AGRICULTURAL DEVELOPMENT DISTRICT:** The Property is is not located in a Texas Agricultural Development District. For additional information, contact the Texas Department of Agriculture.

(9) **TRANSFER FEES:** If the Property is subject to a private transfer fee obligation, §5.205, Property Code requires Seller to notify Buyer as follows: The private transfer fee obligation may be governed by Chapter 5, Subchapter G of the Texas Property Code.

(10) **PROPANE GAS SYSTEM SERVICE AREA:** If the Property is located in a propane gas system service area owned by a distribution system retailer, Seller must give Buyer written notice as required by §141.010, Texas Utilities Code. An addendum containing the notice approved by TREC or required by the parties should be used.

(11) **NOTICE OF WATER LEVEL FLUCTUATIONS:** If the Property adjoins an impoundment of water, including a reservoir or lake, constructed and maintained under Chapter 11, Water Code, that has a storage capacity of at least 5,000 acre-feet at the impoundment's normal operating level, Seller hereby notifies Buyer: "The water level of the impoundment of water adjoining the Property fluctuates for various reasons, including as a result of: (1) an entity lawfully exercising its right to use the water stored in the impoundment; or (2) drought or flood conditions."

7. PROPERTY CONDITION:

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall immediately cause existing utilities to be turned on and shall keep the utilities on during the time this contract is in effect.

NOTICE: Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.

B. ACCEPTANCE OF PROPERTY CONDITION: "As is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer's agreement to accept the Property As Is under Paragraph 7B (1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

(Check one box only)

- (1) Buyer accepts the Property As Is.
- (2) Buyer accepts the Property As Is provided Seller, at Seller's expense, shall complete the following specific repairs and treatments: _____

(Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs and treatments.)

C. COMPLETION OF REPAIRS: Unless otherwise agreed in writing: (i) Seller shall complete all agreed repairs and treatments prior to the Closing Date; and (ii) all required permits must be obtained, and repairs and treatments must be performed by persons who are licensed to

provide such repairs or treatments or, if no license is required by law, are commercially engaged in the trade of providing such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may exercise remedies under Paragraph 15 or extend the Closing Date up to 5 days, if necessary, for Seller to complete repairs and treatments.

D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

E. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:

- (1) any flooding of the Property which has had a material adverse effect on the use of the Property;
- (2) any pending or threatened litigation, condemnation, or special assessment affecting the Property;
- (3) any environmental hazards that materially and adversely affect the Property;
- (4) any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
- (5) any wetlands, as defined by federal or state law or regulation, affecting the Property; or
- (6) any threatened or endangered species or their habitat affecting the Property.

B. BROKERS' FEES: All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. CLOSING:

A. The closing of the sale will be on or before September 30, 2015, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.

B. At closing:

- (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
- (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
- (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
- (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.

10. POSSESSION:

A. Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present or required condition upon closing and funding.

B. Leases:

- (1) After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
- (2) If the Property is subject to any lease to which Seller is a party, Seller shall deliver to Buyer copies of the lease(s) and any move-in condition form signed by the tenant within 7 days after the Effective Date of the contract.

11. SPECIAL PROVISIONS: (Insert only factual statements and business details applicable to the sale. TREC rules prohibit license holders from adding factual statements or business details for which a contract addendum or other form has been promulgated by TREC for mandatory use.)

Legal Description: Tract 5 5.617 +/- & Tract 3 3.256 +/- acres out of the O'Campo Ct Tract. *This contract is contingent upon the City of Robinson Rezoning the property from its current zoning*

12. SETTLEMENT AND OTHER EXPENSES:

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

- (a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.
- (b) Seller shall also pay an amount not to exceed \$ _____ to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(Address of Property)

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Funding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

13. PRORATIONS AND ROLLBACK TAXES:

A. PRORATIONS: Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

B. ROLLBACK TAXES: If this sale or Buyer's use of the Property after closing results in the assessment of additional taxes, penalties or interest (Assessments) for periods prior to closing, the Assessments will be the obligation of Buyer. If Assessments are imposed because of Seller's use or change in use of the Property prior to closing, the Assessments will be the obligation of Seller. Obligations imposed by this paragraph will survive closing.

14. CASUALTY LOSS: If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds, if permitted by Seller's insurance carrier, and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

15. DEFAULT: If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

16. MEDIATION: It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

17. ATTORNEY'S FEES: A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

18. ESCROW:

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide

TAR 1607

Initialed for identification by Buyer

and Seller

TREC NO. 8-12

a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursement of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for (i) damages; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

19. REPRESENTATIONS: All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

20. FEDERAL TAX REQUIREMENTS: If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

21. NOTICES: All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by fax or electronic transmission as follows:

To Buyer at:	To Seller at:
<u>3825 W Waco Dr.</u>	<u>3701 W Waco Dr.</u>
<u>Waco, TX 76710</u>	<u>Waco, TX 76710</u>
Phone: <u>(254) 752-1416 (fax)</u>	Phone: _____
Fax: <u>254-263-2940 (ofc.)</u>	Fax: _____
E-mail: _____	E-mail: _____

22. AGREEMENT OF PARTIES: This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (check all applicable boxes):

- | | |
|---|---|
| <input checked="" type="checkbox"/> Third Party Financing Addendum | <input type="checkbox"/> Addendum for Coastal Area Property |
| <input type="checkbox"/> Seller Financing Addendum | <input type="checkbox"/> Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum |
| <input type="checkbox"/> Addendum for Property Subject to Mandatory Membership in a Property Owners Association | <input type="checkbox"/> Addendum for Property Located Seaward of the Gulf Intracoastal Waterway |
| <input type="checkbox"/> Buyer's Temporary Residential Lease | <input type="checkbox"/> Addendum for Sale of Other Property by Buyer |
| <input type="checkbox"/> Seller's Temporary Residential Lease | <input type="checkbox"/> Addendum for Property in a Propane Gas System Service Area |
| <input type="checkbox"/> Addendum for Reservation of Oil, Gas and Other Minerals | <input checked="" type="checkbox"/> Other (list): <u>Addendum for Seller's disclosure of Lead-Based Paint</u> |
| <input type="checkbox"/> Addendum for "Back-Up" Contract | |

TAR 1607 Initialed for identification by Buyer JR and Seller JS JK TREC NO. 9-12

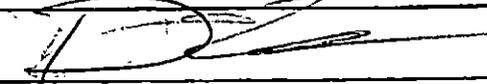
23. **TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller \$ 1,500.00 (Option Fee) within 3 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 60 days after the effective date of this contract (Option Period). Notices under this paragraph must be given by 5:00 p.m. (local time where the Property is located) by the date specified. If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee will will not be credited to the Sales Price at closing. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

24. **CONSULT AN ATTORNEY BEFORE SIGNING:** TREC rules prohibit real estate license holders from giving legal advice. READ THIS CONTRACT CAREFULLY.

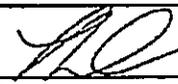
Buyer's Attorney is: _____ Seller's Attorney is: _____

Phone: _____ Phone: _____
Fax: _____ Fax: _____
E-mail: _____ E-mail: _____

EXECUTED the 28 day of June, 2016 (EFFECTIVE DATE).
(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)



Buyer
Straya Const. & Development



Seller
Robinson Developers, LLC
Amanda Lafue
Seller

Buyer

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188. (512) 936-3000 (<http://www.trec.texas.gov>)
TREC NO. 9-12. This form replaces TREC NO. 9-11.

BROKER INFORMATION
 (Print name(s) only. Do not sign)

Other Broker Firm _____ License No. _____ represents <input type="checkbox"/> Buyer only as Buyer's agent <input type="checkbox"/> Seller as Listing Broker's subagent	Keller Williams Realty _____ 8 Listing Broker Firm License No. _____ represents <input type="checkbox"/> Seller and Buyer as an intermediary <input checked="" type="checkbox"/> Seller only as Seller's agent
Associate's Name _____ License No. _____	JRHST - JB _____ Listing Associate's Name License No. _____
Licensed Supervisor of Associate _____ License No. _____	Donna Hazelwood _____ Licensed Supervisor of Listing Associate License No. _____
Other Broker's Address _____ Fax _____	3701 W Waco Dr. _____ (254) 761-5120 Listing Broker's Office Address Fax _____
City _____ State _____ Zip _____	Waco _____ TX _____ 76710 City State Zip
Associate's Email Address _____ Phone _____	jbird@kw.com _____ (254) 717-6721 Listing Associate's Email Address Phone _____
	Selling Associate's Name _____ License No. _____
	Licensed Supervisor of Selling Associate _____ License No. _____
	Selling Associate's Office Address _____ Fax _____
	City _____ State _____ Zip _____
	Selling Associate's Email Address _____ Phone _____

Listing Broker has agreed to pay Other Broker zero of the total sales price when the Listing Broker's fee is received. Escrow agent is authorized and directed to pay other Broker from Listing Broker's fee at closing.

OPTION FEE RECEIPT

Receipt of \$ _____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address _____

Address _____ Phone: _____

City _____ State _____ Zip _____ Fax: _____



PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

THIRD PARTY FINANCING ADDENDUM

TO CONTRACT CONCERNING THE PROPERTY AT

312 N. Tate & 511 S. Old Rob. Rd. Robinson
(Street Address and City)

A. TYPE OF FINANCING AND DUTY TO APPLY AND OBTAIN APPROVAL: Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain approval for the financing, including but not limited to furnishing all information and documents required by Buyer's lender. (Check applicable boxes):

1. Conventional Financing:

- (a) A first mortgage loan in the principal amount of \$ 340,000.00 (excluding any financed PMI premium), due in full in 7 year(s), with interest not to exceed 4.500 % per annum for the first 15 year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan.
(b) A second mortgage loan in the principal amount of \$ (excluding any financed PMI premium), due in full in year(s), with interest not to exceed % per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan.

2. Texas Veterans Loan: A loan(s) from the Texas Veterans Land Board of \$ for a period in the total amount of years at the interest rate established by the Texas Veterans Land Board.

3. FHA Insured Financing: A Section FHA insured loan of not less than \$ (excluding any financed MIP), amortizable monthly for not less than years, with interest not to exceed % per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan.

4. VA Guaranteed Financing: A VA guaranteed loan of not less than \$ (excluding any financed Funding Fee), amortizable monthly for not less than years, with interest not to exceed % per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan.

5. USDA Guaranteed Financing: A USDA-guaranteed loan of not less than \$ (excluding any financed Funding Fee), amortizable monthly for not less than years, with interest not to exceed % per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan.

6. Reverse Mortgage Financing: A reverse mortgage loan (also known as a Home Equity Conversion Mortgage loan) in the original principal amount of \$ (excluding any financed PMI premium or other costs), with interest not to exceed % per annum for the first year(s) of the loan with Origination Charges as shown on Buyer's Loan Estimate for the loan not to exceed % of the loan. The reverse mortgage loan will not be an FHA insured loan.

Initialed for identification by Buyer and Seller

TREC NO. 40-7 11-2-2016

TAR 1901

Carroll Kirby, Inc., 1621 James Ave. Waco, TX 76706 Phone: (254)723-1111

Charles Morton Produced with a qForm® by sBlogia 10075 Pines Mile Road, Fraser, Michigan 48226 www.rbl.com

Old Robinson Rd.

312 W. Tate & 511 S. Old Rob. Rd., Robinson, TX 76706

(Address of Property)

B. APPROVAL OF FINANCING: Approval for the financing described above will be deemed to have been obtained when Buyer Approval and Property Approval are obtained.

1. Buyer Approval:

[X] This contract is subject to Buyer obtaining Buyer Approval. If Buyer cannot obtain Buyer Approval, Buyer may give written notice to Seller within 30 days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer. If Buyer does not terminate the contract under this provision, the contract shall no longer be subject to the Buyer obtaining Buyer Approval. Buyer Approval will be deemed to have been obtained when (i) the terms of the loan(s) described above are available and (ii) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history.

[] This contract is not subject to Buyer obtaining Buyer Approval.

2. Property Approval: Property Approval will be deemed to have been obtained when the Property has satisfied lender's underwriting requirements for the loan, including but not limited to appraisal, insurability, and lender required repairs. If Property Approval is not obtained, Buyer may terminate this contract by giving notice to Seller before closing and the earnest money will be refunded to Buyer.

3. Time is of the essence for this paragraph and strict compliance with the time for performance is required.

C. SECURITY: Each note for the financing described above must be secured by vendor's and deed of trust liens.

D. FHA/VA REQUIRED PROVISION: If the financing described above involves FHA insured or VA financing, it is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise: (i) unless the Buyer has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$ _____; or (ii) if the contract purchase price or cost exceeds the reasonable value of the Property established by the Department of Veterans Affairs.

(1) The Buyer shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation or the reasonable value established by the Department of Veterans Affairs.

(2) If FHA financing is involved, the appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value or the condition of the Property. The Buyer should satisfy himself/herself that the price and the condition of the Property are acceptable.

(3) If VA financing is involved and if Buyer elects to complete the purchase at an amount in excess of the reasonable value established by the VA, Buyer shall pay such excess amount in cash from a source which Buyer agrees to disclose to the VA and which Buyer represents will not be from borrowed funds except as approved by VA. If VA reasonable value of the Property is less than the Sales Price, Seller may reduce the Sales Price to an amount equal to the VA reasonable value and the sale will be closed at the lower Sales Price with proportionate adjustments to the down payment and the loan amount.

E. AUTHORIZATION TO RELEASE INFORMATION:

(1) Buyer authorizes Buyer's lender to furnish to Seller or Buyer or their representatives information relating to the status of the approval for the financing.

(2) Seller and Buyer authorize Buyer's lender, title company, and escrow agent to disclose and furnish a copy of the closing disclosures provided in relation to the closing of this sale to the parties' respective brokers and sales agents identified on the last page of the contract.

Buyer Straya Const. & Development

Seller Robinson Developers, L.L.C.

Buyer

Seller

This form has been approved by the Texas Real Estate Commission for use with similarly approved or promulgated contract forms. Such approval relates to this form only. TREC forms are intended for use only by trained real estate license holders. No representation is made as to the legal validity or adequacy of any provision in any specific transaction. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12168, Austin, TX 78711-2168. (512) 916-3000 (http://www.trec.texas.gov) TREC No. 40-7. This form replaces TREC No. 40-6.



ADDENDUM FOR SELLER'S DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS AS REQUIRED BY FEDERAL LAW

CONCERNING THE PROPERTY AT 312 W Tate & 511 E Old Rob. Rd. Robinson (Street Address and City)

A. LEAD WARNING STATEMENT: "Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-paint hazards is recommended prior to purchase."

NOTICE: Inspector must be properly certified as required by federal law.

B. SELLER'S DISCLOSURE:

1. PRESENCE OF LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS (check one box only):

- (a) Known lead-based paint and/or lead-based paint hazards are present in the Property (explain):
(b) Seller has no actual knowledge of lead-based paint and/or lead-based paint hazards in the Property.

2. RECORDS AND REPORTS AVAILABLE TO SELLER (check one box only):

- (a) Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the Property (list documents):
(b) Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.

C. BUYER'S RIGHTS (check one box only):

- 1. Buyer waives the opportunity to conduct a risk assessment or inspection of the Property for the presence of lead-based paint or lead-based paint hazards.
2. Within ten days after the effective date of this contract, Buyer may have the Property inspected by inspectors selected by Buyer. If lead-based paint or lead-based paint hazards are present, Buyer may terminate this contract by giving Seller written notice within 14 days after the effective date of this contract, and the earnest money will be refunded to Buyer.

D. BUYER'S ACKNOWLEDGMENT (check applicable boxes):

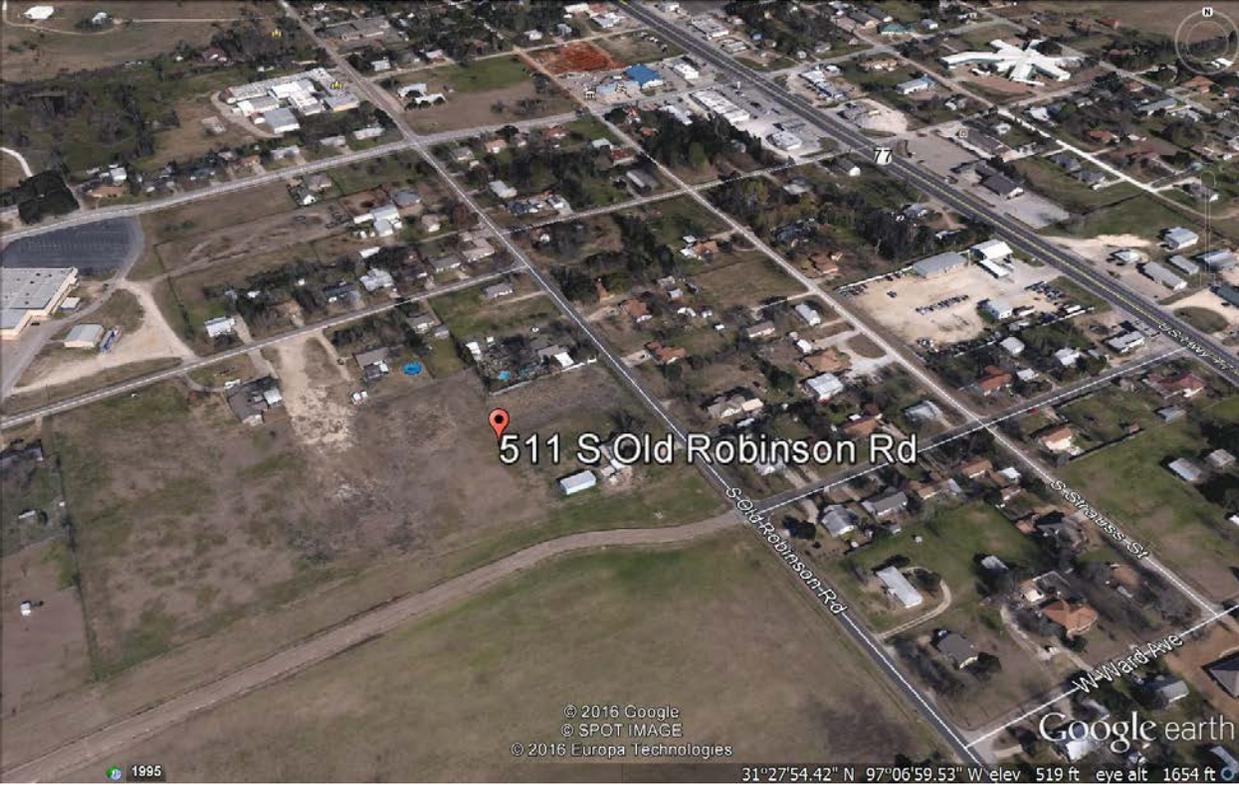
- 1. Buyer has received copies of all information listed above.
2. Buyer has received the pamphlet Protect Your Family from Lead in Your Home.

E. BROKERS' ACKNOWLEDGMENT: Brokers have informed Seller of Seller's obligations under 42 U.S.C. 4952d to: (a) provide Buyer with the federally approved pamphlet on lead poisoning prevention; (b) complete this addendum; (c) disclose any known lead-based paint and/or lead-based paint hazards in the Property; (d) deliver all records and reports to Buyer pertaining to lead-based paint and/or lead-based paint hazards in the Property; (e) provide Buyer a period of up to 10 days to have the Property inspected; and (f) retain a completed copy of this addendum for at least 3 years following the sale. Brokers are aware of their responsibility to ensure compliance.

F. CERTIFICATION OF ACCURACY: The following persons have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Buyer Signature: Straya Const. & Development, Date: 6-27-16
Seller Signature: Amanda Stalue, Date: 06/20/2016
Seller: Robinson Developers, LLC
Other Broker, Date, Listing Broker, Date

The form of this addendum has been approved by the Texas Real Estate Commission for use only with similarly approved or promulgated forms of contracts. Such approval relates to this contract form only. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not suitable for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, 512-936-3000 (http://www.trec.texas.gov)



PUBLIC NOTICE

The City of Robinson Planning and Zoning Commission will meet and conduct a Public Hearing to receive comments on Tuesday, Aug 16th, 2016 at 6:00 PM in the Council Room at Robinson City Hall, 111 W. Lyndale, Robinson, Texas to consider the following Zone Change:

1. Re Zone OCAMPO C TRACT 3; 3.256 ACRES (511 S Old Robinson Rd) from R-1 Single Family Residential to 2F.

The Robinson City Council will conduct a Public Hearing and consider the recommendation of the Planning and Zoning Commission at its meeting on Tuesday, Sept. 6th 2016 at 6:00 p.m. in the Council Room at Robinson City Hall, 111 W. Lyndale, Robinson, Texas to consider the abovementioned Zoning change request.

Jana Lewellen, City Secretary

**CITY OF ROBINSON, TEXAS
A NOTICE OF PUBLIC HEARING ON A
REQUESTED AMENDMENT TO THE
ZONING MAP**

Date: July 15, 2016

Dear Sir or Madam:

This is to advise that there has been a request made by Strava Construction and Development to rezone from R-1 Single Family Residential to 2F on property located at 511 S Old Robinson Rd. more particularly described as follows:

OCAMPO C TRACT 3; 3.256 Acres

NOTICE OF HEARING BEFORE PLAN COMMISSION

Notice is hereby given that a public hearing will be held before the City Plan Commission of the City of Robinson on Tuesday, the 16th day of August, 2016 in the Council Chambers, 111 W. Lyndale Ave, at 6:00 p.m., regarding this requested zone change. The Plan Commission will forward a recommendation to the City Council.

NOTICE OF HEARING BEFORE CITY COUNCIL

Notice is hereby given that a public hearing will be held by the City Council of the City of Robinson on Tuesday, the 6th day of September, 2016, in the Council Chambers, 111 W. Lyndale Ave, at 6:00 p.m., regarding this requested zone change.

According to City Tax Records, you are the owner of property which is located within two hundred (200) feet of the area of the proposed change of zoning. This is a Notice of the public hearings, at which any interested persons will be given an opportunity to be heard. In hearing this matter, the City Plan Commission and City Council may approve the request as submitted, may approve an amended request, or may deny the request.

For more information on the Comprehensive Plan, its land use classifications and its role in the Planning and Zoning process, you may contact the Planning Department at 662-1415 ex 1540, or at 111 W. Lyndale Avenue.

Sincerely
Barry Lightfoot

NO OTHER NOTICE WILL BE MAILED

July 15, 2016

Dear Property Owner:

This is to confirm your request for a zone change located at 511 S old Robinson Rd more particularly described as follows:

OCAMPO C Tract 3; 3.256 Acres

FIRST HEARING:

The hearing will be held before the City Plan Commission.

Day and Date: Tuesday, August 16th, 2016
Time: 6:00 P.M.
Place: Council Chambers 111 W Lindale Ave.

SECOND HEARING

The second hearing will be held before the City Council

Day and Date: Tuesday, September 6th 2016
Time: 6.00 P.M
Place: Council Chambers 111 W Lyndale Ave.

For more information, you may contact the Planning Department at 662-1415, or at 111 W. Lyndale Avenue.

Sincerely
Barry Lightfoot

ROBINSON ISD
500 W LYNDAL AVE
ROBINSON, TX 76706-5505

ROBINSON DEVELOPERS LLC
3701 W WACO DR
WACO, TX 76710

JOHN SISNEROZ
409 S OLD ROBINSON RD
ROBINSON, TX 76706-5514

STEPHEN & VERONICA MALIDEN
306 W TATE AVE
ROBINSON, TX 76706-5527

MARY JEANETTE DICKERSON WEISS
2217 W MOONLIGHT DR
ROBINSON, TX 76706

JUSTIN & BRITTANY MAHAN
401 S OLD ROBINSON RD
ROBINSON, TX 76706

ROBINSON FAWN A'LE
600 S OLD ROBINSON RD
ROBINSON, TX 76706-5519

RANDY RAY SIMONS
3600 HIGH PRAIRIE RD
VALLEY MILLS, TX 76689-2703

ROBERT A LAUGHLIN
361 W CENTRAL
LORENA, TX 76655-4312

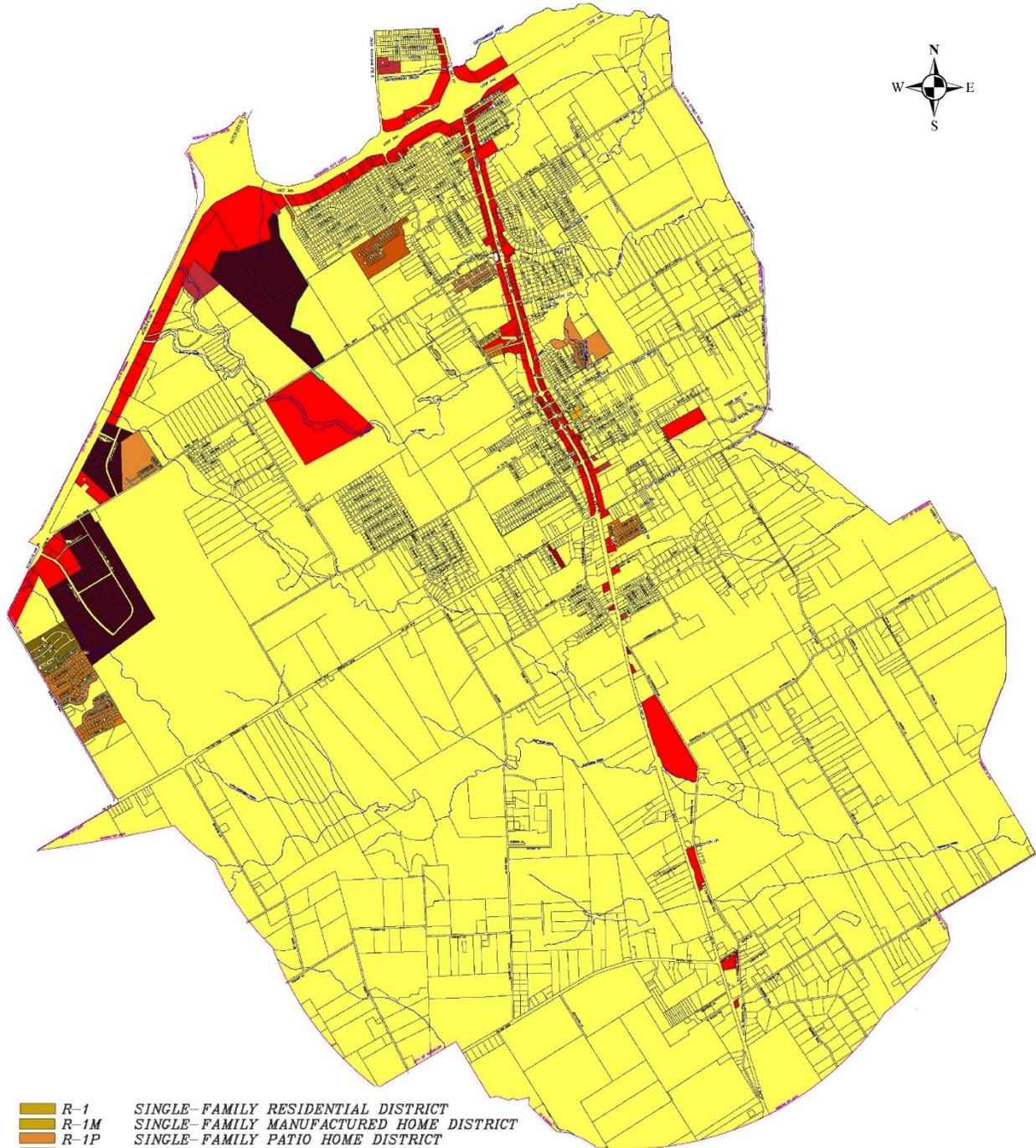
KENNETH HENDRIX
530 JASON ST
ROBINSON, TX 76706-5114

KEVIN K & LORI KENNY
714 N OLD ROBINSON RD
ROBINSON, TX 76706-5223

MORRIS A & RHONDA G WOOD
423 POMPAO PARK
ROBINSON, TX 76706-7397

CARL CLENDENING
410 S OLD ROBINSON RD
ROBINSON, TX 76706-5515

BILLY H LAUGHLIN
408 S OLD ROBINSON RD
ROBINSON, TX 76706-5515



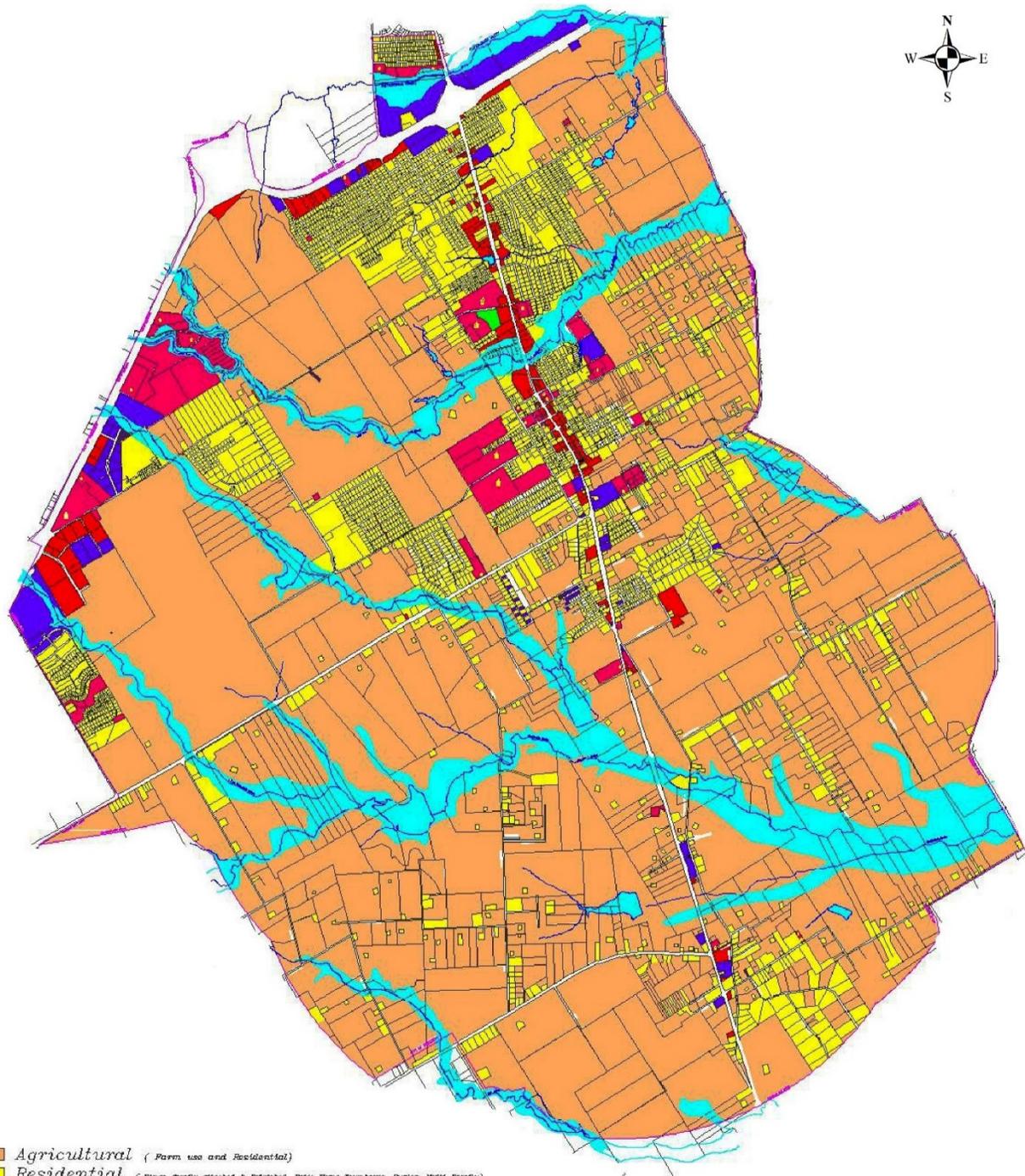
- R-1 SINGLE-FAMILY RESIDENTIAL DISTRICT
- R-1M SINGLE-FAMILY MANUFACTURED HOME DISTRICT
- R-1P SINGLE-FAMILY PATIO HOME DISTRICT
- R-1T SINGLE-FAMILY TOWN HOME DISTRICT
- R-2 TWO-FAMILY (DUPLIX) RESIDENTIAL DISTRICT
- R-3 MULTI-FAMILY RESIDENTIAL DISTRICT
- C-1 LIGHT COMMERCIAL DISTRICT
- C-2 MEDIUM COMMERCIAL DISTRICT
- C-3 HEAVY COMMERCIAL DISTRICT
- C-P PLANNED COMMERCIAL DISTRICT
- M INDUSTRIAL DISTRICT
- M-P PLANNED INDUSTRIAL DISTRICT
- PUD PLANNED UNIT DEVELOPMENT

Community Visions 2034

"A Comprehensive Plan for the City of Robinson, Texas"

Existing Zoning Map





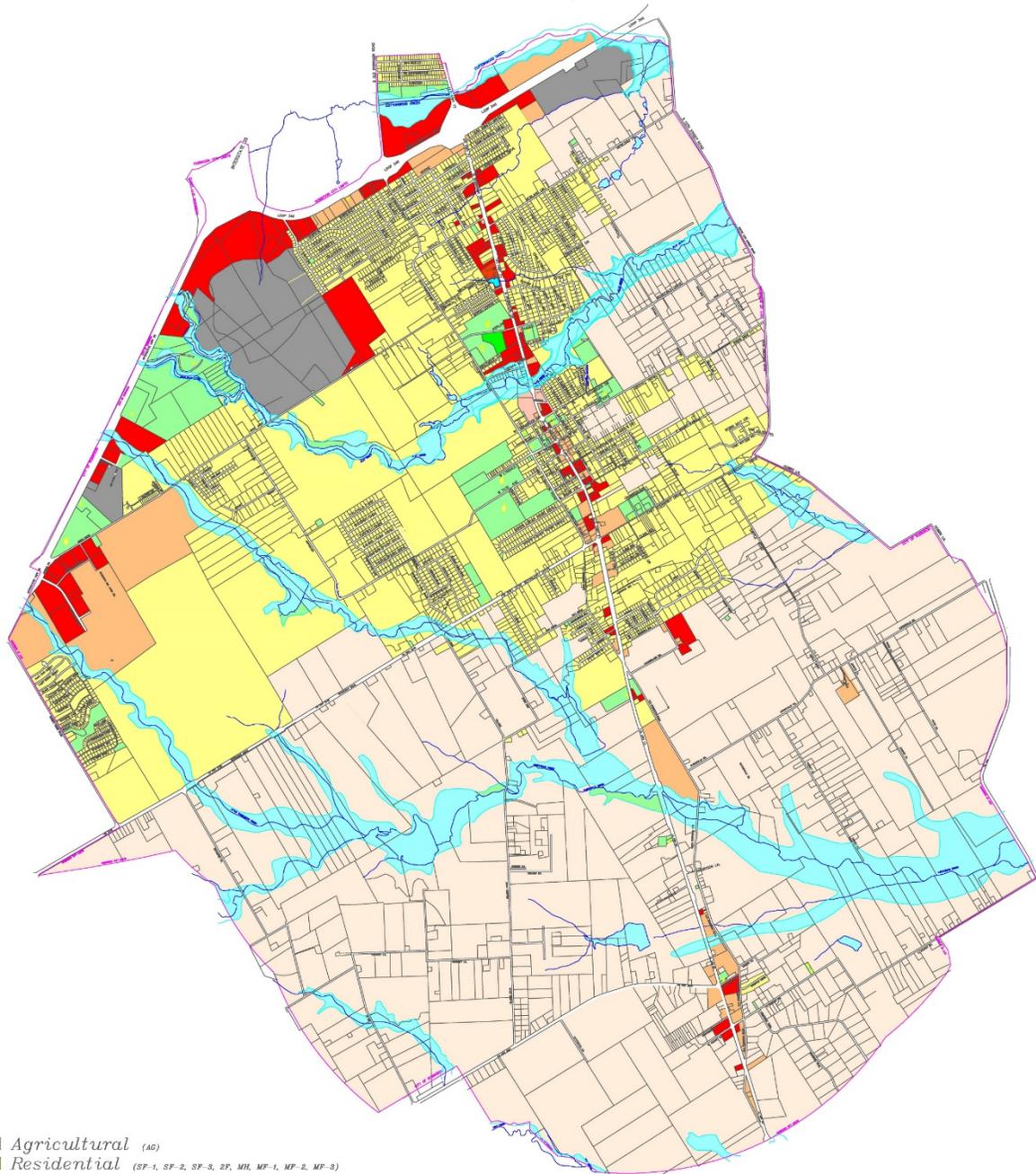
- Agricultural** (Farm use and Residential)
- Residential** (Single-family detached & detached, Two story townhomes, Duplex, Multi Family)
- Commercial** (General Retail, Office, Corner Store, Restaurants)
- Industrial**
- Floodplain/Surface Water** (100-year floodplain area, reservoirs, lakes, ponds)
- Public/ Semi-Public** (Educational, Churches, Libraries, Public Buildings)
- Parks & Open Space**
- Vacant** (Land with no current use)

Community Visions 2034

"A Comprehensive Plan for the City of Robinson, Texas"

Existing Land Use





- Agricultural (A0)
- Residential (SF-1, SF-2, SF-3, 2F, MH, MF-1, MF-2, MF-3)
- Commercial (C-1, C-2, C-3)
- Office (O-1, O-2)
- Industrial (I-1, I-2, I-3)
- Floodplain/Surface Water
- Public/Semi-Public
- Parks & Open Space

Community Visions 2034
"A Comprehensive Plan for the City of Robinson, Texas"
Future Land Use Map
0 500 1,000 2,000 3,000 4,000 Feet

ORDINANCE No. 2016-007

**ORDINANCE OF THE CITY OF ROBINSON, TEXAS APPROVING
ZONING CHANGE: 511 S OLD ROBINSON ROAD**

WHEREAS, the owner of property located at 511 S Old Old Robinson Road has requested that the property be re-zoned from R-1, Single Family Residential to 2F; and

WHEREAS, the Planning and Zoning Commission recommends approval of the change; and

WHEREAS, the change would comply with the Comprehensive Growth Plan and promote orderly growth and development.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF ROBINSON, TEXAS THAT:**

The property located at 511 S Old Robinson Road is hereby re-zoned from R-1, Single Family Residential to 2F.

Passed this 6th day of September, 2016.

Bert Echterling, Mayor

Attest:

Jana Lewellen, City Secretary



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Agenda Item #7

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: **PUBLIC HEARING:** Conduct the second of two public hearings to receive comments on the proposed tax rate of \$0.499500 cents per \$100 valuation for fiscal year 2017 (2016 tax year), and announce meeting to adopt the proposed tax rate on September 13, 2016.

STAFF RECOMMENDATION: Conduct Public Hearing, and receive comments on the proposed tax rate.

ITEM SUMMARY: The State's truth-in-taxation statutes specify that a proposed ad valorem tax rate which exceeds the lower of the effective rate or the rollback rate requires additional steps before the rate may be adopted. Although the proposed tax rate of \$0.499500 is less than the current year, anything above the effective rate of \$0.468849 is considered a "tax increase". This public hearing is the final hearing required by State Law.

ATTACHMENTS:

Governing Body Summary

Rate Adoption Worksheet

Tax Rate Worksheets

Tax Data

2016 Governing Body Summary #1A*

Benchmark 2016 Tax Rates

Robinson

Date: 08/25/2016 10:08 AM

DESCRIPTION OF TAX RATE	TAX RATE PER \$100	THIS YEAR'S TAX LEVY**	ADDITIONAL TAX LEVY
Effective Tax Rate	\$0.468849	\$3,445,502	
One Percent \$100 Tax Increase***	\$0.473537	\$3,479,954	\$34,452
One Cent per \$100 Tax Increase***	\$0.478849	\$3,518,991	\$73,489
Notice & Hearing Limit****	\$0.468849	\$3,445,502	\$0
Rollback Tax Rate	\$0.503473	\$3,699,949	\$254,447
Last Year's Tax Rate	\$0.505321	\$3,713,530	\$268,028
Proposed Tax Rate	\$0.499500	\$3,670,752	\$225,250

*These figures are provided as estimates of possible outcomes resulting from varying the tax rate. Please be aware that these are only estimates and should not be used alone in making budgetary decisions.

**Tax levies are calculated using line 19 of the Effective Tax Rate Worksheet and this year's frozen tax levy on homesteads of the elderly or disabled.

***Tax increase compared to effective tax rate.

****The Notice and Hearing Limit is the highest tax rate that may be adopted without notices and a public hearing. It is the lower of the rollback tax rate or the effective tax rate.

2016 Effective Tax Rate Worksheet

Robinson

Date: 08/25/2016 10:08 AM

1. 2015 total taxable value. Enter the amount of 2015 taxable value on the 2015 tax roll today. Include any adjustments since last year's certification; exclude Tax Code Section 25.25(d) one-third over-appraisal corrections from these adjustments. This total includes the taxable value of homesteads with tax ceilings (will deduct in Line 2) and the captured value for tax increment financing (will deduct taxes in Line 14). ¹	\$672,215,116
2. 2015 tax ceilings. Counties, cities and junior college districts. Enter 2015 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing units adopted the tax ceiling provision in 2015 or a prior year for homeowners age 65 or older or disabled, use this step. ²	\$0
3. Preliminary 2015 adjusted taxable value. Subtract Line 2 from Line 1.	\$672,215,116
4. 2015 total adopted tax rate.	\$0.505321/\$100
5. 2015 taxable value lost because court appeals of ARB decisions reduced 2015 appraised value. A. Original 2015 ARB Values.	\$1,186,871
B. 2015 values resulting from final court decisions.	\$988,000
C. 2015 value loss. Subtract B from A. ³	\$198,871
6. 2015 taxable value, adjusted for court-ordered reductions. Add Line 3 and Line 5C.	\$672,413,987
7. 2015 taxable value of property in territory the taxing unit deannexed after Jan. 1, 2015. Enter the 2015 value of property in deannexed territory. ⁴	\$0
8. 2015 taxable value lost because property first qualified for an exemption in 2016. Note that lowering the amount or percentage of an existing exemption does not create a new exemption or reduce taxable value. If the taxing unit increased an original exemption, use the difference between the original exempted amount and the increased exempted amount. Do not include value lost to freeport or goods-in-transit exemptions.	
A. Absolute exemptions. Use 2015 market value:	\$1,571,440
B. Partial exemptions. 2016 exemption amount or 2016 percentage exemption times 2015 value:	\$1,671,191
C. Value loss. Add A and B. ⁵	\$3,242,631
9. 2015 taxable value lost because property first qualified for agricultural appraisal (1-d or 1-d-1), timber appraisal, recreational/scenic appraisal or public access airport special appraisal in 2016. Use only properties that qualified in 2016 for the first time; do not use properties that qualified in 2015.	
A. 2015 market value:	\$81,024
B. 2016 productivity or special appraised value:	\$1,820

C. Value loss. Subtract B from A. ⁶	\$79,204
10. Total adjustments for lost value. Add lines 7, 8C and 9C.	\$3,321,835
11. 2015 adjusted taxable value. Subtract Line 10 from Line 6.	\$669,092,152
12. Adjusted 2015 taxes. Multiply Line 4 by Line 11 and divide by \$100.	\$3,381,063
13. Taxes refunded for years preceding tax year 2015. Enter the amount of taxes refunded by the taxing unit for tax years preceding tax year 2015. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2015. This line applies only to tax years preceding tax year 2015. ⁷	\$1,609
14. Taxes in tax increment financing (TIF) for tax year 2015. Enter the amount of taxes paid into the tax increment fund for a reinvestment zone as agreed by the taxing unit. If the taxing unit has no 2016 captured appraised value in Line 16D, enter 0. ⁸	\$0
15. Adjusted 2015 taxes with refunds and TIF adjustment. Add Lines 12 and 13, subtract Line 14. ⁹	\$3,382,672
16. Total 2016 taxable value on the 2016 certified appraisal roll today. This value includes only certified values and includes the total taxable value of homesteads with tax ceilings (will deduct in Line 18). These homesteads include homeowners age 65 or older or disabled. ¹⁰	
A. Certified values:	\$734,885,292
B. Counties: Include railroad rolling stock values certified by the Comptroller's office:	\$0
C. Pollution control exemption: Deduct the value of property exempted for the current tax year for the first time as pollution control property:	\$0
D. Tax increment financing: Deduct the 2016 captured appraised value of property taxable by a taxing unit in a tax increment financing zone for which the 2016 taxes will be deposited into the tax increment fund. Do not include any new property value that will be included in Line 21 below. ¹¹	\$0
E. Total 2016 value. Add A and B, then subtract C and D.	\$734,885,292
17. Total value of properties under protest or not included on certified appraisal roll. ¹²	
A. 2016 taxable value of properties under protest. The chief appraiser certifies a list of properties still under ARB protest. The list shows the appraisal district's value and the taxpayer's claimed value, if any, or an estimate of the value if the taxpayer wins. For each of the properties under protest, use the lowest of these values. Enter the total value. ¹³	\$0
B. 2016 value of properties not under protest or included on certified appraisal roll. The chief appraiser gives taxing units a list of those taxable properties that the chief appraiser knows about, but are not included in the appraisal roll certification. These properties also are not on the list of properties that are still under protest. On this list of properties, the chief appraiser includes the market value, appraised value and exemptions for the preceding year and a reasonable estimate of the market value, appraised value and exemptions for the current year. Use the lower market, appraised or taxable value (as appropriate). Enter the total value. ¹⁴	\$0

C. Total value under protest or not certified: Add A and B.	\$0
18. 2016 tax ceilings. Counties, cities and junior colleges enter 2016 total taxable value of homesteads with tax ceilings. These include the homesteads of homeowners age 65 or older or disabled. Other taxing units enter 0. If your taxing units adopted the tax ceiling provision in 2015 or a prior year for homeowners age 65 or older or disabled, use this step. ¹⁵	\$0
19. 2016 total taxable value. Add Lines 16E and 17C. Subtract Line 18.	\$734,885,292
20. Total 2016 taxable value of properties in territory annexed after Jan. 1, 2015. Include both real and personal property. Enter the 2016 value of property in territory annexed. ¹⁶	\$0
21. Total 2016 taxable value of new improvements and new personal property located in new improvements. New means the item was not on the appraisal roll in 2015. An improvement is a building, structure, fixture or fence erected on or affixed to land. New additions to existing improvements may be included if the appraised value can be determined. New personal property in a new improvement must have been brought into the taxing unit after Jan. 1, 2015, and be located in a new improvement. New improvements do include property on which a tax abatement agreement has expired for 2016. ¹⁷	\$13,402,020
22. Total adjustments to the 2016 taxable value. Add Lines 20 and 21.	\$13,402,020
23. 2016 adjusted taxable value. Subtract Line 22 from Line 19.	\$721,483,272
24. 2016 effective tax rate. Divide Line 15 by Line 23 and multiply by \$100. ¹⁸	\$0.468849/\$100
25. COUNTIES ONLY. Add together the effective tax rates for each type of tax the county levies. The total is the 2016 county effective tax rate. ¹⁹	

A county, city or hospital district that adopted the additional sales tax in November 2015 or in May 2016 must adjust its effective tax rate. The Additional Sales Tax Rate Worksheet sets out this adjustment. Do not forget to complete the Additional Sales Tax Rate Worksheet if the taxing unit adopted the additional sales tax on these dates.

¹Tex. Tax Code Section 26.012(14)

²Tex. Tax Code Section 26.012(14)

³Tex. Tax Code Section 26.012(13)

⁴Tex. Tax Code Section 26.012(15)

⁵Tex. Tax Code Section 26.012(15)

⁶Tex. Tax Code Section 26.012(15)

⁷Tex. Tax Code Section 26.012(13)

⁸Tex. Tax Code Section 26.03(c)

⁹Tex. Tax Code Section 26.012(13)

¹⁰Tex. Tax Code Section 26.012(15)

¹¹Tex. Tax Code Section 26.03(c)

¹²Tex. Tax Code Section 26.01(c)

¹³Tex. Tax Code Section 26.04 and 26.041

¹⁴Tex. Tax Code Section 26.04 and 26.041

¹⁵Tex. Tax Code Section 26.012(6)

¹⁶Tex. Tax Code Section 26.012(17)

¹⁷Tex. Tax Code Section 26.012(17)

¹⁸Tex. Tax Code Section 26.04(c)

¹⁹Tex. Tax Code Section 26.04(d)

2016 Rollback Tax Rate Worksheet

Robinson

Date: 08/25/2016

26. 2015 maintenance and operations (M&O) tax rate.	\$0.371895/\$100
27. 2015 adjusted taxable value. Enter the amount from Line 11.	\$669,092,152
28. 2015 M&O taxes.	
A. Multiply Line 26 by Line 27 and divide by \$100.	\$2,488,320
B. Cities, counties and hospital districts with additional sales tax: Amount of additional sales tax collected and spent on M&O expenses in 2015. Enter amount from full year's sales tax revenue spent for M&O in 2015 fiscal year, if any. Other taxing units enter 0. Counties exclude any amount that was spent for economic development grants from the amount of sales tax spent.	\$431,204
C. Counties: Enter the amount for the state criminal justice mandate. If second or later year, the amount is for increased cost above last year's amount. Other taxing units enter 0.	\$0
D. Transferring function: If discontinuing all of a department, function or activity and transferring it to another taxing unit by written contract, enter the amount spent by the taxing unit discontinuing the function in the 12 months preceding the month of this calculation. If the taxing unit did not operate this function for this 12-month period, use the amount spent in the last full fiscal year in which the taxing unit operated the function. The taxing unit discontinuing the function will subtract this amount in H below. The taxing unit receiving the function will add this amount in H below. Other taxing units enter 0.	\$0
E. Taxes refunded for years preceding tax year 2015: Enter the amount of M&O taxes refunded in the preceding year for taxes before that year. Types of refunds include court decisions, Tax Code Section 25.25(b) and (c) corrections and Tax Code Section 31.11 payment errors. Do not include refunds for tax year 2015. This line applies only to tax years preceding tax year 2015.	\$1,184
F. Enhanced indigent health care expenditures: Enter the increased amount for the current year's enhanced indigent health care expenditures above the preceding tax year's enhanced indigent health care expenditures, less any state assistance.	\$0
G. Taxes in TIF: Enter the amount of taxes paid into the tax increment fund for a reinvestment zone as agreed by the taxing unit. If the taxing unit has no 2016 captured appraised value in Line 16D, enter 0.	\$0
H. Adjusted M&O Taxes. Add A, B, C, E and F. For unit with D, subtract if discontinuing function and add if receiving function. Subtract G.	\$2,920,708
29. 2016 adjusted taxable value. Enter Line 23 from the Effective Tax Rate Worksheet.	\$721,483,272
30. 2016 effective maintenance and operations rate. Divide Line 28H by Line 29 and multiply by \$100.	\$0.404820/\$100
31. 2016 rollback maintenance and operation rate. Multiply Line 30 by 1.08.	\$0.437205/\$100

<p>32. Total 2016 debt to be paid with property taxes and additional sales tax revenue. "Debt" means the interest and principal that will be paid on debts that:</p> <ul style="list-style-type: none"> (1) are paid by property taxes, (2) are secured by property taxes, (3) are scheduled for payment over a period longer than one year and (4) are not classified in the taxing unit's budget as M&O expenses. <p>A. Debt also includes contractual payments to other taxing units that have incurred debts on behalf of this taxing unit, if those debts meet the four conditions above. Include only amounts that will be paid from property tax revenue. Do not include appraisal district budget payments. List the debt in Schedule B: Debt Service.</p> <p>B. Subtract unencumbered fund amount used to reduce total debt.</p> <p>C. Subtract amount paid from other resources.</p> <p>D. Adjusted debt. Subtract B and C from A.</p>	<p>\$925,706</p> <p>\$0</p> <p>\$7,500</p> <p>\$918,206</p>
33. Certified 2015 excess debt collections. Enter the amount certified by the collector.	\$0
34. Adjusted 2016 debt. Subtract Line 33 from Line 32D.	\$918,206
35. Certified 2016 anticipated collection rate. Enter the rate certified by the collector. If the rate is 100 percent or greater, enter 100 percent.	100.00%
36. 2016 debt adjusted for collections. Divide Line 34 by Line 35	\$918,206
37. 2016 total taxable value. Enter the amount on Line 19.	\$734,885,292
38. 2016 debt tax rate. Divide Line 36 by Line 37 and multiply by \$100.	\$0.124945/\$100
39. 2016 rollback tax rate. Add Lines 31 and 38.	\$0.562150/\$100
40. COUNTIES ONLY. Add together the rollback tax rates for each type of tax the county levies. The total is the 2016 county rollback tax rate.	

A taxing unit that adopted the additional sales tax must complete the lines for the Additional Sales Tax Rate. A taxing unit seeking additional rollback protection for pollution control expenses completes the Additional Rollback Protection for Pollution Control.

2016 Additional Sales Tax Rate Worksheet

Robinson

Date: 08/25/2016

41. Taxable Sales. For taxing units that adopted the sales tax in November 2015 or May 2016, enter the Comptroller's estimate of taxable sales for the previous four quarters. ¹ Taxing units that adopted the sales tax before November 2015, skip this line.	\$0
42. Estimated sales tax revenue. Counties exclude any amount that is or will be spent for economic development grants from the amount of estimated sales tax revenue. ² Taxing units that adopted the sales tax in November 2015 or in May 2016. Multiply the amount on Line 41 by the sales tax rate (.01, .005 or .0025, as applicable) and multiply the result by .95. ³ - or - Taxing units that adopted the sales tax before November 2015. Enter the sales tax revenue for the previous four quarters. Do not multiply by .95.	\$431,204
43. 2016 total taxable value. Enter the amount from Line 37 of the Rollback Tax Rate Worksheet.	\$734,885,292
44. Sales tax adjustment rate. Divide Line 42 by Line 43 and multiply by \$100.	\$0.058677/\$100
45. 2016 effective tax rate, unadjusted for sales tax. Enter the rate from Line 24 or 25, as applicable, on the Effective Tax Rate Worksheet.	\$0.468849/\$100
46. 2016 effective tax rate, adjusted for sales tax. ⁴ Taxing units that adopted the sales tax in November 2015 or in May 2016. Subtract Line 44 from Line 45. Skip to Line 47 if you adopted the additional sales tax before November 2015.	\$0.468849/\$100
47. 2016 rollback tax rate, unadjusted for sales tax. ⁵ Enter the rate from Line 39 or 40, as applicable, of the Rollback Tax Rate Worksheet.	\$0.562150/\$100
48. 2016 rollback tax rate, adjusted for sales tax. Subtract Line 44 from Line 47.	\$0.503473/\$100

¹Tex. Tax Code Section 26.041(d)

²Tex. Tax Code Section 26.041(i)

³Tex. Tax Code Section 26.041(d)

⁴Tex. Tax Code Section 26.04(c)

⁵Tex. Tax Code Section 26.04(c)

Section 26.05(b) of Property Tax Code
Worksheet for Determination of Steps Required for Adoption of Tax Rate
Robinson

M&O Tax Increase in Current Year	
1. Last year's taxable value, adjusted for court-ordered reductions. Enter Line 6 of the Effective Tax Rate Worksheet.	\$672,413,987
2. Last year's M&O tax rate. Enter Line 26 of the Rollback Tax Rate Worksheet.	\$0.371895/\$100
3. M&O taxes refunded for years preceding tax year 2015. Enter Line 28E of the Rollback Tax Rate Worksheet.	\$1,184
4. Last year's M&O tax levy. Multiply line 1 times line 2 and divide by 100. To the result, add line 3.	\$2,501,857
5. This year's total taxable value. Enter line 19 of the Effective Tax Rate Worksheet.	\$734,885,292
6. This year's proposed M&O tax rate Enter the proposed M&O tax rate approved by the Governing Body.	\$0.374555/\$100
7. This year's M&O tax levy. Multiply line 5 times line 6 and divide by 100.	\$2,752,550
8. M&O Tax Increase (Decrease). Subtract line 4 from line 7.	\$250,693
Comparison of Total Tax Rates	
9. Effective Total Tax Rate.	\$0.468849/\$100
10. This year's proposed total tax rate.	\$0.499500/\$100
11. This year's rate minus effective rate. Subtract line 9 from line 10.	\$0.030651
12. Percentage change in total tax rate. Divide Line 11 by line 9.	6.54%
Comparison of M&O Tax Rates	
13. Effective M&O Tax Rate. Enter line 30 of the Rollback Tax Rate Worksheet. Adjust for Sales Tax using Line 44 of the Sales Tax Worksheet, if necessary.	\$0.346143/\$100
14. This year's proposed M&O tax rate.	\$0.374555/\$100
15. This year's rate minus effective rate. Subtract line 13 from line 14.	\$0.028412
16. Percentage change in M&O tax rate. Divide line 15 by line 13.	8.21%
Raised M&O Taxes on a \$100,000 Home	
17. This year's taxable value on a \$100,000 home.	\$100,000
18. Last year's M&O tax rate.	\$0.371895/\$100
19. This year's proposed M&O tax rate.	\$0.374555/\$100
20. This year's raised M&O taxes. Subtract line 18 from line 19 and multiply result by line 17.	\$2.66

Property Tax Information

TAXABLE VALUE

TAX VALUE	2015 Actual	2016 Proposed
NET TAXABLE VALUE	673,460,422	734,885,292
New Construction Included	14,705,306	13,402,020

PROPERTY TAX CALCULATION

TOTAL TAXABLE VALUE		673,460,422	734,885,292
Proposed Tax Rate	x	0.505321	0.499500
Tax Levy		3,403,137	3,670,752
Collection Rate	x	1.0000	1.0000
NET COLLECTIONS		3,403,137	3,670,752
Collections from New Constr.		74,309	66,943
Increase (Decrease) from Previous Year			267,615

PROPERTY TAX ALLOCATIONS

TOTAL 2016 TAX RATE	O & M LEVY	DEBT SERVICE LEVY	TOTAL LEVY
\$0.499500	2,752,550	918,202	3,670,752
	@	@	@
	0.374555	0.124945	0.499500
		Effective Tax Rate	0.468849
		Amt. Over (Under) Effective Rate	0.030651
		Rollback Tax Rate	0.503473
		Amt. Over (Under) Rollback Rate	

Note: The City Charter of the City of Robinson does not provide for a debt limit. Under provisions of state law, the maximum tax rate is limited to \$2.50 per \$100 assessed valuation.

Tax Rate Limit	\$	2.5000
Proposed Tax Rate	\$	0.4995
Available Tax Rate	\$	2.0005



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Agenda Item #8

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: **PUBLIC HEARING:** Conduct a public hearing for the City of Robinson Budget for fiscal year beginning October 1, 2016, and ending September 30, 2017.

STAFF RECOMMENDATION: Conduct Public Hearing, and receive comments on the proposed Budget for FY 2016-2017.

ITEM SUMMARY: A preliminary budget workshop was conducted on July 18, 2016, and a budget workshop was conducted on August 6, 2016. Pursuant to Section 8.04 of the City Charter, as required by law, the Council shall hold a public hearing on the proposed budget as revised, at which all interested persons shall be given an opportunity to be heard, for or against, on any proposed item thereof.

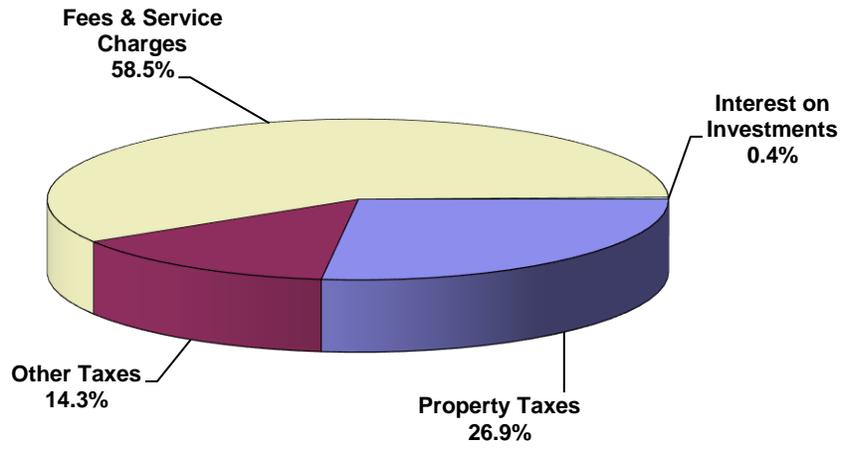
ATTACHMENTS:

Budget Summary

**Combined Summary of Revenues and Expenditures/Expenses
FY 2016-17**

DESCRIPTION	GOVERNMENTAL FUNDS			PROPRIETARY FUNDS		TOTAL ALL FUNDS
	GENERAL FUND	DEBT SERVICE FUND	SPECIAL PURPOSE FUNDS	WATER FUND	WASTE WATER FUND	
BEGINNING BALANCE	2,479,976	122,768	193,217	1,903,204	786,568	5,485,733
<u>REVENUES</u>						
Taxes	4,671,480	923,902	21,500	-	-	5,616,882
Sanitation Charges For Service	674,764	-	-	-	-	674,764
License and Permits	38,900	-	13,400	-	-	52,300
Fines & Forfeitures	250,718	-	-	-	-	250,718
Intergovernmental	28,000	-	-	-	-	28,000
Contributions and Donations	-	-	-	-	-	-
Other Financial Services	55,000	-	-	17,000	20,000	92,000
Interest on Investments	16,800	1,800	394	24,000	9,000	51,994
Water Charges & Fees	-	-	-	4,837,462	-	4,837,462
Wastewater Charges & Fees	-	-	-	-	2,042,316	2,042,316
TOTAL REVENUES	5,735,662	925,702	35,294	4,878,462	2,071,316	13,646,436
TRANSFERS FROM OTHER FUNDS	378,387					378,387
EXPENDITURES / EXPENSES						
Personnel Services	3,751,282	-	4,845	757,154	328,141	4,841,422
Supplies	255,479	-	7,000	176,415	24,200	463,094
Maintenance	359,088	-	1,600	299,330	195,445	855,463
Other Services & Charges	1,537,444	-	4,000	1,074,815	380,580	2,996,839
Capital Outlay	304,467	-	-	321,700	103,000	729,167
Appropriations (Debt)	12,405	925,706	-	1,891,766	681,908	3,511,785
TOTAL EXPENDITURES/EXPENSES	6,220,165	925,706	17,445	4,521,180	1,713,274	13,397,770
REVENUE OVER (UNDER) EXPENDITURES/EXPENSES	(106,116)	(4)	17,849	357,282	358,042	627,053
TRANSFERS TO OTHER FUNDS	-	-	-	266,060	112,327	378,387
ENDING BALANCE	2,373,860	122,764	211,066	1,994,426	1,032,283	5,734,399

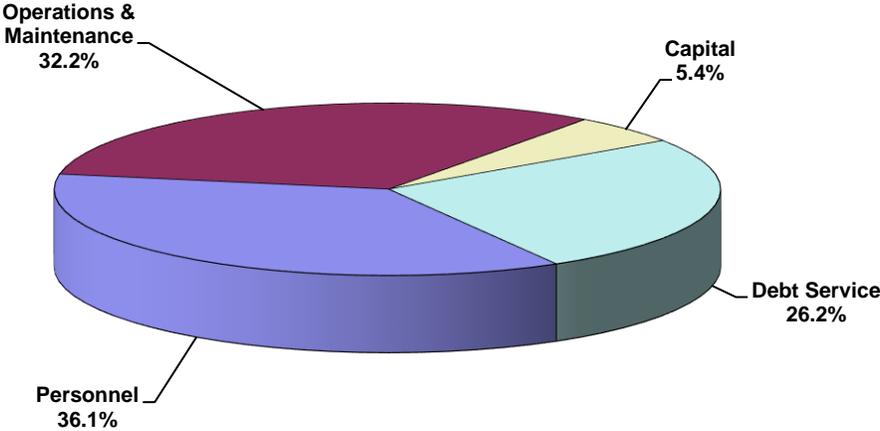
PROJECTED REVENUES 2016-17



ALL FUNDS

Property Taxes	\$	3,670,752
Other Taxes		1,946,130
Fees & Service Charges		7,977,560
Interest on Investments		51,994
	\$	13,646,436

BUDGETED EXPENDITURES/EXPENSES FY 2016-17



ALL FUNDS

Personnel	\$	4,841,422
Operations & Maintenance		4,315,396
Capital		729,167
Debt Service		3,511,785
		13,397,770
	\$	13,397,770

AUTHORIZED PERSONNEL BY FUND AND DEPARTMENT

	FY 2015-16		FY 2016-17	
	Full Time	Part Time	Full Time	Part Time
GENERAL FUND				
Administration	7.00	-	6.00	-
Municipal Court	2.00	1.00	2.00	1.00
Street Department	7.00	-	8.00	-
Police Department	32.00	1.00	32.00	1.00
Planning Department	4.00	-	4.00	-
Community Media	1.00	-	1.00	-
SUBTOTAL	53.00	2.00	53.00	2.00
WATER FUND				
Water Administration	5.00	-	5.00	-
Water Treatment	3.00	-	3.00	-
Water Distribution	5.00	-	4.50	-
SUBTOTAL	13.00	-	12.50	-
WASTEWATER FUND				
Wastewater Department	6.00	-	5.50	-
SUBTOTAL	6.00	-	5.50	-
TOTAL CITY EMPLOYEES	72.00	2.00	71.00	2.00



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Agenda Item #9

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: Consider and possible action on agriculture agreement between the City of Robinson and Behnke Farms.

STAFF RECOMMENDATION: Staff recommends approval of the revised lease agreement as presented.

ITEM SUMMARY: The City of Robinson entered into an agreement with Behnke Farms on September 1, 2008 to lease land that is located within the Water Treatment Plant property along South 12th Street at Flat Creek. Behnke Farms has used the lease area to farm crops during this time period. The term of the lease was for a 5-year period ending September 1, 2013. The lease was renewed for a period of two (2) years at the September 3, 2013 City Council Meeting ending August 31, 2015, and renewed for one additional year ending August 31, 2016 at the August 4, 2015 Council Meeting.

Attached is a new Agriculture Lease Agreement between the City of Robinson and Behnke Farms for a 12-month period renewable for up to three (3) additional one year terms by mutual written agreement of the Landlord and the Tenant.

Council approved the Agriculture Agreement at its August 2, 2016 meeting; however, upon review by the tenant(s) proposed changes were submitted, and have been provided for review.

FISCAL IMPACT: None

ATTACHMENTS:

Revised Lease Agreement with strike-throughs

Final Lease Agreement

Site Plan

Agricultural Lease

Date: _____

Landlord: City of Robinson, Texas, a municipal corporation (hereinafter “City” or “Landlord”)

Landlord's Address:

111 W. Lyndale, Robinson, McLennan County, Texas 76706

Tenant: Carl and Donna Benke d/b/a Benke Farms

Tenant's Address:

5342 Rosenthal Parkway, Lorena, Texas

Leased Premises Description (hereinafter “Premises”):

A 51.6-acre tract of land being part of a 314.11-acre tract conveyed to the City of Robinson, Texas by deed recorded at Volume 1707, Page 627 of the Deed Records of McLennan County, Texas, and the location of which is shown in Exhibit “A” attached hereto.

Base Rent:

\$2000.00 payable on execution of this lease. For any renewal term the amount and terms of payment shall be as mutually agreed in the renewal.

Term (months): 12 months. Renewable for up to three (3) additional one year terms by mutual written agreement of the Landlord and the Tenant.

Commencement Date: September 1, 2016

Termination Date: August 31, 2017

Permitted Use: Solely for planting, raising, and harvesting agricultural products or grazing livestock, and no other purpose. Permitted uses do not include raising swine or fowl, feedlots, or slaughtering, processing or rendering operations; or any use that is prohibited by applicable ordinances.

~~**Tenant's Insurance:** During the term of this lease Tenant shall maintain at Tenant's sole cost and expense general liability insurance covering the premises and operations thereon for the benefit and protection of the Tenant and the Landlord. Landlord must be named as an additional insured, and subrogation rights against the Landlord must be waived. Coverage must be in the amount of \$250,000 per person, \$500,000 aggregate. Tenant must provide Landlord with a certificate of insurance meeting the requirements above before commencing occupancy of the~~

premises.

B. Tenant's Obligations

Tenant agrees to -

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.
2. Accept the Premises in their present condition "AS IS," the Premises being currently suitable for the Permitted Use based on the Tenant's own inspection.
3. Obey all laws relating to Tenant's use, maintenance of condition, and occupancy of the Premises, including the rules and regulations of the United States Department of Agriculture and the Texas Agriculture Commissioner, and Ordinances of the City of Robinson.
4. Pay for all labor, fuel, and utility services used by Tenant.
5. Pay all taxes on the crops raised on and Tenant's personal property located on the Premises, and any property tax on the leasehold.
6. Allow Landlord to enter the Premises to inspect the Premises and show the Premises to prospective purchasers or tenants.
7. Repair, replace, and maintain any part of the Premises used by Tenant.
8. **INDEMNIFY, DEFEND, AND HOLD LANDLORD AND LANDLORD'S AGENTS HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) ARISING OUT OF TENANT'S OR TENANT'S AGENTS' USE OF THE PREMISES. THE INDEMNITY CONTAINED IN THIS PARAGRAPH (i) IS INDEPENDENT OF TENANT'S INSURANCE, (ii) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (iii) WILL SURVIVE THE END OF THE TERM, AND (iv) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS.**
9. Vacate the Premises on the last day of the Term.
10. Cultivate the Premises in a timely, thorough, and farmerlike manner, employing the best methods of farming customarily practiced on like crops in the area.

11. Keep all gates on the Premises closed and locked.
12. Enter and exit the Premises only at those places designated by Landlord.
13. Keep all fences and gates in good repair.

Tenant agrees not to -

1. Use the Premises for any purpose other than the Permitted Use.
2. Create or allow a nuisance or permit any waste of the Premises.
3. Change Landlord's lock system.
4. Alter the Premises, including clearing new roads, moving or erecting any fences, or locating on the Premises any type of manufactured housing or mobile home.
5. Assign this lease or sublease any portion of the Premises without Landlord's written consent.
6. Hunt or fish on the Land or allow anyone else to do so.
7. Litter or leave trash or debris on the Premises.
8. Allow a lien to be placed on the Premises.

C. Landlord's Obligations

Landlord agrees to -

Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date.

Landlord retains no maintenance obligation with regard to the Premises.

D. General Provisions

Landlord and Tenant agree to the following:

1. *Alterations.* Improvements to the Premises require prior approval of the Landlord. Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at termination of this lease and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

2. *Release of Claims/Subrogation.* TENANT RELEASES LANDLORD AND LANDLORD'S AGENTS FROM ALL CLAIMS OR LIABILITIES FOR ANY INJURY TO TENANT AND TENANT'S AGENTS OR TO TENANT'S OR TENANT'S AGENTS' PROPERTY LOCATED ON THE PREMISES. **THE RELEASE IN THIS PARAGRAPH WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD OR LANDLORD'S AGENTS.**

3. *Condemnation/Substantial or Partial Taking*

If the Premises cannot be used for the Permitted Use because of condemnation or purchase in lieu of condemnation, this lease will terminate. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation, except as may be payable to Tenant directly for lost crops.

~~4. *Landlord's Lien*~~

~~Tenant grants to Landlord a security interest in the collateral to secure payment and performance by Tenant of all obligations and payments due from Tenant under this lease. The collateral will include all of Tenant's crops, livestock, and personal property located or to be located on the Premises, and all products, proceeds, offspring, increase, governmental payments, insurance proceeds, documents of title, and warehouse receipts relating to such property.~~

~~This lease is a security agreement under both article 9 of the Texas Business and Commerce Code and the federal Food Security Act of 1985. Landlord may file financing statements or continuation statements to perfect or continue the perfection of the security interest. Tenant agrees to furnish to Landlord a list of the names and addresses of any buyer, commission merchant, or selling agent to or through whom Tenant may sell the collateral. Tenant agrees to notify Landlord of the identity of any buyer, commission merchant, selling agent, or warehouse to or with whom Tenant intends to sell or store the collateral within seven days before any sale or storage of the collateral.~~

5. *Default by Landlord/Events.* A default by Landlord is the failure to comply with any provision of this lease that is not cured within thirty days after written notice. Tenant's sole remedy for a breach by Landlord is to terminate this lease and to be re-paid the proportionate share of the rent for the remaining period of the lease.

6. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent; (b) abandoning or vacating a substantial portion of the Premises; and (C) failing to comply within ten days after written notice with any provision of this lease other than the defaults set forth in (a) and (b). Landlord's remedies for Tenant's default are to cancel this lease and take possession of the Premises. Tenant shall be liable for any costs of the Landlord incurred in re-taking possession of the Premises and excluding Tenant therefrom, including any reasonable and necessary attorney's fees. Landlord shall be under no obligation to return to Tenant any unearned, pre-paid rent, but must apply any such rent to its costs in recovering possession of the Property before charging such against the Tenant.

Landlord may terminate this lease for its own convenience for a public project on 90 days written notice. Lessor shall not be required to allow crops to mature or be harvested before exercising any right of Lessor to terminate this Lease, and Lessor shall not be liable to or responsible for reimbursement to the Lessee for the value or cost of any crops lost by virtue of termination of this Lease. However, if the Lessor terminates this Lease for its own convenience to begin its public project, and the 90-day notice period is insufficient to allow crops *already planted* to mature and be harvested, an extension of time not to exceed 90 days, will be granted.

~~7. *Holdover.* If Tenant does not vacate the Premises following termination of this lease, Tenant will become a tenant at will and must vacate the Premises on receipt of notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term. The rental for each month of holdover will be 150% of the effective monthly rental under this lease (annual rental divided by 12 times 1.50).~~

8. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

9. *Venue.* Exclusive venue is in the county in which the Premises are located.

10. *Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

11. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

12. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

13. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

14. *Mineral Interests.* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable

to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor. Any damages to growing crops arising from an oil, gas, or mineral interest will be paid to the Tenant.

15. *No Representation as to Zoning.* Landlord makes no representation as to the zoning applicable to the Premises or as to the potential for changes to the zoning applicable to the Premises, and Tenant has conducted Tenant's own investigation into these matters.

Landlord

City of Robinson, Texas

By: _____
Bert Echterling, Mayor

Tenant

Benke Farms

Carl Benke

Donna Benke

Agricultural Lease

Date: _____

Landlord: City of Robinson, Texas, a municipal corporation (hereinafter “City” or “Landlord”)

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Landlord may terminate this lease for its own convenience for a public project on 90 days written notice. Lessor shall not be required to allow crops to mature or be harvested before exercising any right of Lessor to terminate this Lease, and Lessor shall not be liable to or responsible for reimbursement to the Lessee for the value or cost of any crops lost by virtue of termination of this Lease. However, if the Lessor terminates this Lease for its own convenience to begin its public project, and the 90-day notice period is insufficient to allow crops *already planted* to mature and be harvested, an extension of time not to exceed 90 days, will be granted.

6. *Attorney's Fees.* If either party retains an attorney to enforce this lease, the party prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

7. *Venue.* Exclusive venue is in the county in which the Premises are located.

8. *Entire Agreement.* This lease, its exhibits, addenda, and riders are the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the Premises or the lease of the Premises by Landlord to Tenant, and Tenant is not relying on any statements or representations of any agent of Landlord, that are not in this lease and any exhibits, addenda, and riders.

9. *Amendment of Lease.* This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

10. *Limitation of Warranties.* THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

11. *Notices.* Any notice required or permitted under this lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

12. *Mineral Interests.* This lease is subordinate to any present or future oil, gas, or other mineral exploration agreements and leases relating to the Land. Landlord will not be liable to Tenant for any damages for actions attributable to those agreements and will receive all consideration paid therefor. Any damages to growing crops arising from an oil, gas, or mineral interest will be paid to the Tenant.

13. *No Representation as to Zoning.* Landlord makes no representation as to the zoning applicable to the Premises or as to the potential for changes to the zoning applicable to the Premises, and Tenant has conducted Tenant's own investigation into these matters.

Landlord

City of Robinson, Texas

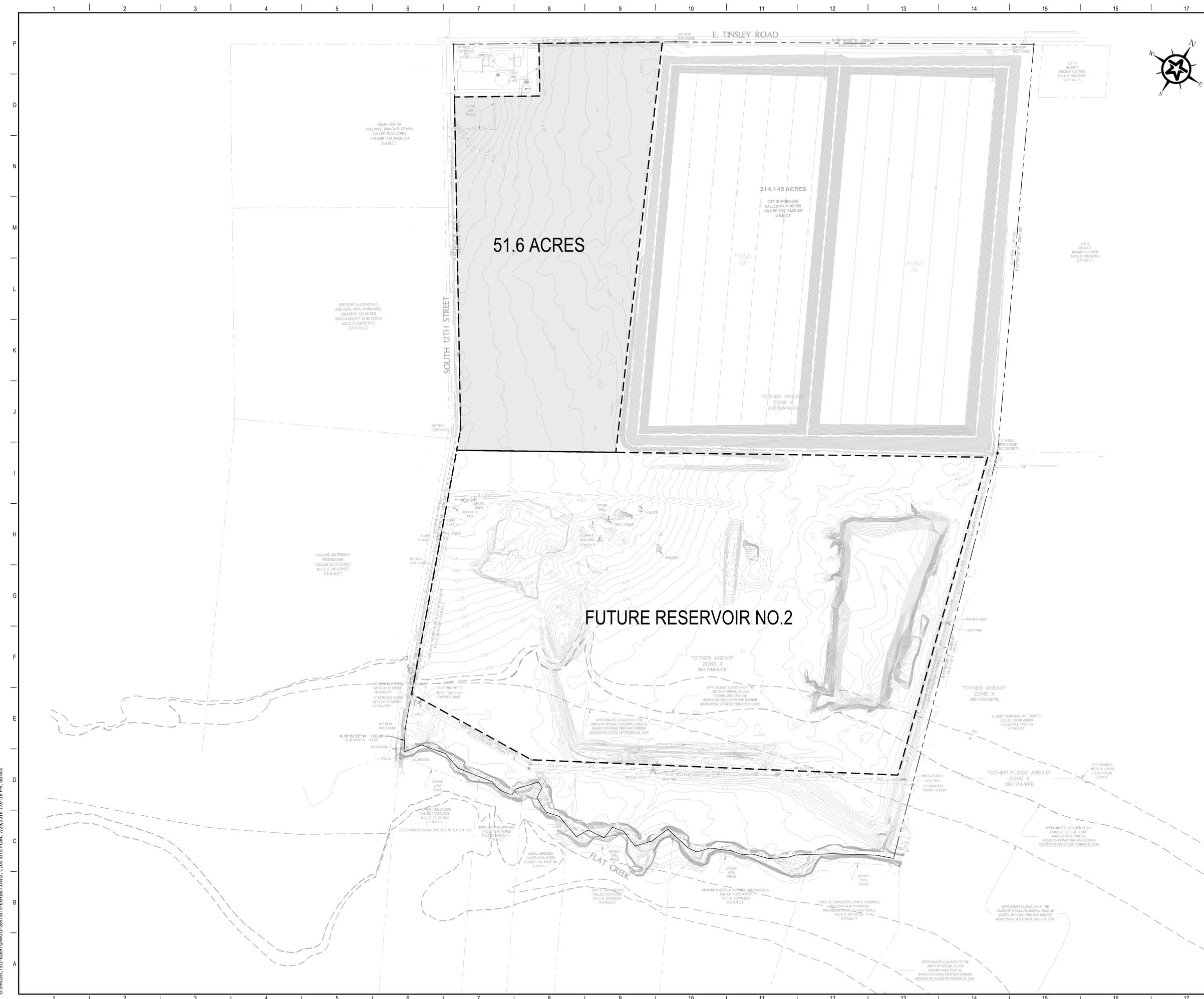
By: _____
Bert Echterling, Mayor

Tenant

Benke Farms

Carl Benke

Donna Benke



REV.	DESCRIPTION	DATE



CITY OF ROBINSON
OFF-CHANNEL RESERVOIR NO. 2

SITE PLAN

PRELIMINARY
 FOR REVIEW ONLY

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COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #10

DEPT./DIVISION SUBMISSION & REVIEW:

Jana Lewellen, City Secretary

ITEM DESCRIPTION: Consider and possible action on Ordinance 2016-008 declaring unopposed candidates elected to office and canceling the November 8, 2016, General Election.

STAFF RECOMMENDATION: Approve Ordinance 2016-008 canceling the General Election portion of the November 8, 2016 Joint Election, and declaring unopposed candidates elected.

ITEM SUMMARY: On July 5, 2016 the Robinson City Council ordered the General Election for the City of Robinson for the purpose of electing City Council persons and for voting in a Local Option Election for the City of Robinson to vote for/against “the legal sale of mixed beverages in restaurants by food and beverage certificate holders only. Pursuant to Section 2.053 (c) of the Texas Election Code, the ballots used at a separate election held at the same time as an election that would have been held if the candidates were not declared elected under this section shall include the offices and names of the candidates declared elected under this section listed separately after the measures or contested races in the separate election under the heading “Unopposed Candidates Declared Elected.” The candidates shall be grouped in the same relative order prescribed for the ballot generally. No votes are cast in connection with the candidates. Election Officials shall be issued certificates of election following the time the election would have been canvassed which will be anytime between the dates of November 16, 2016 and November 22, 2016.

FISCAL IMPACT: None

ATTACHMENTS:

Ordinance

Certification of Unopposed Candidates

ORDINANCE NO. 2016-008

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROBINSON, TEXAS, DECLARING UNOPPOSED CANDIDATES IN THE NOVEMBER 8, 2016 ELECTED TO OFFICE; CANCELING THE GENERAL ELECTION; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City’s General Election was called for November 8, 2016, for the purpose of electing four members to the City Council; and

WHEREAS, the City Secretary has certified in writing that no person has made a declaration of write-in candidacy, and that each candidate on the ballot is unopposed for election to office; and

WHEREAS, under these circumstances, Subchapter C, Chapter 2, Election Code, authorizes the City Council to declare the candidates elected to office and cancel the election.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROBINSON, TEXAS, THAT:

SECTION 1. The following candidates, who are unopposed in the November 8, 2016, General Election, are declared elected to office, and shall be issued certificates of election following the time the election would have been canvassed:

<u>Candidate</u>	<u>Office Sought</u>
Bert Echterling	Councilmember
Jim Mastergeorge	Councilmember
Jeremy Stivener	Councilmember
Steven Tindell	Councilmember

SECTION 2. The November 8, 2016, General Election is canceled, and the City Secretary is directed to cause a copy of this ordinance to be posted on Election Day at each polling place that would have been used in the election.

SECTION 3. It is declared to be the intent of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance, are severable, and if any phrase, clause, sentence, paragraph, or section of this ordinance is declared invalid by the judgment or decree of a court of competent jurisdiction, the invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance since the City Council would have enacted them without the invalid portion.

SECTION 4. This ordinance shall take effect upon its final passage, and it is so ordained.

PASSED AND APPROVED this the 6th day of September, 2016.

Bert Echterling, Mayor

ATTEST:

Jana Lewellen, City Secretary

**CERTIFICATION OF UNOPPOSED CANDIDATES FOR
THE CITY OF ROBINSON, MCLENNAN COUNTY, TEXAS
CERTIFICACIÓN DE CANDIDATOS ÚNICOS
PARA ROBINSON DE CIUDAD, MCLENNAN COUNTY, TEXAS**

To: Presiding Officer of Governing Body
Al: Presidente de la entidad gobernante

As the authority responsible for having the official ballot prepared, I hereby certify that the following candidates are unopposed for election to office for the election scheduled to be held on November 8, 2016

Como autoridad a cargo de la preparación de la boleta de votación oficial, por la presente certifico que los siguientes candidatos son candidatos únicos para elección para un cargo en la elección que se llevará a cabo el November 8, 2016

List offices and names of candidates:
Lista de cargos y nombres de los candidatos:

Office(s) Cargo(s)	Candidate(s) Candidato(s)
Councilmember	Bert Echterling
Councilmember	Jim Mastergeorge
Councilmember	Jeremy Stivener
Councilmember	Steven Tindell

Signature (Firma)

Jana Lewellen, TRMC

Printed name (Nombre en letra de molde)

City Secretary

Title (Puesto)

August 29, 2016

Date of signing (Fecha de firma)

(Seal) (sello)

See reverse side for instructions
(Instrucciones en el reverso)



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #11

DEPT./DIVISION SUBMISSION & REVIEW:

Jana Lewellen, City Secretary

ITEM DESCRIPTION: Consider and possible action regarding Notice of Joint Election.

STAFF RECOMMENDATION: Approve Notice of Election as presented.

ITEM SUMMARY: Attached is the Notice of Election for the November 8, 2016 Joint General Election for voting in a Local Option Election for the City of Robinson to vote for/against “the legal sale of mixed beverages in restaurants by food and beverage certificate holders only”. McLennan County Commissioners Court will be approving the document in court on Tuesday, September 6, 2016.

FISCAL IMPACT: None

ATTACHMENTS:

Notice of Election

List of Vote Centers

**NOTICE OF JOINT GENERAL ELECTION
(AVISO DE LA ELECCIÓN CONJUNTA GENERAL)**

To the registered voters of the County of McLennan, Texas:

(A los votantes registrados del Condado de McLennan, Texas:)

Notice is hereby given that the polling places listed below will be open from 7:00 a.m. to 7:00 p.m., November 8, 2016, for voting in a General Election:

- to elect Presidential Electors, Members of Congress, Members of the Legislature, state, district and county officers in McLennan County;
- to elect one (1) person for each position to serve the full term of two (2) years for Mayor and two (2) positions for City Council for the City of Moody;
- to elect one (1) person for each position to serve the full term of two (2) years for Mayor and two (2) positions for City Council and a proposition - street tax reauthorization for the City of Riesel;
- for voting in a Local Option Election for the City of Robinson to vote for/against “the legal sale of mixed beverages in restaurants by food and beverage certificate holders only”;
- to elect one (1) person for each position to serve the full term of two (2) years for three (3) positions for City Council for the City of West and a Special Referendum Election;
- to elect one (1) person for each position to serve the full term of four (4) years for three (3) positions on the Board of Trustees for the Axtell Independent School District;
- to elect one (1) person for each position to serve the full term of three (3) years for three (3) positions on the Board of Trustees for the Moody Independent School District;
- to elect one (1) person for each position to serve the full term of three (3) years for two (2) positions on the Board of Trustees for the Riesel Independent School District;
- to elect one (1) person for each position to serve the full term of three (3) years for two (2) positions on the Board of Trustees for the Robinson Independent School District;

The execution of a Joint Election Agreement with Moody, Riesel, Robinson, West, Axtell ISD, Moody ISD, Riesel ISD and Robinson ISD is hereby authorized and approved.

(Notifíquese por la presente que los lugares electorales indicados abajo estarán abiertos desde las 7 de la mañana hasta las 7 de la tarde del 8 de noviembre 2016 para la votación en las elección general:

- para elegir los electores presidenciales, los miembros del congreso, los miembros de la legislatura, los oficiales del estado, los oficiales del distrito y los oficiales del Condado de McLennan;
- para elegir una (1) persona para que sirvan el término completo de dos (2) años para alcalde y dos (2) posiciones para la ciudad de Moody;
- para elegir una (1) persona para que sirvan el término completo de dos (2) años para alcalde y dos (2) posiciones y proposición - volver a autorizar el impuesto de ventas para las calles para la ciudad de Riesel;
- para votar en la Elección De Opcion Local del ciudad de Robinson para votar a favor/en contra “la venta legal de bebidas alcohólicas mezcladas (cocteles) en restaurantes sólo por los poseedores de un certificado de comidas y bebidas”;
- para elegir una (1) persona para que sirvan el término completo de dos (2) años para tres (3) posiciones para la ciudad de West y elección de referendo especial;
- para elegir una (1) persona para que sirvan el término completo de cuatro (4) años para las tres (3) posiciones en la junta de regentes del distrito escolar independiente de Axtell;
- para elegir una (1) persona para que sirvan el término completo de tres (3) años para las tres (3) posiciones en la junta de regentes del distrito escolar independiente de Moody;
- para elegir una (1) persona para que sirvan el término completo de tres (3) años para las dos (2) posiciones en la junta de regentes del distrito escolar independiente de Riesel;
- para elegir una (1) persona para que sirvan el término completo de tres (3) años para dos (2) posiciones en la junta de regentes del distrito escolar independiente de Robinson;

Se autoriza y se aprueba la ejecución de un acuerdo común de las elecciones con los distritos escolares de Moody, Riesel, Robinson, West, Axtell ISD, Moody ISD, Riesel ISD y Robinson ISD por los derechos otorgados.)

**LOCATION(S) OF POLLING PLACES
(UBICACIONES DE LOS LUGARES ELECTORALES)**

**See attached List
(Véase la lista adjunta)**

Early Voting by personal appearance will be conducted at:
(La votación adelantada en persona se llevará a cabo todos los días en:)

**Main Early Voting Site:
(Lugar principal de votación adelantada:)**

McLennan County Elections Administration Office
Records Building
214 North Fourth Street, Suite 300
Waco, Texas 76701

**Branch Early Voting Site:
(Sucursales de votación adelantada:)**

Robinson Community Center
106 W. Lyndale Ave.
Robinson, TX 76706

Waco Multi-Purpose Community Center
1020 Elm St.
Waco, Texas 76704

First Assembly of God Church
6701 Bosque Blvd.
Waco, Texas 76710

Brazos Meadows Baptist Church
625 S. Hewitt Dr.
Hewitt, Texas 76643

The dates and times of Early Voting are:
(Los días y horas de votación adelantada son:)

Monday (lunes)	October 24, 2016 (24 de octubre, 2016)	8:00 AM - 5:00 PM
Tuesday (martes)	October 25, 2016 (25 de octubre, 2016)	8:00 AM - 5:00 PM
Wednesday (miércoles)	October 26, 2016 (26 de octubre, 2016)	8:00 AM - 5:00 PM
Thursday (jueves)	October 27, 2016 (27 de octubre, 2016)	8:00 AM - 5:00 PM
Friday (viernes)	October 28, 2016 (28 de octubre, 2016)	8:00 AM - 5:00 PM
Saturday (sabado)	October 29, 2016 (29 de octubre, 2016)	7:00 AM – 7:00 PM
Sunday (domingo)	October 30, 2016 (30 de octubre, 2016)	1:00 PM – 6:00 PM
Monday (lunes)	October 31, 2016 (31 de octubre, 2016)	7:00 AM - 7:00 PM
Tuesday (martes)	November 1, 2016 (1 de noviembre, 2016)	7:00 AM - 7:00 PM
Wednesday (miércoles)	November 2, 2016 (2 de noviembre, 2016)	7:00 AM - 7:00 PM
Thursday (jueves)	November 3, 2016 (3 de noviembre, 2016)	7:00 AM - 7:00 PM
Friday (viernes)	November 4, 2016 (4 de noviembre, 2016)	7:00 AM - 7:00 PM

Applications to vote by mail should be mailed to:
(Las solicitudes para poder votar por deben ser enviadas a:)

Kathy E. Van Wolfe
McLennan County Elections Administrator
P.O. Box 2450
Waco, Texas 76703-2450
kathy.vanwolfe@co.mclennan.tx.us

Applications for ballot by mail must be received no later than the close of business on October 28, 2016.
(Las solicitudes para votar por correo tendrán que ser recibidas antes del fin del día laboral el 28 de octubre, 2016.)

Issued this the 6th day of September, 2016.
(Emitada el día 6th de Septiembre 2016.)

Scott Felton, McLennan County Judge
(Juez del Condado de McLennan)

Mayor, City of Moody
(alcalde, ciudad de Moody)

Mayor, City of Robinson
(alcalde, ciudad de Robinson)

President, Axtell ISD Board of Trustees
(presidente, junta de regentes de Axtell ISD)

President, Riesel ISD Board of Trustees
(presidente, junta de regentes de Riesel ISD)

Mayor, City of Riesel
(alcalde, ciudad de Riesel)

Mayor, City of West
(alcalde, ciudad de West)

President, Moody ISD Board of Trustees
(presidente, junta de regentes de Moody ISD)

President, Robinson ISD Board of Trustees
(presidente, junta de regentes de Robinson ISD)

MCLENNAN COUNTY VOTE CENTERS

(LOS CENTROS DE VOTACIÓN DEL CONDADO DE MCLENNAN)

ON TUESDAY, NOVEMBER 8, 2016, REGISTERED VOTERS WILL BE ABLE TO CAST THEIR ELECTION DAY BALLOTS AT ANY OF THE VOTE CENTERS LISTED BELOW FROM 7:00 AM - 7:00 PM

(El martes, 8 de noviembre 2016, los votantes inscritos podrán emitir su voto el día de elecciones en CUALQUIERA de los Centros de Votación que se indican a continuación de 7:00 AM - 7:00 PM)

AXTELL SCHOOL ATH. MEETING ROOM	312 W. Seley, Axtell
BELLMEAD CIVIC CENTER	3900 Parrish St., Waco
BRAZOS MEADOWS BAPTIST CHURCH	625 S. Hewitt Drive, Hewitt
BRUCEVILLE-EDDY ISD SPECIAL EVENTS CENTER	1 Eagle Drive, Eddy
CENTRAL CHRISTIAN CHURCH	4901 Lake Shore Drive, Waco
CESAR CHAVEZ MIDDLE SCHOOL	700 S. 15th Street, Waco
CHALK BLUFF BAPTIST CHURCH	5993 Gholson Road, Waco
CHINA SPRING ISD ADMINISTRATION BLDG.	12166 Yankie Road, China Spring
CRAWFORD HIGH SCHOOL	200 Pirate Drive, Crawford
DEWEY COMMUNITY CENTER	925 N. 9th Street, Waco
FELLOWSHIP BIBLE CHURCH	5200 Speegleville Rd., McGregor
FIRST ASSEMBLY OF GOD CHURCH	6701 Bosque Blvd., Waco
G.W. CARVER MIDDLE SCHOOL	1601 J.J. Flewellen Road, Waco
HEWITT FIRST BAPTIST CHURCH	301 S. 1st Street, Hewitt
H.G. ISBILL JUNIOR HIGH	305 S. Van Buren St., McGregor
LACY LAKEVIEW CIVIC CENTER	505 E. Craven Ave., Waco
LORENA FIRST BAPTIST CHURCH	307 E. Center St., Lorena
MART COMMUNITY CENTER	804 E. Bowie Ave., Mart
MCC CONFERENCE CENTER	4601 N. 19th Street, Waco
MHMR CENTER FOR DEV. SERVICES	3420 W. Waco Drive, Waco
MOODY CITY HALL	600 Ave E, Moody
RIESEL ISD ADMINISTRATION BLDG.	600 Frederick Street, Riesel
ROBINSON COMMUNITY CENTER	106 W. Lyndale, Robinson
SOUTH WACO LIBRARY	2737 S. 18th Street, Waco
SPEEGLEVILLE BAPTIST CHURCH	469 Speegle Road, Waco
TENNYSON MIDDLE SCHOOL	6100 Tennyson Drive, Waco
UNIVERSITY HIGH SCHOOL	3201 S. New Road, Waco
WACO CONVENTION CENTER	100 Washington Ave., Waco
WACO HIGH SCHOOL (Performing Arts Center)	2020 N. 42nd St., Waco
WACO MULTI-PURPOSE COMMUNITY CENTER	1020 Elm Street, Waco
WEST COMMUNITY CENTER	200 Tokio Road, West
WOODWAY FIRST BAPTIST CHURCH	13000 Woodway Drive, Woodway



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #12

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: Consider and possible action regarding nominations to serve a six-year term on the Texas Municipal League Intergovernmental Risk Pool Board of Trustees.

STAFF RECOMMENDATION: Cast ballot and return no later than September 30, 2016

ITEM SUMMARY: Each member of the Risk Pool is entitled to vote for Board of Trustee members. Each organization can place an “x” in the square beside the candidate’s name or writing in the name of an eligible person in the space provided. The officials listed have been nominated to serve a six-year term on the TMLIRP Board of Trustees. See Candidates below:

Place 6

Mary Gauer (Incumbent), City of Harker Heights Mayor and City Council

Kyle J. Jung, City Manager of Manvel

Write-In _____

Place 7

Richard Jorgensen, City Manager of Giddings

C. J. Wax (Incumbent), Mayor of Rockport

Write-In _____

Place 8

Jim Cox, City Administrator for City of Leonard

Andrea M. Gardner, City Manager for City of Copperas Cove

Larry Melton (Incumbent), Mayor for Odessa

Write-In _____

Place 9

Richard L. Davis, City Manager for Baytown

Andres Garza (Incumbent), City Manager for the City of Wharton

Rick A. Schroeder, City Administrator for the City of Helotes

Write-In _____

FISCAL IMPACT: None

ATTACHMENTS:

Ballot

RECEIVED

AUG 19 2016

OFFICIAL BALLOT

Texas Municipal League Intergovernmental Risk Pool Board of Trustees Election

This is the official ballot for the election of Places 6 – 9 of the Board of Trustees for the Texas Municipal League Intergovernmental Risk Pool. Each Member of the Pool is entitled to vote for Board of Trustee members. Please record your organization's choices by placing an "X" in the square beside the candidate's name or writing in the name of an eligible person in the space provided. You can only vote for one candidate for each place.

The officials listed on this ballot have been nominated to serve a six-year term on the TML Intergovernmental Risk Pool (Workers' Compensation, Property and Liability) Board of Trustees.

Ballots must reach the office of David Reagan, Secretary of the Board, no later than September 30, 2016. Ballots received after September 30, 2016, cannot be counted. **The ballot must be properly signed and all pages of the ballot must be mailed to: Trustee Election, David Reagan, Secretary of the Board, P.O. Box 149194, Austin, Texas 78714-9194. If the ballot is not signed, it will not be counted.**

PLACE 6

- Mary Gauer** (Incumbent). Ms. Gauer has served on the TML Risk Pool Board of Trustees since 1998 and as Chair from 2010 to 2012. She served on the Harker Heights City Council from 1991 to 1998, and as Mayor from 1998 to 2004. Ms. Gauer serves as an elected citizen member of the Executive Committee of the Central Texas COG. She has served as President of the TML Association of Mayors, Councilmembers and Commissioners and the TML Region 9. She has also served as chair or member of several TML legislative committees.

- Kyle J. Jung**. City Manager for Manvel (Region 14) since January 17, 2012. Mr. Jung has more than 20 years of local government experience working for the cities of Flatonia and Sour Lake as City Manager, cities of Lubbock and Big Spring in various administrative roles, and with the Texas Municipal League. At the Texas Municipal League, he was chiefly responsible for the governance of the Texas City Management Association. Mr. Jung has a Master's degree in public administration with an emphasis in budgeting and personnel management from Texas Tech University.

WRITE IN CANDIDATE:

PLACE 7

- Richard Jorgensen.** City Manager of Giddings (Region 10). Previously, he served as City Manager for Vidor, Silsbee, and Sour Lake. Mr. Jorgensen has 20 years' experience in city government preparing, coordinating and monitoring the annual fiscal budget. He has also been involved in 4A and 4B economic development corporations for 13 years as either chairman or as a director. He has a Bachelor's degree in business administration and a Master's degree in public administration. He is involved with the Texas City Managers Association, serving on the Board for two years.
- C.J. Wax (Incumbent).** Mayor of Rockport since 2010. Mr. Wax is the current President of TML and served as the TML Region 11 Board Representative to the TML Board from 2011-15. He has served on the TML Risk Pool Board since 2013. He also has served on the Care Regional Board of Trustees since 2014 (currently as Chairman), on the Texas Windstorm Task Force under Chairman Todd Hunter, and on the Rockport Planning and Zoning Commission from 2009-10. He currently represents Rockport on the Coastal Bend COG, Aransas County Pathways, and Storm Water Advisory Committees.

WRITE IN CANDIDATE:

PLACE 8

Jim Cox. City Administrator for the City of Leonard (Region 13) since October 1, 2015. He previously served as City Administrator in Lindale, Texas, and Groesbeck, Texas. He also served for two terms on the City Council and on the Home Rule Charter Commission for Bay City, Texas. Mr. Cox is active in TCMA serving on the Membership Committee and Small Cities Advisory Board. He is a graduate of the Certified Public Manager Program at Stephen F. Austin University and attended the University of Texas at Arlington majoring in Business Administration.

Andrea M. Gardner. City Manager for the City of Copperas Cove (Region 9) since 2007. Previously, she was the Assistant City Manager/Director of Finance for Copperas Cove, Director of Finance for Pearland, and the Senior Budget Coordinator for Pasadena. She holds a Bachelor's degree in Accounting from the University of Houston and is a Certified Public Manager. Ms. Gardner also serves on the Metropolitan Planning Organization Technical Committee as the City's representative and the Central Texas COG's Executive Committee as a Citizen Liaison.

Larry Melton (Incumbent). Mayor for Odessa (Region 4) from 2001 to 2012. Mr. Melton also served three years as a councilmember. He has served on the TML Risk Pool Board of Trustees since 2009 and as Chair since 2014. He is the Chief Executive Officer of a regional public accounting firm, Johnson, Miller and Company, where he is responsible for all administrative and human resources areas of the firm. Previously, Mr. Melton was in the banking business for approximately 30 years. He is active in the United Way of Odessa and Odessa Chamber of Commerce. In 1993, he was honored as Odessa's outstanding citizen.

WRITE IN CANDIDATE:

PLACE 9

- Richard L. Davis.** City Manager for Baytown (Region 14) since 2015. Mr. Davis also served as City Manager for West Jordan, Utah; Town Manager for Fountain Hills, Arizona; and City Manager for West Point City, Utah. He has a Bachelor's degree in Public Relations from BYU and a Master's degree in Public Administration from BYU. He is a graduate of the Romney Institute of Public Management (Marriott School of Management) and the recipient of the Lennis M. Knighton Award for high academic achievement. He is a credentialed Municipal Manager by the International City and County Management Association.

- Andres Garza** (Incumbent). City Manager for the City of Wharton (Region 14) since 1994. Mr. Garza has served on the TML Risk Pool Board of Trustees since 1984, serving as Chair from 1994-1996. He served as the Pearsall City Manager from 1980 to 1994. Mr. Garza has been in public service for over 39 years of which 36 have been as a City Manager. He serves on the TML Small City's Advisory Council, has a BBA degree from Southwest Texas State University, and is a member of TCMA and ICMA.

- Rick A. Schroder.** City Administrator for the City of Helotes (Region 7) since September 2008. Mr. Schroder also served Helotes as the Economic Development Corporation's Specialist from November 2006 to September 2008. He graduated Magna Cum Laude from Trinity University in 2004 and earned a Master of Public Service and Administration in 2006 from the George H.W. Bush School of Government and Public Service at Texas A&M University. He interned for Congressman Henry Bonilla and for Ron Kaufman, former White House Political Director for President George H.W. Bush.

WRITE IN CANDIDATE:

Certificate

I certify that the vote cast above has been cast in accordance with the will of the majority of the governing body of the public entity named below.

Witness by hand, this _____ day of _____, 2016.

Signature of Authorized Official

Title

Printed Name of Authorized Official

Printed Name of Political Entity



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/02/2016

Meeting Date: 09/06/2016

Agenda Item #13

DEPT./DIVISION SUBMISSION & REVIEW:

Craig Lemin, City Manager

ITEM DESCRIPTION: Consider authorizing staff and the city engineer to go out for bids for the reclamation of Downsville Road.

STAFF RECOMMENDATION: Staff recommends approval of the proposal.

ITEM SUMMARY: After much evaluation and discussion, a plan has been developed to complete Downsville Road. The work previously completed has created challenges for this project. The previous reclamation pulled too much clay into the base which has offset the benefits of the emulsion used previously. In addition, an insufficient amount of emulsion was used on the project. Evaluation of the existing base shows an inconsistent thickness across the roadway. In addition, inadequate culverts were placed under some driveways and too large a culvert was placed under the roadway. Finally, the street was not properly crowned which allows water to cross the street during most storms. To complete the road correctly, additional base material will need to be added and the base will then need to have lime added to stabilize the clay pulled up into it during last year's reclamation. Additional emulsion will then need to be added to get the correct amount in the base. The street will be crowned and completed with a chip sealed surface.

City staff will replace all the culverts that need to be addressed and will clean out ditches and drainage areas that need attention. Staff does not have the equipment or expertise to complete the reclamation of the roadway. Staff is recommending bids be solicited and contractor selected to complete this portion of the project. The estimated cost of the project is \$280,000.

FISCAL IMPACT: \$280,000 from available street bond money totaling \$4,683,631

ATTACHMENTS:

Draft Bid Manual



CITY OF ROBINSON

DOWNSVILLE ROAD IMPROVEMENTS

PROJECT MANUAL

AUGUST 2016

PROJECT NUMBER: 1-02179

**PROJECT MANUAL
as part of
the
Bidding Documents**



Walker Partners
engineers ★ surveyors

DOCUMENT 00 01 10
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ADVERTISEMENT FOR BIDS

City of Robinson
(Owner)

Separate sealed bids for **City of Robinson** for **Downsville Road Improvements** will be received by the Engineer at the office of **City of Robinson City Hall, 111 West Lyndale, Robinson, Texas 76706 until 2 o'clock (P.M.), September 11, 2016** and then publicly opened and read aloud at 2:00 P.M. in the Conference Room of City Hall on the same day.

The information for Bidders, Form of Bid, Form of Contract, Plans Specifications, and Forms of Bid Bond, Performance and Payment Bond, and other contract documents may be examined at the following:

Walker Partners, LLC
600 Austin Avenue, Suite 20, Waco, Texas 76701

Copies may be obtained at the office of the Walker Partners, LLC located at 600 Austin Avenue, Suite 20, Waco, Texas upon a payment of \$ 25.00 (nonrefundable) for each set of plans and specifications.

The owner reserves the right to waive any informalities or to reject any or all bids.

Each bidder must deposit with his bid, security in the minimum amount of 5% of the greatest amount of bid. The bid bond and surety's power of attorney must both carry the date of the bid opening.

Attention of bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the contract.

No bidder may withdraw his bid within 30 days after the actual date of the opening thereof.

August 29, 2016

Date

/s/Clark W. Gauer, P.E.

Engineer

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ARTICLE 1 - DEFINED TERMS

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. *Issuing Office*--The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

ARTICLE 2 - COPIES OF BIDDING DOCUMENTS

2.01 Complete sets of the Bidding Documents in the number and for the payment sum, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Office. The payment is nonrefundable.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

ARTICLE 3 - QUALIFICATIONS OF BIDDERS

3.01 To demonstrate Bidder's qualifications to perform the Work, within five days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

A. Left Blank Intentionally

B. Left Blank Intentionally

ARTICLE 4 - EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

4.01 *Subsurface and Physical Conditions*

A. The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Bidding Documents.

2. Those drawings of physical conditions in or relating to existing surface and subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.02 of the General Conditions has been identified and established in Paragraph 4.02 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions or information contained in such reports or shown or indicated in such drawings.

4.02 *Underground Facilities*

A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others. The Contractor shall call Texas 811 at 1-800-344-8377 at least 48 hours prior to digging.

4.03 *Hazardous Environmental Condition*

A. The Supplementary Conditions identify those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that Engineer has used in preparing the Bidding Documents.

B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated conditions appear in Paragraphs 4.02, 4.03, and 4.04 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work appear in Paragraph 4.06 of the General Conditions.

4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

4.06 Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding Documents. On request, Owner will provide to each Bidder for examination access to or copies of Contract Documents (other than portions thereof related to price) for such other work.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

A. examine and carefully study the Bidding Documents, the other related data identified in the Bidding Documents, and any Addenda;

B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;

D. carefully study all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions, and (2) reports and drawings of Hazardous Environmental Conditions at the Site which have been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions;

E. obtain and carefully study (or accept consequences of not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto;

F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents;

G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;

H. correlate the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents;

I. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and

J. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.

4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

ARTICLE 5 - PRE-BID CONFERENCE

5.01 There will not be a pre-bid conference for this project.

ARTICLE 6 - SITE AND OTHER AREAS

6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

ARTICLE 7 - INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

ARTICLE 8 - BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of five (5) percent of Bidder's maximum Bid price and in the form of a certified check or bank money order or a Bid bond (on the form attached) issued by a surety meeting the requirements of Paragraphs 5.01 and 5.02 of the General Conditions.

8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may annul the Notice of Award and the Bid security of that Bidder will be forfeited. The Bid security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

ARTICLE 9 - CONTRACT TIMES

9.01 The Contractor shall have 25 calendar days to complete the proposed work in accordance with Article 4.02 of the Agreement.

ARTICLE 10 - LIQUIDATED DAMAGES

10.01 Liquidated damages in the amount of \$100.00 shall be assessed each day after the number of days specified as the contract time as set forth in Article 9, above and in accordance with Article 4.03 of the Agreement.

ARTICLE 11 - SUBSTITUTE AND "OR-EQUAL" ITEMS

11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents, or those substitute or "or-equal" materials and equipment approved by Engineer and identified by Addendum. The materials and equipment described in the Bidding Documents establish a standard of required type, function and quality to be met by any proposed substitute or "or-equal" item. No item of material or equipment will be considered by Engineer as a substitute or "or-equal" unless written request for approval has been submitted by Bidder and has been received by Engineer at least 15 days prior to the date for receipt of Bids. Each such request shall conform to the requirements of Paragraph 6.05 of the General Conditions. The burden of proof of the merit of the proposed item is upon Bidder. Engineer's decision of approval or disapproval of a proposed item will be final. If Engineer approves any proposed item, such approval will be set forth in an Addendum issued to all prospective Bidders. Bidders shall not rely upon approvals made in any other manner.

ARTICLE 12 - SUBCONTRACTORS, SUPPLIERS, AND OTHERS

12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, without an increase in the Bid.

12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.

12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

ARTICLE 13 - PREPARATION OF BID

13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from Engineer.

13.02 All blanks on the Bid Form shall be completed by printing in ink or by typewriter and the Bid signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternative, and unit price item listed therein, or the words "No Bid," "No Change," or "Not Applicable" entered.

13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown below the signature.

13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown below the signature.

13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown below the signature.

13.06 A Bid by an individual shall show the Bidder's name and official address.

13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown below the signature.

13.08 All names shall be typed or printed in ink below the signatures.

13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

13.10 The address and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the Contract. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

ARTICLE 14 - BASIS OF BID; COMPARISON OF BIDS

14.01 *Unit Price*

A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.

B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with Paragraph 11.03 of the General Conditions.

C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between words and figures will be resolved in favor of the words.

14.02 The Bid price shall include such amounts as the Bidder deems proper for overhead and profit on account of cash allowances, if any, named in the Contract Documents as provided in Paragraph 11.02 of the General Conditions.

14.03 Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Article 9.

ARTICLE 15 - SUBMITTAL OF BID

15.01 The Bid Form is to be completed and submitted with the Bid Security.

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the Advertisement or Invitation to Bid and shall be enclosed in an opaque sealed envelope plainly marked with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate envelope plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to the City of Robinson, 111 West Lyndale, Robinson, Texas 76706.

ARTICLE 16 - MODIFICATION AND WITHDRAWAL OF BID

16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.

16.02 If within 24 hours after Bids are opened, any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

ARTICLE 17 - OPENING OF BIDS

17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 - BIDS TO REMAIN SUBJECT TO ACCEPTANCE

18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.

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

19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.

19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities to perform the Work in accordance with the Contract Documents.

19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

ARTICLE 20 - CONTRACT SECURITY AND INSURANCE

20.01 Article 5 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

ARTICLE 21 - SIGNING OF AGREEMENT

21.01 When Owner gives a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within

ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

ARTICLE 22 - SALES AND USE TAXES

22.01 Owner is exempt from Texas state sales and use taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Bid. Refer to Paragraph SC-6.10 of the Supplementary Conditions for additional information.

ARTICLE 23 - RETAINAGE

23.01 Provisions concerning Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

ARTICLE 24 - CONTRACTS TO BE ASSIGNED

24.01 Left Blank Intentionally

ARTICLE 25 - PARTNERING

25.01 Left Blank Intentionally

BID FORM

City of Robinson
Downsville Road Improvements

Project No. 1-02179

TABLE OF ARTICLES

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

*City of Robinson
111 W. Lyndale
Robinson, TX 76706*

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

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

ARTICLE 3 – BIDDER'S ACCEPTANCE OF INSTRUCTIONS

3.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 4 – BIDDER'S REPRESENTATIONS

4.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the Work.

D. Bidder has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in SC-4.02.

- E. Bidder has obtained and carefully studied (or accepts the consequences for not doing so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
- F. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
- I. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
- J. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- K. Bidder will submit written evidence of its authority to do business in the state where the Project is located not later than the date of its execution of the Agreement.

ARTICLE 5 – FURTHER REPRESENTATIONS

5.01 Bidder further represents that:

- A. this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Owner.

ARTICLE 6 – BASIS OF BID

6.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

BID PROPOSAL

ITEM NO.	DESCRIPTION	EST QTY	UNIT	UNIT BID PRICE	TOTAL AMOUNT
1	MOBILIZATION	1	LS		
2	TRAFFIC CONTROL IMPLEMENTATION	1	LS		
3	LIME TREATMENT (ROAD MIXED)(8" DEPTH)(EXISTING MATERIAL AND NEW BASE)	12267	SY		
4	LIME (SLURRY)	264	TON		
5	FLEXIBLE BASE (ROADWAY DELIVERY)(IN VEHICLE)(TY A GRADE 2)	1015	CY		
6	AGGREGATE TY B GRADE 4	90	CY		
7	EMULSION (CRS-2)	3936	GAL		
8	FOG SEAL (CSS-1H)	1687	GAL		
9	PROOF ROLLING & CORRECT SOFT SPOTS	8	HR		
10	FLEXIBLE BASE (8" DEPTH)(FOR BASE FAILURES / CORRECT SOFT SPOTS)	600	SY		
11	EMULSIFIED ASPHALT TREATMENT (6" DEPTH)	38027	SY		
12	CONTINGENCY ALLOWANCE	1	LS	25,000.00	25,000.00
TOTAL BID					

Unit Prices have been computed in accordance with Paragraph 11.03.B of the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

ARTICLE 7 – TIME OF COMPLETION

7.01 Bidder agrees that the Work will be substantially complete within 25 calendar days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 14.07.B of the General Conditions within 25 calendar days after the date when the Contract Times commence to run.

7.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the Contract Times.

ARTICLE 8 – ATTACHMENTS TO THIS BID

8.01 The following documents are attached to and made a condition of this Bid:

- A. Required Bid security in the form of Bid Bond or Cashier's Check
- B. Affidavit of Non-Collusion

ARTICLE 9 – LEFT BLANK INTENTIONALLY

ARTICLE 10 – DEFINED TERMS

10.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 11 – BID SUBMITTAL

11.01 This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____ (SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____ (CORPORATE SEAL)

Attest _____

Date of Authorization to do business in *[State Where Project is Located]* is ____/____/____.

A Joint Venture

Name of Joint Venture: _____

First Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____ (SEAL)

By: _____
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address _____

Phone No. _____ Fax No. _____

SUBMITTED on _____, 20____.

State Contractor License No. _____ . (If applicable)

BID BOND

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

BID

Bid Due Date:

Project (Brief Description Including Location):

BOND

Bond Number:

Date (Not later than Bid due date):

Penal Sum: _____ (Words) _____ (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

BIDDER

SURETY

Bidder's Name and Corporate Seal (Seal)

Surety's Name and Corporate Seal (Seal)

By: _____
Signature and Title

By: _____
Signature and Title
(Attach Power of Attorney)

Attest: _____
Signature and Title

Attest: _____
Signature and Title

Note: Above addresses are to be used for giving required notice.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder any difference between the total amount of Bidder's Bid and the total amount of the Bid of the next lowest, responsible Bidder who submitted a responsive Bid as determined by Owner for the work required by the Contract Documents, provided that:
 - 1.1. If there is no such next Bidder, and Owner does not abandon the Project, then Bidder and Surety shall pay to Owner the penal sum set forth on the face of this Bond, and
 - 1.2. In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
 - 3.1. Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
 - 3.2. All Bids are rejected by Owner, or
 - 3.3. Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default by Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

Notice of Award

Dated _____

Project:	Owner:	Owner's Contract No.:
Contract:		Engineer's Project No.:
Bidder:		
Bidder's Address: (send Certified Mail, Return Receipt Requested)		

You are notified that your Bid dated _____ for the above Contract has been considered. You are the Successful Bidder and are awarded a Contract for _____

(Indicate total Work, alternates or sections or Work awarded.)

The Contract Price of your Contract is _____ Dollars (\$ _____).

_____ copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award.

_____ sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within [15] days of the date you receive this Notice of Award.

1. Deliver to the Owner [_____] fully executed counterparts of the Contract Documents.
2. Deliver with the executed Contract Documents the Contract security [Bonds] as specified in the Instructions to Bidders (Article 20), [and] General Conditions (Paragraph 5.01).
3. Other conditions precedent:

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

Owner

By: _____
Authorized Signature

Title

Copy to Engineer

Notice to Proceed

Dated _____

Project:	Owner:	Owner's Contract No.:
Contract:	Engineer's Project No.:	
Contractor:		
Contractor's Address: [send Certified Mail, Return Receipt Requested]		

You are notified that the Contract Times under the above contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

- 1.0 The contractor shall call the Texas One-Call System @ 1-800-344-8377 at least 48 hours prior to clearing & grubbing.

Contractor	Owner
Received by:	Given by:
Authorized Signature	Authorized Signature
Title	Title
Date	Date

Copy to Engineer

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT**

THIS AGREEMENT is by and between City of Robinson

(Owner) and _____

(Contractor).

Owner and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

ARTICLE 1 - WORK

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

Clearing and grubbing to make the Site ready for the next phase of construction (Bid Package No. 2) which shall consist of an off-channel storage reservoir.

ARTICLE 2 - THE PROJECT

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

Downsville Road Improvements

ARTICLE 3 - ENGINEER

3.01 The Project has been designed by Walker Partners, LLC (Engineer), who is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 25 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 25 days after the date when the Contract Times commence to run.

4.03 Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on

time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$100.00 for each day that expires after the time specified in Paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. Left Blank Intentionally

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.B:

As provided in Paragraph 11.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in Paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in Paragraph 11.03 of the General Conditions.

Item No.	Item Description	Estimated		Unit Price	Unit Amount
		Quantities	Measure		
1	MOBILIZATION	1	LS	\$00,000.00	\$00,000.00
2	S	1	LS	\$000.00	\$000.00
3	S	1	LS	\$00,000.00	\$00,000.00
4	C	1	LS	\$0,000.00	\$00,000.00
5	R	1	LS	\$0,000.00	\$0,000.00
6	R	1	LS	\$0,000.00	\$0,000.00
7	R	1	LS	\$0,000.00	\$0,000.00
8	B	1	LS	\$0,000.00	\$0,000.00
Total Contract Amount					\$ 000,000.00

C. For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor’s Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions:

a. 95% percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, Owner, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage; and

b. 95% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 95% percent of the Work completed, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 100% percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0% percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in Paragraph 4.02 of the General Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Supplementary Conditions as provided in Paragraph 4.06 of the General Conditions.

E. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.

F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

I. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

J. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 Contents

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive).
2. Performance bond (pages 1 to 2, inclusive).
3. Payment bond (pages 1 to 2, inclusive).
4. Other bonds: N/A
5. General Conditions (pages 1 to 39, inclusive).
6. Supplementary Conditions (pages 1 to 5, inclusive).
7. Specifications as listed in the table of contents of the Project Manual.
8. Drawings consisting of 2 sheets with each sheet bearing the following general title: Downsville Road Improvements
9. Addenda (numbers 1 to 1, inclusive).
10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 20, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award: N/A
11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1, inclusive).
 - b. Work Change Directives.
 - c. Change Order(s).

B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 Terms

A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

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

10.03 Successors and Assigns

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

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Headings

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

10.06 Other Provisions

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

CITY OF ROBINSON

By: _____

By: _____

Title: _____

Title: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

111 West Lyndale

Robinson, Texas 76706

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Owner-Contractor Agreement.)

License No.: _____ (Where applicable)

Agent for service or process: _____

(If Contractor is a corporation or a partnership, attach evidence of authority to sign.)

PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-610 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.
2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
 - 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 1. Surety in accordance with the terms of the Contract;
 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract.
4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:
 - 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
 - 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
 - 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 2. Deny liability in whole or in part and notify Owner citing reasons therefor.
5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:
 - 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
 - 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
 - 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.
7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.
8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 12.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
 Surety Agency or Broker
 Owner's Representative (engineer or other party)

PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (Name and Address):

CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Bond Number:

Date (Not earlier than Contract Date):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

(Space is provided below for signatures of additional parties, if required.)

Attest:

Signature and Title

CONTRACTOR AS PRINCIPAL

Company:

Signature: _____ (Seal)

Name and Title:

SURETY

(Seal)

Surety's Name and Corporate Seal

By:

Signature and Title

(Attach Power of Attorney)

Attest:

Signature and Title:

EJCDC No. C-615 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, the American Institute of Architects, the American Subcontractors Association, and the Associated Specialty Contractors.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
 - 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
 - 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone
Surety Agency or Broker:
Owner's Representative (engineer or other party):

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

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

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

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

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

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

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

7. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda).

8. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, bid security of acceptable form, if any, and the Bid Form with any supplements.

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

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

11. *Contract*--The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*-- Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor's submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

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

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

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

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

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

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

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

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

21. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

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

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

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

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

26. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

27. *Notice of Award*--The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed therein, Owner will sign and deliver the Agreement.

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

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

30. *PCBs*--Polychlorinated biphenyls.

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

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

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

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

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

36. *Related Entity* -- An officer, director, partner, employee, agent, consultant, or subcontractor.

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

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

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

40. *Schedule of Values*--A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

41. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

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

43. *Specifications*--That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain

administrative requirements and procedural matters applicable thereto.

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

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

46. *Successful Bidder*--The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

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

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

50. *Unit Price Work*--Work to be paid for on the basis of unit prices.

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

52. *Work Change Directive*--A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times

but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 *Terminology*

A. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

B. *Intent of Certain Terms or Adjectives*

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

C. *Day*

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

D. *Defective*

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

- a. does not conform to the Contract Documents, or
- b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
- c. has been damaged prior to Engineer's - recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. Furnish, Install, Perform, Provide

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

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

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

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

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

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

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

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

2.02 *Copies of Documents*

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

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement

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

2.04 *Starting the Work*

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

2.05 *Before Starting Construction*

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

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

2. a preliminary Schedule of Submittals; and

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

2.06 *Preconstruction Conference*

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

2.07 *Initial Acceptance of Schedules*

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

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

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

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

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

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

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

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

3.02 *Reference Standards*

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

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

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or

responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, or Engineer, or any of, their Related Entities, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

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

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

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor knew or reasonably should have known thereof.

B. Resolving Discrepancies

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

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

b. the provisions of any Laws or Regulations applicable to the performance of the Work

(unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

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

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

1. A Field Order;
2. Engineer's approval of a Shop Drawing or Sample; (Subject to the provisions of Paragraph 6.17.D.3); or
3. Engineer's written interpretation or clarification.

3.05 *Reuse of Documents*

A. Contractor and any Subcontractor or Supplier or other individual or entity performing or furnishing all of the Work under a direct or indirect contract with Contractor, shall not:

1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or Engineer's consultants, including electronic media editions; or
2. reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.

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

3.06 *Electronic Data*

A. Copies of data furnished by Owner or Engineer to Contractor or Contractor to Owner or Engineer that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's

sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

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

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

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

4.01 *Availability of Lands*

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

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

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

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that Engineer has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that Engineer has used in preparing the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice*: If Contractor believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

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

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

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

C. Possible Price and Times Adjustments

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

- a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.

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

- a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or

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

3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, Owner and Engineer, and any of their Related Entities shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

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

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

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

- a. reviewing and checking all such information and data,
- b. locating all Underground Facilities shown or indicated in the Contract Documents,
- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
- d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will

promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

4.05 *Reference Points*

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

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the Engineer in the preparation of the Contract Documents.

B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their Related Entities with respect to:

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

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

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

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

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

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

F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to

entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

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

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

I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified

in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.

B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

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

5.02 *Licensed Sureties and Insurers*

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

5.03 *Certificates of Insurance*

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

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

5.04 *Contractor's Liability Insurance*

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection

from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

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

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

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

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:

a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or

b. by any other person for any other reason;

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

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

B. The policies of insurance required by this Paragraph 5.04 shall:

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

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

3. include completed operations insurance;
4. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;
5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);

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

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment.

- a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 *Owner's Liability Insurance*

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

5.06 *Property Insurance*

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

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

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

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

6. include testing and startup; and

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

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

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

D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any

deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

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

5.07 *Waiver of Rights*

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

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

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

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

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

5.08 *Receipt and Application of Insurance Proceeds*

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

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

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

A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract

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

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

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

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

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

B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or

received from the superintendent shall be binding on Contractor.

6.02 *Labor; Working Hours*

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

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

6.03 *Services, Materials, and Equipment*

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

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

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

6.04 *Progress Schedule*

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

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

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

6.05 *Substitutes and "Or-Equals"*

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

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

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

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

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

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

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

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

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

2. Substitute Items

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

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

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

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

1) shall certify that the proposed substitute item will:

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

b) be similar in substance to that specified, and

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

2) will state:

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

b) whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and

c) whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

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

b) available engineering, sales, maintenance, repair, and replacement services;

4) and shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change,

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

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

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

E. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the charges of Engineer for making changes in the Contract

Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

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

6.06 *Concerning Subcontractors, Suppliers, and Others*

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

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

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

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

2. shall anything in the Contract Documents create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual

or entity except as may otherwise be required by Laws and Regulations.

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

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

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

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

6.07 *Patent Fees and Royalties*

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

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

6.08 *Permits*

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

6.09 *Laws and Regulations*

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

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

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

6.10 *Taxes*

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

6.11 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

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

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

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

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

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

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

6.12 *Record Documents*

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

6.13 *Safety and Protection*

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

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

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

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

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

C. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Draw-

ings or Specifications or to the acts or omissions of Owner or Engineer or , or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).

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

6.14 *Safety Representative*

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

6.15 *Hazard Communication Programs*

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

6.16 *Emergencies*

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

6.17 *Shop Drawings and Samples*

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

1. Shop Drawings

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

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

2. *Samples*: Contractor shall also submit Samples to Engineer for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals.

a. Submit number of Samples specified in the Specifications.

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

B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals , any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. Submittal Procedures

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

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

b. the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and

d. shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents

with respect to Contractor's review and approval of that submittal.

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

D. Engineer's Review

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

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

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

E. Resubmittal Procedures

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

6.18 Continuing the Work

A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or

disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its Related Entities shall be entitled to rely on representation of Contractor's warranty and guarantee.

B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or

2. normal wear and tear under normal usage.

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

1. observations by Engineer;

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

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

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

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

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

7. any correction of defective Work by Owner.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

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

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

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

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

B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal

shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

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

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

E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 - OTHER WORK AT THE SITE

7.01 *Related Work at Site*

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

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

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

B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and

properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

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

7.02 *Coordination*

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

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

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

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

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

7.03 *Legal Relationships*

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

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

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

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

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

8.02 *Replacement of Engineer*

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

8.03 *Furnish Data*

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

8.04 *Pay When Due*

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

8.05 *Lands and Easements; Reports and Tests*

A. Owner's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by Engineer in preparing the Contract Documents.

8.06 *Insurance*

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

8.07 *Change Orders*

A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 *Inspections, Tests, and Approvals*

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

8.09 *Limitations on Owner's Responsibilities*

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

8.10 *Undisclosed Hazardous Environmental Condition*

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

8.11 *Evidence of Financial Arrangements*

A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents, Owner's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *Owner's Representative*

A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract Documents and will not be changed without written consent of Owner and Engineer.

9.02 *Visits to Site*

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

Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

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

9.03 *Project Representative*

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

9.04 *Authorized Variations in Work*

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

9.05 *Rejecting Defective Work*

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

9.06 *Shop Drawings, Change Orders and Payments*

A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.

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

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

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

9.07 *Determinations for Unit Price Work*

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

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

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

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

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

D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show

partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 *Limitations on Engineer's Authority and Responsibilities*

A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

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

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

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

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall

promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

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

10.02 *Unauthorized Changes in the Work*

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

10.03 *Execution of Change Orders*

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

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

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

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

10.04 *Notification to Surety*

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

10.05 *Claims*

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

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

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

1. deny the Claim in whole or in part,

2. approve the Claim, or

3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

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

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

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

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

11.01 *Cost of the Work*

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

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

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

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and

Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.

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

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have

resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

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

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

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

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

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

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

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

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

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

C. Contractor's Fee: When all the Work is performed on the basis of cost-plus, Contractor's fee shall

be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.

D. Documentation: Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

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

B. Cash Allowances

1. Contractor agrees that:

a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. Contingency Allowance

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

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

11.03 Unit Price Work

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

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

C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:

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

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

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

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

12.01 *Change of Contract Price*

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

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

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

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an

allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or

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

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

1. a mutually acceptable fixed fee; or

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

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

b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;

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

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

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

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

12.02 *Change of Contract Times*

A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted

by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.

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

12.03 *Delays*

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

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

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

D. Owner, Engineer and the Related Entities of each of them shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

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

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

13.01 *Notice of Defects*

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

13.02 *Access to Work*

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

13.03 *Tests and Inspections*

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

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

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

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

3. as otherwise specifically provided in the Contract Documents.

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

D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to

be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.

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

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

13.04 *Uncovering Work*

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

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

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

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

13.05 *Owner May Stop the Work*

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

13.06 *Correction or Removal of Defective Work*

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

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

13.07 *Correction Period*

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

1. repair such defective land or areas; or
2. correct such defective Work; or
3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.

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

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

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

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

13.08 *Acceptance of Defective Work*

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

13.09 *Owner May Correct Defective Work*

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

B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.

C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

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

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress

payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. Applications for Payments

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

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

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

B. *Review of Applications*

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

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

a. the Work has progressed to the point indicated;

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

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

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

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

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

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

a. to supervise, direct, or control the Work, or

b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

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

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

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

5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent

inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Change Orders;
- c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
- d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due

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

D. Reduction in Payment

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

- a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling Owner to a set-off against the amount recommended; or
- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.

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

3. If it is subsequently determined that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1.

14.03 Contractor's Warranty of Title

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

14.04 Substantial Completion

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

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

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

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

Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.

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

14.05 *Partial Utilization*

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

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner and Engineer that such part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.

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

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

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

14.06 *Final Inspection*

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals

that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. Application for Payment

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

2. The final Application for Payment shall be accompanied (except as previously delivered) by:

a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.7;

b. consent of the surety, if any, to final payment;

c. a list of all Claims against Owner that Contractor believes are unsettled; and

d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.

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

B. *Engineer's Review of Application and Acceptance*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations

under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

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

14.08 *Final Completion Delayed*

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

14.09 *Waiver of Claims*

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

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

2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance

with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *Owner May Suspend Work*

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

15.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);

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

3. Contractor's disregard of the authority of Engineer; or

4. Contractor's violation in any substantial way of any provisions of the Contract Documents.

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

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

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

3. complete the Work as Owner may deem expedient.

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

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

E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B, and 15.02.C.

15.03 *Owner May Terminate For Convenience*

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

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

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

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

4. reasonable expenses directly attributable to termination.

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

15.04 *Contractor May Stop Work or Terminate*

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

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

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be

governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.

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

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

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

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

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

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

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

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

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

17.02 *Computation of Times*

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

17.03 *Cumulative Remedies*

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

17.04 *Survival of Obligations*

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

17.05 *Controlling Law*

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

17.06 *Headings*

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

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. C-700, 2002 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect:

SC-4.02 Delete Paragraphs 4.02.A and 4.02.B in their entirety and insert the following:

A. No reports or drawings related to Geotechnical Conditions are known to Owner or Engineer.

SC-4.06 Delete Paragraphs 4.06.A and 4.06.B in their entirety and insert the following:

A. No reports or drawings related to Hazardous Environmental Conditions are known to Owner or Engineer.

B. Left Blank Intentionally.

SC-5.04 Add the following new paragraph immediately after Paragraph 5.04.B:

CONTRACTOR'S Insurance. Before commencing the work, and as a condition of payment, the CONTRACTOR shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations are by the CONTRACTOR, or any of its consultants or subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

C. Minimum Limits of Liability. The CONTRACTOR shall maintain insurance with limits of liability equal to the limits of liability as set forth below.

1. Workers Compensation
 - A. Statutory Workers Compensation Benefits
 - B. Employer Liability:
 - Bodily Injury by Accident - \$1,000,000 Each Accident
 - Bodily Injury by Disease - \$1,000,000 Policy Limit
 - Bodily Injury by Disease - \$1,000,000 Each Employee
2. Commercial General Liability
 - \$1,000,000 Combined Single Limit of Bodily Injury Liability and Property Damage Liability Per Occurrence
 - \$2,000,000 General Aggregate Limit
 - \$2,000,000 Products & Completed Operations Aggregate Limit
 - \$1,000,000 Personal and Advertising Injury Limit

Products and Completed Operations Coverage must be maintained for not less than two full years after final payment.

3. Business Auto Liability
 - A. \$1,000,000 Combined Single Limit of Bodily Injury Liability and Property Damage Liability

4. Excess Liability
 - A. \$2,000,000 Each Occurrence Limit
\$2,000,000 Aggregate Limit

D. Number of Policies. Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

E. Additional Insured. The CONTRACTOR shall endorse all policies identified in Subparagraph 5.04(C) (with the exception of Workers Compensation) to name Owner as an Additional Insured. On the Commercial General Liability Policy, the Owner shall be given Additional Insured status for BOTH the ongoing operations of the CONTRACTOR and the completed operations of the CONTRACTOR. Also, the coverage provided to the Owner as an Additional Insured shall be written on a Primary Basis.

F. Waiver of Subrogation Endorsements. The CONTRACTOR shall endorse all policies identified in Subparagraph 5.04(C) with a Waiver of Subrogation in favor of the Owner. The CONTRACTOR shall also require similar waivers from its subcontractors in favor of the CONTRACTOR and Owner.

G. Acceptable Insurance Companies. The CONTRACTOR shall maintain in effect all insurance coverages under this Agreement at the CONTRACTOR'S sole expense and with insurance companies acceptable to the Owner and which have an A. M. Best Company rating of A- VII or better.

H. Notice of Cancellation or Non-Renewal. The CONTRACTOR'S insurance policies identified in Subparagraph 5.04(C) shall contain a provision that coverage will not be cancelled or non-renewed until at least thirty (30) days' prior written notice has been given to the Owner.

I. Certificates of Insurance. Certificates of insurance showing required coverage to be in force pursuant to Subparagraph 5.04(C) shall be filed with the Owner prior to commencement of the CONTRACTOR'S work. In the event the CONTRACTOR fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage as desired for Owner's benefit and charge the expense to the CONTRACTOR, or terminate this Agreement.

J. Continuation of Coverage. The CONTRACTOR shall continue to carry Completed Operations Liability Insurance for at least two years after either ninety (90) days following substantial completion of the work or final payment to the CONTRACTOR,

whichever is earlier. The CONTRACTOR shall furnish the Owner evidence of such insurance at final payment and one year from final payment.

SC-5.06.A. Delete Paragraph 5.06.A in its entirety and insert the following in its place:

A. Contractor shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof.

1. This insurance shall:

a. include the interests of Owner, Contractor, Subcontractors, Engineer and any other individuals or entities identified herein, and the officers, directors, partners, employees, agents and other consultants and subcontractors of any of them each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

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

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

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

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

f. include testing and startup; and

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

2. Contractor shall be responsible for any deductible or self-insured retention.

3. The policies of insurance required to be purchased and maintained by Contractor in accordance with this Paragraph SC-5.06.A shall comply with the requirements of paragraph 5.06.C of the General Conditions.

SC-5.06.E. Delete Paragraph GC-5.06.E in its entirety.

SC-6.02 Add a new sentence immediately after Paragraph 6.02A:

A1. The Engineer shall provide line and grade staking for the water improvements, one time, at no expense to the Contractor. Any restaking shall be at the expense of the Contractor.

SC-6.10 Add a new paragraph immediately after Paragraph 6.10.A:

B. Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.

1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.

2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

SC-7.04 Claims Between Contractors

A. Should Contractor cause damage to the work or property of any other contractor at the Site, or should any claim arising out of Contractor's performance of the Work at the Site be made by any other contractor against Contractor, Owner, Engineer, or the construction coordinator, Contractor shall promptly attempt to settle with such other contractor by agreement, or to otherwise resolve the dispute by arbitration or at law.

B. Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Engineer, the construction coordinator and the officers, directors, partners, employees, agents and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any other contractor against Owner, Engineer, Engineer's Consultants, or the construction coordinator to the extent said claim is based on or arises out of Contractor's performance of the Work. Should another contractor cause damage to the Work or property of Contractor or should the performance of work by any other contractor at the Site give rise to any other Claim, Contractor shall not institute any action, legal or equitable, against Owner, Engineer, or the construction coordinator or permit any action against any of them to be maintained and continued in its name or for its benefit in any court or before any arbiter which seeks to impose liability on or to recover damages from Owner, Engineer, or the construction coordinator on account of any such damage or Claim.

C. If Contractor is delayed at any time in performing or furnishing Work by any act or neglect of another contractor, and Owner and Contractor are unable to agree as to the extent of any adjustment in Contract Times attributable thereto, Contractor may make a Claim for an extension of times in accordance with Article 12. An extension of the Contract Times shall be Contractor's

exclusive remedy with respect to Owner, Engineer, and construction coordinator for any delay, disruption, interference, or hindrance caused by any other contractor. This paragraph does not prevent recovery from Owner, Engineer, or construction coordinator for activities that are their respective responsibilities.

ADDENDUM NO.

OWNER

PROJECT NAME

PROJECT NO.:

DATE OF ADDENDUM:

BID OPENING DATE:

This Addendum forms a part of Contract and clarifies, corrects or modifies original Bid Documents, dated _____ . Acknowledge receipt of this addendum in space provided on Bid Form. Failure to do so may subject bidder to disqualification.

- 1)
- 2)
- 3)

Approved by:

Engineer

WAGE RATES

General Decision Number: TX160016 01/08/2016 TX16

Superseded General Decision Number: TX20150016

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClenon and Williamson Counties) and HIGHWAY Construction Projects

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.15 for calendar year 2016 applies to all contracts subject to the Davis-Bacon Act for which the 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 \$10.15 (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 2016. 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.

Modification Number	Publication Date
0	01/08/2016

* SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving and Structures).....	\$ 12.56	
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	
Structures.....	\$ 12.87	
LABORER		
Asphalt Raker.....	\$ 12.12	
Flagger.....	\$ 9.45	
Laborer, Common.....	\$ 10.50	
Laborer, Utility.....	\$ 12.27	
Pipelayer.....	\$ 12.79	
Work Zone Barricade		
Servicer.....	\$ 11.85	

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69
Asphalt Distributor.....\$ 15.55
Asphalt Paving Machine.....\$ 14.36
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04
Concrete Pavement
Finishing Machine.....\$ 15.48
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67
Directional Drilling
Locator.....\$ 11.67
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93
Front End Loader, 3 CY or
Less.....\$ 13.04
Front End Loader, Over 3 CY.\$ 13.21
Loader/Backhoe.....\$ 14.12
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63
Pavement Marking Machine....\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88
Roller, Asphalt.....\$ 12.78
Roller, Other.....\$ 10.50
Scraper.....\$ 12.27
Spreader Box.....\$ 14.04
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51

Steel Worker

Reinforcing.....\$ 14.00
Structural.....\$ 19.29

TRAFFIC SIGNAL INSTALLER

Traffic Signal/Light Pole
Worker.....\$ 16.00

TRUCK DRIVER

Lowboy-Float.....\$ 15.66
Off Road Hauler.....\$ 11.88
Single Axle.....\$ 11.79
Single or Tandem Axle Dump

Truck.....\$ 11.68
Tandem Axle Tractor w/Semi
Trailer.....\$ 12.81

WELDER.....\$ 15.97

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

=====
Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed
in dotted lines beginning with characters other than "SU" or
"UAVG" denotes that the union classification and rate were
prevailing for that classification in the survey. Example:
PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of
the union which prevailed in the survey for this
classification, which in this example would be Plumbers. 0198
indicates the local union number or district council number
where applicable, i.e., Plumbers Local 0198. The next number,
005 in the example, is an internal number used in processing
the wage determination. 07/01/2014 is the effective date of the
most current negotiated rate, which in this example is July 1,
2014.

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

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that
no one rate prevailed for this classification in the survey and
the published rate is derived by computing a weighted average
rate based on all the rates reported in the survey for that
classification. As this weighted average rate includes all

rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

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

Union Average Rate Identifiers

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

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

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations

Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



SAMPLE FORMS

Work Change Directive

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

You are directed to proceed promptly with the following change(s):

Item No.	Description

Attachments (list documents supporting change):

Purpose for Work Change Directive:

- Authorization for Work described herein to proceed on the basis of Cost of the Work due to:
- Nonagreement on pricing of proposed change.
- Necessity to expedite Work described herein prior to agreeing to changes on Contract Price and Contract Time.

Estimated change in Contract Price and Contract Times:

Contract Price \$ _____ (increase/decrease) Contract Time _____ days (increase/decrease)

If the change involves an increase, the estimated amounts are not to be exceeded without further authorization.

Recommended for Approval by Engineer:	Date
Authorized for Owner by:	Date
Accepted for Contractor by:	Date
Approved by Funding Agency (if applicable):	Date:

Change Order

No. _____

Date of Issuance: _____ Effective Date: _____

Project:	Owner:	Owner's Contract No.:
Contract:	Date of Contract:	
Contractor:	Engineer's Project No.:	

The Contract Documents are modified as follows upon execution of this Change Order:

Description: _____

Attachments: (List documents supporting change): _____

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIMES:

Original Contract Price: \$ _____
Original Contract Times: Working days Calendar days
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____: \$ _____
[Increase] [Decrease] from previously approved Change Orders
No. _____ to No. _____:
Substantial completion (days): _____
Ready for final payment (days): _____

Contract Price prior to this Change Order: \$ _____
Contract Times prior to this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

[Increase] [Decrease] of this Change Order: \$ _____
[Increase] [Decrease] of this Change Order:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

Contract Price incorporating this Change Order: \$ _____
Contract Times with all approved Change Orders:
Substantial completion (days or date): _____
Ready for final payment (days or date): _____

RECOMMENDED: ACCEPTED: ACCEPTED:
By: _____ By: _____ By: _____
Engineer (Authorized Signature) Owner (Authorized Signature) Contractor (Authorized Signature)

Date: _____ Date: _____ Date: _____

Approved by Funding Agency (if applicable): _____ Date: _____

Change Order Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

Progress Estimate

Contractor's Application

For (contract):		Application Number:										
Application Period:		Application Date:										
A		B		C		D		E		F		G
Specification Section No.	Description	Item	Scheduled Value	Work Completed		Materials Presently Stored (not in C or D)	Total Completed and Stored to Date (C + D + E)	% (E) B	Balance to Finish (B - F)			
				From Previous Application (C + D)	This Period							
Totals												

Progress Estimate

Contractor's Application

For (contract):		Application Number:								
Application Period:		Application Date:								
A		B	C	D	E	F	G			
Bid Item No.	Description	Bid Quantity	Unit Price	Bid Value	Estimated Quantity Installed	Value	Materials Presently Stored (not in C)	Total Completed and Stored to Date (D + E)	% (E) B	Balance to Finish (B - F)
	Item									
Totals										

Certificate of Substantial Completion

Project:	Owner:	Owner's Contract No.:
Contract:		Date of Contract:
Contractor:		Engineer's Project No.:

This [tentative] [definitive] Certificate of Substantial Completion applies to:

- All Work under the Contract Documents:
 The following specified portions:

_____ Date of Substantial Completion

The Work to which this Certificate applies has been inspected by authorized representatives of Owner, Contractor and Engineer, and found to be substantially complete. The Date of Substantial Completion of the Project or portion thereof designated above is hereby declared and is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below.

A [tentative] [revised tentative] [definitive] list of items to be completed or corrected, is attached hereto. This list may not be all-inclusive, and the failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

The responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, heat, utilities, insurance and warranties shall be as provided in the Contract Documents except as amended as follows:

- Amended Responsibilities
 Not Amended

Owner's Amended Responsibilities:

Contractor's Amended Responsibilities:

The following documents are attached to and made part of this Certificate:

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of Contractor's obligation to complete the Work in accordance with the Contract Documents.

Executed by Engineer	Date
Accepted by Contractor	Date
Accepted by Owner	Date

TECHNICAL SPECIFICATIONS

SECTION 00 70 00 - EXECUTION AND CLOSEOUT REQUIREMENTS

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Closeout procedures.
- B. Project record documents.
- C. Operation and maintenance data.
- D. Examination.
- E. Execution.
- F. Final cleaning.

1.2 CLOSEOUT PROCEDURES

- A. Prerequisites for Final Completion: Complete following items before requesting final acceptance and final payment.
 - 1. When Contractor considers Work to be complete, submit written certification that:
 - a. Contract Documents have been reviewed.
 - b. Work has been examined for compliance with Contract Documents.
 - c. Work has been completed according to Contract Documents.
 - d. Work is completed and ready for final inspection.
 - 2. Submittals: Submit following:
 - a. One year warranty letter (from date of final acceptance by City) for all workmanship and materials used for the Work.
 - b. Contractor's affidavit of payment of debts and claims on Contractor's Affidavit of Payment of Debts and Claims.
 - c. Contractor affidavit of release of liens on Contractor's Affidavit of Release of Liens.
 - d. Consent of surety to final payment on Consent of Surety to Final Payment Form.
 - 3. Perform final cleaning for Contractor-soiled areas according to this Section.

1.3 PROJECT RECORD DOCUMENTS

- A. Maintain on Site one set of the following record documents; record actual revisions to the Work:
 - 1. Drawings.
 - 2. Specifications.
 - 3. Addenda.
 - 4. Change Orders and other modifications to the Contract.
- B. Ensure entries are complete and accurate, enabling future reference by City.
- C. Store record documents separate from documents used for construction.

- D. Record information concurrent with construction progress, not less than weekly.
- E. Record Drawings and Shop Drawings: Legibly mark each item to record actual construction as follows:
 - 1. Include Contract modifications such as Addenda, supplementary instructions, change directives, field orders, minor changes in the Work, and change orders.
 - 2. Identify and locate existing buried or concealed items encountered during Project.
- F. Submit PDF electronic files of marked-up documents to City Engineer prior to final inspection.

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION

3.1 EXAMINATION

- A. Verify that existing Site conditions and substrate surfaces are acceptable for subsequent Work. Beginning new Work means acceptance of existing conditions.
- B. Examine and verify specific conditions described in individual Specification Sections.

3.2 EXECUTION

- A. Verify that field measurements are as indicated on approved Drawings.

3.3 FINAL CLEANING

- A. Execute final cleaning prior to final Project assessment.
- B. Remove waste and surplus materials, rubbish, and construction facilities from Site.

END OF SECTION

Item 216

Proof Rolling



1. DESCRIPTION

Proof-roll earthwork, base, or both to locate unstable areas.

2. EQUIPMENT

2.1. **Specified Equipment.** Furnish rollers that weigh at least 25 tons when loaded. The maximum acceptable load is 50 tons. Provide rollers that meet the requirements of Section 210.2.4., "Pneumatic Tire Rollers."

2.2. **Alternative Equipment.** The Contractor may use alternate compaction equipment that produces results equivalent to the specified equipment in the same period of time as approved. Discontinue the use of the alternative equipment and furnish the specified equipment if the desired results are not achieved.

3. CONSTRUCTION

Perform proof rolling as directed. Adjust the load and tire inflation pressures within the range of the manufacturer's charts or tabulations, as directed. Make at least 2 coverages with the proof roller. Offset each trip of the roller by at most one tire width. Operate rollers at a speed between 2 and 6 mph, as directed. Correct unstable or nonuniform areas, if found, in accordance with the applicable Item.

4. MEASUREMENT

Rolling will be measured by the hour operated on surfaces being tested.

5. PAYMENT

The work performed and equipment furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Proof Rolling." This price is full compensation for furnishing and operating equipment and for labor, materials, tools, and incidentals.

Item 247

Flexible Base



1. DESCRIPTION

Construct a foundation course composed of flexible base.

2. MATERIALS

Furnish uncontaminated materials of uniform quality that meet the requirements of the plans and specifications. Notify the Engineer of the proposed material sources and of changes to material sources. The Engineer may sample and test project materials at any time before compaction throughout the duration of the project to assure specification compliance. Use Tex-100-E material definitions.

- 2.1. **Aggregate.** Furnish aggregate of the type and grade shown on the plans and meeting the requirements of Table 1. Each source must meet Table 1 requirements for liquid limit, plasticity index, and wet ball mill for the grade specified. Do not use additives, such as but not limited to lime, cement, or fly ash to modify aggregates to meet the requirements of Table 1 unless shown on the plans.

Table 1
Material Requirements

Property	Test Method	Grade 1-2	Grade 3	Grade 4 ²	Grade 5
Sampling	Tex-400-A				
Master gradation sieve size (cumulative % retained)	Tex-110-E			As shown on the plans	
2-1/2"		0	0		0
1-3/4"		0-10	0-10		0-5
7/8"		10-35	-		10-35
3/8"		30-65	-		35-65
#4		45-75	45-75		45-75
#40	65-90	50-85	70-90		
Liquid Limit, % Max	Tex-104-E	40	40	As shown on the plans	35
Plasticity Index, Max ¹	Tex-106-E	10	12	As shown on the plans	10
Plasticity index, Min ¹		As shown on the plans			
Wet ball mill, % Max	Tex-116-E	40	-	As shown on the plans	40
Wet ball mill, % Max increase passing the #40 sieve		20	-	As shown on the plans	20
Min compressive strength, psi	Tex-117-E			As shown on the plans	
lateral pressure 0 psi		35	-		-
lateral pressure 3 psi		-	-		90
lateral pressure 15 psi		175	-		175

- Determine plastic index in accordance with Tex-107-E (linear shrinkage) when liquid limit is unattainable as defined in Tex-104-E.
- Grade 4 may be further designated as Grade 4A, Grade 4B, etc.

- 2.1.1. **Material Tolerances.** The Engineer may accept material if no more than 1 of the 5 most recent gradation tests has an individual sieve outside the specified limits of the gradation.

When target grading is required by the plans, no single failing test may exceed the master grading by more than 5 percentage points on sieves No. 4 and larger or 3 percentage points on sieves smaller than No. 4.

The Engineer may accept material if no more than 1 of the 5 most recent plasticity index tests is outside the specified limit. No single failing test may exceed the allowable limit by more than 2 points.

- 2.1.2. **Material Types.** Do not use fillers or binders unless approved. Furnish the type specified on the plans in accordance with the following:
- 2.1.2.1. **Type A.** Crushed stone produced and graded from oversize quarried aggregate that originates from a single, naturally occurring source. Do not use gravel or multiple sources.
- 2.1.2.2. **Type B.** Crushed or uncrushed gravel. Blending of 2 or more sources is allowed.
- 2.1.2.3. **Type C.** Crushed gravel with a minimum of 60% of the particles retained on a No. 4 sieve with 2 or more crushed faces as determined by Tex-460-A, Part I. Blending of 2 or more sources is allowed.
- 2.1.2.4. **Type D.** Type A material or crushed concrete. Crushed concrete containing gravel will be considered Type D material. Crushed concrete must meet the requirements in Section 247.2.1.3.2., "Recycled Material (Including Crushed Concrete) Requirements," and be managed in a way to provide for uniform quality. The Engineer may require separate dedicated stockpiles in order to verify compliance.
- 2.1.2.5. **Type E.** Caliche, iron ore or as otherwise shown on the plans.
- 2.1.3. **Recycled Material.** Reclaimed asphalt pavement (RAP) and other recycled materials may be used when shown on the plans. Request approval to blend 2 or more sources of recycled materials.
- 2.1.3.1. **Limits on Percentage.** Do not exceed 20% RAP by weight, when RAP is allowed, unless otherwise shown on the plans. The percentage limitations for other recycled materials will be as shown on the plans.
- 2.1.3.2. **Recycled Material (Including Crushed Concrete) Requirements.**
- 2.1.3.2.1. **Contractor-Furnished Recycled Materials.** Provide recycled materials, other than RAP, that have a maximum sulfate content of 3,000 ppm when tested in accordance with Tex-145-E. When the Contractor furnishes the recycled materials, including crushed concrete, the final product will be subject to the requirements of Table 1 for the grade specified. Certify compliance with DMS-11000, "Evaluating and Using Nonhazardous Recyclable Materials Guidelines," for Contractor furnished recycled materials. In addition, recycled materials must be free from reinforcing steel and other objectionable material and have at most 1.5% deleterious material when tested in accordance with Tex-413-A. For RAP, do not exceed a maximum percent loss from decantation of 5.0% when tested in accordance with Tex-406-A. Test RAP without removing the asphalt.
- 2.1.3.2.2. **Department-Furnished Required Recycled Materials.** When the Department furnishes and requires the use of recycled materials, unless otherwise shown on the plans:
- Department-required recycled material will not be subject to the requirements in Table 1,
 - Contractor-furnished materials are subject to the requirements in Table 1 and this Item,
 - the final product, blended, will be subject to the requirements in Table 1, and
 - for final product, unblended (100% Department-furnished required recycled material), the liquid limit, plasticity index, wet ball mill, and compressive strength is waived.
- Crush Department-furnished RAP so that 100% passes the 2 in. sieve. The Contractor is responsible for uniformly blending to meet the percentage required.
- 2.1.3.2.3. **Department-Furnished and Allowed Recycled Materials.** When the Department furnishes and allows the use of recycled materials or allows the Contractor to furnish recycled materials, the final blended product is subject to the requirements of Table 1 and the plans.

- 2.1.3.3. **Recycled Material Sources.** Department-owned recycled material is available to the Contractor only when shown on the plans. Return unused Department-owned recycled materials to the Department stockpile location designated by the Engineer unless otherwise shown on the plans.

The use of Contractor-owned recycled materials is allowed when shown on the plans. Contractor-owned surplus recycled materials remain the property of the Contractor. Remove Contractor-owned recycled materials from the project and dispose of them in accordance with federal, state, and local regulations before project acceptance. Do not intermingle Contractor-owned recycled material with Department-owned recycled material unless approved.

- 2.2. **Water.** Furnish water free of industrial wastes and other objectionable matter.
- 2.3. **Material Sources.** Expose the vertical faces of all strata of material proposed for use when non-commercial sources are used. Secure and process the material by successive vertical cuts extending through all exposed strata, when directed.

3. EQUIPMENT

Provide machinery, tools, and equipment necessary for proper execution of the work.

- 3.1. Provide rollers in accordance with Item 210, "Rolling." Provide proof rollers in accordance with Item 216, "Proof Rolling," when required.
- 3.2. When ride quality measurement is required, provide a high speed or lightweight inertial profiler certified at the Texas A&M Transportation Institute. Provide equipment certification documentation. Display a current decal on the equipment indicating the certification expiration date.

4. CONSTRUCTION

Construct each layer uniformly, free of loose or segregated areas, and with the required density and moisture content. Provide a smooth surface that conforms to the typical sections, lines, and grades shown on the plans or as directed.

Stockpile base material temporarily at an approved location before delivery to the roadway. Build stockpiles in layers no greater than 2 ft. thick. Stockpiles must have a total height between 10 and 16 ft. unless otherwise approved. After construction and acceptance of the stockpile, loading from the stockpile for delivery is allowed. Load by making successive vertical cuts through the entire depth of the stockpile.

Do not add or remove material from temporary stockpiles that require sampling and testing before delivery unless otherwise approved. Charges for additional sampling and testing required as a result of adding or removing material will be deducted from the Contractor's estimates.

Haul approved flexible base in clean trucks. Deliver the required quantity to each 100-ft. station or designated stockpile site as shown on the plans. Prepare stockpile sites as directed. When delivery is to the 100-ft. station, manipulate in accordance with the applicable Items.

- 4.1. **Preparation of Subgrade or Existing Base.** Remove or scarify existing asphalt concrete pavement in accordance with Item 105, "Removing Treated and Untreated Base and Asphalt Pavement," when shown on the plans or as directed. Shape the subgrade or existing base to conform to the typical sections shown on the plans or as directed.

When new base is required to be mixed with existing base, deliver, place, and spread the new flexible base in the required amount per station. Manipulate and thoroughly mix the new base with existing material to provide a uniform mixture to the specified depth before shaping.

Proof roll the roadbed in accordance with Item 216, "Proof Rolling," before pulverizing or scarifying when shown on the plans or directed. Correct soft spots as directed.

- 4.2. **Placing.** Spread and shape flexible base into a uniform layer with an approved spreader the same day as delivered unless otherwise approved. Construct layers to the thickness shown on the plans. Maintain the shape of the course. Control dust by sprinkling, as directed. Correct or replace segregated areas as directed, at no additional expense to the Department.

Place successive base courses and finish courses using the same construction methods required for the first course.

- 4.3. **Compaction.** Compact using density control unless otherwise shown on the plans. Multiple lifts are permitted when shown on the plans or approved. Bring each layer to the moisture content directed. When necessary, sprinkle the material in accordance with Item 204, "Sprinkling."

Begin rolling longitudinally at the sides and proceed towards the center, overlapping on successive trips by at least 1/2 the width of the roller unit. Begin rolling at the low side and progress toward the high side on super-elevated curves. Offset alternate trips of the roller. Operate rollers at a speed between 2 and 6 mph as directed.

Rework, recompact, and refinish material that fails to meet or that loses required moisture, density, stability, or finish requirements before the next course is placed or the project is accepted. Continue work until specification requirements are met. Perform the work at no additional expense to the Department.

Before final acceptance, the Engineer will select the locations of tests and measure the flexible base depth in accordance with Tex-140-E. Correct areas deficient by more than 1/2 in. in thickness by scarifying, adding material as required, reshaping, recompacting, and refinishing at the Contractor's expense.

- 4.3.1. **Ordinary Compaction.** Roll with approved compaction equipment as directed. Correct irregularities, depressions, and weak spots immediately by scarifying the areas affected, adding or removing approved material as required, reshaping, and recompacting.

- 4.3.2. **Density Control.** Compact to at least 100% of the maximum dry density determined by Tex-113-E, unless otherwise shown on the plans. Maintain moisture during compaction within ± 2 percentage points of the optimum moisture content as determined by Tex-113-E. Measure the moisture content of the material in accordance with Tex-115-E or Tex-103-E during compaction daily and report the results the same day to the Engineer, unless otherwise shown on the plans or directed. Do not achieve density by drying the material after compaction.

The Engineer will determine roadway density and moisture content of completed sections in accordance with Tex-115-E. The Engineer may accept the section if no more than 1 of the 5 most recent density tests is below the specified density and the failing test is no more than 3 pcf below the specified density.

- 4.4. **Finishing.** After completing compaction, clip, skin, or tight-blade the surface with a maintainer or subgrade trimmer to a depth of approximately 1/4 in. Remove loosened material and dispose of it at an approved location. Seal the clipped surface immediately by rolling with a pneumatic tire roller until a smooth surface is attained. Add small increments of water as needed during rolling. Shape and maintain the course and surface in conformity with the typical sections, lines, and grades as shown on the plans or as directed.

Correct grade deviations greater than 1/4 in. in 16 feet measured longitudinally or greater than 1/4 in. over the entire width of the cross-section in areas where surfacing is to be placed. Correct by loosening and adding, or removing material. Reshape and re-compact in accordance with Section 247.4.3., "Compaction."

- 4.5. **Curing.** Cure the finished section until the moisture content is at least 2 percentage points below optimum or as directed before applying the next successive course or prime coat.

- 4.6. **Ride Quality.** This section applies to the final travel lanes that receive a 1 or 2 course surface treatment for the final surface, unless otherwise shown on the plans. Measure ride quality of the base course after placement of the prime coat and before placement of the surface treatment, unless otherwise approved. Use a certified profiler operator from the Department's MPL. When requested, furnish the Engineer documentation for the person certified to operate the profiler.

Provide all profile measurements to the Engineer in electronic data files within 3 days after placement of the prime coat using the format specified in Tex-1001-S. The Engineer will use Department software to evaluate longitudinal profiles to determine areas requiring corrective action. Correct 0.1-mi.sections having an average international roughness index (IRI) value greater than 100.0 in. per mile to an IRI value of 100.0 in. per mile or less for each wheel path, unless otherwise shown on the plans.

Re-profile and correct sections that fail to maintain ride quality until placement of the next course, as directed. Correct re-profiled sections until specification requirements are met, as approved. Perform this work at no additional expense to the Department.

5. MEASUREMENT

Flexible base will be measured as follows:

- **Flexible Base (Complete In Place).** The ton, square yard, or any cubic yard method.
- **Flexible Base (Roadway Delivery).** The ton or any cubic yard method.
- **Flexible Base (Stockpile Delivery).** The ton, cubic yard in vehicle, or cubic yard in stockpile.

Measurement by the cubic yard in final position and square yard is a plans quantity measurement. The quantity to be paid for is the quantity shown in the proposal unless modified by Article 9.2., "Plans Quantity Measurement." Additional measurements or calculations will be made if adjustments of quantities are required.

Measurement is further defined for payment as follows.

- 5.1. **Cubic Yard in Vehicle.** By the cubic yard in vehicles of uniform capacity at the point of delivery.
- 5.2. **Cubic Yard in Stockpile.** By the cubic yard in the final stockpile position by the method of average end areas.
- 5.3. **Cubic Yard in Final Position.** By the cubic yard in the completed and accepted final position. The volume of base course is computed in place by the method of average end areas between the original subgrade or existing base surfaces and the lines, grades, and slopes of the accepted base course as shown on the plans.
- 5.4. **Square Yard.** By the square yard of surface area in the completed and accepted final position. The surface area of the base course is based on the width of flexible base as shown on the plans.
- 5.5. **Ton.** By the ton of dry weight in vehicles as delivered. The dry weight is determined by deducting the weight of the moisture in the material at the time of weighing from the gross weight of the material. The Engineer will determine the moisture content in the material in accordance with Tex-103-E from samples taken at the time of weighing.

When material is measured in trucks, the weight of the material will be determined on certified scales, or the Contractor must provide a set of standard platform truck scales at a location approved by the Engineer. Scales must conform to the requirements of Item 520, "Weighing and Measuring Equipment."

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for the types of work shown below. No additional payment

will be made for thickness or width exceeding that shown on the typical section or provided on the plans for cubic yard in the final position or square yard measurement.

Sprinkling and rolling, except proof rolling, will not be paid for directly but will be subsidiary to this Item unless otherwise shown on the plans. When proof rolling is shown on the plans or directed, it will be paid for in accordance with Item 216, "Proof Rolling."

Where subgrade is constructed under this Contract, correction of soft spots in the subgrade will be at the Contractor's expense. Where subgrade is not constructed under this Contract, correction of soft spots in the subgrade will be paid in accordance with pertinent Items or Article 4.4., "Changes in the Work."

- 6.1. **Flexible Base (Complete In Place).** Payment will be made for the type and grade specified. For cubic yard measurement, "In Vehicle," "In Stockpile," or "In Final Position" will be specified. For square yard measurement, a depth will be specified. This price is full compensation for furnishing materials, temporary stockpiling, assistance provided in stockpile sampling and operations to level stockpiles for measurement, loading, hauling, delivery of materials, spreading, blading, mixing, shaping, placing, compacting, reworking, finishing, correcting locations where thickness is deficient, curing, furnishing scales and labor for weighing and measuring, and equipment, labor, tools, and incidentals.
- 6.2. **Flexible Base (Roadway Delivery).** Payment will be made for the type and grade specified. For cubic yard measurement, "In Vehicle," "In Stockpile," or "In Final Position" will be specified. The unit price bid will not include processing at the roadway. This price is full compensation for furnishing materials, temporary stockpiling, assistance provided in stockpile sampling and operations to level stockpiles for measurement, loading, hauling, delivery of materials, furnishing scales and labor for weighing and measuring, and equipment, labor, tools, and incidentals.
- 6.3. **Flexible Base (Stockpile Delivery).** Payment will be made for the type and grade specified. For cubic yard measurement, "In Vehicle" or "In Stockpile" will be specified. The unit price bid will not include processing at the roadway. This price is full compensation for furnishing and disposing of materials, preparing the stockpile area, temporary or permanent stockpiling, assistance provided in stockpile sampling and operations to level stockpiles for measurement, loading, hauling, delivery of materials to the stockpile, furnishing scales and labor for weighing and measuring, and equipment, labor, tools, and incidentals.

Item 260

Lime Treatment (Road-Mixed)



1. DESCRIPTION

Mix and compact lime, water, and subgrade or base (with or without asphaltic concrete pavement) in the roadway.

2. MATERIALS

Furnish uncontaminated materials of uniform quality that meet the requirements of the plans and specifications. Notify the Engineer of the proposed material sources and of changes to material sources. Obtain verification from the Engineer that the specification requirements are met before using the sources. The Engineer may sample and test project materials at any time before compaction. Use Tex-100-E for material definitions.

- 2.1. **Lime.** Furnish lime that meets the requirements of DMS-6350 "Lime and Lime Slurry," and DMS-6330, "Pre-Qualification of Lime Sources." Use hydrated lime, commercial lime slurry, quicklime, or carbide lime slurry as shown on the plans. Do not use quicklime when sulfates are present in quantities greater than 3,000 ppm. When furnishing quicklime, provide it in bulk.
- 2.2. **Subgrade.** The Engineer will determine the sulfate content of the existing subgrade in accordance with Tex-145-E and organic content in accordance with Tex-148-E before lime treatment begins. Suspend operations when material to be treated has a sulfate content greater than 7,000 ppm or an organic content greater than 1.0% and proceed as directed.
- 2.3. **Flexible Base.** Unless otherwise shown on the plans, furnish base material that meets the requirements of Item 247, "Flexible Base," for the type and grade shown on the plans, before the addition of lime.
- 2.4. **Water.** Furnish water free of industrial wastes and other objectionable material.
- 2.5. **Asphalt.** When asphalt or emulsion is permitted for curing purposes, furnish materials that meet the requirements of Item 300, "Asphalts, Oils, and Emulsions," as shown on the plans or as directed.
- 2.6. **Mix Design.** The Engineer will determine the target lime content and optimum moisture content in accordance with Tex-121-E or prior experience with the project materials. The Contractor may propose a mix design developed in accordance with Tex-121-E. The Engineer will use Tex-121-E to verify the Contractor's proposed mix design before acceptance. Reimburse the Department for subsequent mix designs or partial designs necessitated by changes in the material or requests by the Contractor. Limit the amount of recycled asphalt pavement to no more than 50% of the mix unless otherwise shown on the plans or directed.

3. EQUIPMENT

Provide machinery, tools, and equipment necessary for proper execution of the work. Provide rollers in accordance with Item 210, "Rolling." Provide proof rollers in accordance with Item 216, "Proof Rolling," when required.

- 3.1. **Storage Facility.** Store quicklime and dry hydrated lime in closed, weatherproof containers.
- 3.2. **Slurry Equipment.** Use slurry tanks equipped with agitation devices to slurry hydrated lime or quicklime on the project or other approved location. The Engineer may approve other slurring methods.

- 3.3. Provide a pump for agitating the slurry when the distributor truck is not equipped with an agitator. Equip the distributor truck with a sampling device in accordance with Tex-600-J, Part I, when using commercial lime slurry or carbide lime slurry.
- 3.4. **Hydrated Lime Distribution Equipment.** Provide equipment to spread lime evenly across the area to be treated. Provide equipment with a rotary vane feeder to spread lime, when shown on the plans.
- 3.5. **Pulverization Equipment.** Provide pulverization equipment that:
- cuts and pulverizes material uniformly to the proper depth with cutters that plane to a uniform surface over the entire width of the cut,
 - provides a visible indication of the depth of cut at all times, and
 - uniformly mixes the materials.

4. CONSTRUCTION

Construct each layer uniformly, free of loose or segregated areas, and with the required density and moisture content. Provide a smooth surface that conforms to the typical sections, lines, and grades shown on the plans or as directed.

- 4.1. **Preparation of Subgrade or Existing Base for Treatment.** Before treating, remove existing asphalt pavement in accordance with Item 105, "Removing Treated and Untreated Base and Asphalt Pavement," when shown on the plans or as directed. Shape existing material in accordance with applicable bid items to conform to typical sections shown on the plans and as directed.

Unless otherwise approved, proof roll the roadbed in accordance with Item 216, "Proof Rolling," before pulverizing or scarifying existing material. Correct soft spots as directed.

When material is imported from a borrow source, notify the Engineer of the location of the borrow source well in advance to allow time for testing and approval to avoid delay to the project. Stockpile as directed. The Engineer will test the borrow source and determine the sulfate and organic contents. When the borrow source has a sulfate content greater than 3,000 ppm or an organic content greater than 1.0%, proceed as directed.

When new base material is required to be mixed with existing base, deliver, place, and spread the new material in the required amount per station. Manipulate and thoroughly mix new base with existing material to provide a uniform mixture to the specified depth before shaping.

- 4.2. **Pulverization.** Pulverize or scarify existing material after shaping so that 100% passes a 2-1/2 in. sieve. If the material cannot be uniformly processed to the required depth in a single pass, excavate and windrow the material to expose a secondary grade to achieve processing to plan depth.
- 4.3. **Application of Lime.** Uniformly apply lime using dry or slurry placement as shown on the plans or as directed. Add lime at the percentage determined in Section 260.2.6., "Mix Design." Apply lime only on an area where mixing can be completed during the same working day.

Start lime application only when the air temperature is at least 35°F and rising or is at least 40°F. The temperature will be taken in the shade and away from artificial heat. Suspend application when the Engineer determines that weather conditions are unsuitable.

Minimize dust and scattering of lime by wind. Do not apply lime when wind conditions, in the opinion of the Engineer, cause blowing lime to become dangerous to traffic or objectionable to adjacent property owners. When pebble grade quicklime is placed dry, mix the material and lime thoroughly at the time of lime application. Use of quicklime can be dangerous. Inform users of the recommended precautions for handling and storage.

- 4.3.1. **Dry Placement.** Before applying lime, bring the prepared roadway to approximately 2 percentage points above optimum moisture content. When necessary, sprinkle in accordance with Item 204, "Sprinkling." Distribute the required quantity of hydrated lime or pebble grade quicklime with approved equipment. Only hydrated lime may be distributed by bag. Do not use a motor grader to spread hydrated lime.
- 4.3.2. **Slurry Placement.** Provide slurry free of objectionable materials, at or above the minimum dry solids content, and with a uniform consistency that will allow ease of handling and uniform application. Deliver commercial lime slurry or carbide lime slurry to the jobsite, or use hydrated lime or quicklime to prepare lime slurry at the jobsite or other approved location, as specified. When dry quicklime is applied as slurry, use 80% of the amount shown on the plans.
- Distribute slurry uniformly by making successive passes over a measured section of roadway until the specified lime content is reached. Uniformly spread the residue from quicklime slurry over the length of the roadway being processed, unless otherwise directed.
- 4.4. **Mixing.** Begin mixing within 6 hr. of application of lime. Hydrated lime exposed to the open air for 6 hr. or more between application and mixing, or that experiences excessive loss due to washing or blowing, will not be accepted for payment.

Thoroughly mix the material and lime using approved equipment. When treating subgrade, bring the moisture content above the optimum moisture content to insure adequate chemical reaction of the lime and subgrade materials. Allow the mixture to mellow for 1 to 4 days, as directed. When pebble grade quicklime is used, allow the mixture to mellow for 2 to 4 days, as directed. Sprinkle the treated materials during the mixing and mellowing operation, as directed, to achieve adequate hydration and proper moisture content. When the material to be treated has a sulfate content greater than 3,000 ppm but less than or equal to 7,000 ppm, mellow for a minimum of 7 days. Maintain in a continuously moist condition by sprinkling in accordance with Item 204, "Sprinkling." After mellowing, resume mixing until a homogeneous, friable mixture is obtained. After mixing, the Engineer may sample the mixture at roadway moisture and test in accordance with Tex-101-E, Part III, to determine compliance with the gradation requirements in Table 1.

Table 1
Gradation Requirements (Minimum % Passing)

Sieve Size	Base	Subgrade
1-3/4"	100	100
3/4"	85	85
#4	—	60

- 4.5. **Compaction.** Compact the mixture using density control, unless otherwise shown on the plans. Multiple lifts are permitted when shown on the plans or approved. Bring each layer to the moisture content directed. Sprinkle the treated material in accordance with Item 204, "Sprinkling" or aerate the treated material to adjust the moisture content during compaction so that it is no more than 1.0 percentage points below optimum and 2.0 percentage points above optimum as determined by Tex-121-E. Measure the moisture content of the material in accordance with Tex-115-E or Tex-103-E during compaction daily and report the results the same day, unless otherwise shown on the plans or directed.

Begin rolling longitudinally at the sides and proceed toward the center, overlapping on successive trips by at least 1/2 the width of the roller unit. On superelevated curves, begin rolling at the low side and progress toward the high side. Offset alternate trips of the roller. Operate rollers at a speed between 2 and 6 mph as directed.

Before final acceptance, the Engineer will select the locations of tests in each unit and measure the treated depth in accordance with Tex-140-E. Correct areas deficient by more than 1/2 in. in thickness or more than 1/2% in target lime content by adding lime as required, reshaping, recompacting, and refinishing at the Contractor's expense.

Rework, recompact, and refinish material that fails to meet or that loses required moisture, density, stability, or finish before the next course is placed or the project is accepted. Continue work until specification

requirements are met. Rework in accordance with Section 260.4.6., "Reworking a Section." Perform the work at no additional expense to the Department.

- 4.5.1. **Ordinary Compaction.** Roll with approved compaction equipment, as directed. Correct irregularities, depressions, and weak spots immediately by scarifying the areas affected, adding or removing treated material as required, reshaping, and recompacting.
- 4.5.2. **Density Control.** The Engineer will determine roadway density and moisture content of completed sections in accordance with Tex-115-E. The Engineer may accept the section if no more than 1 of the 5 most recent density tests is below the specified density and the failing test is no more than 3 pcf below the specified density.
- 4.5.2.1. **Subgrade.** Compact to at least 95% of the maximum density determined in accordance with Tex-121-E, unless otherwise shown on the plans.
- 4.5.2.2. **Base.** Compact the bottom course to at least 95% of the maximum density determined in accordance with Tex-121-E, unless otherwise shown on the plans. Compact subsequent courses treated under this Item to at least 98% of the maximum density determined in accordance with Tex-121-E, unless otherwise shown on the plans.
- 4.6. **Reworking a Section.** When a section is reworked within 72 hr. after completion of compaction, rework the section to provide the required density. When a section is reworked more than 72 hr. after completion of compaction, add additional lime at 25% of the percentage determined in Section 260.2.6., "Mix Design." Reworking includes loosening, adding material or removing unacceptable material if necessary, mixing as directed, compacting, and finishing. When density control is specified, determine a new maximum density of the reworked material in accordance with Tex-121-E, and compact to at least 95% of this density.
- 4.7. **Finishing.** Immediately after completing compaction of the final course, clip, skin, or tight-blade the surface of the lime-treated material with a maintainer or subgrade trimmer to a depth of approximately 1/4 in. Remove loosened material and dispose of at an approved location. Roll the clipped surface immediately with a pneumatic tire roller until a smooth surface is attained. Add small amounts of water as needed during rolling. Shape and maintain the course and surface in conformity with the typical sections, lines, and grades shown on the plans or as directed.
- Finish grade of constructed subgrade to within 0.1 ft. in the cross-section and 0.1 ft. in 16 ft. measured longitudinally.
- Correct grade deviations of constructed base greater than 1/4 in. in 16 ft. measured longitudinally or greater than 1/4 in. over the entire width of the cross-section in areas where surfacing is to be placed. Remove excess material, reshape, and roll with a pneumatic-tire roller. Correct as directed if material is more than 1/4 in. low. Do not surface patch. The 72-hr. time limit required for completion of placement, compaction, and finishing does not apply to finishing required just before applying the surface course.
- 4.8. **Curing.** Cure for the minimum number of days shown in Table 2 by sprinkling in accordance with Item 204, "Sprinkling," or by applying an asphalt material at a rate of 0.05 to 0.20 gal. per square yard as directed. Maintain moisture during curing. Upon completion of curing, maintain the moisture content in accordance with Section 132.3.5., "Maintenance of Moisture and Reworking," for subgrade and Section 247.4.5., "Curing" for bases before placing subsequent courses. Do not allow equipment on the finished course during curing except as required for sprinkling, unless otherwise approved. Apply seals or additional courses within 14 calendar days of final compaction.

Table 2
Minimum Curing Requirements before Placing Subsequent Courses¹

Untreated Material	Curing (Days)
PI ≤ 35	2
PI > 35	5

1. Subject to the approval of the Engineer. Proof rolling may be required as an indicator of adequate curing.

5. MEASUREMENT

5.1. **Lime.** When lime is furnished in trucks, the weight of lime will be determined on certified scales, or the Contractor must provide a set of standard platform truck scales at a location approved by the Engineer. Scales must conform to the requirements of Item 520, "Weighing and Measuring Equipment."

When lime is furnished in bags, indicate the manufacturer's certified weight. Bags varying more than 5% from that weight may be rejected. The average weight of bags in any shipment, as determined by weighing 10 bags taken at random, must be at least the manufacturer's certified weight.

5.1.1. **Hydrated Lime.**

5.1.1.1. **Dry.** Lime will be measured by the ton (dry weight).

5.1.1.2. **Slurry.** Lime slurry will be measured by the ton (dry weight) of the hydrated lime used to prepare the slurry at the jobsite.

5.1.2. **Commercial Lime Slurry.** Lime slurry will be measured by the ton (dry weight) as calculated from the minimum percent dry solids content of the slurry, multiplied by the weight of the slurry in tons delivered.

5.1.3. **Quicklime.**

5.1.3.1. **Dry.** Lime will be measured by the ton (dry weight) of the quicklime.

5.1.3.2. **Slurry.** Lime slurry will be measured by the ton (dry weight) of the quicklime used to prepare the slurry multiplied by a conversion factor of 1.28 to give the quantity of equivalent hydrated lime, which will be the basis of payment.

5.1.4. **Carbide Lime Slurry.** Lime slurry will be measured by the ton (dry weight) as calculated from the minimum percent dry solids content of the slurry, multiplied by the weight of the slurry in tons delivered.

5.2. **Lime Treatment.** Lime treatment will be measured by the square yard of surface area. The dimensions for determining the surface area are established by the widths shown on the plans and the lengths measured at placement.

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid in accordance with Section 260.6.1., "Lime," and Section 260.6.2., "Lime Treatment."

Furnishing and delivering new base will be paid for in accordance with Section 247.6.2., "Flexible Base (Roadway Delivery)." Mixing, spreading, blading, shaping, compacting, and finishing new or existing base material will be paid for in accordance with Section 260.6.2., "Lime Treatment." Removal and disposal of existing asphalt concrete pavement will be paid for in accordance with pertinent Items or Article 4.4., "Changes in the Work."

Sprinkling and rolling, except proof rolling, will not be paid for directly but will be subsidiary to this Item, unless otherwise shown on the plans. When proof rolling is shown on the plans or directed by the Engineer, it will be paid for in accordance with Item 216, "Proof Rolling."

Where subgrade is constructed under this Contract, correction of soft spots in the subgrade or existing base will be at the Contractor's expense. Where subgrade is not constructed under this Contract, correction of soft spots in the subgrade or existing base will be paid for in accordance with pertinent Items or Article 4.4., "Changes in the Work."

Where subgrade to be treated under this Contract has sulfates greater than 7,000 ppm, work will be paid for in accordance with Article 4.4., "Changes in the Work."

Asphalt used solely for curing will not be paid for directly but will be subsidiary to this Item. Asphalt placed for curing and priming will be paid for under Item 310, "Prime Coat."

6.1. **Lime.** Lime will be paid for at the unit price bid for "Lime" of one of the following types:

- Hydrated Lime (Dry),
- Hydrated Lime (Slurry),
- Commercial Lime Slurry,
- Quicklime (Dry),
- Quicklime (Slurry), or
- Carbide Lime Slurry.

This price is full compensation for materials, delivery, equipment, labor, tools, and incidentals.

Lime used for reworking a section in accordance with Section 260.4.6., "Reworking a Section," will not be paid for directly but will be subsidiary to this Item.

6.2. **Lime Treatment.** Lime treatment will be paid for at the unit price bid for "Lime Treatment (Existing Material)," "Lime Treatment (New Base)," or "Lime Treatment (Mixing Existing Material and New Base)," for the depth specified. No payment will be made for thickness or width exceeding that shown on the plans. This price is full compensation for shaping existing material, loosening, mixing, pulverizing, spreading, applying lime, compacting, finishing, curing, curing materials, blading, shaping and maintaining shape, replacing mixture, disposing of loosened materials, processing, hauling, preparing secondary subgrade, water, equipment, labor, tools, and incidentals.

Item 314

Emulsified Asphalt Treatment



1. DESCRIPTION

Apply an emulsified asphalt and water mixture as a base or subgrade treatment; for erosion control, including dust prevention; or as a prime coat.

2. MATERIALS

Furnish materials in accordance with the following.

- Item 204, "Sprinkling," and
- Item 300, "Asphalts, Oils, and Emulsions."

Use emulsified asphalt of the type and grade shown on the plans. Use a quantity of emulsified asphalt in the mixture, expressed as a percent of total volume, in accordance with the percentage shown on the plans or as directed.

3. EQUIPMENT

Provide a self-propelled sprinkler in accordance with Article 204.3., "Equipment." Provide current calibration documentation for the tank used for distribution.

4. CONSTRUCTION

Agitate the water and emulsified asphalt to produce a uniform blend. Evenly distribute at the rate selected by the Engineer to locations shown on the plans or as directed.

- 4.1. **Base or Subgrade Treatment.** Treat the base or subgrade to the depth and width shown on the plans or as directed.

Regulate the percentage of emulsified asphalt in the mixture and distribute successive applications to achieve the specified rate. Maintain the proper moisture content of the treated material. Mix the treated material, then shape and compact as required by the specification for the course. Finish the course to the line, grade, and typical section shown on the plans. Maintain the surface with light applications of the emulsified asphalt mixture while curing the course, as directed.

- 4.2. **Erosion Control.** Apply the mixture as shown on the plans or as directed.

- 4.3. **Prime Coat.** Regulate the percentage of emulsified asphalt in the mixture and distribute successive applications to achieve the specified rate.

5. MEASUREMENT

The treatment will be measured by the gallon of emulsified asphalt used in the emulsified asphalt and water mixture.

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Emulsified Asphalt (Base or Subgrade Treatment)," "Emulsified Asphalt (Erosion Control)," or "Emulsified Asphalt (Prime Coat)," of the type and grade specified. This price is full compensation for materials, including emulsified asphalt and water, and for equipment, labor, tools, and incidentals.

Item 315 Fog Seal



1. DESCRIPTION

Apply an emulsified asphalt and water mixture as an aggregate loss preventative or surface seal.

2. MATERIALS

Use emulsified asphalt of the type and grade shown on the plans that meet the requirements of Item 300, "Asphalts, Oils, and Emulsions." Provide water in accordance with Article 204.2., "Materials."

Use a quantity of emulsified asphalt in the mixture, expressed as a percentage of total volume, which meets the percentage shown on the plans or directed.

3. EQUIPMENT

Provide applicable equipment in accordance with Article 316.3., "Equipment." Furnish the necessary facilities and equipment for determining the temperature of the mixture, regulating the application rate, and securing uniformity at the junction of 2 distributor loads.

4. CONSTRUCTION

Apply the mixture when the air temperature is at or above 60°F, or above 50°F and rising. Measure the air temperature in the shade away from artificial heat. The Engineer will determine when weather conditions are suitable for application.

The Engineer will select the application temperature within the limits recommended in Item 300, "Asphalts, Oils, and Emulsions." Apply the material within 15°F of the selected temperature but less than the maximum allowable temperature.

Distribute material at the rate shown on the plans or as directed.

Open the treated surface to traffic when directed. Furnish and uniformly distribute clean, fine sand on the surface to blot the excess when an excessive quantity of asphalt is applied. Maintain ingress and egress as directed by applying sand to freshly sealed areas.

5. MEASUREMENT

This Item will be measured by the gallon of emulsified asphalt used in the emulsified asphalt and water mixture.

6. PAYMENT

The work performed and the materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit price bid for "Fog Seal" of the type and grade specified. This price is full compensation for materials, equipment, labor, tools, and incidentals. Blotter sand will not be paid for directly but will be subsidiary to this Item.

Item 316

Seal Coat



1. DESCRIPTION

Construct a surface treatment consisting of one or more applications of a single layer of asphalt material covered with a single layer of aggregate.

2. MATERIALS

Furnish materials of the type and grade shown on the plans in accordance with the following:

2.1. **Asphalt.** Furnish asphalt materials meeting the requirements of Item 300, "Asphalts, Oils, and Emulsions."

Furnish Type II or Type III A-R binder in accordance with Section 300.2.9, "Asphalt-Rubber Binders," as shown on the plans. Furnish a blend design for approval. Include in the design, at a minimum, the following:

- manufacturer and grade of asphalt cement;
- manufacturer and grade of crumb rubber;
- manufacturer, type, and percentage of extender oil, if used;
- test report on crumb rubber gradation in accordance with Tex-200-F, Part I;
- design percentage of crumb rubber versus asphalt content;
- blending temperature; and
- test results on the properties at reaction times of 60, 90, 240, 360, and 1,440 min. in accordance with Section 300.2.9., "Asphalt-Rubber Binders."

Furnish a new asphalt-rubber blend design if the grade or source for any of the components changes.

If a tack coat is specified when using asphalt-rubber, unless otherwise shown on the plans or approved, furnish CSS-1H, SS-1H, or a performance grade (PG) binder with a minimum high temperature grade of PG 58 for tack coat binder. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use. If required, verify that emulsified asphalt proposed for use meets the minimum residual asphalt percentage specified in Item 300, "Asphalts, Oils, and Emulsions."

2.2. **Aggregate.** Furnish aggregate meeting Item 302, "Aggregates for Surface Treatments," of the type and grade shown on the plans. Unless otherwise shown on the plans, furnish aggregate with a minimum B Surface Aggregate Classification.

2.3. **Materials Selections.** Furnish asphalt and aggregate shown on the plans.

3. EQUIPMENT

3.1. **Distributor.** Furnish a distributor that will apply the asphalt material uniformly at the specified rate or as directed.

3.1.1. **Transverse Variable Rate.** When a transverse variable rate is shown on the plans, ensure that the nozzles outside the wheel paths will output a predetermined percentage more asphalt material by volume than the nozzles over the wheel paths. Use a dual spray bar distributor as desired to provide for a transverse variable rate.

- 3.1.2. **Agitation for Asphalt-Rubber.** If using asphalt-rubber, furnish a distributor capable of keeping the rubber in uniform suspension and adequately mixing the asphalt, rubber, and any additional additives.
- 3.1.3. **Calibration.**
- 3.1.3.1. **Transverse Distribution.** Furnish a distributor test report, less than 1 yr. old, when tested in accordance with Tex-922-K, Part III. The Department reserves the right to witness the calibration testing. Notify the Engineer 3 days before calibration testing.
- Include the following documentation on the test report:
- the serial number of the distributor,
 - a method that identifies the actual nozzle set used in the test, and
 - the fan width of the nozzle set at a 12-in. bar height.
- When a transverse variable rate is required, and a single spray bar is to be used, perform the test using the type and grade of asphalt material to be used on the project. The Engineer may verify the transverse rate and distribution at any time. If verification does not meet the requirements, correct deficiencies and furnish a new test report.
- 3.1.3.2. **Tank Volume.** Furnish a volumetric calibration and strap stick for the distributor tank in accordance with Tex-922-K, Part I.
- Provide documentation of distributor calibration performed not more than 5 yr. before the date first used on the project. The Engineer may verify calibration accuracy in accordance with Tex-922-K, Part II.
- 3.1.4. **Computerized Distributor.** When paying for asphalt material by weight, the Engineer may allow use of the computerized distributor display to verify application rates. Verify application rate accuracy at a frequency acceptable to the Engineer.
- 3.2. **Aggregate Spreader.** Use a continuous-feed, self-propelled spreader to apply aggregate uniformly at the specified rate or as directed. If racked in aggregate is specified on the plans, furnish a second aggregate spreader for the racked in aggregate to apply aggregate uniformly at the specified rate.
- 3.3. **Rollers.** Unless otherwise shown on the plans, furnish light pneumatic-tire rollers in accordance with Item 210, "Rolling."
- 3.4. **Broom.** Furnish rotary, self-propelled brooms.
- 3.5. **Asphalt Storage and Handling Equipment.** When the plans or the Engineer allows storage tanks, furnish a thermometer in each tank to indicate the asphalt temperature continuously. Keep equipment clean and free of leaks. Keep asphalt material free of contamination.
- 3.6. **Aggregate Haul Trucks.** Unless otherwise approved, use trucks of uniform capacity to deliver the aggregate. Provide documentation showing measurements and calculation in cubic yards. Clearly mark the calibrated level. Truck size may be limited when shown on the plans.
- 3.7. **Digital Distance Measuring Instrument.** Furnish a vehicle with a calibrated digital distance measuring instrument accurate to ± 6 ft. per mile.

4. CONSTRUCTION

- 4.1. **General.** Comply with the seal coat season as shown on the plans. Asphalt and aggregate rates shown on the plans are for estimating purposes only. Adjust the rates for existing conditions as directed.

- 4.2. **Temporary Aggregate Stockpiles.** The Engineer will approve the location of temporary aggregate stockpiles on the right of way before delivery. Place stockpiles in a manner that will not:
- obstruct traffic or sight distance,
 - interfere with the access from abutting property, or
 - interfere with roadway drainage.
- Locate stockpiles a minimum of 30 ft. from roadway when possible. Sign and barricade as shown on the plans.
- 4.3. **Aggregate Furnished by the Department.** When shown on the plans, the Department will furnish aggregate to the Contractor without cost. Stockpile locations are shown on the plans.
- 4.4. **Adverse Weather Conditions.** Do not place surface treatments when, in the Engineer's opinion, general weather conditions are unsuitable. Meet the requirements for air and surface temperature shown below.
- 4.4.1. **Standard Temperature Limitations.** Apply seal coat when air temperature is above 50°F and rising. Do not apply seal coat when air temperature is 60°F and falling. In all cases, do not apply seal coat when surface temperature is below 60°F.
- 4.4.2. **Polymer-Modified Asphalt Cement Temperature Limitations.** When using materials described in Section 300.2.2., "Polymer Modified Asphalt Cement," apply seal coat when air temperature is above 70°F and rising. Do not apply seal coat when air temperature is 80°F and falling. In all cases, do not apply seal coat when surface temperature is below 70°F.
- 4.4.3. **Asphalt-Rubber Temperature Limitations.** Do not place hot asphalt-rubber seal coat when, in the Engineer's opinion, general weather conditions are unsuitable. Apply seal coat when the air temperature is 80°F and above, or above 70°F and rising. In all cases, do not apply seal coat when surface temperature is below 70°F.
- 4.4.4. **Cool Weather Night Air Temperature.** The Engineer reserves the right to review the **National Oceanic and Atmospheric Administration (NOAA)** weather forecast and determine if the nightly air temperature is suitable for asphalt placement to prevent aggregate loss.
- 4.4.5. **Cold Weather Application.** When asphalt application is allowed outside of the above temperature restrictions, the Engineer will approve the binder grade and the air and surface temperatures for asphalt material application. Apply seal coat at air and surface temperatures as directed.
- 4.5. **Mixing Hot A-R Binder.** If using asphalt-rubber, mix in accordance with the approved blend design required in Section 316.2.1., "Asphalt."
- At the end of each shift, provide the Engineer with production documentation, which includes the following:
- amount and temperature of asphalt cement before addition of rubber,
 - amount of rubber and any extender added,
 - viscosity of each hot A-R batch just before roadway placement, and
 - time of the rubber additions and viscosity tests.
- 4.6. **Surface Preparation.** Remove existing raised pavement markers. Repair any damage incurred by removal as directed. Remove dirt, dust, or other harmful material before sealing. When shown on the plans, remove vegetation and blade pavement edges. When directed, apply a tack coat before applying the hot asphalt-rubber treatment on an existing wearing surface in accordance with Section 340.2.5., "Tack Coat."
- 4.7. **Rock Land and Shot.**
- 4.7.1. **Definitions.**
- A "rock land" is the area covered at the aggregate rate directed with 1 truckload of aggregate.

- A "shot" is the area covered by 1 distributor load of asphalt material.

4.7.2. **Setting Lengths.** Calculate the lengths of both rock land and shot. Adjust shot length to be an even multiple of the rock land. Verify that the distributor has enough asphalt material to complete the entire shot length. Mark shot length before applying asphalt. When directed, mark length of each rock land to verify the aggregate rate.

4.8. **Asphalt Placement.**

4.8.1. **General.** The maximum shot width is the width of the current transverse distribution test required under Section 316.3.1.3.1., "Transverse Distribution," or the width of the aggregate spreader box, whichever is less. Adjust the shot width so operations do not encroach on traffic or interfere with the traffic control plan, as directed. Use paper or other approved material at the beginning and end of each shot to construct a straight transverse joint and to prevent overlapping of the asphalt. Unless otherwise approved, match longitudinal joints with the lane lines. The Engineer may require a string line if necessary to keep joints straight with no overlapping. Use sufficient pressure to flare the nozzles fully.

Select an application temperature, as approved, in accordance with Item 300, "Asphalts, Oils, and Emulsions." Uniformly apply the asphalt material at the rate directed, within 15°F of the approved temperature, and not above the maximum allowable temperature.

4.8.2. **Limitations.** Do not apply asphalt to the roadway until:

- traffic control methods and devices are in place as shown on the plans or as directed,
- the loaded aggregate spreader is in position and ready to begin,
- haul trucks are loaded with enough aggregate to cover the shot area and are in place behind the spreader box, and
- rollers are in place behind the haul trucks.

4.8.3. **Nonuniform Application.** Stop application if it is not uniform due to streaking, ridging, puddling, or flowing off the roadway surface. Verify equipment condition, operating procedures, application temperature, and material properties. Determine and correct the cause of nonuniform application. If the cause is high or low emulsion viscosity, replace emulsion with material that corrects the problem.

4.8.4. **Test Strips.** The Engineer may stop asphalt application and require construction of test strips at the Contractor's expense if any of the following occurs:

- nonuniformity of application continues after corrective action;
- on 3 consecutive shots, application rate differs by more than 0.03 gal. per square yard from the rate directed; or
- any shot differs by more than 0.05 gal. per square yard from the rate directed.

The Engineer will approve the test strip location. The Engineer may require additional test strips until surface treatment application meets specification requirements.

4.9. **Aggregate Placement.** As soon as possible, apply aggregate uniformly at the rate directed without causing the rock to roll over.

4.9.1. **Nonuniform Application.** Stop application if it is not uniform in the transverse direction. Verify equipment condition, operating procedures, and transverse application rate. The transverse application rate should be within 1 lb. Determine and correct the cause of nonuniform application.

4.10. **Rolling.** Start rolling operation on each shot as soon as aggregate is applied. Use sufficient rollers to cover the entire mat width in 1 pass, i.e., 1 direction. Roll in a staggered pattern. Unless otherwise shown on the plans, make a minimum of:

- 5 passes; or

- 3 passes when the asphalt material is an emulsion.

If rollers are unable to keep up with the spreader box, stop application until rollers have caught up, or furnish additional rollers. Keep roller tires asphalt-free.

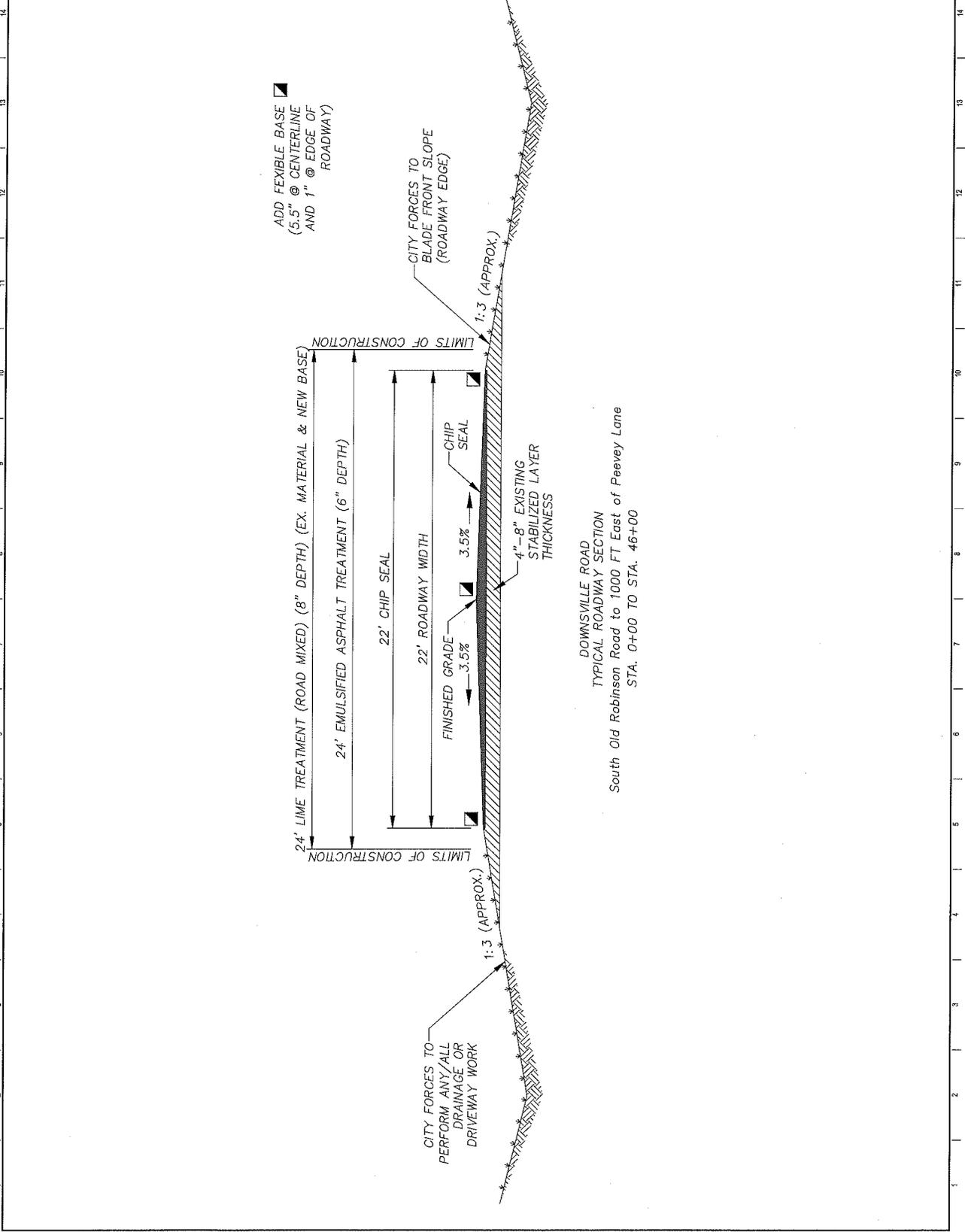
- 4.11. **Patching.** Before rolling, repair spots where coverage is incomplete. Repair can be made by hand spotting or other approved method. When necessary, apply additional asphalt material to embed aggregate.
- 4.12. **Racked-in Aggregate.** If specified on the plans, apply racked-in aggregate after patching, uniformly at the rate directed. The racked-in aggregate must be applied before opening the roadway or intersection to traffic.
- 4.13. **Brooming.** After rolling, sweep as soon as aggregate has sufficiently bonded to remove excess. In areas of racked-in aggregate, sweep as directed.
- 4.14. **Final Acceptance.** Maintain seal coat until the Engineer accepts the work. Repair any surface failures. Before final project acceptance, remove all temporary stockpiles and restore the area to the original contour and grade.

5. MEASUREMENT

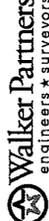
- 5.1. **Asphalt Material.** Unless otherwise shown on the plans, asphalt material will be measured by one of the following methods:
- 5.1.1. **Volume.** Asphalt material, including all components, will be measured at the applied temperature by strapping the tank before and after road application. The distributor calibrated strap stick will be used for measuring the asphalt level in the distributor asphalt tank. The certified tank chart will be used to determine the beginning gallons and the final gallons in the distributor tank. The quantity to be measured for payment will be the difference between the beginning gallons and the final gallons.
- 5.1.2. **Weight.** Asphalt material will be measured in tons using certified scales meeting the requirements of Item 520, "Weighing and Measuring Equipment," unless otherwise approved. The transporting truck must have a seal attached to the draining device and other openings. Random checking on public scales at the Contractor's expense may be required to verify weight accuracy.
- Upon work completion or temporary suspension, any remaining asphalt material will be weighed by a certified public weigher, or measured by volume in a calibrated distributor or tank and the quantity converted to tons at the measured temperature. The quantity to be measured will be the number of tons received minus the number of tons remaining after all directed work is complete and minus the amount used for other items.
- 5.1.3. **Quantity Adjustments.** When shown on the plans, the measured quantity will be adjusted to compensate for variation in required application or residual rates for different types of asphalt.
- 5.2. **Aggregate.** Aggregate will be measured by the cubic yard in the trucks as applied on the road. Strike off the loaded aggregate for accurate measurement when directed.
- 5.3. **Loading, Hauling, and Distributing Aggregate.** When the Department furnishes the aggregate, the loading, hauling, and distributing will be measured by the cubic yard in the trucks as applied on the road.

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under "Measurement" will be paid for at the unit prices bid for "Asphalt," "Aggregate," and "Loading, Hauling, and Distributing Aggregate" of the types-grades specified on the plans. These prices are full compensation for surface preparation; furnishing, preparing, hauling, and placing materials; removing existing pavement markers and excess aggregate; rolling; cleaning up stockpiles; and equipment, labor, tools, and incidentals.



REV.	DESCRIPTION	DATE


Walker Partners
 engineers * surveyors
12345 Main Street, Suite 100, Anytown, VA 22001

DOWNSVILLE ROAD
 TYPICAL SECTION
 STA. 0+00 TO STA. 46+00
 PRELIMINARY
 FOR REVIEW ONLY

NO.	DATE	BY	CHKD.
1			
2			
3			
4			

THIS DOCUMENT IS
 PREPARED FOR THE PURPOSE
 OF THE PROJECT DESCRIBED
 HEREIN AND IS NOT TO BE
 USED FOR ANY OTHER
 PROJECT WITHOUT THE
 WRITTEN CONSENT OF
 WALKER PARTNERS.
 GEORGE E. WALKER, JR.
 LICENSE NO. 142719
 DRAWING NO. 142719
 EXHIBIT

DOWNSVILLE ROAD
 TYPICAL ROADWAY SECTION
 South Old Robinson Road to 1000 FT East of Peevey Lane
 STA. 0+00 TO STA. 46+00



COUNCIL AGENDA ITEM MEMORANDUM

Date Submitted: 09/01/2016

Meeting Date: 09/06/2016

Item #14

DEPT./DIVISION SUBMISSION & REVIEW:

Bert Echterling, Mayor

ITEM DESCRIPTION: Councilmember requests for items to be placed on future agendas.

ROGERS:

STIVENER:

LEUSCHNER:

ECHTERLING:

MASTERGEORGE:

JANICS:

BAKER: