



**BID PROPOSAL  
AND  
CONSTRUCTION SPECIFICATIONS**

**FOR**

**FY 2022 STREET MAINTENANCE**

Prepared By:  
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## ADVERTISEMENT FOR BIDS

The City of Bulverde, Texas will receive sealed bids for the FY 2022 Street Maintenance Program. These improvements are generally described as follows:

|                                |           |           |
|--------------------------------|-----------|-----------|
| Chip Seal (Full Streets)       | 87,667 SY | 36,026 LF |
| Chip Seal (Partial Streets)    | 7,281 SY  | 3,040 LF  |
| 2" Overlay w/Underseal         | 5,420 SY  | 2,217 LF  |
| Roadway Edge Repair            | 366 SY    | 1,275 LF  |
| Full Depth Pavement Repair     | 1,146 SY  | 905 LF    |
| Blade Level Up                 | 6,098 SY  | 3,494 LF  |
| Old Boerne Road Reconstruction | 2,451 SY  | 785 LF    |
| Road Striping (center)         | -         | 3,700 LF  |
| Road Striping (edge)           | -         | 1,680 LF  |

All bids shall be submitted in accordance with and on the forms included in the Project Manual. Bids shall be submitted in a sealed envelope addressed to:

FY 2022 Street Maintenance  
City of Bulverde  
30360 Cougar Bend  
Bulverde, TX 78163

### Schedule

- October 22, 2021 Release Project for Bid. Contract Documents, including proposal bid forms, exhibits, specifications, and Project Manual, may be obtained on the City's website: [www.bulverdetx.gov](http://www.bulverdetx.gov)
- November 3, 2021 Non-mandatory Pre-Bid Conference at City Hall Council Chambers, 2:00 pm.
- November 19, 2021 Deadline for Questions to be submitted in writing to City Engineer Adrian Garcia by email at [agarcia@bulverdetx.gov](mailto:agarcia@bulverdetx.gov) by 2:00 pm.
- November 23, 2021 Questions and Responses Posted to City's website as Addenda
- December 2, 2021 Bid Opening. Sealed bids will be received at City Hall until 2:00 pm. Bids will then be opened and read aloud at City Hall Council Chambers.
- December 13, 2021 Bid Recommendation

Contractors, in submitting their respective bids, acknowledge that such bids conform to all requirements of Texas State Statute. Each bidder must include a bid security with the bid, payable to the City of Bulverde, in accordance with the contract documents.

No bidder may withdraw its bid after the scheduled time of the bid opening. It is the intent to issue Notice of Award as soon as possible after bid opening.

The Owner reserves the right to reject any and all bids or parts thereof, and to waive any irregularities of any bid. The contract may be awarded either to the lowest responsible bidder or the bidder who provides the requested goods and services at the best value for the City of Bulverde.

City of Bulverde, Texas

By: William Krawietz, Mayor

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# **INSTRUCTIONS TO BIDDERS**

DIVISION 0 - BIDDING AND CONTRACT DOCUMENTS  
SECTION 00100 - INSTRUCTIONS TO BIDDERS

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1.0 DEFINED TERMS.

Terms used in these Instructions to Bidders which are defined in the General Conditions of the Construction Contract, have the meanings assigned to them in the General Conditions. The term "BIDDER" means one who submits a Bid directly to the OWNER, as distinct from a sub-BIDDER, who submits a bid to a BIDDER. The term "Successful BIDDER" means the lowest, qualified, responsible and responsive BIDDER to whom the OWNER (on the basis of the OWNER's evaluation as hereinafter provided) makes an award. The term "Bidding Documents" includes the Advertisement for Bids, Instructions to Bidders, the Bid Form, Statement of Qualifications, Anticipated Subcontractors, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

In this section on "Instructions to Bidders", the term BIDDER is used to describe a prospective CONTRACTOR. When the term BIDDER is used, it refers to the company that could become the CONTRACTOR; therefore all requirements of the CONTRACTOR also pertain to the BIDDER, and vice versa.

The OWNER as defined in the General Conditions is the City of Bulverde. The ENGINEER as defined in the General Conditions is identified in the Project Manual.

2.0 COPIES OF BIDDING DOCUMENTS.

- 2.1 Complete sets of the Bidding Documents in the number and for the purchase sum may be obtained as stated in the "Advertisement for Bids".
- 2.2 Complete sets of Bidding Documents must be used in preparing Bids. Neither the OWNER nor ENGINEER assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 OWNER and ENGINEER, in making copies of Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work, and does not confer a license or grant for any other use.

3.0 QUALIFICATIONS OF BIDDERS.

To demonstrate qualifications to perform the Work, each BIDDER must submit with the Bid (or within 48 hours of the Bid, if allowed by the Project Manual) written evidence, such as financial data, previous experience, record of performance on previous projects, plant and equipment, information on their permanent place of business, technical expertise, present commitments, and other such data as may be called for on the Statement of Qualifications contained in the Bidding Documents.

Each BIDDER must be prepared to submit evidence of the BIDDER's qualifications to do business in Texas, prior to the Notice of Award. BIDDERS must be properly licensed as a General or Excavator Contractor, and Utility Contractor if utility work is involved in the project. This licensing must either be current at the time of the Bid Opening, or be obtained prior to the Notice of Award. Refer to Page BF-6 of the Bid Form.

#### 4.0 LIST OF SUBCONTRACTORS.

Each BIDDER shall submit a list of subcontractors on the form included in the Project Manual with his Bid. BIDDER shall describe the construction activities each subcontractor is to perform relative to the proposed scope of work and include the number of contracts and description of work the BIDDER has worked on with the subcontractor. Preference may be given to contractors who propose to self-perform a majority of the work.

Prior to the award of Contract, the OWNER shall notify the BIDDER if the OWNER, after due investigation, has reasonable objection to any Subcontractor listed and does not accept him. Acceptance of any or all listed Subcontractors by the OWNER does not relieve the CONTRACTOR from any responsibility for its Subcontractors. Refer to Page BF-7 of the Bid Form

#### 5.0 QUESTIONS.

Questions regarding this project should be addressed to the City of Bulverde Engineer, Adrian Garcia, by email at [agarcia@bulverdetx.gov](mailto:agarcia@bulverdetx.gov)

#### 6.0 EXAMINATION OF CONTRACT DOCUMENTS AND SITE.

- 6.1 It is the responsibility of each BIDDER, before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate BIDDER's observations with the Contract Documents, and (e) notify OWNER of all conflicts, errors or discrepancies in the Contract Documents.
- 6.2 Information and data reflected in the Contract Documents, with respect to Underground Facilities at or contiguous to the site, is based upon information and data furnished to the OWNER and ENGINEER by owners of such Underground Facilities or others, and the OWNER and ENGINEER do not assume responsibility for the accuracy or completeness thereof, unless it is expressly provided otherwise in the Supplementary Conditions.
- 6.3 Provisions concerning responsibilities for the adequacy of data furnished to prospective BIDDERS on subsurface conditions, Underground Facilities and other physical conditions, and possible changes in the Contract Documents, due to differing conditions, appear in the General Conditions and Supplemental General Conditions.
- 6.4 Before submitting a Bid, each BIDDER will, at the BIDDER's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies, and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and Underground Facilities), at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work, and which the BIDDER deems necessary to determine its Bid for performing

and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents.

- 6.5 On request, in advance, OWNER will provide each BIDDER access to the site to conduct such explorations and tests as each BIDDER deems necessary for submission of a Bid. BIDDER shall fill all holes, clean up, and restore the site to its former condition upon completion of such explorations.
- 6.6 The lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and other lands designated for use by the CONTRACTOR in performing the Work are identified in the Contract Documents. All additional lands, and access thereto, required for temporary construction facilities or storage of materials and equipment are to be provided by the CONTRACTOR. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by the OWNER, unless otherwise provided in the Contract Documents.
- 6.7 The submission of a Bid will constitute an incontrovertible representation by the BIDDER that the BIDDER has complied with every requirement of this Article 6, and that without exception, the Bid is premised upon performing and furnishing the Work required by the Contract Documents, and such means, methods, techniques, sequences or procedures of construction, as may be indicated in or required by the Contract Documents and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

#### 7.0 INTERPRETATIONS AND ADDENDA.

- 7.1 All questions about the meaning or intent of the Contract Documents are to be directed to the OWNER and ENGINEER. All addenda will be published to the City website no later than November 23, 2021. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.2 Addenda may also be issued to modify the Bidding Documents, as deemed advisable by the OWNER or ENGINEER.

#### 8.0 BID SECURITY.

- 8.1 Each BIDDER must deposit bid security with the bid, payable to the OWNER, which deposit shall be one of the following:
  - 1. Certified check, cashier's check or draft drawn on a State or National Bank in the amount of five percent (5%) of the total bid.
  - 2. Bid Bond, prepared on the form provided in the Project Manual, issued by a Surety authorized to do business in the State of Texas and acceptable to the OWNER in the amount of five percent (5%) of the total bid.
- 8.2 The Bid Security of the successful BIDDER will be retained until such BIDDER has executed the Agreement and furnished the required contract security, whereupon

the Bid Security will be returned. If the Successful BIDDER fails to execute and deliver the Agreement and furnish the required contract security within ten (10) 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 the OWNER believes to have a reasonable chance of receiving the award may be retained by the OWNER, until the earlier of the seventh day after the effective date of the Agreement, or the thirty-first (31st) day after the Bid Opening, whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid Opening.

#### 9.0 CONTRACT TIME.

**The City intends to start construction of this project after contract award. Contract award is expected on December 14, 2021.**

The Notice to Proceed for the work will be issued following contract award upon receipt of signed contract documents and shall be no later than January 17, 2022.

Substantial Completion of the Work is to be completed within 200 calendar days from the issuance of the Notice to Proceed. All work must be completed by August 30, 2022. Final completion is to be reached within 30 days of Substantial Completion. Final Payment will not be made until Final Completion is reached and all closeout documents acceptably submitted.

#### 10.0 LIQUIDATED DAMAGES.

Provisions for liquidated damages are set forth in the Agreement.

#### 11.0 SUBSTITUTE OR "OR-EQUAL" ITEMS.

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications. A substitute or "or-equal" item of material or equipment may be furnished or used by the CONTRACTOR, if acceptable to the ENGINEER. Application for such acceptance will not be considered by the ENGINEER until after the effective date of the Agreement. The procedure for submission of any such application by the CONTRACTOR, and consideration by the ENGINEER, is set forth in paragraph 6.05 of the General Conditions and may be supplemented in the Special Provisions.

#### 12.0 SUBCONTRACTORS, SUPPLIERS, AND OTHERS.

12.1 If requested by the ENGINEER, the BIDDER shall provide information on the qualifications, experience and financial or other data of any Subcontractors proposed on this project. If OWNER or ENGINEER, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, other person or organization, they may, before the Notice of Award is given, require the apparent Successful BIDDER to submit an acceptable substitute without an increase in Bid price. 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 and other persons and organizations. The

declining to make requested substitutions will not constitute grounds for sacrificing the Bid security of any BIDDER. Any Subcontractor, Supplier, or other person or organization listed and to whom the OWNER or ENGINEER does not make written objection prior to giving of the Notice of Award will be deemed acceptable to the 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.

- 12.2 No CONTRACTOR shall be required to employ any Subcontractor, Supplier, other person or organization against whom CONTRACTOR has reasonable objection.

### 13.0 BID FORM.

- 13.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from the ENGINEER. Bids must be submitted on the forms requested.
- 13.2 All blanks on the Bid Form must be completed in ink or by typewriter. The Bidder must include both unit prices and extended prices. In case of a difference between the unit price and the extended price, the unit price shall be used in computing the total amount of the bid. In case of a difference between the total bid price and the sum of the extended prices, the sum of the extended prices shall govern.
- 13.3 Bids by corporations must be executed in the corporate name by the president or vice president (or other corporate officer accompanied by evidence of authority to sign), and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 13.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature, and the official address of the partnership must be shown below the signature.
- 13.5 All names must be typed or printed below the signature.
- 13.6 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be filled in on the Bid Form).
- 13.7 The address, telephone and fax numbers for communications regarding the Bid must be shown.
- 13.8 Work included in each Bid Item is as covered in Section 01150 and the Project Manual.

### 14.0 SUBMISSION OF BIDS.

Bids shall be submitted at the time and place indicated in the "Advertisement for Bids", and shall be enclosed in an opaque, sealed envelope, marked with the project title, name and address of the BIDDER, and accompanied by the Bid Security and other required documents. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope, with the notation "BID ENCLOSED" on the face of the separate envelope.

## 15.0 MODIFICATION AND WITHDRAWAL OF BIDS.

Bids 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 at any time prior to the time of opening of Bids, as called for in the Advertisement for Bids. No BIDDER may withdraw his Bid for a period as specified in the Invitation for Bids after the date and hour set for the opening declared therein.

## 16.0 OPENING OF BIDS.

Bids will be opened and read aloud publicly. An abstract of the amounts of the base Bids and major alternates (if any), will be made available to BIDDERS within one week after the opening of Bids.

## 17.0 BIDS TO REMAIN SUBJECT TO ACCEPTANCE.

All bids will remain subject to acceptance for thirty days (30) after the day of the Bid Opening, but the OWNER may, in its sole discretion, release any Bid, and return the Bid Security prior to that date.

## 18.0 AWARD OF CONTRACT.

18.1 The OWNER reserves the right to reject any and all Bids, to waive any and all informalities not involving price, time, or changes in the Work, and to negotiate contract terms with the successful BIDDER, and the right to disregard all nonconforming, nonresponsive, unbalanced, or conditional Bids. Also, the OWNER reserves the right to reject the Bid of any BIDDER if the OWNER believes that it would not be in the best interest of the project to make an award to that BIDDER, whether because the Bid is not responsive or the BIDDER is unqualified, or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by the OWNER. Discrepancies in 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. The contract may be awarded to the lowest responsible BIDDER or to the BIDDER who provides goods or services at the best value for the OWNER.

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

18.3 OWNER may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work as to which the identity of Subcontractors, Suppliers, and other persons and organizations must be submitted, as provided in the Supplementary Conditions. The OWNER also may consider the operating costs, maintenance requirements,

performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work, when such data is required to be submitted prior to the Notice of Award.

- 18.4 OWNER may conduct such investigations as the OWNER deems necessary to assist in the evaluation of any Bid, and to establish the responsibility, qualifications and financial ability of BIDDERS, proposed Subcontractors, Suppliers, and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to the OWNER's satisfaction within the prescribed time. The OWNER may also use previous experience with the BIDDER in evaluating qualifications.
- 18.5 This contract contains multiple schedules of work. BIDDER may submit bids for any individual schedule of work the BIDDER chooses. The OWNER may award multiple contracts to multiple contractors depending upon the analysis of the bids received. If a Contract is to be awarded, it will be awarded to the lowest responsible, responsive BIDDER, whose evaluation by the OWNER indicates to OWNER that the award will be in the best interests of the Project for each schedule of work in the contract.

The OWNER reserves the right to award individual schedules of work to individual contractors or combine schedules of work into a single contract as required to meet available funding or other criteria.

#### 19.0 CONTRACT SECURITY.

The successful BIDDER shall be required to furnish a contract performance bond, and a labor and materials payment bond, each in the amount of one hundred percent (100%) of the contract price as originally bid or subsequently modified. The surety company shall be authorized to do business in the State of Texas. The cost of the bonds shall be included in the Contractor's Bid Proposal. When the successful BIDDER delivers the executed Agreement to the OWNER, it must be accompanied by the required Construction Performance Bond, and Construction Payment Bond on the forms included in this Project Manual. No exceptions will be made.

#### 20.0 INSURANCE CERTIFICATES.

The successful BIDDER shall be required to furnish, with the executed Agreement, Insurance Certificates called for in the Supplementary Conditions.

#### 21.0 SIGNING OF AGREEMENT.

When the OWNER gives a Notice of Award to the successful BIDDER, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen (15) days thereafter the CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to the OWNER with the required Bonds. Within ten days of due execution by the OWNER, the OWNER shall deliver one fully signed counterpart to the CONTRACTOR and ENGINEER. No contract shall be considered as effective until it has been fully executed by all parties.

If the BIDDER to whom the Notice of Award is given does not properly execute the Agreement within the time allowed, the OWNER may withdraw the Notice of Award and the BIDDER will forfeit his Bid Security.

Following the execution of the Contract by the OWNER and the CONTRACTOR, written Notice to Proceed with the Work shall be given by the OWNER to the CONTRACTOR. The Contract Time will commence to run with the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the effective date of the Agreement.

#### 22.0 PREBID CONFERENCE.

A non-mandatory pre-bid conference is scheduled for 2 pm on Wednesday, November 3, 2020 at the Council Chambers in City Hall.

#### 23.0 SALES AND USE TAXES.

The CONTRACTOR must pay all State Sales and Use Tax on materials and equipment to be incorporated in the Work.

#### 24.0 RETAINAGE.

Provisions concerning retainage are set forth in the Agreement.

#### 25.0 STATE LAWS AND REGULATIONS.

All applicable laws, ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout.

**END OF SECTION 00100**

# **AGREEMENT**

DIVISION 0 - BIDDING AND CONTRACT DOCUMENTS  
SECTION 00500 - AGREEMENT

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THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_, by and between the City of Bulverde (hereinafter called OWNER), and \_\_\_\_\_ (hereinafter called CONTRACTOR).

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

ARTICLE 1. WORK.

CONTRACTOR shall complete all Work in conformance with the terms and specifications in the Contract Documents. The Work is generally described as follows:

FY 2022 Street Maintenance

|                                |           |           |
|--------------------------------|-----------|-----------|
| Chip Seal (Full Streets)       | 87,667 SY | 36,026 LF |
| Chip Seal (Partial Streets)    | 7,281 SY  | 3,040 LF  |
| 2" Overlay w/Underseal         | 5,420 SF  | 2,217 LF  |
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| Road Striping (center)         | -         | 3,700 LF  |
| Road Striping (edge)           | -         | 1,680 LF  |

ARTICLE 2. ENGINEER.

The Project has been designed by: Halff Associates, Inc. hereinafter called ENGINEER, and who is to act as the OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

- 3.1 Substantial Completion of the Work must be completed within 200 calendar days from the issuance of the Notice to Proceed or by August 30, 2022, whichever is earlier. Final payment will be withheld until final completion and acceptance of the Work as stipulated in paragraph 5.2 of the Agreement and all project closeout paperwork is completed. Final completion is to be within thirty (30) days of Substantial Completion.

- 3.2 Liquidated Damages. The OWNER and CONTRACTOR recognize that time is of the essence of this Agreement, and that the OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed, in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, the OWNER and CONTRACTOR agree that, as liquidated damages for delay, (but not as a penalty), the CONTRACTOR shall pay the OWNER One Hundred Dollars (\$100.00), for each calendar day that expires after the time specified in paragraph 3.1 for Substantial Completion, until the Work is substantially complete. After Substantial Completion, if the CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the OWNER, the CONTRACTOR shall pay the OWNER One Hundred Dollars (\$100.00) for each calendar day that expires after the time specified in paragraph 3.1 for final completion and readiness for final payment of all work.

#### ARTICLE 4. CONTRACT PRICE.

The OWNER shall pay the CONTRACTOR for completion of the Work, in accordance with the Contract Documents according to the Bid, which is attached as an Exhibit. The total awarded sum is \$\_\_\_\_\_. The total price can vary due to Change Orders. Measurement and payment for bid items shall be per section 01150 and the Project Manual.

#### ARTICLE 5. PAYMENT PROCEDURES.

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

- 5.1 Progress Payments. OWNER will make progress payments based on the CONTRACTOR'S Applications for Payment as prepared by CONTRACTOR and recommended by the ENGINEER, based on work completed through the 20th (twentieth) day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work. The schedule of values is provided for in article 14 of the General Conditions and Section 01300. Payments will be made according to the General Conditions.

- 5.1.1 The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all Work covered by the Contract Documents. The OWNER at any time, however, after fifty (50) percent of the Work has been completed, may eliminate retainage on the remaining estimates, as long as the character and progress of the work is satisfactory to the OWNER and ENGINEER. The OWNER also retains the right to reinstate 10% withholding.

- 5.1.2 Upon Substantial Completion, progress payments will be made in an amount sufficient to increase total payments to the CONTRACTOR to 90% of the Contract Price, less such amounts as the ENGINEER shall determine, or the OWNER may withhold, in accordance with the General Conditions.

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

## ARTICLE 6. INTEREST

All moneys not paid when due, as provided in Article 14 of the General Conditions, shall bear interest at a maximum rate allowed by law, not to exceed 1% per month in accordance with and subject to the exceptions in Chapter 2251, Texas Government Code.

## ARTICLE 7. CONTRACTOR'S REPRESENTATIVES

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

- 7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of investigations and tests of latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Contract Documents.
- 7.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to above as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has carefully reviewed and checked all information and data shown or indicated on the Contract Documents, with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the written resolution thereof by the ENGINEER is acceptable to the CONTRACTOR.

## ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between the OWNER and the CONTRACTOR concerning the Work, consists of the following:

- 8.1 This Agreement
- 8.2 Performance Bond and Labor and Material Payment Bond, attached as Exhibit A.
- 8.3 Notice of Award and Notice to Proceed, to be attached as Exhibit B.
- 8.4 General Conditions and Modifications to General Conditions, attached as Exhibit C.
- 8.5 Technical Specifications and Special Provisions, as listed in table of contents thereof, including Division 1, General Requirements, attached as Exhibit D.
- 8.6 Drawings (Location Maps), attached as Exhibit E.
- 8.7 Bidding Requirements and any Addenda, attached as Exhibit F.
- 8.8 CONTRACTOR'S executed Bid, to be attached as Exhibit G.
- 8.9 Documentation submitted by CONTRACTOR and accepted by the ENGINEER prior to Notice of Award, to be attached as Exhibit H.
- 8.10 Any Modification, including Change Orders, duly delivered after execution of Agreement.

There are no Contract Documents, other than those listed in this Article 8. The Contract Documents may only be amended, modified, or supplemented in writing, duly executed by both parties, or as provided in article 3 of the General Conditions.

The Contract Documents listed above are intended to be complementary and to describe and provide for a complete work. The CONTRACTOR will not take advantage of an apparent error or omission in the plans and specifications. If the CONTRACTOR discovers such an error or omission, he will immediately notify the ENGINEER. The ENGINEER will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract Documents.

## ARTICLE 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under, or interests in the Contract Documents 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.

- 9.3 The OWNER and the 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.
- 9.4 The OWNER does not waive its sovereign immunity by entering into this Agreement, and specifically retains all immunities and defenses available to it as a sovereign pursuant to state laws.
- 9.5 Pursuant to the laws of the State of Texas, reference is hereby made to Chapter 2252, Texas Government Code, which governs and is made a part of this Agreement.

#### ARTICLE 10. OTHER PROVISIONS.

10.1 Indemnification. CONTRACTOR WILL DEFEND (WITH COUNSEL OF OWNER'S CHOOSING), INDEMNIFY, AND HOLD HARMLESS OWNER FROM ALL DAMAGES, COSTS, EXPENSES, AND REASONABLE AND NECESSARY ATTORNEY FEES FOR ALL CLAIMS AND SUITS, INCLUDING SUITS FOR DEATH, PERSONAL INJURY, AND PROPERTY DAMAGE, ARISING OUT OF, OR CONNECTED WITH THE WORK, **WHETHER OR NOT CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE OWNER, ITS AGENTS OR EMPLOYEES.**

10.2 Prompt Payment. Notwithstanding anything in this Agreement or the Contract Documents to the contrary, Chapter 2251, Texas Government Code, governs all payments to be made by OWNER under the Contract Documents. CONTRACTOR acknowledges that OWNER is a Texas municipality whose city council meets only once a month. Upon receiving any payment from OWNER under this Agreement, CONTRACTOR shall pay to each person who supplied material, machinery, supplies, goods, or services for which payment is being made, the appropriate share of the payment made to CONTRACTOR, not later than the 10th calendar day after the day on which CONTRACTOR receives payment. If CONTRACTOR does not make the required payment by such 10th calendar date, CONTRACTOR shall automatically pay interest to such persons in accordance with Sections 2251.022 and 2251.023, Texas Government Code. A bona fide dispute under Chapter 2251, Texas Government Code, exists when a person disputes a charge, item, service or other matter contained in a properly submitted invoice by sending written notice of same. Such bona fide dispute ceases upon the relevant parties all acknowledging in writing that the dispute has been resolved.

10.3 No Damages for Delay. Except for a request for an appropriate extension of time in accordance with this paragraph, no claim shall be made by, or allowed to, CONTRACTOR against OWNER or ENGINEER for any damages which may arise out of a delay in the progress of the Work related to any of the following acts or occurrences (each an "Occurrence"): (1) any act or neglect of the OWNER or the ENGINEER, or by any separate contractor, employee, or agent of the OWNER; (2) any act or neglect of utility owners or their contractors; or (3) strikes, lockouts, fire, adverse weather conditions, acts of nature, act of God, war on American soil, civil disturbance, or similar unavoidable circumstances. In the event of an Occurrence, the Contract Time may be extended by Change Order for such reasonable time as the ENGINEER determines. To request an extension of the Contract Time under this paragraph, the CONTRACTOR must: (1) give written notice to the OWNER within 48 hours of the start of the Occurrence of the cause of the potential delay and an estimate of the possible time extension involved; and (2) within seven days after the cause of the delay has been remedied, the CONTRACTOR gives written notice to the OWNER of any actual time extension requested as a result of the Occurrence. An appropriate extension of time

under this paragraph is Contractor's sole and exclusive remedy for any delay caused by an Occurrence.

10.4 Attorney Fees. If any party to this Agreement institutes a legal proceeding against the other party arising out of this Agreement, the prevailing party shall be entitled to recover from the other party the prevailing party's actual costs incurred related to such legal proceeding, including but not limited to reasonable and necessary attorney fees.

10.5 Governing Law and Venue. This Agreement shall be governed, enforced, and construed in accordance with the internal laws of the State of Texas without regard to choice of law rules. Venue for any dispute arising under this Agreement shall lie exclusively in the courts of Comal County, Texas.

10.6 Severability. In the event that one or more of the provisions contained in the Contract Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the Contract Documents shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but shall not affect the remaining provisions of the Contract Documents, which shall remain in full force and effect.

10.7 No Joint Venture. The relationship between the parties reflected in the Contract Documents does not create a partnership or joint venture between the parties. Except as specified between ENGINEER and OWNER, the Contract Documents do not appoint any party as agent for the other party.

10.8 Agreement Controls. To the extent that the provisions of this Agreement conflict with any provision in the Contract Documents, the provisions of this Agreement control.

10.9 Effect of Acceptance. Final acceptance of the Work and payment to CONTRACTOR does not constitute acceptance of Work not done in accordance with the Contract Documents.

10.10 No Waiver. No waiver of any terms of this Agreement shall be valid unless in writing and signed by all parties. No waiver of default of any term of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

10.11 Agreement Prepared Jointly by Both Parties. The parties hereto expressly agree and stipulate that there shall not be a presumption that this Agreement shall be construed more strongly against the Party drafting this Agreement or any paragraph clause or provision hereof.

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

This Agreement will be effective on \_\_\_\_\_, 20\_\_.

CITY OF BULVERDE \_\_\_\_\_

30360 Cougar Bend \_\_\_\_\_

Bulverde, TX 78163 \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

(CORPORATE SEAL)

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

30360 Cougar Bend \_\_\_\_\_

\_\_\_\_\_

Bulverde, TX 78163 \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

License No. \_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

(If the CONTRACTOR is a corporation, attach evidence of authority to sign).

**END OF SECTION 00500**

**EXHIBIT A**  
**PERFORMANCE BOND**  
**LABOR BOND**

DIVISION 0 - BIDDING AND CONTRACT DOCUMENTS  
SECTION 00610 - PERFORMANCE BOND

---

**KNOW ALL MEN BY THESE PRESENTS:** that

\_\_\_\_\_

(Name of Contractor)

\_\_\_\_\_

(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_

(Name of Surety)

(Phone of Surety)

\_\_\_\_\_

(Mailing Address of Surety)

\_\_\_\_\_

(Physical Address of Surety)

hereinafter called Surety, are held and firmly bound unto

City of Bulverde

(Name of Owner)

30360 Cougar Bend, Bulverde, TX 78163

(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered is into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of: FY 2022 Street Maintenance Program

**NOW, THEREFORE**, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

**PROVIDED, FURTHER**, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on the BOND, and it does hereby waive notice of any such change, extension of time,

alteration or addition to the terms of the contract or to the Work or to the specifications.

**PROVIDED, FURTHER,** that no final settlement between the OWNER and the CONTRACTOR shall abridge that right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF,** this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this the \_\_\_day of \_\_\_\_ 20\_\_.

ATTEST:

\_\_\_\_\_  
Witness as to Principal

(SEAL)

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

\_\_\_\_\_  
Principal  
By: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_  
Witness as to Surety

(SEAL)

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

\_\_\_\_\_  
Surety  
By: \_\_\_\_\_  
Attorney-In-Fact

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

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners shall execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**END OF SECTION 00610**

DIVISION 0 - BIDDING AND CONTRACT DOCUMENTS  
SECTION 00620 - LABOR AND MATERIALS PAYMENT BOND

---

**KNOW ALL MEN BY THESE PRESENTS:** that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_, hereinafter called Principal and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Phone of Surety)

\_\_\_\_\_  
(Mailing Address of Surety)

\_\_\_\_\_  
(Physical Address of Surety)

hereinafter called Surety, are held and firmly bound unto

City of Bulverde

(Name of Owner)

30360 Cougar Bend, Bulverde, TX 78163

(Address of Owner)

hereinafter called OWNER, in the penal sum of \_\_\_\_\_ Dollars, (\$\_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION** is such that whereas, the Principal entered is into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of FY 2022 Street Maintenance Program.

**NOW, THEREFORE,** if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the Work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, diesel, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such Work, and all insurance premiums on said Work, and for all labor, performed in such Work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

**PROVIDED, FURTHER,** that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on the BOND, and it does hereby waive notice of any such change, extension of time,

alteration or addition to the terms of the contract or to the Work or to the specifications.

**PROVIDED, FURTHER,** that no final settlement between the OWNER and the CONTRACTOR shall abridge that right of any beneficiary hereunder, whose claim may be unsatisfied.

**IN WITNESS WHEREOF,** this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this the \_\_\_ day of \_\_\_\_ 20\_\_.

ATTEST: \_\_\_\_\_  
Principal  
By: \_\_\_\_\_  
\_\_\_\_\_  
Witness as to Principal

(SEAL)

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

ATTEST: \_\_\_\_\_  
(Surety)  
By: \_\_\_\_\_  
(Witness as to Surety) \_\_\_\_\_  
(Attorney-In-Fact)

(SEAL)

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

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners shall execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

**END OF SECTION 00620**

**EXHIBIT C: STANDARD GENERAL CONDITIONS**

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

**Note: The City of Bulverde, Texas has modified this document.**

# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

**ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE**

and

Issued and Published Jointly By



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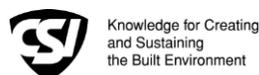
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These General Conditions have been prepared for use with the Suggested Forms of Agreement Between Owner and Contractor Nos. C-520 or C-525 (2002 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC Construction Documents, General and Instructions (No. C-001) (2002 Edition). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. C-800) (2002 Edition).

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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*—Office of the City Engineer, or its agent.

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

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### 2.01 *Delivery of Bonds and Evidence of Insurance*

A. Engineer shall furnish to Contractor four (4) copies of the Agreement and other Contract Documents bound therewith. Contractor shall execute the Agreement, insert executed copies of the required Bonds and power of attorney and certificate of insurance and submit all copies to Owner. Owner shall execute all copies and return two copies to the Contractor, who shall promptly deliver one copy to its surety.

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

### 2.02 *Copies of Documents*

A. Owner shall furnish to Contractor up to four 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.

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. Prior to the first Application for Payment all schedules submitted in accordance with Paragraph 2.05.A shall be finalized and acceptable to Owner and Engineer.

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 is in CPM form or other format that 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

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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. If Drawings exist, each sheet will bear a general title matching the title on the cover of this document. These Drawings are a part of this contract.

D. 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. If it is necessary or desirable that Contractor use land outside the Owner's easement or right-of-way for materials delivery or occupy for any other purpose with men, tools, equipment, construction materials, or excavated materials, Contractor shall obtain written consent from the property owner and tenant of the land.

### 4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Special Provisions list:

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, within 15 days 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.

5. no claim for an adjustment in the contract price or contract times (or milestones) will be valid for differing subsurface or physical conditions if the procedures of paragraph 4.03 are not followed.

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 Special Provisions:

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. notify all owners of underground utilities and coordinate the Work with the owners of such underground utilities, in at least two, but not more than 10, working days prior to any excavation
- e. 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 Special Provisions 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

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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 State of Texas, with minimum "A.M. Best Rating" of A-, VI, as will protect the Contractor, the vicarious acts of Subcontractors, the Owner and Engineer and their agents and employees 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 Intentionally omitted.

5.04 *Insurance*

A. Without limiting any of the other obligations or liabilities of the Contractor, Contractor shall secure and maintain such insurance from an insurance company (or companies) authorized to write insurance in the State of Texas, with minimum "A.M. Best Rating" of A-, VI, as will protect himself, his Subcontractor, the Owner and the Engineer and their respective agents and employees from claims for bodily injury, death or property damage which may arise from operations and completed operations under this Agreement. Contractor shall maintain the commercial liability coverage for a period of at least two (2) years following the substantial completion date of the project.

B. Such coverage shall be written for claims arising out of all premises/operations, subcontracted operations, products/completed operations, and all liability assumed by the Contractor under any contract or agreement. Contractor shall not commence work under this Agreement until such insurance has been obtained and certificates of insurance, with binders, or certified copies of the insurance policy shall have been filed with the Owner and the Engineer.

C. All insurance coverages shall remain in effect throughout the life of the Agreement, except that the Contractor shall maintain the Commercial General Liability coverage for a period of at least two years following the substantial completion date for property damage resulting from occurrences during the agreement period. In addition, the Contractor shall obtain and pay the entire premium for Owner's Protective Liability Coverage to protect the Owner and Engineer for their liability arising under this Agreement. Each insurance policy shall contain a clause providing that it will not be canceled by the insurance company without 30 days written notice to the Owner and Engineer of intention to cancel. The minimum amounts of such insurance coverages being described in the following paragraphs.

D. Commercial General Liability

1. Bodily Injury: \$1,000,000      \$1,000,000  
Each Occurrence Aggregate

a. Coverage to include: premises operations, products and completed operations, contractual, operations of independent contractors, and personal injury.

2. Property Damage: \$1,000,000      \$1,000,000  
Each Occurrence Aggregate

a. Coverage to include: premises operations, products and completed operations, contractual, operations of independent contractors, broad form property damage including completed operations, and property damage

applicable to blasting, collapse and underground hazards if exposures exist as noted below:

Blasting \_\_\_\_\_  
Collapse \_\_\_\_\_  
Underground \_\_\_\_\_

b. or; a combined single limit of \$3,000,000 for sections 1 and 2 above. May be satisfied by primary insurance or a combination of primary excess or umbrella insurance. Deductible not to exceed \$5,000 per occurrence.

3. Automobile Liability: bodily injury and property damage for a combined single limit of \$1,000,000 for each accident.

a. Coverage to include: all owned, hired, and non-owned.

#### E. Workers' Compensation

1. Occupational Disease: statutory

2. Employer's Liability: \$100,000  
Each Accident

3. Sections 3 and E above may be satisfied by primary insurance or a combination of primary and excess or umbrella insurance.

E. The sum of the aggregate limit of liability as respects sections D.1, D.2, D.3, and E shall not be less than \$3,000,000.

#### F. Owners and Contractors Protective Liability

1. Bodily Injury and Property Damage: \$1,000,000 each occurrence and \$1,000,000 aggregate.

#### G. Additional Insureds

1. Contractor's insurance coverage shall name the Owner and Engineer as an Additional Insured under Commercial General Liability, Automobile Liability, Excess or Umbrella policies.

5.05 Intentionally omitted.

#### 5.06 Property Insurance

A. Contractor 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, flood, extended coverages, 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. Contractor shall be responsible for any deductible or self-insured retention.

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. Intentionally omitted.

#### 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

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#### 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. Regular working hours are defined as 8:00 A.M. to 5:00 P.M. Emergency work may be done without prior permission.

#### 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 with each application for payment an updated progress schedule reflecting the amount of work completed and adjustments to future work. Such adjustments will be acceptable to Engineer as providing an orderly progression of the Work to completion within any specified milestones and the

contract time. No progress payment will be made to Contractor until the updated schedules are submitted to and acceptable to Engineer and Owner. Review and acceptance of progress schedules by the Engineer will neither impose on Engineer responsibility for the sequencing, scheduling or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefore.

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. Any necessary permits, licenses, agreements, insurance, and approvals required by any governmental agency for the performance of this Work shall be obtained by the Contractor at its own expense. 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.

#### 4. Damage to Utility Facilities

a. Contractor shall notify utility operator/owner immediately of any damage. Utility owner/operator shall determine the appropriate repair. If the damage results in a release of natural gas or other hazardous substance, or potentially endangers life, health, or property, then Contractor shall immediately contact the utility owner/operator, call 911 and take immediate action to protect the public and property.

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 Drawings 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).

E. It is expressly understood by the parties to this Agreement that the Contractor is solely responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work. The right of the Owner and Engineer to observe or otherwise review the Work and operations shall not relieve the Contractor from any of its covenants and obligations hereunder. Contractor shall incorporate all safety requirements into the construction progress and work schedules, including preconstruction and scheduled monthly safety meetings, posted safety rules, tailgate meetings, and site inspections by safety and other inspectors employed by the Contractor.

F. Contractor shall be responsible for and shall take necessary precautions and provide all material and equipment to protect, shore, brace, support and maintain all underground pipes, conduits, drains, sewers, water mains, gas mains, cables, etc., and other underground construction uncovered in the proximity, or otherwise affected by the Work. All pavement surfacing, driveways, curbs, walks, buildings, grass areas, utility poles, or guy wires damaged by the Work shall be repaired and/or replaced to the satisfaction of the Owner, Engineer, and affected property owner at Contractor's expense. The Contractor shall also be responsible for repairing all damage to streets, roads, bridges, highways, shoulders, ditches, embankments, culverts, or other public or private property or facility, regardless of location or character, which may be caused by moving, hauling or otherwise transporting equipment, materials, or men to and from the Work or any part of Site thereof; whether by Contractor or any Subcontractors. Contractor shall make satisfactory and acceptable arrangements with owner of, or the agency or the authority having jurisdiction over, the damaged property or facility concerning its repair or replacement or payment of costs incurred in connection with said damage.

G. Contractor shall conduct his work so as to interfere as little as possible with public travel, whether vehicular or pedestrian. Whenever it is necessary to cross, obstruct, or close roads, driveways, and walks, whether public or private, the Contractor shall obtain approval from the governing party and, at its own expense, provide and maintain suitable and safe bridges, detours, and other temporary expedients for the accommodation of public and private drives before interfering with them. The provisions for temporary expedients will not be required when Contractor has obtained permission from the owner and tenant of the private property, or from the authority having jurisdiction over public property involved, to obstruct traffic at the designated point.

H. Safety provisions must be entirely adequate and meet with City or State and Federal regulations to protect the public on these streets and roads.

#### 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, Sub-

contractors, 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. While Owner and Engineer may have the right under this Contract to observe or otherwise review the Work, progress and operations of the Contractor, it is expressly understood and agreed that such observation shall not relieve the Contractor from any of its covenants and obligations hereunder.

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

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### 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.

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## ARTICLE 8 - OWNER'S RESPONSIBILITIES

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### 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

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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 Special Provisions, 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 Special Provisions.

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.

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

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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. The cost is for the use of all construction equipment and machinery and parts thereof whether owned by the Contractor or rented from others. The costs shall be calculated as follows and will include the costs of transportation, loading, unloading, assembly, dismantling and removal thereof for equipment involved only in the changed portion of the Work under the cost

of the Work method. Transportation, loading and assembly costs will not be included for equipment already on the Site which is being used for other portions of the Work. The cost of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work. Hourly equipment and machinery rates shall be calculated from the Rental Rate Blue Book for Construction Equipment, and the equipment list submitted according to 2.05 and 2.07 and as follows:

1. For working equipment, the hourly rate shall be the monthly rental rate divided by 176 hours per month plus the hourly operating cost.

2. For equipment on standby, the hourly rate shall be 50% of the monthly rental rate divided by 176 hours per month, and the hourly operating cost shall not apply.

3. For specialized equipment rented for a short duration used for change order work or additional work not part of the scope of work bid, the equipment rental rates will be negotiated prior to the work being performed.

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 by more than 25% from the estimated quantity of such item in the Agreement, and

2. the total cost of the particular item of Unit Price Work amounts to 20% or more of the Contract Price which is the sum of all schedules (if any), 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

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#### 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. Intentionally omitted.

B. Intentionally omitted.

C. Intentionally omitted.

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

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#### 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.

Nothing in the Standard General Conditions, Article 13, concerning the correction period shall establish a period of limitation with respect to any other obligation which Contractor has under the Contract Documents. The establishment of time periods relates only to the specific obligations of Contractor to correct the work and has no relationship to the time within which Contractor's obligations under the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to Contractor's obligations other than to specifically correct the work.

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

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### 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. Payments for materials in storage shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit. Bill of sale, invoice or other document warranting clear title for materials in storage will be waived for the material in storage included in the first progress payment application. However, proof of payment and clear title must be submitted with Application No. 2 for all material included in Application No. 1. Without such documentation, amounts paid for materials in storage will be deducted from subsequent payments. Beginning with the second application, all requests for payment for materials in storage shall be accompanied by Bill of Sale, invoice or other document warranting clear title as required above.

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. In accordance with state law, Owner may accept deposited securities in lieu of cash retainage provided the Contractor executes the Owner's standard "APPLICATION FOR SUBSTITUTION OF SECURITIES IN LIEU OF CASH RETAINAGE," a copy of which is bound herein. Retainage may be used by the Owner to offset costs for any of the losses enumerated in Paragraphs 14.02.B.5a through 14.02.B.5.d inclusive, 14.02.D.1.a through 14.02.D.1.d inclusive, or 15.02.C. In addition, retainage may be used by the Owner to protect against loss from failure by the Contractor to complete necessary work and to offset any liquidated damages due Owner.

4. Each application for progress payment shall be accompanied by Contractor's updated progress schedule, shop drawing schedule, procurement schedule, and other data specified herein or reasonably required by Owner or Engineer. The Owner reserves the right to require

submission of monthly certified payrolls by the Contractor.

#### 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. Thirty days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended (subject to provisions of 14.02.D) becomes 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, including liquidated damages; 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. Neither recommendation of any progress payment by Engineer nor payment by the Owner to Contractor, nor any use or occupancy of the Work or any part thereof will release the Contractor from complying with the Contract Documents. Specifically the Contractor shall maintain in accordance with Article 5, property insurance on all Work, materials, and equipment whether incorporated in the project or not and whether included in an application for payment or not, for the full insurable value thereof. Passing title to Owner for materials and equipment included in an application for payment does not relieve the Contractor of the Contractor's obligation to provide insurance

(including property insurance) as required in Article 5. All insurance shall remain in effect as provided in Article 5.

#### 14.04 Substantial Completion

- A. Intentionally omitted.
- B. Intentionally omitted.
- C. Intentionally omitted.
- D. Intentionally omitted.
- E. When Contractor considers the work ready for utilization by Owner, Contractor shall declare in writing to Owner and Engineer that the work is substantially complete and request the Engineer issue a Notice of Substantial Completion therefore. Within a reasonable time thereafter, 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 shall notify Contractor in writing giving reasons therefore. If Engineer considers the work substantially complete, Engineer shall prepare and deliver to Owner and Contractor a tentative Notice of Substantial Completion, which will fix the date of substantial completion and the responsibilities between Owner and Contractor for operation and maintenance. The notice shall include a tentative list of items to be completed or corrected before final acceptance. Owner shall have ten days after receipt of the tentative notice during which to make written objection to Engineer as to any provisions of the notice or list. If, after considering such objections, Engineer concludes the work is not substantially complete, Engineer shall notify Contractor in writing stating reasons therefore. If after ten days and after consideration of Owner's objection, Engineer considers the work substantially complete, Engineer shall execute and deliver to Owner and Contractor a definitive Notice of Substantial Completion, with a revised list of items to be completed or corrected, reflecting such changes from the tentative notice as Engineer believes justified after consideration of any objections from Owner.

#### 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. Owner has the right to take possession of or use any completed or substantially completed portions of the work at any time, but such taking possession or use will not be deemed an acceptance of any work not completed in accordance with the Contract Documents. Owner's use of any facilities so identified in the Contract Documents will not be grounds for extension of the contract time or change in the contract price. Owner's use of any facilities not specifically identified in the Contract Documents will be in accordance with conditions agreed to prior to such use, and any extra costs or delays in completion incurred and properly claimed by the Contractor will be equitably adjusted with a Change Order. Facilities substantially completed in accordance with the Contract Documents which are occupied or used by Owner prior to substantial completion of the entire work will be done in accordance with General Conditions 14.04. Guarantee periods for accepted or substantially completed work including mechanical and electrical equipment will commence upon the start of continuous use by Owner. All tests and instruction of Owner's personnel must be satisfactorily completed, and Owner shall assume responsibility for and operation of all facilities occupied or used except as may arise through portions of work not yet completed by Contractor.

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. After Contractor has remedied all deficiencies to the satisfaction of the Engineer and delivered all construction records, maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents (all as required by the Contract Documents), Owner and Contractor shall be promptly notified in writing by Engineer that the work is acceptable.

#### 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**

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**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. Intentionally omitted.

3. Intentionally omitted.

4. Intentionally omitted.

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

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### 16.01 Intentionally omitted.

All matters involving disputes in this Agreement shall be referred to the City Manager, City of Bulverde, for attempted resolution prior to commencement of legal action to resolve same.

## ARTICLE 17 - MISCELLANEOUS

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### 17.01 *Giving Notice*

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

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

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

3. The mailing address for giving notices to Contractor given in the Agreement is hereby designated as the place to which all notices, letters, and other communication to Contractor will be mailed or delivered. The mailing address for giving notices to Owner given in the Agreement is hereby designated as the place to which all notices, letters, and other communication to Owner shall be mailed or delivered. Either party may change the mailing address at any time by an instrument in writing delivered to the Engineer and to the other party.

### 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.

**EXHIBIT D: TECHNICAL SPECIFICATIONS AND  
SPECIAL PROVISIONS**

# **CITY OF BULVERDE**

## **2022 STREET MAINTENANCE SPECIAL PROVISIONS**

### **PART I – GENERAL REQUIREMENTS**

#### **1. STANDARD SPECIFICATIONS**

The Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges, November 1, 2014 Edition, and any modifications, hereinafter referred to as the Standard Specifications, are hereby incorporated by reference and are as much a part of these Contract Documents as if bound herein. All provisions of these Standard Specifications shall apply to this contract unless superseded by provisions bound herein. Where the provisions of the specifications bound herein conflict with any provisions of the Standard Specifications, the specifications bound herein shall govern. Any subsequent addenda issued after these specifications have been prepared shall supplement and/or supersede any article of these specifications.

The plans for this improvement, and the specifications accompanying them, are intended to be mutually cooperative, and anything shown or called for in the one and omitted in the other, is as binding as if called for, or shown by both. Any work not herein specified, which may be fairly implied as included in this improvement, shall be done by the Contractor without extra compensation.

If a discrepancy exists, calculated dimensions, unless obviously incorrect, will govern over scaled dimensions; plans will govern over standard specifications and standard drawings; special provisions will govern over standard specifications, supplemental specifications, plans and standard drawings.

#### **2. INTENT**

The intent of the plans and specifications is to provide for a complete project. No separate payment will be made for items not specifically called out in the Bid Form or specified "For the Contractor's Information Only". Any such work shall be incidental to other items of work and shall be included in the unit price bid for related items of work.

#### **3. DESCRIPTION OF WORK**

The work to be done under this contract consists of, but is not limited to asphalt shoulder/pavement edge repair, full depth pavement repair, mill and level up, striping, full depth pavement reconstruction of Old Boerne Road and traffic control in Bulverde, TX, in accordance with accompanying specifications.

#### **4. TRAFFIC CONTROL MEASURES**

Traffic control devices shall be defined as all signs, markings, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, pedestrian facility, bikeway, or private road open to public travel by authority of a public agency or official having jurisdiction, or, in the case of a private road, by authority of the private owner or private officials having jurisdiction as defined on 'Texas Manual on Uniform Traffic Control Devices' (TMUTCD). For more detail refer to TMUTCD, Rev 2, October 2014 manual. Any work occurring within the right-of-way of a roadway, shall conform to the minimum guidelines within this manual for the safety of construction crew as well as travelling public, and minimizing inconvenience to them.

The appropriate level of traffic control measures for a situation shall be determined using the guidelines provided in TMUTCD manual. No work will be permitted to commence until all traffic control devices are installed in position and approved and as directed by the Engineer at a minimum level. The Contractor is required to discuss and present a traffic control plan to the Engineer for approval at least 7 days in advance.

The works that shall be performed under this Contract are generally short-term in nature as described under Special Provision 3: Description of Work. Therefore, any provision thereof made for Traffic Control works shall not be measured and paid for separately but will be subsidiary to the pertaining bid items. The Contractor shall make sufficient allowance in the unit bid rate to furnish traffic control devices such as traffic cones, channelizing devices, detour signs, removal of existing pavement markings, construction zone signs, flaggers, etc.

#### **5. RIGHT-OF-WAY PREPARATION**

Prepare the right-of-way and designated easements for construction operations by removing and disposing of all obstructions, debris on roads, etc. Unless otherwise permitted by the Engineer in writing, the Contractor shall not store materials, construction equipment, construction spoils, etc. within the right-of-way. Attention is drawn to the Contractor to protect and preserve items that are to be remained within the right-of-way such as road signs, mailboxes, trees, overhead and underground utilities, etc. The Contractor shall be responsible for the repair or replace for such damaged items without any cost to the City to the full satisfaction of the Engineer.

The works that shall be performed under this Contract are generally short-term in nature as described under Special Provision 3: Description of Work. Therefore, any provision thereof made right-of-way preparation shall not be measured and paid for separately but will be subsidiary to the pertaining bid items.

#### **6. PERMITS**

The Contractor shall be responsible for obtaining all permits necessary for the completion of this work. The costs for all permits shall be considered incidental to construction and shall be included in the price bid for related items of work.

## **7. SURVEY MARKERS AND MONUMENTS**

The Contractor shall protect and not disturb any survey markers or monuments, such as lot or block corners, property pins, intersection of street monuments, or section corners or section breakdown corners not scheduled for replacement. Any survey marker or monument that is disturbed or destroyed by the Contractor shall be replaced at no cost to the Owner by a licensed land surveyor.

## **8. COORDINATION WITH OTHER CONTRACTORS**

The Contractor shall coordinate all work on this project with the work of Subcontractors and other Contractors in the area to assure orderly completion of the work and to maintain safe conditions with reasonable traffic flow.

## **9. USE OF WATER**

Should the Contractor desire or elect to use treated water for compaction or other purposes, Contractor shall make proper arrangements with and pay necessary fees to the water purveyor providing service in the project area.

Contractor shall not use property owner's water or hoses without property owner's permission.

## **10. DATE OF COMPLETION**

The entire work shall be completed within the time stated in the Agreement Form. For each and every calendar day that the contract remains uncompleted beyond the date specified for completion, the sum specified in the Agreement Form will be deducted from earnings due the Contractor not as a penalty, but as agreed upon settled and liquidated damages because of the uncertainty of fixing actual damages.

Permitting the Contractor to continue and finish the work, or part of it, after the date fixed for its completion, or after the date to which the completion may have been extended, will in no way operate as a waiver on the part of the Owner of its rights under the contract.

## **11. EXTENSION OF CONTRACT TIME FOR ADVERSE WEATHER**

Contractor shall schedule the work to be completed within the contract time stipulated in the Agreement. Contractor's progress schedule shall include an allowance for time lost due to normal adverse weather. "Adverse weather" is defined as atmospheric conditions at a definite time and place that are unfavorable to construction activities.

Adverse weather occurrences will not constitute justification for an extension of contract time unless the total time lost due to weather occurrences exceeds 10 percent of the contract time stipulated in the Contract agreement.

Contractor shall, throughout the Project, record occurrences of adverse weather and resultant impacts to normally scheduled work, as well as the lingering effects of the occurrence. Adverse weather must prevent work on critical path activities for 50 percent or more of Contractor's scheduled workday and actually cause a delay to the completion of the Project to be considered an adverse weather delay day. Contractor shall, in a timely manner, submit written record of each adverse weather occurrence to Engineer for approval.

## **12. ONE-YEAR CORRECTION PERIOD**

Prior to expiration of the one-year correction period, the Engineer will inspect the project to determine whether corrective work is required. The Engineer will notify the Contractor in writing if corrective work is required and Contractor shall, within ten (10) days of receipt of notification or such longer time as may be set forth in the notice, commence correction of the defective work without cost to Owner.

## **PART II – MISCELLANEOUS SPECIAL PROVISIONS**

### **1. NOTIFICATION OF PROPERTY OWNERS**

It shall be the Contractor's responsibility to notify property owners or tenants of the approaching work in order to arrange for the removal of parked vehicles or other items in the street that would interfere with construction operations. Contractor shall notify property owners or tenants two to five days prior to start of work. If work is not started within the time specified, Contractor shall re-notify property owners or tenants until work has actually commenced. ***Contractor shall submit copy of notification to Engineer.***

### **2. ACCESS AND PARKING**

The Contractor shall maintain access to the adjacent property at all times during construction. On-street parking may be removed, with the approval of the Engineer, to accommodate construction. The Contractor shall provide property owners with a minimum of 48 hours notice whenever their normal access shall be interrupted or whenever on-street parking adjacent to their property will be removed. At least one access shall be maintained at all times to commercial properties, including parking lots.

### **3. MATERIALS**

All materials provided by the Contractor for this project shall be new.

#### 4. ROADWAY EDGE REPAIR

This work consists of excavating a fixed width and depth along the edge of existing pavement and placing new materials in the excavated area to provide protection for the roadway pavement edge.

- A. Paved shoulder- includes excavation and removal of existing material along the edge of the roadway. As marked by the Engineer for the areas to be removed and replaced, saw-cut the area and remove all damaged pavements minimum 6” below the existing pavement surface. Prepare the excavated area as discussed in Section 5.B. Pavement Cuts/Repairs below. Place HMAC TY B to minimum 6” compacted thickness. The Type B base shall be constructed 12” minimum outside offset from the existing pavement edge as shown on the attached **Exhibit 1**.

The price includes full compensation for saw-cuts, excavation, surface preparation, all materials, placement, equipment, traffic control, labor, tools and other incidental works. The works performed shall be in accordance with respective specifications for which they pertain to.

- B. The edge protection shall be installed in segments along curves and other areas where edge deterioration is evident. The Engineer shall mark the start and stop points of each segment. All asphalt or concrete driveways inside the marked areas shall be skipped. Edge protection will continue through only gravel or other soft surface driveways.
- C. Payment shall be per square yard of constructed edge protection. Payment shall be for all labor, materials, equipment, time, surface preparation and cleaning, and incidentals at the unit bid price. Average repair width is two (2) feet.

#### 5. ASPHALT PAVEMENT FULL DEPTH REPAIR (FDR)

This work consists of removed damaged sections of the roadway surface, re-compacting the base material, and patching the damaged area with new asphalt pavement in accordance with TxDOT Specifications 300, 320, and 340 of the Standard Specifications.

- A. Asphalt paving material shall be 2” HMAC Type C for surface course paving and 6” HMAC Type B for base course where pavement overlays will be performed, and the aggregate shall be Class B as specified in TxDOT Specification 340. The oil used to manufacture the pavement shall be PG 64-22, conforming to Section 3230 of the Standard Specifications. **Oil used shall not contain more than 5% recycled engine oil base.** Payment shall be for each square yard pavement patch area.
- B. **Pavement Cuts/Repairs:** Damaged pavement sections marked by the Engineer shall be removed by methods yielding a straight, near vertical face along the perimeter of the saw cut area in accordance with TxDOT Specification 700. Remove all loose materials, clean surfaces, and hand compact the base prior to

installing the pavement materials, or as directed by the Engineer. For more details refer to the specification.

Transition to existing pavement and ride quality to follow the requirements of item "12. General Requirements" below.

The measurement and payment for the potholes repair works shall be in accordance with the specification.

- C. **Depth of Repair:** Where specified, contractor shall remove all deleterious base material to a depth of 6" from the bottom of the surface course.
- D. **Owner's representative approval:** Contractor shall request, with at least 24-hour's notice, the City Engineer and/or his/her approved designee to be onsite during the excavation of roadway repairs to confirm the removal depth of deleterious material and adjustment of work for payment.

## **6. BLADE LEVEL UP**

This work consists of preparing the pavement for an asphalt concrete level-up. Mill pavement from 0" to 2" as required to place 1.5" minimum level-up thickness. Place an asphalt concrete level-up course or courses and compact the courses at location shown on the plans or at location as directed. Repair the front slope to eliminate any drop off created by the level-up.

- A. The Contractor shall blade level-up hot-mix asphalt (Type D, Grade HMA (Method), PG 64-22) matching the existing roadway pavement width and shall maintain the established cross-slope.
- B. Placement and material methods shall be in compliance with TxDOT Specifications 300, 320, 330, 334, and 340.
- C. The surface of the pavement after compaction, shall be smooth and true to the established line, grade and cross section.
- D. Measurement for Blade Level-Up shall be by the ton, as evidenced by trip tickets provided by the Contractor.

## **7. CHIP SEAL**

This work consists of Preparing the roadway surface, placing a layer of oil on the surface of the existing pavement, spreading a layer of aggregate on top of the oil, compacting the aggregate into the oil, and sweeping up the excess aggregate after the oil has cured in accordance with Sections 300 and 316 of the Standard Specifications.

- A. Aggregate shall meet the specifications of Section 302 with one exception. The exception is that the maximum Decantation % in Table 3 of Section 302.2 shall be reduced to 0.7.
- B. The Contractor shall clear all vegetation from the surface of the roadway and clear any vegetation and soil mass from the edges of the roadway to expose the entire surface of the roadway. The exposed surface for the roadway shall be

prepared to accept the chip seal in accordance with common practices and manufacturer's recommendations.

- C. Oil shall be HFRS-2P with a target application rate of 0.33 gal/SY. This target rate is established for bidding purposes, the contractor shall adjust the actual applied rate as needed to ensure proper bonding of the aggregate to the existing surface, while preventing bleeding.
- D. Surface course aggregate shall be FS Trap Rock (Single seal applications). Underseal aggregate course shall be FS Trap Rock. The target application rate shall be 25 pounds per SY of roadway surface. During the course of the work, adjustments will be made in the rate of application when required to prevent bleeding and maintain proper aggregate adhesion to the roadway surface. Payment shall be for each square yard of pavement roadway area covered by the chip seal.
- E. Sweeping operations shall be performed in such a manner that the loose aggregate is picked up from the roadway surface and residential driveway approaches and removed from the project area (vacuum or mechanical sweeper) within one week of installation. **All loose aggregate shall be the property of the Contractor. All loose aggregate must be removed from the project site. UP to two (2) additional sweepings may be required to remove the residual loose aggregate if shedding of the material occurs after the initial installation. Sweeping loose aggregate into bar ditches and onto driveways is prohibited.**

## **8. SPRAY APPLIED UNDERSEAL MEMBRANE**

- A. Refer to TxDOT special specification 3002 (attached) – Spray Applied Underseal Membrane
- B. The underseal membrane should be defined as a single course chip seal following the prior mentioned specifications with the exception of an FS type trap rock as the aggregate.
- C. Measurement and payment for the underseal membrane shall be in square yards of street coverage.

## **9. DENSE-GRADED HOT-MIX ASPHALT (SMALL QUANTITY) (D-GR HMA)**

D-GR HMA shall be constructed in accordance with TxDOT specification Item 340: Dense-Graded Hot-Mix Asphalt. The asphalt binder for D-GR HMA shall be performance-graded (PG) 70-22 and the aggregate shall be SAC-B. Unless otherwise directed or mentioned on the bid documents, the D-GR HMA for overlay construction shall be 2" compacted thickness Type D HMA. The existing pavement must be corrected on the weak or damaged areas prior to the construction of strengthening overlays.

Tack Coat shall be CSS-1, SS-1H, or a PG binder with a minimum high temperature grade of PG 58 in accordance with TxDOT Item 300: Asphalts, Oils and Emulsions.

Measurement and payment for hot-mix asphalt shall be in tons of composite mix, which includes asphalt, aggregate, and additives as specified in Item 340. These prices are full compensation for surface preparation, materials including tack coat, placement, equipment, labor, tools, and incidentals.

## **10. PAVEMENT CENTER STRIPING**

This work consists of cleaning the roadway surface as required and placing double yellow centerline striping paint, with glass beads, on the roadway surface in accordance with Sections 666 and 678 of the Standard Specifications. Engineer shall mark the starting and stopping point of each striping segment on the roadways.

- A. Pavement Striping shall be Type I meeting the requirements of Section 666 of the Standard Specifications.
- B. The striping shall consist of two (2) 4" wide yellow centerline stripes, 4" apart. Payment shall be per linear foot of completed roadway striping, placed on the roadway surface.

## **11. PAVEMENT EDGE STRIPING**

This work consists of cleaning the roadway surface as required and placing single white edge striping paint, with glass beads, on the roadway surface in accordance with Sections 666 and 678 of the Standard Specifications. Engineer shall mark the starting and stopping point of each striping segment on the roadways.

- C. Pavement Striping shall be Type I meeting the requirements of Section 666 of the Standard Specifications.
- D. The striping shall consist of one (1) 4" wide solid white line stripe along the outside travel lane in both directions (both sides of roadway). Payment shall be per linear foot of completed roadway striping, placed on the roadway surface.
- E. Edge striping is an individual work schedule specific to Bulverde Road.

## **12. PAVING GENERAL REQUIREMENTS**

### **HMA Materials**

Materials for HMA must have prior approval of the Engineer. The Contractor shall submit mix design (or previously approved mix design) for the review and approval as specified in the specification. Course and fine aggregate sources must be approved or pre-approved.

### **Pre-Paving Meeting**

Prior to the commencement of the paving operation, a pre-paving meeting between the City, Contractor and the Engineer should be held approximately one week before

paving operation begins. The Contractor must present a 'Paving Plan' discussing surface preparation, paving and compactions widths and sequences, temperature control, equipment pre-check arrangements, etc.

### **Traffic Control**

Contractor shall submit traffic control plans to engineer for review and approval prior to commencement of field work.

### **Weather and Temperature Control**

HMA construction shall not be allowed when either the surface is wet, or the surface temperature is less than 60 degrees and decreasing. The contractor shall measure and confirm the temperature conducive for paving operation with the Engineer.

### **Cleaning and Tack Coat**

When repairs of damaged spots are completed, the surface to be overlaid must be thoroughly cleaned and remove all loose dusts and foreign materials. A thin tack coat of asphalt shall be applied to ensure uniform and complete bonding of the overlay with the existing pavement structure. Paving over the tack coat should not commence until the emulsion has broken or is tacky when touched. Tack coat shall be applied at the rate of approximately 0.10 gallons per square yard.

### **Compaction and Rolling**

Compaction shall be done as described in the specification. Unless otherwise directed, rolling shall begin at the sides and proceed longitudinally parallel to the road centerline. When paving in echelon or abutting a previously installed lane, the longitudinal joint should be rolled first followed by the regular rolling procedure as specified in the specification. Any displacement occurring as result of the rolling operation, or from other causes, shall be corrected immediately before the pavement temperature drops below 160°F.

### **Transition to the Existing Pavement**

It is the Contractors responsibility to transition the finished overlay grade smoothly to the existing pavement surface by means of milling from 0" to 2". The transition shall be smooth and shall not be abrupt when driven at designed speed of the road, and must be approved by the Engineer.

### **Ride Quality**

Use Surface Test Type A to evaluate ride quality in accordance with TxDOT Item '585: Ride Quality for Pavement Surfaces'. The Contractor shall provide a 10-ft straightedge for the assessment of ride quality.

### **Inspection and Testing period of localized roadway repairs**

Localized repairs including level-up, full depth repair, crack seal and edge repairs must be completed first and allow minimum of 30 calendar days to be tested with

traffic and inspected by the City before full width chip seals and overlays are started on the same section of pavement. This time period will be used to determine if any issues exist with the localized repairs. Following City acceptance of localized repairs, the City will issue notice to proceed for full width chip seal and overlays.

**Mobilization**

Refer to TxDOT specification Item No. 500 for Mobilization.

# Special Specification 3002

## Spray Applied Underseal Membrane



### 1. DESCRIPTION

Construct an underseal membrane composed of a warm spray-applied polymer-modified emulsion meeting the requirements of Table 1. The membrane is applied through a spray-paver and is covered immediately with a mixture of aggregate, asphalt binder, and additives mixed hot in a mixing plant.

**Table 1**  
**Polymer-Modified Emulsions Requirements**

| Test on Emulsion  | Test Method | Min | Max  |
|---|-------------|-----|------|
| Viscosity @ 77°F, SSF   | Tex-513-C   | 20  | 100  |
| Storage Stability <sup>1</sup> , %  | Tex-521-C   |     | 1    |
| Demulsibility <sup>2</sup><br>Anionic emulsions — 35 ml of 0.02 N CaCl <sub>2</sub> , %<br>Cationic emulsions — 35 ml 0.8% sodium dioctyl sulfosuccinate, % | Tex-521-C   | 55  |      |
| Sieve Test <sup>3</sup> , %   | Tex-521-C   |     | 0.05 |
| Distillation Test <sup>4</sup><br>Residue by distillation, % by wt.<br>Oil portion of distillate, % by vol.   | Tex-521-C   | 63  | 0.5  |
| Test on Residue from Distillation   | Test Method | Min | Max  |
| Elastic Recovery @ 50°F, 50 mm/min., %  | Tex-539-C   | 60  |      |
| Penetration @ 77°F, 100 g, 5 sec, 0.1 mm  | Tex-502-C   | 100 | 150  |

- After standing undisturbed for 24 hr., the surface must be smooth, must not exhibit a white or milky colored substance, and must be a homogeneous color throughout.
- Material must meet demulsibility test for emulsions.
- May be required by the Engineer only when the emulsion cannot be easily applied in the field.
- The temperature on the lower thermometer should be brought slowly to 350°F ±10°F and maintained at this temperature for 20 min. The total distillation should be complete in 60 ±5 min. from the first application of heat.

### 2. EQUIPMENT

- Spray Paver.** In addition to the requirements of Item 320, "Equipment for Asphalt Concrete Pavement," furnish a spray paver that will spray the membrane and apply the type and grade of mix shown on the plans and level the surface of the pavement layer in a single pass. Configure the spray paver so that the mixture is placed no more than 5 sec. after the membrane is applied.
- Membrane Storage Tank and Distribution System.** Equip the spray paver with an insulated storage tank having a minimum capacity of 900 gal., unless otherwise approved. Provide a metered mechanical pressure sprayer on the spray paver to apply the membrane at the specified rate. Locate the spray bar on the spray paver so that the membrane is applied immediately in front of the screed unit. Provide a read out device on the spray paver to monitor the membrane application rate.

Unless otherwise directed, furnish a volumetric calibration and strap stick for the tank in accordance with Tex-922-K, Part I. Calibrate the tank within the previous 5 yr. of the date first used on the project. The Engineer may verify calibration accuracy in accordance with Tex-922-K, Part II.

### 3. CONSTRUCTION METHODS

- 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.

- 3.2. **Membrane Placement.** Unless otherwise directed, uniformly apply the membrane at a rate between 0.15 and 0.25 gal. per square yard. The Engineer may adjust the application rate, taking into consideration the existing pavement surface conditions. Spray the membrane using a metered mechanical pressure spray bar at a temperature between 140°F to 180°F. Monitor the membrane application rate and adjust the rate when needed or when directed. If required, verify that the spray bar is capable of applying the membrane at a uniform rate across the entire paving width as directed. Do not let the wheels or other parts of the paving machine contact the freshly applied membrane. Apply a uniform membrane coat to all contact surfaces and all joints as shown on the plans. Prevent splattering of the membrane when placed adjacent to curb, gutter, and other structures.
- 3.3. **Quality Control.** Perform the quality control tests listed in Table 2. If operational tolerances in Table 2 are exceeded, adjust processes or cease production when directed. The Engineer may perform independent tests to confirm contractor compliance and may require testing differences or failing results to be resolved before resuming production.
- 3.4. **Membrane Sampling.** Obtain a 1-qt. sample of the polymer-modified emulsion for each lot of mixture produced. The Engineer will witness the sampling of polymer-modified emulsion. Take the sample from the emulsion tank located on the paving machine, but not from the emulsion spraybar. Obtain the sample at approximately the same time the mixture random sample is obtained. Take all samples in accordance with Tex-500-C, Part III. Label the can with the corresponding lot and subplot numbers, and immediately deliver the sample to the Engineer. The Engineer will randomly choose at least 1 sample per project and test it to verify compliance with Table 1.

**Table 2**  
**Operational Tolerance and Minimum Testing Frequency**

| Test Description                        | Test Method | Minimum Testing Frequency  | Operational Tolerance |
|---|-------------|----------------------------|-----------------------|
| Membrane Application Rate               | Tex-247-F   | 1 per day                  | ±0.02                 |
| Emulsion Membrane Sampling <sup>1</sup> | Tex-500-C   | 1 per day<br>(sample only) | Table 1               |

1. The Engineer may reduce or waive the sampling and testing requirements based on a satisfactory history.

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## 4. MEASUREMENT

Unless otherwise noted on the plans, underseal membrane material will be measured by one of the following methods:

- 4.1. **Volume.** Underseal membrane material will be measured at the applied temperature by strapping the tank before and after road application and determining the net volume in gallons from the distributor's calibrated strap stick. The Engineer will witness all strapping operations for volume determination.

If the meter and readout device is accurate within 1.5% of the strapped asphalt volume, the Engineer may allow use of the meter and readout to determine asphalt volume used and application rate.

The Engineer may require redetermination of meter readout at any time and will require volume determinations by strapping if the meter is not accurate to within 1.5% of strapped volume.

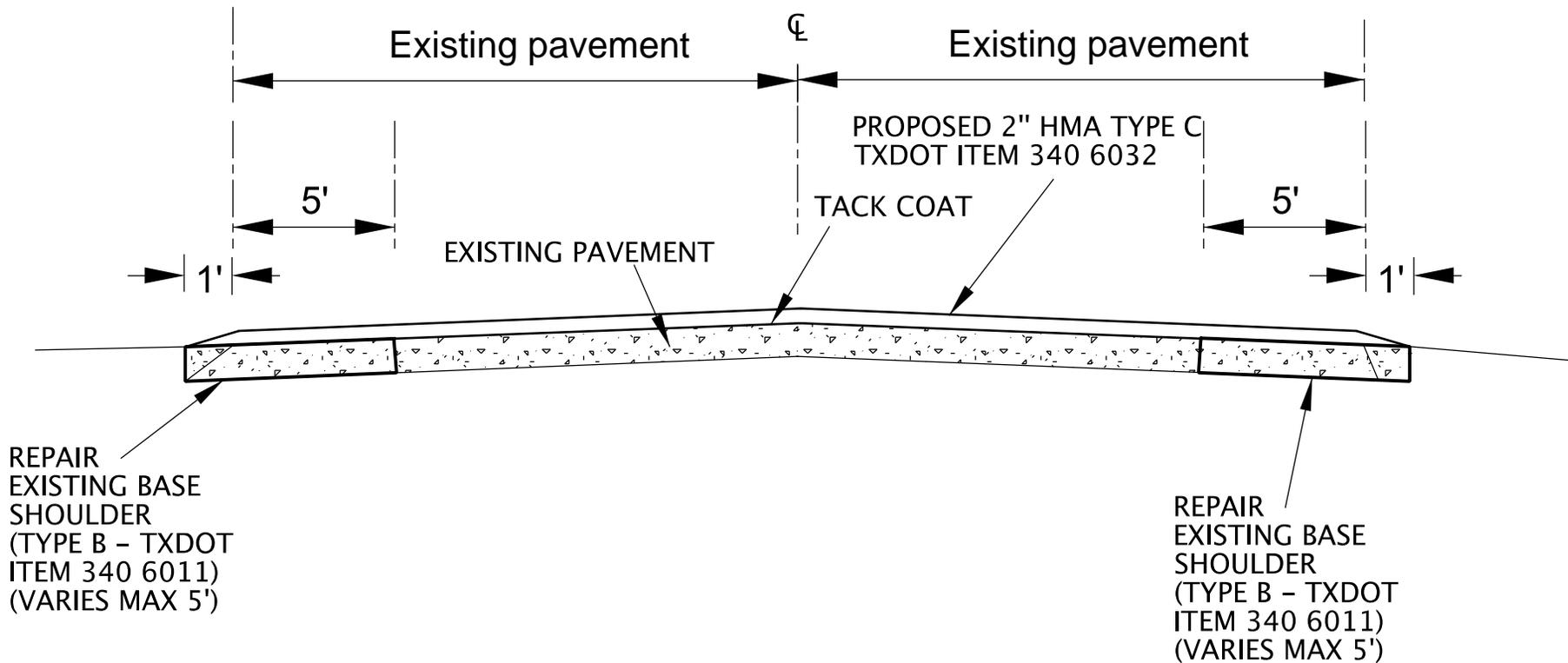
- 4.2. **Weight.** Underseal membrane material will be measured in tons using certified scales meeting the requirements of Item 320, "Equipment for Asphalt Concrete Pavement," unless otherwise approved. The transporting truck must have a seal attached to the driving device and other openings. The Engineer may require random checking on public scales, at the Contractor's expense, to verify weight accuracy.

Upon completion or temporary suspension, any remaining membrane material will be weighed by a certified public weigher or measured by volume in a calibrated 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.

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**5. PAYMENT**

The work performed and materials furnished in accordance with this Item and measured as provided above will be paid for at the unit bid price for "Membrane Underseal." These prices are full compensation for all materials, equipment, labor, tools, and incidentals necessary to complete the work.



# EXHIBIT 1

## OVERLAY AND EDGE REPAIR TYPICAL SECTION

|                                 |           |
|---------------------------------|-----------|
| CITY OF BULVERDE, TX            |           |
| STREET MAINTENANCE PLAN<br>2022 |           |
|                                 | EXHIBIT 1 |

## **EXHIBITS E: LOCATION OF WORK**

LOCATION OF WORK

**CITY OF BULVERDE**

**FY 2022 STREET MAINTENANCE PROGRAM**

Chip Seal (Full Streets): 87,667 SY / 36,026 LF

Algerita Ln (1,230 SY) (464 LF)  
Barton Hill Dr (14,340 SY) (6,390 LF)  
Bay Hill (2,006 SY) (972 LF)  
Buck Ln (8,196 SY) (3,394 LF)  
Cedar Vw (1,913 SY) (825 LF)  
Ceniso Cir (1,438 SY) (532 LF)  
Grazing Deer Dr (1,309 SY) (606 LF)  
High Ridge Dr (3,853 SY) (1,554 LF)  
Koch Dr (3,529 SY) (1,536 LF)  
Kuntz Run (2,355 SY) (888 LF)  
Leopard Dr (1,745 SY) (680 LF)  
Limestone Cir (2,924 SY) (1,227 LF)  
Onion Crk (4,676 SY) (2,002 LF)  
Prancing Deer Dr (5,970 SY) (2,451 LF)  
Quercus Ln (879 SY) (336 LF)  
Rainbow Dr (1,167 SY) (439 LF)  
Ranchers Cir (2,652 SY) (1,026 LF)  
Running Deer Dr (2,773 SY) (1,156 LF)  
Sierra Vista Dr (9,727 SY) (3,606 LF)  
Spotted Deer Dr (2,187 SY) (948 LF)  
Stallion Ln (2,503 SY) (995 LF)  
Sun Valley Dr (1,218 SY) (462 LF)  
Taylor Pt (9,077 SY) (3,537 LF)

Chip Seal (Partial Streets): 7,281 SY / 3,040 LF

Flat Rock Vw (3,428 SY) (1,486 LF)  
High Ridge Dr (3853 SY) (1,554 LF)

2" Overlay w/Underseal: 5,420 SY / 2,217 LF

Bulverde Rd (5,420 SY) (2,217 LF)

Roadway Edge Repair: 366 SY / 1,275 LF

Algerita Ln (100 SY) (225 LF)  
Barton Hill Dr (166 SY) (659 LF)  
Bulverde Rd (25 SY) (110 LF)  
Ceniso Cir (7 SY) (30 LF)  
Flat Rock View (7 SY) (30 LF)  
Onion Creek (42 SY) (187 LF)  
Taylor Point (19 SY) (34 LF)

## LOCATION OF WORK

### Asphalt Pavement Full Depth Pavement Repair: 1,146 SY

Algerita Ln (34 SY)  
Barton Hill Dr (186 SY)  
Bulverde Rd (222 SY)  
Casey Rd (692 SY)  
Taylor Point (12 SY)

### Blade Level Up: 6,098 SY / 504 TON

Buck Lane (988 SY) (81.6 TON)  
Cedar View (200 SY) (16.5 TON)  
Flat Rock View (527 SY) (43.5 TON)  
Grazing Deer Dr (93 SY) (7.7 TON)  
Kuntz Run (29 SY) (2.4 TON)  
Leopard Dr (76 SY) (6.3 TON)  
Old Boerne Rd (716 SY) (59.1 TON)  
Onion Creek (1054 SY) (87 TON)  
Prancing Deer (1122 SY) (92.6 TON)  
Stallion (586 SY) (48.4 TON)  
Sun Valley (707 SY) (58.4 TON)

### Roadway Centerline Striping: 38,243 LF

Algerita Ln (464 LF)  
Barton Hill Dr (6,390 LF)  
Bay Hill (972 LF)  
Buck Ln (3,394 LF)  
Cedar Vw (825 LF)  
Ceniso Cir (532 LF)  
Grazing Deer Dr (606 LF)  
High Ridge Dr (1,554 LF)  
Koch Dr (1,536 LF)  
Kuntz Run (888 LF)  
Leopard Dr (680 LF)  
Limestone Cir (1,227 LF)  
Onion Crk (2,002 LF)  
Prancing Deer Dr (2,451 LF)  
Quercus Ln (336 LF)  
Rainbow Dr (439 LF)  
Ranchers Cir (1,026 LF)  
Running Deer Dr (1,156 LF)  
Sierra Vista Dr (3,606 LF)  
Spotted Deer Dr (948 LF)  
Stallion Ln (995 LF)  
Sun Valley Dr (462 LF)  
Taylor Pt (3,537 LF)  
Bulverde Rd (2,217 LF)

LOCATION OF WORK

Roadway Edge Striping: 4,544 LF  
Bulverde Rd (4,544 LF)

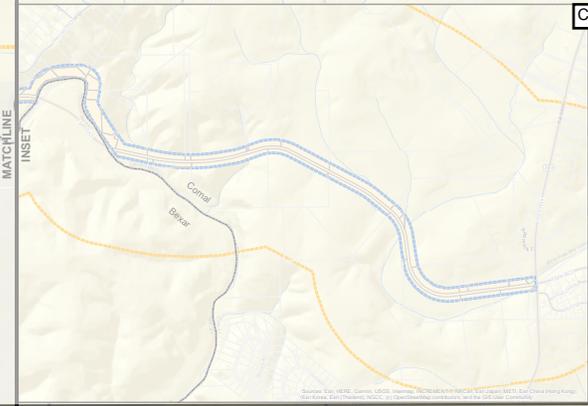
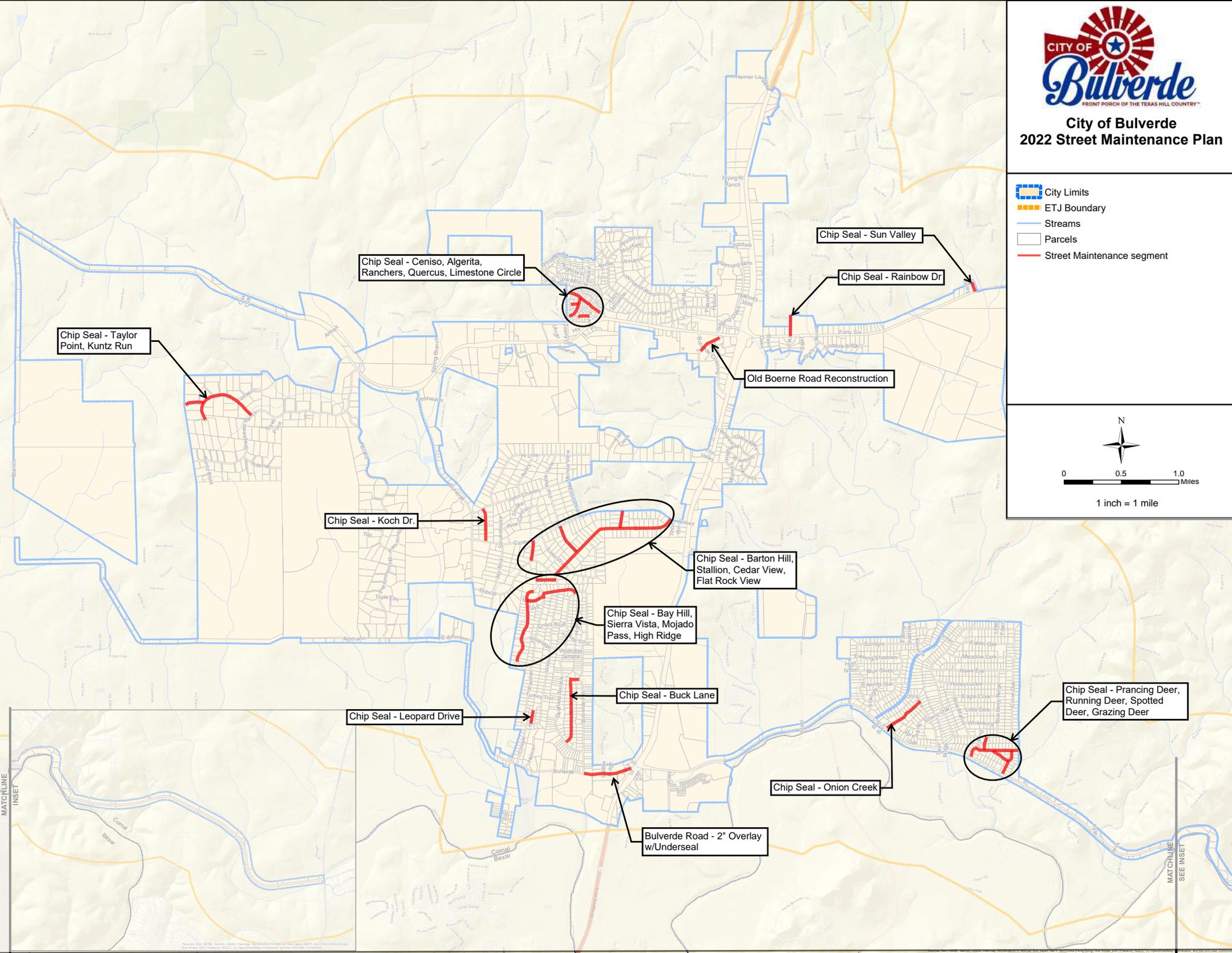
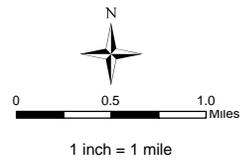
Roadway Reconstruction:  
Old Boerne Road (785 LF)

*\*See Schedule V in the "Bid Forms" section of this document for bid items and bid quantities related to Old Boerne Road roadway reconstruction.*



### City of Bulverde 2022 Street Maintenance Plan

- City Limits
- ETJ Boundary
- Streams
- Parcels
- Street Maintenance segment



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

## Full Streets

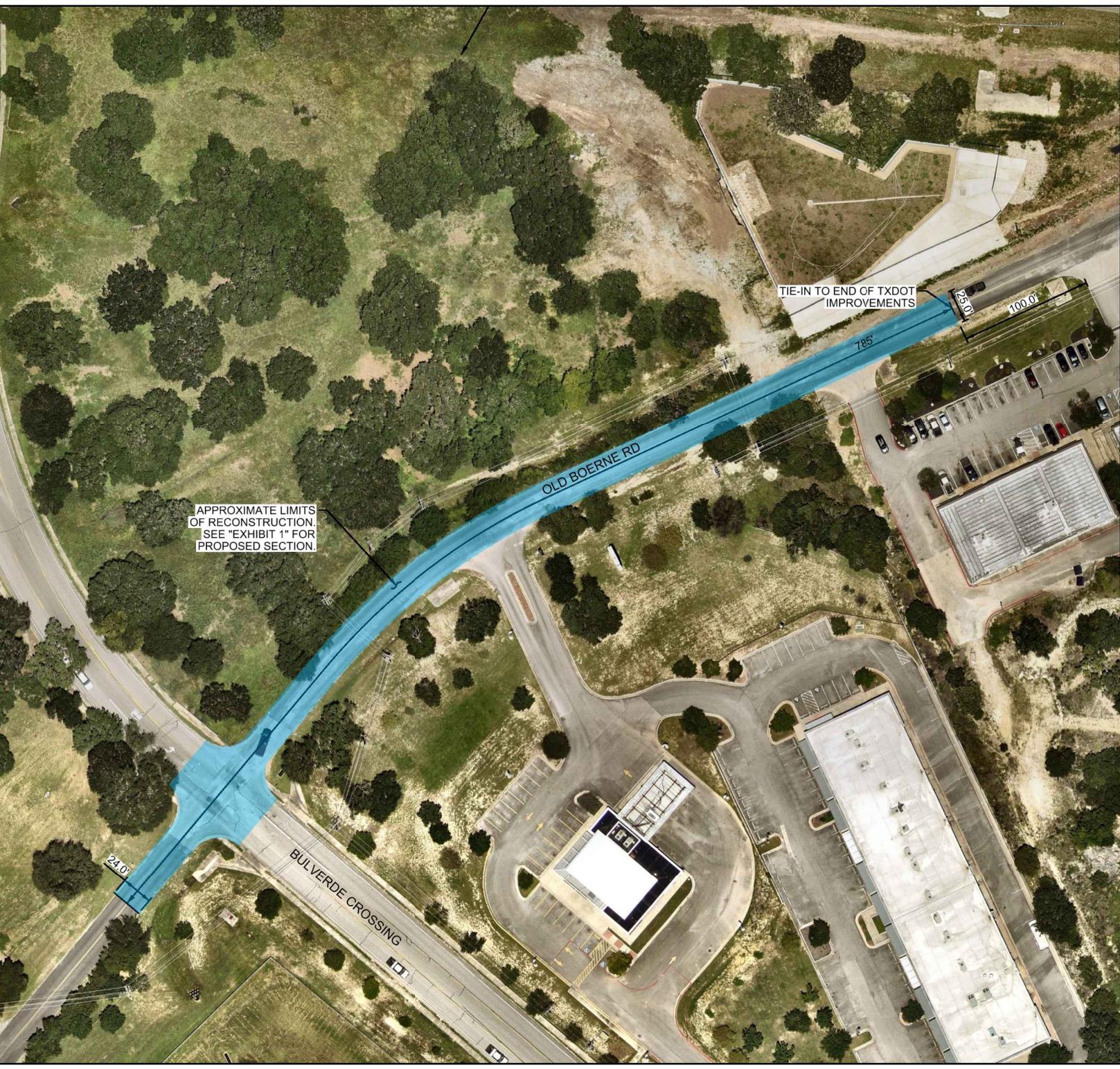
| Route            | Length (ft) | Area (ft <sup>2</sup> ) | Proposed Treatment | From              | To                 |
|------------------|-------------|-------------------------|--------------------|-------------------|--------------------|
| Algerita Ln      | 463         | 11,066                  | Chip Seal          | Farhills Dr       | Cul-de-sac         |
| Barton Hill Dr   | 6,390       | 129,055                 | Chip Seal          | Bobcat Dr         | Casey Rd           |
| Bay Hill         | 971         | 18,053                  | Chip Seal          | Bobcat Dr         | Cul-de-sac         |
| Buck Ln          | 3,393       | 73,764                  | Chip Seal          | Deerfield Terrace | Bulverde Hills Dr  |
| Cedar Vw         | 824         | 17,209                  | Chip Seal          | Casey Rd          | Barton Hill Dr     |
| Ceniso Cir       | 532         | 12,941                  | Chip Seal          | Farhills Dr       | Cul-de-sac         |
| Grazing Deer Dr  | 606         | 11,778                  | Chip Seal          | Circle Oak Dr     | Prancing Deer      |
| High Ridge Dr    | 1,553       | 34,669                  | Chip Seal          | Panther Dr        | Turkey Strut Ln    |
| Koch Dr          | 1,536       | 31,754                  | Chip Seal          | John Charles Rd   | Casey Rd           |
| Kuntz Run        | 887         | 21,190                  | Chip Seal          | Taylor Point      | Cul-de-sac         |
| Leopard Dr       | 680         | 15,698                  | Chip Seal          | Wildcat Dr        | Cul-de-sac         |
| Limestone Cir    | 1,226       | 26,309                  | Chip Seal          | Farhills Dr       | Cul-de-sac         |
| Onion Crk        | 2,002       | 42,076                  | Chip Seal          | FM 1863           | Olympus            |
| Prancing Deer Dr | 2,451       | 53,727                  | Chip Seal          | FM 1863           | Bridlegate Dr      |
| Quercus Ln       | 335         | 7,910                   | Chip Seal          | Ranchers Cir      | Cul-de-sac         |
| Rainbow Dr       | 438         | 10,500                  | Chip Seal          | View Ridge Dr     | TX-46              |
| Ranchers Cir     | 1,026       | 23,868                  | Chip Seal          | Limestone Cir     | Cul-de-sac         |
| Running Deer Dr  | 1,156       | 24,952                  | Chip Seal          | Prancing Deer     | FM 1863            |
| Sierra Vista Dr  | 3,606       | 87,535                  | Chip Seal          | Cul-de-sac        | Cul-de-sac         |
| Spotted Deer Dr  | 948         | 19,676                  | Chip Seal          | Prancing Deer     | Running Deer       |
| Stallion Ln      | 995         | 22,525                  | Chip Seal          | Casey Rd          | Bobcat Dr          |
| Sun Valley Dr    | 462         | 10,957                  | Chip Seal          | TX-46             | 462 LF NW of TX-46 |
| Taylor Pt        | 3,537       | 81,687                  | Chip Seal          | Shepherds Ranch   | Cul-de-sac         |

## Partial Streets

| Route         | Length (ft) | Area (ft <sup>2</sup> ) | Proposed Treatment        | From               | To                               |
|---------------|-------------|-------------------------|---------------------------|--------------------|----------------------------------|
| Flat Rock Vw  | 1,485       | 30,847                  | Chip Seal                 | Barton Hill        | Casey                            |
| Old Boerne Rd | 785         | 17,270                  | Exhibit 1 (Old Boerne Rd) | Starbucks Driveway | Bulverde Crossing and Old Boerne |
| Bulverde Rd   | 2,217       | 48,775                  | 2" Overlay w/Underseal    | Bulverde Hills     | US 281                           |
| High Ridge Dr | 1,553       | 34,669                  | Chip Seal                 | Panther            | Deerfield Terrace                |

## Localized Roadway Repairs

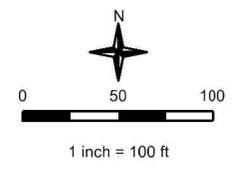
| Street          | Type of Distress                         | Latitude    | Longitude    | Length (ft) | Width (ft) | Area (SY) | Lane                   | Treatment        |
|-----------------|--|-------------|--------------|-------------|------------|-----------|------------------------|------------------|
| Algerita Ln     | Edge Failure                             | 29.80104723 | -98.4405433  | 225         | 4          | 100.0     | West Bound             | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.77455672 | -98.4298889  | 100         | 2          | 22.2      | East Bound,North Bound | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.77455119 | -98.43002602 | 98          | 2          | 21.8      | South Bound,West Bound | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.77412167 | -98.43026879 | 40          | 3          | 13.3      | East Bound,North Bound | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.77312521 | -98.44029084 | 128         | 3          | 42.7      | East Bound,North Bound | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.7712159  | -98.44261506 | 100         | 2          | 22.2      |                        | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.76784802 | -98.4464626  | 160         | 2          | 35.6      |                        | Edge Repair      |
| Barton Hill Dr  | Edge Failure                             | 29.76757969 | -98.44656218 | 33          | 2          | 7.3       | North Bound,West Bound | Edge Repair      |
| Bulverde Rd     | Edge Failure                             | 29.74275077 | -98.43664755 | 110         | 2          | 24.4      | East Bound             | Edge Repair      |
| Ceniso Cir      | Edge Failure                             | 29.80037512 | -98.44274132 | 30          | 2          | 6.7       |                        | Edge Repair      |
| Flat Rock View  | Edge Failure                             | 29.7705517  | -98.44346289 | 30          | 2          | 6.7       | East Bound,North Bound | Edge Repair      |
| Onion Creek     | Edge Failure                             | 29.75019639 | -98.39511137 | 100         | 2          | 22.2      |                        | Edge Repair      |
| Onion Creek     | Edge Failure                             | 29.74869554 | -98.39730844 | 65          | 2          | 14.4      | East Bound,North Bound | Edge Repair      |
| Onion Creek     | Edge Failure                             | 29.74801473 | -98.39859497 | 22          | 2          | 4.9       |                        | Edge Repair      |
| Taylor Point    | Edge Failure, Alligating                 | 29.78954026 | -98.49755935 | 34          | 5          | 18.9      | North Bound            | Edge Repair      |
| Algerita Ln     | Base Failure, Alligatoring, Pothole      | 29.80082255 | -98.44011341 | 60          | 5          | 33.3      | West Bound             | FDR              |
| Barton Hill Dr  | Alligatoring, Base Failure               | 29.77365018 | -98.43085547 | 11          | 10         | 12.2      | Center                 | FDR              |
| Barton Hill Dr  | Base Failure                             | 29.7735792  | -98.43106236 | 20          | 14         | 31.1      | Center                 | FDR              |
| Barton Hill Dr  | Base Failure                             | 29.770224   | -98.4437529  | 38          | 6          | 25.3      | East Bound,South Bound | FDR              |
| Barton Hill Dr  | Base Failure, Alligatoring               | 29.77340168 | -98.4372472  | 85          | 4          | 37.8      | East Bound             | FDR              |
| Barton Hill Dr  | Base Failure, Alligatoring               | 29.76809191 | -98.44605625 | 90          | 6          | 60.0      |                        | FDR              |
| Barton Hill Dr  | Base Failure, Alligatoring               | 29.77397058 | -98.43041641 | 34          | 5          | 18.9      | East Bound,West Bound  | FDR              |
| Bulverde Rd     | Alligatoring                             | 29.74246078 | -98.43934614 | 160         | 6          | 106.7     | East Bound             | FDR              |
| Bulverde Rd     | Alligatoring, Base Failure               | 29.74304125 | -98.43601774 | 72          | 5          | 40.0      | West Bound             | FDR              |
| Bulverde Rd     | Base Failure, Alligatoring               | 29.74299991 | -98.43603048 | 45          | 15         | 75.0      | East Bound             | FDR              |
| Casey Rd        | Alligatoring, Base Failure               | 29.77263108 | -98.44886401 | 105         | 22         | 256.7     |                        | FDR              |
| Casey Rd        | Base Failure, Alligatoring               | 29.77236419 | -98.44921052 | 170         | 23         | 434.4     |                        | FDR              |
| Taylor Point    | Alligatoring, Base Failure               | 29.78969243 | -98.49737763 | 15          | 7          | 11.7      | North Bound            | FDR              |
| Buck Lane       | Base Failure, Alligatoring               | 29.751345   | -98.444496   | 220         | 6          | 146.7     | North Bound            | Blade & Level Up |
| Buck Lane       | Base Failure                             | 29.7534963  | -98.44451467 | 218         | 20         | 484.4     |                        | Blade & Level Up |
| Buck Lane       | Base Failure, Alligatoring               | 29.75025    | -98.444469   | 178         | 18         | 356.0     |                        | Blade & Level Up |
| Cedar View      | Base Failure                             | 29.77466091 | -98.43706501 | 200         | 9          | 200.0     | North Bound            | Blade & Level Up |
| Flat Rock View  | Base Failure                             | 29.77352207 | -98.44578709 | 237         | 20         | 526.7     |                        | Blade & Level Up |
| Grazing Deer Dr | Alligatoring, Base Failure               | 29.74565115 | -98.38449219 | 93          | 9          | 93.0      | Center                 | Blade & Level Up |
| Kuntz Run       | Base Failure, Alligatoring               | 29.7895871  | -98.49760998 | 43          | 6          | 28.7      |                        | Blade & Level Up |
| Leopard Dr      | Base Failure                             | 29.75046302 | -98.45002189 | 34          | 20         | 75.6      |                        | Blade & Level Up |
| Old Boerne Rd   | Base Failure, Alligatoring, Edge Failure | 29.7972571  | -98.42321053 | 280         | 23         | 715.6     |                        | Blade & Level Up |
| Onion Creek     | Base Failure, Alligatoring               | 29.74888753 | -98.39695168 | 280         | 20         | 622.2     |                        | Blade & Level Up |
| Onion Creek     | Base Failure, Alligatoring               | 29.7485791  | -98.39760549 | 185         | 21         | 431.7     |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure               | 29.74512659 | -98.38220687 | 50          | 10         | 55.6      |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure               | 29.74520298 | -98.38620577 | 76          | 8          | 67.6      |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure               | 29.74485191 | -98.38638447 | 116         | 6          | 77.3      |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure               | 29.74500241 | -98.38624634 | 68          | 6          | 45.3      |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure               | 29.74519308 | -98.38612799 | 114         | 12         | 152.0     |                        | Blade & Level Up |
| Prancing Deer   | Alligatoring, Base Failure, Pothole      | 29.7451075  | -98.38191994 | 310         | 21         | 723.3     |                        | Blade & Level Up |
| Stallion        | Base Failure                             | 29.77090064 | -98.45005576 | 527         | 10         | 585.6     | South Bound            | Blade & Level Up |
| Sun Valley      | Alligatoring, Base Failure               | 29.8038701  | -98.38554666 | 265         | 24         | 706.7     |                        | Blade & Level Up |

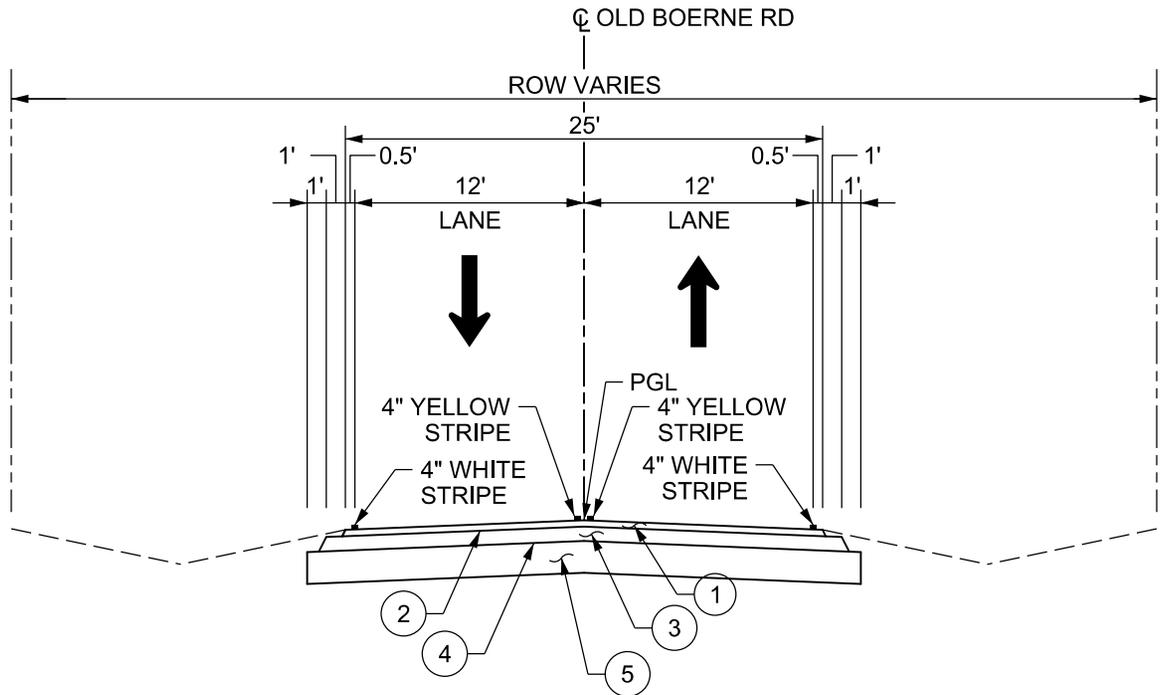


City of Bulverde  
2022 Street Maintenance Plan  
Old Boerne Road Reconstruction

**Legend**

Limits of Reconstruction





**PROPOSED TYPICAL SECTION**  
OLD BOERNE RD

**NOTE:**  
PAVEMENT DESIGN FOLLOWS THE DESIGN OF TXDOT'S  
FUTURE IMPROVEMENTS. GEOTECHNICAL INFORMATION  
ON EXISTING CONDITIONS IS AVAILABLE UPON REQUEST.

**PROPOSED PAVEMENT SECTION**

- ① 2" SP-C SAC-B (PG 70-22)
- ② TACK COAT
- ③ 4.5" TY B (PG 64-22)
- ④ PRIME COAT
- ⑤ 10" FLEX BAS TY D GR 1-2 OR 5

|   |  |           |
|---|--|-----------|
| CITY OF BULVERDE, TX                          |  |           |
| STREET MAINTENANCE PLAN 2022<br>OLD BOERNE RD |  |           |
|   |  | EXHIBIT 1 |

## **EXHIBIT F: BID FORM**

**BID FORM**

**Construction Bid For**

**2022 STREET MAINTENANCE PROGRAM**

TO: HONORABLE MAYOR AND COUNCIL MEMBERS  
CITY OF BULVERDE, TEXAS

THE UNDERSIGNED BIDDER, having familiarized himself with the work required by the contract documents, the site where the work is to be performed, local labor conditions and all laws, regulations, and other factors affecting performance of the work, and having satisfied himself of the expense and difficulties attending performance of the work;

HEREBY PROPOSES and agrees, if this bid is accepted, to enter into an Agreement in the form attached to perform all work, including the assumption of all obligations, duties, and responsibilities necessary to the successful completion of the contract and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the work; tools, equipment, supplies, transportation, facilities, labor, superintendence, and services required to perform the work; bonds, insurance and submittals; all as indicated or specified in the Contract Documents to be performed or furnished by Contractor for the prices set forth in the following unit price or lump sum schedule.

2022 Street Maintenance

Schedule I – Chip Seal

| ITEM NO. | TXDOT ITEM NO. | ITEM DESCRIPTION                     | QUANTITY | UNIT | UNIT PRICE | TOTAL PRICE |
|----------|----------------|--------------------------------------|----------|------|------------|-------------|
| 1.1      | 300, 316       | Seal Coat (Single Surface Treatment) | 94,948   | SY   |            |             |
| 1.4      | 510            | Traffic Control                      | 1        | LS   |            |             |
| 1.5      | 500            | Mobilization                         | 1        | LS   |            |             |

**TOTAL BID**                      \$ \_\_\_\_\_  
(Figures)

**TOTAL BID** \_\_\_\_\_  
\_\_\_\_\_  
(Words)

Schedule II – Asphalt Overlays

| ITEM NO. | TXDOT ITEM NO. | ITEM DESCRIPTION   | QUANTITY | UNIT | UNIT PRICE | TOTAL PRICE |
|----------|----------------|--------------------|----------|------|------------|-------------|
| 2.1      | 340 6032       | 2" Type C HMA      | 596      | TON  |            |             |
| 2.2      | 3002           | Underseal Membrane | 1,355    | GAL  |            |             |
| 2.3      | 510            | Traffic Control    | 1        | LS   |            |             |
| 2.4      | 500            | Mobilization       | 1        | LS   |            |             |

**TOTAL BID**                      \$ \_\_\_\_\_  
(Figures)

**TOTAL BID** \_\_\_\_\_  
\_\_\_\_\_  
(Words)





2022 Street Maintenance

The undersigned bidder agrees to be bound by this bid for a period not to exceed thirty (30) days.

The undersigned bidder agrees to furnish the required bonds and to enter into a contract within ten (10) days after Owner's acceptance of this bid, and further agrees to complete all work as specified in the contract Agreement Form after the commencement of contract time, as defined in the General Conditions.

The undersigned agrees that the unit prices shall govern in checking the bid and, should a discrepancy exist in the total prices and total amount of bid as listed above, after extensions are checked and corrections made, if any, the total amount of the bid as corrected shall be used in awarding the contract.

The undersigned bidder hereby certifies (a) that this bid is genuine and is not made in the interest of, or on the behalf of, any undisclosed person, firm, or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; (b) that he has not directly or indirectly solicited any other bidder to put in a false or sham bid; (c) that he has not solicited or induced any person, firm, or corporation to refrain from bidding; and (d) that he has not sought by collusion to obtain for himself any advantage over any other bidder or over the Owner.

The undersigned bidder acknowledges receipt of the following addenda, which have been considered in preparation of this bid:

No. \_\_\_\_\_ Dated \_\_\_\_\_

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SIGNATURE OF BIDDER:

If an individual: \_\_\_\_\_, doing business as \_\_\_\_\_

2022 Street Maintenance

If a Partnership: \_\_\_\_\_

by \_\_\_\_\_, partner

If a Corporation: \_\_\_\_\_

(a \_\_\_\_\_ Corporation)

by \_\_\_\_\_

Title \_\_\_\_\_ (SEAL & ATTEST)

Business Address of Bidder \_\_\_\_\_

\_\_\_\_\_

If bidder is a joint venture, other party must sign below.

If an Individual: \_\_\_\_\_, doing business

as \_\_\_\_\_

If a Partnership: \_\_\_\_\_

by \_\_\_\_\_, partner

\_\_\_\_\_

If a Corporation: \_\_\_\_\_

(a \_\_\_\_\_, Corporation)

by \_\_\_\_\_

Title \_\_\_\_\_ (SEAL & ATTEST)

PREVIOUS EXPERIENCE OF BIDDER

SIMILAR PROJECTS COMPLETED (List at least three)

1. Date: \_\_\_\_\_ Value: \_\_\_\_\_

Name of Project, Address, Type of Improvement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name/Phone of Owner: \_\_\_\_\_

Name/Phone of Engineer: \_\_\_\_\_

2. Date: \_\_\_\_\_ Value: \_\_\_\_\_

Name of Project, Address, Type of Improvement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name/Phone of Owner: \_\_\_\_\_

Name/Phone of Engineer: \_\_\_\_\_

3. Date: \_\_\_\_\_ Value: \_\_\_\_\_

Name of Project, Address, Type of Improvement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name/Phone of Owner: \_\_\_\_\_

Name/Phone of Engineer: \_\_\_\_\_

LIST OF SUBCONTRACTORS (IF ANY)

1. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
2. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
3. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
4. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
5. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
6. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_
  
7. Name of Business: \_\_\_\_\_  
Type of Work: \_\_\_\_\_  
Name/Phone of Owner: \_\_\_\_\_  
Name/Phone of Engineer: \_\_\_\_\_