



Contract Documents and Technical Specifications

CONVERSE SIDEWALK PROJECT (CDBG)
Converse, Texas

City of Converse

6S Project No. 2017-009-01
Contract No.

December 20, 2018

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P.O. Box 689
Pleasanton, Texas 78064
t 210.775.8003





CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

FOR

CONVERSE SIDEWALK PROJECT (CDBG)
Job No. 2017-009-01, Contract No. 1
Converse, Bexar County, TEXAS

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NOTICE TO BIDDERS

The City of Converse will receive bids for construction of "Converse Sidewalk Project (CDBG), Job No.2017-009-01, Contract No. 1; Converse, Bexar County, Texas" at the office of the ENGINEER (6S Engineering ,Inc., 12274 Bandera Rd., Suite 248, Helotes, Texas 78023). The project includes construction and reconstruction of sidewalks and some curb sections within the City of Converse. A Non-Mandatory Pre-Bid Conference will be held Tuesday, January 15, 2019 at 11:00 a.m. at 403 S. Seguin, Converse, Texas.

Bid closing date and time is 3:00 p.m., Friday, February 1, 2019 at 403 S. Seguin, Converse, Texas. Immediately after the closing time the bids will be publicly opened and read

Proposals must be accompanied by a cashier's check or a bid bond from a surety company holding a permit in the State of Texas for an amount equal to 2% of the amount bid. The amount of said cashier's check or bond will be forfeited to the OWNER and the bank or surety shall be liable to the OWNER for the amount in the event the successful bidder shall fail or refuse to enter into a contract or furnish bonds as hereafter required within ten (10) days after the date of notice of award.

The successful bidder must furnish a performance bond and a payment bond on the forms provided, each in the amount of 100% of the Contract price from a surety company licensed by the State of Texas.

Copies of the bidding documents may be obtained from www.CivcastUSA.com: search "Converse Sidewalk Project (CDBG)". Bidders must register on this website in order to view and/or download specifications, plans, and other related documents for this project. There is NO anticipated charge to view or download documents.

The OWNER reserves the right to reject any or all bids and to waive informalities or irregularities in bidding. In case of lack of clarity in stating prices, the OWNER reserves the right to consider the most advantageous construction thereof, or reject the bid.

City of Converse, Texas

SECTION B

INSTRUCTIONS TO BIDDERS

1. Preparation of Bids:

Unless otherwise directed submit bids in duplicate on the prescribed forms or copies thereof. Prepare bids in accordance with the Contract Documents including but not limited to the Notice to Bidders, the Instructions to Bidders, and any instructions on the Proposal and Bid Sheet. A blank space on the Bid Sheet must be filled in, in ink, in both words and figures as required, with amounts extended and totaled. Written amounts shall govern if different from figures. If optional or alternate items are included in the Proposal and bidder does not wish to bid these items, enter the words NO BID in the appropriate space. Alternate bids will not be considered unless specifically requested in the proposal form. Any statement or letter qualifying the bid will be cause for rejection.

2. Owner:

The OWNER reserves the right to reject any or all bids and to waive informalities and irregularities in bidding. Contract award will be made to the responsible bidder who, in the OWNER's judgment, will be most advantageous to the OWNER and result in the best and most economical completion of the project.

3. Bidders:

Bidders desiring further information or interpretation must request such information or interpretation from the ENGINEER. Should a Bidder discover a discrepancy or an omission in plans or specifications, he should at once notify the ENGINEER via email at jswaim@6s-engineering.com so that an addendum can be issued. No explanation or interpretation other than an addendum issued by the ENGINEER will be considered official or binding.

4. Award of Contract:

The OWNER reserves the right to reject any and all bids. Unless the OWNER rejects all bids, an award will be made as quickly as possible consistent with the time required to analyze the bids. The award of the Contract may be made on the BASE BID only or any combination of the BASE BID AND ALTERNATE BIDS.

5. Conditions of Work:

Bidders are expected to be fully informed of construction and labor conditions under which the work will be performed, and to have thoroughly reviewed the plans, contract documents and specifications. Failure to do so will not relieve a successful bidder of any obligation to furnish material and labor necessary to complete the project.

A soils report and log of borings is not available for Bidder's. Bidders are expected to examine the site and such reports and then decide for themselves the character of the materials to be encountered.

SECTION B - INSTRUCTION TO BIDDERS

OWNER and ENGINEER disclaim any responsibility for the accuracy, true location, and extent of the surface and subsurface investigations that have been prepared by others. OWNER and ENGINEER further disclaim responsibility for interpretation of that data by Bidders, i.e. projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water.

6. Time of Completion:

Attention is directed to the proposal wherein either a blank space is provided for the bidder to enter the number of calendar days within which he agrees to complete the work, unless the completion time is specified by the OWNER.

7. Substitutions:

Where materials or equipment are specified by a trade or brand name, it is not the intention of OWNER to discriminate against an equivalent product of another manufacturer, but to set a definite standard of quality or performance, and to establish an equivalent basis for the evaluation of bids. In preparing his bid, each bidder is expected to include in his base bid the cost of the items so specified.

8. Telegraphic or Telephonic Modifications:

Any bidder may modify his bid by telegraphic or telephonic facsimile communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic or telephonic facsimile communication is received by OWNER prior to said closing time, and provided further, that OWNER is satisfied that a written confirmation of such telegraphic or telephonic facsimile modifications over the signature of the bidder was mailed prior to such closing time.

9. Qualifications of Bidders:

Proposals must be accompanied by a statement of the qualifications of the Bidder to properly execute the work. Statement should be on the form provided. In addition, complete information on any work which the Bidder failed to complete or abandoned within one year period to date of proposal should be included.

10. Financial Statement:

Each Proposal must be accompanied by a statement of the financial condition of the bidder as reflected by his most recently prepared statement. Submit in a sealed envelope marked, "Financial Statement of (name of bidder) for (description of project)". This statement will be examined only if the bidder's Proposal is actively considered for award, otherwise it will be returned unopened after the award of the Contract.

SECTION B - INSTRUCTION TO BIDDERS

11. Delivery of Proposals:

It is the bidder's responsibility to deliver his Proposal at the proper time to the proper place. The fact that a Proposal was dispatched will not be considered. The bidder must have the Proposal actually delivered.

12. Number of Signed Sets of Documents:

Agreement and Bonds will be prepared in not less than four counterpart (original signed) sets. OWNER will furnish CONTRACTOR two sets of conforming Contract Documents, Technical Specifications, and six sets of Plans free of charge, and additional sets will be obtained from ENGINEER at commercial reproduction rates.

13. Sales Tax:

Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code §151.309 as a political subdivision of the State of Texas. Owner shall provide Contractor with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and accordingly, Contractor shall not collect Texas sales and use taxes from Owner with respect to this contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code §151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this contract that are performed at the job site and are either integral to the performance of this contract or expressly required to be provided by this contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provisions for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provisions regarding the exemption of Texas sales and use taxes.

14. Worker's Compensation Insurance:

See the Special Conditions of the Agreement.

END OF SECTION B



QUALIFICATION STATEMENT

PLEASE USE THE ATTACHED FORM TO SUBMIT A
QUALIFICATION STATEMENT (IN A SEALED ENVELOPE) WITH YOUR BID.
ONLY THOSE BIDDERS CONSIDERED FOR AWARD WILL BE OPENED.

FINANCIAL STATEMENT

PLEASE SUBMIT A COPY OF YOUR MOST RECENT FINANCIAL STATEMENT IN THE PACKAGE
DESCRIBED ABOVE.

6S ENGINEERING, INC.
P.O. BOX 689, PLEASANTON, TEXAS 78064



QUALIFICATION STATEMENT

TO BE COMPLETED AND SUBMITTED WITH THE BID:

Submitted to: _____

By: _____ (CORPORATION)

Tax I.D. (FIEN) No.: _____

Owners Name: _____

Principal Office: _____

Address: _____

Phone Number: _____

The signatory of this questionnaire guarantees the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

1. How many years has your organization been in business as a general contractor under your present business name? _____

2. How many years experience in this type of construction work has your organization had:

(a) as a general contractor? _____

(b) as a subcontractor? _____

3. What projects has your organization completed?

Contract Amount	Name of Project	Brief Project Description	When Completed	Name/Address Phone No. of Owner

4. Have you ever failed to complete any work awarded to you? _____



If so, where and why? _____

5. Have you completed any projects within a 10-mile radius of this project? _____

If so, when, where, what? _____

6. The work, if awarded to you, will have the personal supervision of whom? _____

a. For Administrative Management? _____

b. For Construction Superintendence? _____

c. What experience does the designated construction superintendent have in this type of work?

7. What portions of the work do you intend to sublet? Please list the names of potential subcontractors with which you have sublet this type of work before.

8. What equipment do you own that is available for the proposed work?

Quantity	Item	Description, Size Capacity, Etc.	Condition	Service	Locat
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

9. Do you have adequate bonding capacity to provide a performance bond and labor and material payment bond for this project? What is your available bonding capacity?



10. List the Construction Projects your organization has underway on this date.

Contract Amount	Type of Work	Percent Completed	Company/Address/Phone umber of Owner or Contracting Officer Phone Number	Engineer Contact/ Phone Number

11. Please attach a copy of your most recent financial statement. Submit the following in a sealed envelope marked, "Financial Statement of (name of bidder) for (description of project)":

- Provide most recent audited or reviewed yearend financial statements, if available.
- Provide most current unaudited financial statements.
- Include auditor’s opinion, balance sheets, income statement, cash flow statement and footnotes.

This statement will be examined only if the bidder’s Proposal is actively considered for award; otherwise it will be returned unopened after the award of the Contract.

12. Please attach a list with contact information of:

- Banking References
- Accountant
- Surety Agent

13. Are any of your employees or subcontractors’ employees, who would be working on this project, covered by a collective bargaining agreement?



(Name & Title of Person Signing)

STATE OF _____

COUNTY OF _____

_____ being duly sworn deposes and says that he/she is _____
of the above _____
(Name of Organization)

and that the answers to the foregoing questions and all statements therein contained are true and correct.

Sworn to before me this
_____ Day of _____ 20____

(Notary Public)

My Commission Expires: _____

PROPOSAL TO
City of Converse
FOR
Converse Sidewalk Project (CDBG)
Job No. 2017-009-01
Converse, Bexar County, TEXAS

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm or corporation; that he has carefully examined the form of contract, instructions to bidders, specifications and plans, and has carefully examined the locations, conditions, and classes of materials of the proposed work; and agrees that he will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the materials called for in the contract and specifications in the manner prescribed therein, and for the prices set forth in the attached bid sheets.

It is understood that the work to be done will be paid for at the bid unit price or bid lump sum price as hereinafter established for each item subject to the provisions of the General or Special Conditions governing increases or decreases of bid quantities.

It is further understood and agreed that the work is to be completed in full within **140** calendar days after notification to proceed, and that the undersigned proposes to begin work promptly after notification to proceed.

CONTRACTOR

Signature: _____

Attest:

Printed Name: _____

Date: _____

Address: _____

SEAL

Phone No. _____

(Certification if Bidder is a Corporation)

I, _____, certify that I am the secretary of the corporation herein termed CONTRACTOR; and that the person whose name appears above was and is _____ (TITLE) of said corporation; and that this Contract was duly signed for and in behalf of said corporation by authority of its governing body, and such contract is within the scope of its corporate powers.

Signed: _____

(Corporate Seal)

SECTION D

**BID FORM (SCHEDULE OF VALUES)
FOR
CITY OF CONVERSE - CDBG SIDEWALK PROJECT
(BASE BID)**

ITEM NO.	ITEM DESCRIPTION	APPROXIMATE QUANTITIES	UNIT	UNIT BID PRICE	EXTENDED AMOUNT
100.1	MOBILIZATION	1	LS		
100.2	INSURANCE AND BOND	1	LS		
101.1	PREPARING RIGHT OF WAY	1	LS		
103.1	REMOVE SIDEWALKS	863	LF		
103.3A	REMOVE CONCRETE SIDEWALKS	2600	SF		
103.3B	REMOVE CONCRETE DRIVEWAYS	1540	SF		
500.1	CONCRETE CURB	863	LF		
502.1	CONCRETE SIDEWALKS CONVENTIONALLY FORMED	3922	SY		
503.1	PORTLAND CEMENT CONCRETE DRIVEWAY - RESIDENTIAL	175	SY		
512.3	VALVE BOX ADJUSTMENT	4	EA		
513.1	REMOVING AND REPLACE MAIL BOXES (STANDARD)	194	EA		
513.1	REMOVING AND REPLACE MAIL BOXES (ORNAMENTAL)	14	EA		
516.2	ST. AGUSTINE SODDING	3219	SY		
530.1	BARRICADES, SIGNS AND TRAFFIC HANDLING	1	LS		
SUP 2	SIGN TO BE RELOCATED	5	EA		
531.3	R1-1 STOP (30") (HIGH INTENSITY)	2	EA		
531.4	R1-2 YIELD (36") (HIGH INTENSITY)	1	EA		
536.7	24 INCH WIDE WHITE LINE	840	LF		
540.1	CURB INLET GRAVEL FILTERS	74	LF		
552.1	REMOVING AND RELOCATING IRRIGATION SYSTEM	7	LOT		
CONSTRUCTION SUB TOTAL =					
BASE BID TOTAL =					

AGREEMENT

STATE OF TEXAS

Converse, Bexar County

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between The City of Converse hereinafter termed OWNER, and _____, a Texas corporation hereinafter termed CONTRACTOR.

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

Converse Sidewalk Project (CDBG)
Job No. 2017-009-01, Contract No. 1
Converse, Bexar County, TEXAS

and all extra work in connection therewith, and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the General and Special Conditions of the Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Technical Specifications and addenda therefore as prepared by 6S ENGINEERING ,INC., hereinafter termed ENGINEER, each of which has been identified by the endorsement of the CONTRACTOR, and together with the CONTRACTOR's written Proposal, and the Performance and Payment Bonds thereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence the Work (as such term is defined in the Contract Documents) within ten days after the date written notice to do so shall be given to him by OWNER and to fully complete the Work to the satisfaction of OWNER within «Days» calendar days after the date of the written notice to commence Work.

The CONTRACTOR is and at all times shall remain an independent CONTRACTOR, solely responsible for the manner and method of completing its Work under this Contract, with full power and authority to select the means, method and manner of performing such Work, so long as the Work complies with this Contract including the drawings and technical specifications.

The CONTRACTOR agrees that it shall be solely responsible for the safety of its employees and all other persons and shall be solely responsible for determining the course of action necessary to protect all persons, including members of the public, from bodily injury or property damage during its Work on the project, including the erection of barricades or the installation of other traffic or pedestrian control measures.

As part of the consideration for the payments and agreements hereinafter mentioned, **CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE OWNER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS AND CAUSES OF ACTION OF WHATSOEVER NATURE AND CHARACTER WHICH MAY BE ASSERTED BY ANY PERSON OR ENTITY IN CONNECTION WITH CONTRACTOR'S WORK (INCLUDING THE WORK OF SUBCONTRACTORS) ON THE PROJECT, AND THIS INDEMNITY AND HOLD HARMLESS AGREEMENT IS SPECIFICALLY INTENDED TO COVER ALL COSTS OF FUTURE LITIGATION, INCLUDING ATTORNEY'S FEES AND OTHER DEFENSE COSTS.**

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

THE GENERAL AND SPECIAL CONDITIONS ATTACHED TO THIS AGREEMENT CONTAIN PROVISIONS THAT MAY RELIEVE ONE PARTY FOR RESPONSIBILITY IT WOULD OTHERWISE HAVE UNDER THE LAW FOR DAMAGES OR OTHER LIABILITY ARISING OUT OF THE WORK.

EACH OF THE PARTIES HERETO SPECIFICALLY AGREES THAT IT HAS A DUTY TO READ THIS AGREEMENT, THE GENERAL AND SPECIAL CONDITIONS, AND ALL OTHER ATTACHMENTS TO THIS AGREEMENT AND AGREES THAT IT IS CHARGED WITH NOTICE AND KNOWLEDGE OF THE TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO; THAT IT HAS IN FACT READ THIS AGREEMENT AND ALL ATTACHMENTS HERETO AND IS FULLY INFORMED AND HAS FULL NOTICE AND KNOWLEDGE OF THE TERMS, CONDITIONS AND EFFECTS OF THIS AGREEMENT; THAT IT HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS CHOICE THROUGHOUT THE NEGOTIATIONS PRECEDING ITS EXECUTION OF THIS AGREEMENT AND HAS RECEIVED OR VOLUNTARILY CHOSEN NOT TO RECEIVE THE ADVICE OF ITS ATTORNEY IN ENTERING INTO THIS AGREEMENT; AND THAT IT RECOGNIZES THAT CERTAIN TERMS OF THIS AGREEMENT AND ALL ATTACHMENTS HERETO RESULT IN ONE PARTY ASSUMING THE LIABILITY INHERENT IN SOME ASPECTS OF THE TRANSACTION AND RELIEVING THE OTHER PARTY OF ITS RESPONSIBILITY FOR SUCH LIABILITY. EACH PARTY HERETO AGREES AND COVENANTS THAT IT WILL NOT CONTEST THE VALIDITY OR ENFORCEMENT OF ANY EXCULPATORY PROVISION OF THIS AGREEMENT ON THE BASIS THAT THE PARTY HAD NO NOTICE OR KNOWLEDGE OF SUCH PROVISION OR THAT THE PROVISION IS NOT "CONSPICUOUS".

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

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

OWNER

CONTRACTOR

By: _____

By: _____

ATTEST:

ATTEST:

(Certification if Bidder is a Corporation)

I, _____, certify that I am the secretary of the corporation herein termed the CONTRACTOR; and that the person whose name appears above was and is _____ of said corporation,

Title

and that this Contract was duly signed for and in behalf of said Corporation by authority of its governing body, and such contract is within the scope of its corporate powers.

SIGNED:

(Corporate Seal)

SECTION E

PERFORMANCE BOND

STATE OF TEXAS

Converse, Bexar County

KNOW ALL MEN BY THESE PRESENTS: That _____
_____ of the City of _____, County of
_____, and State of _____, as Principal, and

authorized under the laws of the State of Texas to act as Surety on bonds for Principal, are held and
firmly bound unto _____
_____(OWNER) in the penal sum
of _____
_____ Dollars (\$ _____), for payment whereof, the said Principal and
Surety bind themselves and their heirs, administrators, executors, officers, directors, shareholders,
partners, successors, and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the
_____ day of _____, 20____, for

Converse Sidewalk Project (CDBG)
Job No. 2017-009-01
Converse, Bexar County, TEXAS

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

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall
faithfully perform said Contract and shall in all respects fully and faithfully observe and perform all and
singular the covenants, conditions and agreements in and by said Contract agreed and covenanted by
the Principal to be observed and performed during the original term of the Contract and any extensions
thereof that may be granted by Owner, and during the life of any guaranty or warranty required under
the Contract, and according to the true intent and meaning of said Contract and the Contract
Documents and the Plans and Specifications related thereto, then this obligation shall be void;
otherwise to remain in full force and effect. Surety, for value received, stipulates and agrees that no
change, extension of time, alteration or addition to the terms of the Contract, or to the work performed
thereunder, or the plans, specifications, or drawings accompanying the same, shall in anywise affect its
obligation on this bond, and it does hereby waive notice of any such change, extension of time,
alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20____.

Principal

Surety

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address _____

Address _____

Telephone

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

Telephone

SECTION F

PAYMENT BOND

STATE OF TEXAS

Converse, Bexar County

KNOW ALL MEN BY THESE PRESENTS: That _____
_____ of the City of _____, County of
_____, and State of _____, as Principal, and
_____ authorized under the laws of the State of Texas to act as
Surety on bonds for Principals, are held and firmly bound unto
_____ (OWNER) in the penal sum
of _____
_____ Dollars (\$_____), for the payment whereof, the said Principal and
Surety bind themselves and their heirs, administrators, executors, officers, directors, shareholders,
partners, successors and assigns, jointly and severally, by these presents.

WHEREAS, the Principal has entered into a certain written contract with the OWNER, dated the
_____ day of _____, 20____, for

Converse Sidewalk Project (CDBG)
Job No. 2017-009-01
Converse, Bexar County, TEXAS

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

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

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

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this _____ day of _____, 20 ____.

Principal

Surety

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address _____

Address _____

Telephone

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

Telephone

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GENERAL CONDITIONS OF AGREEMENT

1. DEFINITION OF TERMS

1.1 OWNER, CONTRACTOR AND ENGINEER. The OWNER, the CONTRACTOR and the ENGINEER are those persons or organization identified as such in the Agreement and are referred to throughout the Contract Documents as if singular in number and masculine in gender. The term ENGINEER means the ENGINEER or his duly authorized representative. The ENGINEER shall be understood to be the ENGINEER of the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the ENGINEER and the CONTRACTOR.

1.2 CONTRACT DOCUMENTS. The Contract Documents shall consist of the Notice to Bidders (Advertisement), Instructions to Bidders, Proposal, signed Agreement, Performance and Payment Bonds (when required), Special Bonds (when required), General Conditions of the Agreement, Special Conditions of Agreement, Technical Specifications, Plans, and all modifications thereof incorporated in any of the documents before the execution of the agreement.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Agreement, Performance and Payment Bonds, Special Bonds (if any), Proposal, Special Conditions of Agreement, Notice to Bidders, Technical Specifications, Plans, and General Conditions of Agreement.

1.3 SUBCONTRACTOR. The term Subcontractor, as employed herein, includes only those having a direct contract with the CONTRACTOR and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

1.4 WRITTEN NOTICE. Written notice shall be deemed to have been duly served if 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 if delivered at or sent by registered mail to the last business address known to him who gives the notice.

1.5 WORK. The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor services, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards.

1.6 EXTRA WORK. The term "Extra Work" as used in this contract shall be understood to mean and include all work that may be required by the ENGINEER or OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR's proposal, except as provided under "Changes and Alterations", herein.

1.7 WORKING DAY. A "Working Day" is defined as any day not including Saturdays, Sundays or any legal holidays, in which weather or other conditions, not under the control of the CONTRACTOR, will permit construction of the principal units of the work for a period of not less than seven (7) hours between 7:00 a.m. and 6:00 p.m.

1.8 CALENDAR DAY. "Calendar Day" is any day of the week or month, no days being excepted.

1.9

1.09 SUBSTANTIALLY COMPLETED. By the term "substantially completed" is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

2. RESPONSIBILITIES OF THE ENGINEER AND THE CONTRACTOR

2.1 OWNER-ENGINEER RELATIONSHIP. The ENGINEER will be the OWNER's representative during construction. The duties, responsibilities and limitations of authority of the ENGINEER as the OWNER's representative during construction are as set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER and ENGINEER. The ENGINEER will advise and consult with the OWNER, and all of OWNER's instructions to the CONTRACTOR shall be issued through the ENGINEER.

2.2 PROFESSIONAL INSPECTION BY ENGINEER. The ENGINEER shall make periodic visits to the site to familiarize himself generally with the progress of the executed work and to determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the ENGINEER shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspection of the quality or quantity of the work or be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. Notwithstanding any other provision of this agreement or any other Contract Document, the ENGINEER shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any subcontractor or any of the CONTRACTOR's or subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the work.

2.3 PAYMENTS FOR WORK. The ENGINEER shall review CONTRACTOR's applications for payment and supporting data, determine the amount owed to the CONTRACTOR and approve, in writing, payment to CONTRACTOR in such amounts; such approval of payment to CONTRACTOR constitutes a representation to the OWNER of ENGINEER's professional judgement that the work has progressed to the point indicated to the best of his knowledge, information and belief, but such approval of an application for payment to CONTRACTOR shall not be deemed as a representation by ENGINEER that ENGINEER has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

2.4 INITIAL DETERMINATIONS. The ENGINEER initially shall determine all claims, disputes and other matters in question between the CONTRACTOR and the OWNER relating to the execution or progress of the work or the interpretation of the Contract Documents and the ENGINEER's decision shall be rendered in writing within a reasonable time. Should the ENGINEER fail to make such a decision within a reasonable time, appeal to arbitration may be taken as if his decision had been rendered against the party appealing.

2.5 OBJECTIONS. In the event the ENGINEER renders any decision which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this contract, either party may file with the ENGINEER within thirty days his written objection to the decision, and by such action may reserve the right to submit the question so raised to arbitration as hereinafter provided.

2.6 LINES AND GRADES. Unless otherwise specified, all lines and grades shall be furnished by the ENGINEER or his representative. Whenever necessary, construction work shall be suspended to permit performance of this work, but such suspension will be as brief as practicable and the CONTRACTOR shall be allowed no extra compensation therefor. The CONTRACTOR shall give the ENGINEER ample notice of the time and place where lines and grades will be needed. All stakes, marks, etc., shall be carefully preserved by the CONTRACTOR and in case of careless destruction or removal by him or his employees, such stakes, marks, etc., shall be replaced at the CONTRACTOR's expense.

2.7 CONTRACTOR'S DUTY AND SUPERINTENDENCE. The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the CONTRACTOR, in his absence and all directions given to him shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent CONTRACTOR, solely responsible for the manner and method of completing his work under this contract, with full power and authority to select the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the plans, specifications and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of himself, his employees and other persons, as well as for the protection of the safety of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder. Engineering construction drawings and specifications as well as any additional information concerning the work to be performed passing from or through the ENGINEER shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at his own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by him during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the ENGINEER, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of his work on the project, including but without limitation the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the ENGINEER, or any of his representatives, whether called to the CONTRACTOR's attention or not shall in no way relieve CONTRACTOR from his responsibility to complete all work in accordance with said plans and specifications.

2.8 CONTRACTOR'S UNDERSTANDING. It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER or ENGINEER either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

2.9 CHARACTER OF WORKERS. The CONTRACTOR agrees to employ only orderly and competent persons, skillful in the performance of the type of work required under this contract, to do the work; and agrees that whenever the ENGINEER shall inform him in writing that any personnel on the work are, in his opinion, incompetent, unfaithful or disorderly, such person or persons shall be discharged from the work and shall not again be employed on the work without the ENGINEER's written consent.

2.10 CONTRACTOR'S BUILDINGS. The building of structures for housing personnel, or the erection of tents or other forms of protection, will be permitted only at such places as the ENGINEER shall direct, and the

sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the ENGINEER.

2.11 SANITATION. Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the ENGINEER, and their use shall be strictly enforced.

2.12 SHOP DRAWINGS. The CONTRACTOR shall submit to the ENGINEER, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, four checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the ENGINEER shall pass upon them with reasonable promptness, making desired corrections. The CONTRACTOR shall make any corrections required by the ENGINEER, file with him two corrected copies and furnish such other copies as may be needed. The ENGINEER's approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has in writing called the ENGINEER's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR's responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the plans and specifications and within the contract time.

Such review by the ENGINEER shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of his duty as an independent CONTRACTOR as previously set forth, it being expressly understood and agreed that the ENGINEER does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR's performance hereunder.

2.13 PRELIMINARY APPROVAL. The ENGINEER shall not have the power to waive the obligations of this contract for the furnishing by the CONTRACTOR of good material, and of his performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the ENGINEER to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the ENGINEER shall, upon request of the CONTRACTOR, inspect and accept or reflect any material furnished, and in the event the material has been once accepted by the ENGINEER, such acceptance shall be binding on the OWNER, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered taken up or removed for re-examination, by the ENGINEER, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR, otherwise the expense thus incurred shall be allowed as EXTRA WORK, and shall be paid for by the OWNER; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval, he shall bear all expense of taking up, removing, and replacing this work if so directed by the ENGINEER.

2.14 DEFECTS AND THEIR REMEDIES. It is further agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the ENGINEER as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the ENGINEER, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.

2.15 CHANGES AND ALTERATIONS. The CONTRACTOR further agrees that the OWNER may make such changes and alterations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for

the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the work can fairly be classified under the specifications, such increase for such work under this contract will be paid for as provided for in the unit price items under Section 5 "Measurement and Payment", otherwise, such additional work shall be paid for as provided under Extra Work. In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall recompense the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

3. GENERAL OBLIGATIONS AND RESPONSIBILITIES

3.1 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE. The ENGINEER shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications without expense to him, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

3.2 OWNERSHIP OF DRAWINGS. All drawings, specifications and copies thereof furnished by the ENGINEER shall not be reused on other work, and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

3.3 RIGHT OF ENTRY. The OWNER reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agent or agents as he may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

3.4 COLLATERAL CONTRACTS. The OWNER agrees to provide by separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, except where such delays are specifically mentioned elsewhere in the Contract Documents.

3.5 DISCREPANCIES AND OMISSIONS. It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate contract documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the contract, specifications or drawings, the ENGINEER shall define which is intended to apply to the work.

3.6 EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT. The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

3.7 DAMAGES. In the event the CONTRACTOR is damaged in the course of the completion of the work by the act, neglect, omission, mistake or default of the OWNER, thereby causing loss to the CONTRACTOR, the OWNER agrees that it will reimburse the CONTRACTOR for such loss. In the event the OWNER or any of its subcontractors of any tier, is damaged in the course of the work by the act, negligence, omission, mistake or default of the CONTRACTOR, or should the CONTRACTOR unreasonably delay the progress of the work being done by

others on the job so as to cause loss for which the OWNER becomes liable, then the CONTRACTOR shall reimburse the OWNER for such loss.

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

3.9 PERFORMANCE AND PAYMENT BONDS. Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds in the forms provided by the OWNER for this purpose, guaranteeing faithful performance of the work and the fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER.

Unless otherwise approved in writing by the OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of Treasury of the United States.

The successful bidder must submit, within 10 days after the date of the Owner's Notice of Award, Payment and Performance Bonds on the forms furnished, in the amount of 100% of the total contract price. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by laws or regulations or the Contract Documents. The surety company issuing Payment and Performance Bonds must: (a) be authorized to do business in the State of Texas as evidenced by licensing through the State Board of Insurance; (b) be authorized to issue Payment and Performance Bonds in the amount required for the contract as indicated by the records of the State Board of Insurance; (c) for bonds over \$100,000, hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law ("Certificate of Authority") or have obtained reinsurance for any liability in excess of \$100,000 from a reinsurer that is authorized and admitted as a reinsurer in Texas and holds a Certificate of Authority; and (d) have a rating of at least "B+" in the current Best's Key Rating Guide and a financial size category of "XIII" or better.

The person executing a Payment and Performance Bond must be licensed as a Texas Local Recording Agent through the State Board of Insurance as required by the laws of the State of Texas and such licensing must be recorded in the files of the State Board of Insurance.

The person executing the Payment and Performance Bonds must hold an appointment from the surety company to execute Payment and Performance Bonds and bind such surety, and such appointment must be recorded in the office of the State Board of Insurance.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the CONTRACTOR's proposal.

3.10 LOSSES FROM NATURAL CAUSES. Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his own cost and expense.

3.11 PROTECTION OF ADJOINING PROPERTY; INDEMNIFICATION. The said CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such

damage on account of his failure to fully protect all adjoining property. **THE CONTRACTOR AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE OWNER AND ENGINEER AGAINST ANY CLAIM OR CLAIMS FOR DAMAGES DUE TO ANY INJURY TO ANY ADJACENT OR ADJOINING PROPERTY ARISING OR GROWING OUT OF THE PERFORMANCE OF THE CONTRACT; BUT ANY SUCH INDEMNITY SHALL NOT APPLY TO ANY CLAIM OF ANY KIND ARISING OUT OF THE EXISTENCE OR CHARACTER OF THE WORK.**

3.12 PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES; INDEMNIFICATION. **THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY AND SAVE THE OWNER AND ENGINEER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKMEN, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT.** When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the CONTRACTOR fails to do so, then the OWNER may at the option of the CONTRACTOR either pay directly any unpaid bills, of which the OWNER has written notice, or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the CONTRACTOR shall be resumed in full, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligation upon the OWNER by either the CONTRACTOR or his Surety.

3.13 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION; INDEMNIFICATION. The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or OWNER. **THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT RIGHTS AND SHALL INDEMNIFY AND SAVE THE OWNER AND ENGINEER HARMLESS FROM ANY LOSS ON ACCOUNT THEREOF, EXCEPT THAT THE OWNER SHALL DEFEND ALL SUCH SUITS AND CLAIMS AND SHALL BE RESPONSIBLE FOR ALL SUCH LOSS WHEN A PARTICULAR DESIGN, DEVICE, MATERIAL OR PROCESS OR THE PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS SPECIFIED OR REQUIRED BY THE OWNER; PROVIDED, HOWEVER, IF CHOICE OF ALTERNATE DESIGN, DEVICE, MATERIAL OR PROCESS IS ALLOWED TO THE CONTRACTOR, THEN CONTRACTOR SHALL INDEMNIFY AND SAVE OWNER HARMLESS FROM ANY LOSS ON ACCOUNT THEREOF.** If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly gives such information to the OWNER.

3.14 LAWS AND ORDINANCES. The CONTRACTOR shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations, which in any manner affect the contract or the work, and shall indemnify and save harmless the OWNER and ENGINEER against any claim arising from the violation of any such laws, ordinances, and regulations whether by the CONTRACTOR or his employees, except where such violations are called for by the provisions of the Contract Documents. If the CONTRACTOR observes that the plans and specifications are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in the contrary to such laws, ordinances, rules and regulations, and without such notice to the ENGINEER, he shall bear all costs arising therefrom. In case the OWNER is a body politic and corporate, the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the OWNER may enter into contract, shall be controlling, and shall be considered as part of this contract, to the same effect as though embodied herein.

3.15 ASSIGNMENT AND SUBLETTING. The CONTRACTOR further agrees that he will retain personal control and will give his personal attention to the fulfillment of this contract and that he will not assign by Power

of Attorney, or otherwise, or sublet said contract without the written consent of the ENGINEER, and that no part or feature of the work will be sublet to anyone objectionable to the ENGINEER or the OWNER. The CONTRACTOR further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the CONTRACTOR from his full obligations to the OWNER, as provided by this Agreement.

3.16 INDEMNIFICATION. THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER AND THE ENGINEER AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, JUDGEMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH DAMAGES, CLAIM, LOSS, DEMAND, SUIT, JUDGEMENT, COST OR EXPENSE:

- 1. 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; AND,**
- 2. IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY ONE OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT IT IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.**

The obligation of the CONTRACTOR under this Paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, drawings, reports, surveys, change orders, designs or specifications, or the giving of or the failure to give directions or instructions by the ENGINEER, his agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

3.17 INSURANCE. The CONTRACTOR at his own expense shall purchase, maintain and keep in force such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR's operations under the Contract, whether such operations be by himself or by any Subcontractors or by anyone directly or indirectly employed by any of them, or any anyone for whose acts any of them may be liable:

1. Worker's compensation claims, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual bodily injury liability coverages;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual bodily injury liability coverages; and
4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

3.17.1 CERTIFICATE OF INSURANCE. Before commencing any of the work, CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER and the ENGINEER. Such Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen days prior written notice has been given to the OWNER and shall contain a provision naming OWNER and ENGINEER as additional insureds.

The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all subcontractors.

4. PROSECUTION AND PROGRESS

4.1 TIME AND ORDER OF COMPLETION. It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by his own force, the ENGINEER may direct the time and manner of constructing the work done under this contract, so that conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the ENGINEER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

4.2 EXTENSION OF TIME. Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR's control, or by any cause which the ENGINEER shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the ENGINEER, provided, however, that the CONTRACTOR shall give the ENGINEER prompt notice in writing of the cause of such delay.

4.3 HINDRANCES AND DELAYS. No claims shall be made by the CONTRACTOR for damages resulting from hindrances or delays from any cause (except where the work is stopped by order of the OWNER) during the progress of any portion of the work embraced in this contract. In case said work shall be stopped by the act of the OWNER, then such expense as in the judgement of the ENGINEER is caused by such stoppage of said work shall be paid by the OWNER to the CONTRACTOR.

5. MEASUREMENT AND PAYMENT

5.1 QUANTITIES AND MEASUREMENTS. No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

5.2 ESTIMATED QUANTITIES. This agreement, including the specifications, plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as 20% more than, or 20% less than the estimated or contemplated quantity for such

items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below 20% of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five (5) percent of the total contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Agreement, as provided under "Extra Work".

5.3 PRICE OF WORK. In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this Contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by him, and for well and truly performing the same and the whole thereof in the manner and according to this Agreement.

5.4 PARTIAL PAYMENTS. On or before the 10th day of each month, the CONTRACTOR shall prepare and submit to the ENGINEER for approval or modifications a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to and including the last day of the preceding month; said statement shall also include the value of all sound materials delivered on the site of the work that are to be fabricated into the work.

The OWNER shall then pay the CONTRACTOR on or before the 15th day of the current month the total amount of the approved statement, less 10 percent of the amount thereof, which 10 percent shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the OWNER under the terms of this Agreement. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the CONTRACTOR, the OWNER may - upon written recommendation of the ENGINEER - pay a reasonable and equitable portion of the retained percentage to the CONTRACTOR, or the CONTRACTOR at the OWNER's option, may be relieved of the obligation to fully complete the work and, thereupon, the CONTRACTOR shall receive payment of the balance due him under the contract subject only to the conditions stated under "Final Payment".

5.5 USE OF COMPLETED PORTIONS. The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to such extra compensation, or extension of time, or both, as the ENGINEER may determine.

The CONTRACTOR shall notify the ENGINEER when, in the CONTRACTOR's opinion, the contract is "substantially completed" and when so notifying the ENGINEER, the CONTRACTOR shall furnish to the ENGINEER in writing a detailed list of unfinished work. The ENGINEER will review the CONTRACTOR's list of unfinished work and will add thereto such items as the CONTRACTOR has failed to include. The "substantial completion" of the structure or facility shall not excuse the CONTRACTOR from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the structure or facility in accordance with the Contract Documents.

5.6 FINAL COMPLETION AND ACCEPTANCE. Within ten (10) days after the CONTRACTOR has given the ENGINEER written notice that the work has been completed, or substantially completed, the ENGINEER and the OWNER shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract Documents, the ENGINEER shall issue to the OWNER and the CONTRACTOR his Certificate of Completion, and thereupon it shall be the duty of the

OWNER within ten (10) days to issue a Certificate of Acceptance of the work to the CONTRACTOR or to advise the CONTRACTOR in writing of the reason for non-acceptance.

5.7 FINAL PAYMENT. Upon the issuance of the Certificate of Completion, the ENGINEER shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Agreement and shall certify same to the OWNER, who shall pay to the CONTRACTOR on or before the 30th day, and before the 35th day, after the date of the Certificate of Completion, the balance due the CONTRACTOR under the terms of this Agreement, provided he has fully performed his contractual obligations under the terms of this contract; and said payment shall become due in any event upon said performance by the CONTRACTOR. Neither the Certificate of Acceptance nor the final payment, nor any provision in the Contract Documents, shall relieve the CONTRACTOR of the obligation for fulfillment of any warranty which may be required.

5.8 PAYMENTS WITHHELD. The OWNER may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect himself from loss on account of:

1. Defective work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Failure of the CONTRACTOR to make payments properly to subcontractors or for material or labor.
4. Damage to another CONTRACTOR.
5. Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
6. Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provides a Surety Bond satisfactory to the OWNER, which will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

5.9 DELAYED PAYMENTS. Should the OWNER fail to make payment to the CONTRACTOR of the sum named in any partial or final statement, when payment is due, then the OWNER shall pay to the CONTRACTOR, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) percent per annum, unless otherwise specified, from date due as provided under "Partial Payments" and "Final Payments", until fully paid, which shall fully liquidate any injury to the CONTRACTOR growing out of such delay in payment, but the right is expressly reserved to the CONTRACTOR in the event payments be not promptly made, as provided under "Partial Payments", to at any time thereafter treat the contract as abandoned by the OWNER and recover compensation, as provided under "Abandonment of Contract", less such payments withheld in accordance with the provisions of "Payments Withheld".

6. EXTRA WORK AND CLAIMS

6.1 CHANGE ORDERS. Without invalidating this Agreement, the OWNER may, at any time or from time to time, order addition, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the ENGINEER for execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the ENGINEER and executed by the OWNER, the ENGINEER may in writing instruct the CONTRACTOR to proceed with the work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

6.2 MINOR CHANGES. The ENGINEER may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the

CONTRACTOR believes that any minor change or alteration authorized by the ENGINEER involves Extra Work and entitles him to an increase in the Contract Price, the CONTRACTOR shall make written request to the ENGINEER for a written Field Order.

In such case, the CONTRACTOR by copy of his communication to the ENGINEER or otherwise in writing shall advise the OWNER of his request to the ENGINEER for a written Field Order and that the work involved may result in an increase in the Contract Price.

Any request by the CONTRACTOR for a change in Contract Price shall be made prior to beginning the work covered by the proposed change.

6.3 EXTRA WORK. It is agreed that the basis of compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "actual field cost" of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the CONTRACTOR of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expense, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to. The ENGINEER may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the ENGINEER. The ENGINEER or OWNER may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 percent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractor of America. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) percent of the "actual field cost" to be paid the CONTRACTOR shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost".

No claim for Extra Work of any kind will be allowed unless ordered in writing by the ENGINEER. In case any order or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the ENGINEER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the ENGINEER insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C). The CONTRACTOR will thereby preserve the right to submit the matter of payment to arbitration, as herein below provided.

6.4 TIME OF FILING CLAIMS. It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the ENGINEER within thirty

(30) days after the ENGINEER has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The ENGINEER shall reply within thirty (30) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should appeal from the ENGINEER's decision, any demand for arbitration shall be filed with the ENGINEER and the OWNER in writing within ten (10) days after the date of delivery to CONTRACTOR of the ENGINEER'S final decision. It is further agreed that final acceptance of the work by the OWNER and the acceptance by the CONTRACTOR of the final payment shall be a bar to any claims by either party, except where noted otherwise in the Contract Documents.

6.05 ARBITRATION. (This Section has been removed.)

7. ABANDONMENT, TERMINATION, AND SUSPENSION OF CONTRACT

7.01 ABANDONMENT BY CONTRACTOR. In case the CONTRACTOR should abandon and fail or refuse to resume work within ten (10) days after written notification from the OWNER, or the ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of abandonment, the CONTRACTOR shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the OWNER or the Surety on the performance bond, or another CONTRACTOR in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Section 6, Extra Work and Claims), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners.

7.01.1 The OWNER may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense

of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completely by said CONTRACTOR, then the CONTRACTOR and/or his Surety shall pay the amount of such excess to the OWNER; or

7.01.2 The OWNER under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or his Surety shall be credited therewith.

When the work shall have been substantially completed the CONTRACTOR and his Surety shall be so notified and Certificates of Completion and Acceptance, as provided in Paragraph 5.06 herein above, shall be issued. A complete itemized statement of the contract accounts, certified to by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his Surety, whereupon the CONTRACTOR and/or his Surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the OWNER had the work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or his Surety shall pay the balance shown to be due by them to the OWNER, than all machinery, equipment, tools, material or supplies left on the site of the work shall be turned over to the CONTRACTOR and/or his Surety. Should the cost to complete the work exceed the contract price, and the CONTRACTOR and/or his Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and his Surety at the respective addresses designated in this contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and his Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and his Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials or supplies, which remain on the work, and belong to persons other than the CONTRACTOR or his Surety, to their proper OWNERS. The books on all operations provided herein shall be open to the CONTRACTOR and his Surety.

7.02 ABANDONMENT BY OWNER. In case the OWNER shall fail to comply with the terms of this contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the CONTRACTOR, then the CONTRACTOR may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of work that have not been included in payments to the CONTRACTOR of the total amount wrought into the work. And thereupon the ENGINEER shall make an estimate of the total amount earned by the CONTRACTOR, which estimate shall include the value of all work actually completed by said CONTRACTOR (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all

Extra Work performed at the prices agreed upon, or provided for by CONTRACTOR to carry the whole work to completion and which cannot be utilized. The ENGINEER shall then make a final statement of the balance due the CONTRACTOR by deducting from the above estimate all previous payments by the OWNER and all other sums that may be retained by the OWNER under the terms of this Agreement and shall certify same to the OWNER who shall pay to the CONTRACTOR on or before thirty (30) days after the date of the notification by the CONTRACTOR the balance shown by said final statement as due the CONTRACTOR, under the terms of this Agreement.

7.03 TERMINATION BY THE OWNER FOR CAUSE

7.03.1 The Owner may terminate the Contract if the Contractor:

1. Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. Persistently disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction; or
3. Otherwise is guilty of material breach of a provision of the Contract Documents.

7.03.2 When any of the above reasons exists, the Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and Surety seven days written notice, terminate employment of the Contractor and may, subject to any prior rights of the Surety:

1. Request that Surety complete the Work; or
2. Take possession of the site and of all equipment, tools, and construction equipment and machinery thereon owned by the Contractor; and
3. Finish the Work by whatever reasonable method the Engineer may deem expedient.

7.03.3 After receipt of a notice of termination, and except as otherwise directed by the Engineer, the Contractor shall:

1. Stop Work under the Agreement on the site and to the extent specified in the notice of termination;
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work (if any) under the Agreement which is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work under the Agreement which is terminated;
4. Assign to the Owner, in the manner, at the times, and to the extent directed by the Engineer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. The Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval of the Engineer;
6. Take such action as may be necessary, or as the Engineer may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.
7. Secure the Project in a safe state before leaving the site, providing any necessary safety measures, shoring, or other devices.

7.03.4 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 7.03.1, the Contractor shall not be entitled to receive further payment until the Work is complete, subject to the provisions of Paragraph 7.03.5.

7.03.5 If the unpaid balance of the Contract Price exceeds the costs of finishing the Work, including liquidated damages and other amounts due under this Contract, such balance shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be

paid to the Contractor or Owner, as the case may be, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

7.4 TERMINATION BY THE OWNER FOR CONVENIENCE

7.04.1 The Owner may, without cause, and without prejudice to any other rights or remedies of the Owner, terminate employment of the Contractor in whole or part by giving the Contractor and Surety seven-days written notice.

7.04.2 After receipt of a notice of termination, and except as otherwise directed by the Owner, the Contractor shall conform to the requirement of Paragraph 7.04.3.

7.04.3 After receipt of a notice of termination, the Contractor shall submit to the Owner its termination claim, in the form required by the Engineer. Such claim shall be submitted to Owner promptly, but in no event later than two months from the effective date of termination, unless one or more extensions in writing are granted by the Owner. If the Contractor fails to submit its termination claim within the time allowed, the Engineer shall determine, on the basis of available information, the amount, if any, due to the Contractor because of the termination. The Owner shall then pay the Contractor the amount so determined.

7.04.4 If the Owner and Contractor fail to agree on the amount to be paid Contractor because of the termination of the Agreement or part thereof, the Engineer will determine, on the basis of information available to the Engineer, the amount due (if any) to the Contractor by reason of the termination as follows:

1. The Contract Price for all Work performed in accordance with Contract Documents up to the date of termination determined in the manner prescribed for monthly payments in Article 5, except no retainage shall be withheld by the Owner either for payment determined by percentage of completion or for materials and equipment delivered to the site, in storage, or in transit.
2. Reasonable termination expenses, including the costs for settling and paying claims arising out of termination of work under subcontracts and purchase orders, the reasonable cost of preservation and protection of Owner property after termination (if required) and the cost of termination claim preparation. Termination expenses do not include field or central office overhead, salaries of employees of the Contractor or litigation costs including attorney fees.
No amount will be allowed for anticipated profit or central office overhead on the uncompleted Work, or any cost of lost profit for any other business of the Contractor alleged to be damaged by the termination.

7.04.5 Contractor shall promptly remove from the site construction equipment, tools, and temporary facilities, except such temporary facilities, which Owner may wish to purchase and retain.

7.04.6 Contractor shall cooperate with Owner during the transition period.

7.04.7 Owner will take possession of the Work and materials delivered to the site, in storage or in transit as of the date, or dates, specified in the termination notice and will be responsible for maintenance, utilities, security, and insurance, as stated in the notice of termination.

7.5 SUSPENSION BY THE OWNER FOR CONVENIENCE

7.05.1 The Owner may, without cause, after giving the Contractor and the Contractor's Surety notice, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Engineer may determine.

7.05.2 An adjustment shall be made in the Contract Time equivalent to the length of time of the suspension.

7.05.3 An adjustment shall be made for the increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption in accordance with Article 6. No adjustment shall be made to the extent:

1. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or
2. That an adjustment is made or denied under another provision of the Contract.

7.06 TERMINATION BY THE CONTRACTOR

7.06.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of the Contractor, Subcontractor, or their agents or employees, or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction;
2. An act of government, such as a declaration of national emergency, making material unavailable;
3. If repeated suspensions by the Owner as described in Paragraph 7.05 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

7.06.2 If the Agreement is terminated pursuant to this provision, Contractor shall file a Claim for termination expenses in accordance with the requirements of Paragraph 7.04.

END OF DOCUMENT

SECTION H

SPECIAL CONDITIONS OF THE AGREEMENT

1. The work covered by these documents is entitled "Converse Sidewalk Project (CDBG), Job No.2017-009-01, , Converse, Bexar County, TEXAS" to be performed for The City of Converse. The site of the project is Converse, Texas.

2. Description of Work:

2.01 CONTRACTOR shall furnish all materials, appliances, tools, equipment, transportation, services and all labor and superintendence necessary for construction of the work described herein. The completed work shall not lack any part which can be reasonably implied as necessary for proper and useful operation of the facility.

2.02 The work, in general, consists of the following:

- A. Install SWPPP measures.
- B. Install traffic control, signage and barricades.
- C. Removal of concrete curbing and flatwork.
- D. Install concrete curbing, driveway, sidewalks, and ADA ramps.
- E. Install signage and striping.
- F. Remove traffic control, signage, and barricades.
- G. Final clean up and removal of SWPPP measures.

2.03 Contract drawings include the following:

Sheet No.	Description
1	Title Sheet
2	Index
3	General Notes
4	Project Layout
5	Quantity Summary
6	Typical Sections
7	Street Plan (Brenda Dr.
8	Street Plan (Kimberly Dr.)
9	Street Plan (Deborah Dr.)
10	Street Plan (Deborah Dr.)
11	Street Plan (Bridgit Dr.)
12	Street Plan (Bridgit Dr.)
13	Street Plan (5 th Street)
14	Street plan (Michelle Dr.)
15	Street Plan (Michelle Dr.)
16	Street Plan (Janice Dr.)
17	Street Plan (Janice Dr.)
18	(Street Plan (Janice Dr.)

19	SWPPP Plan Narrative
20	SWPPP Plan Layout
21	Temporary Erosion, Sediment & Water Pollution Control Measures Standards
22	Miscellaneous Construction Standards 1
23	Miscellaneous Construction Standards 2
24	Wheel Chair Ramp Standards
25	Concrete Driveway Standards

3. Permits:

CONTRACTOR shall make any and all arrangements and pay for any and all permits required for this work.

4. Utilities:

No utilities are available at the project site. CONTRACTOR shall make all arrangements for and pay for any utility service required during construction of this project.

5. Lines and Grades:

5.01 OWNER will furnish horizontal control references and bench marks to be used by CONTRACTOR in staking out the work. Information describing the relationship of the control references to the proposed work is as shown on the plans.

5.02 The ENGINEER will provide survey stakes for the line and grade to construct the improvements in accordance with the Contract Documents.

5. Construction Surveying Services: The Contractor will be required and responsible to perform any survey necessary at Contractors cost.

6. Laboratory Tests:

6.01 OWNER will provide for laboratory testing during construction, except that CONTRACTOR will provide for testing and/or laboratory certification of materials furnished for use in construction, if required elsewhere by these specifications.

6.02 Retests of materials or installations found defective in initial tests will be at CONTRACTOR's expense. The final pay estimate will not be processed until the CONTRACTOR has paid his portion of the laboratory testing invoices.

6.03 Owner or representative of the Owner has the right to temporarily halt construction for

the purpose of acquiring test samples.

6.04 Copies of CONTRACTOR performed test results shall be submitted promptly to the Owner.

7. Protection of Existing Facilities:

Existing facilities including landscaping, grass, etc., disturbed or damaged by construction, shall be restored or repaired to original or better condition at CONTRACTOR's expense.

The CONTRACTOR is responsible for repair and clean-up of broken manholes, buried valve boxes, broken sewer pipe, and all other damage to District facilities caused by construction activities.

8. Sub-Surface Conditions:

It is not represented that all existing underground structures are shown on the plans. When existing utilities or underground structures not shown on the plans are encountered which constitute obstruction to proposed construction, the ENGINEER shall be notified immediately. The ENGINEER is to determine action to be taken.

9. Soil Conditions:

A report on underground soil conditions likely to be encountered is available for examination at the office of the ENGINEER. This report is for information only and does not relieve the CONTRACTOR of responsibility to satisfy himself concerning actual site conditions.

The soils report and log of borings is available for Contractor's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Contractor is expected to examine the site and such reports and then decide for itself the character of the materials to be encountered.

OWNER and ENGINEER disclaim any responsibility for the accuracy, true locations and extent of the surface and subsurface investigations that have been prepared by others. OWNER and ENGINEER further disclaim responsibility for interpretation of that data by Contractor, i.e. projecting soil-bearing values, rock profiles, soil stability and the presences, level and extent of underground water.

10. Form of Specifications:

10.01 Specifications are of the abbreviated, simplified or streamlined type and include incomplete sentences. The omission of words or phrases such as "the CONTRACTOR shall", "in conformity therewith", "Shall be", "as noted on the drawings", "according to the plans", "a", "an", "the", and "all" are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the drawings.

10.02 The specifications are interpreted to require that the CONTRACTOR shall provide all

items, articles, materials, operation or methods listed, mentioned or scheduled whether on the plans or specified therein, or both, including all labor, materials, equipment and incidentals necessary and required for their completion.

- 10.03 Whenever the words "approved", "satisfactory", "designated", "submitted", "observed", or similar words or phrases are used it shall be assumed that the word "ENGINEER" follows the verb as the object of the clause, such as "approved by the ENGINEER".
- 10.04 All references to standard specifications or manufacturer's installation directions shall mean the latest edition thereof.
- 10.05 Reference to technical society, organization, body or code is made in specifications in accordance with the following abbreviations:
- | | |
|--------|--|
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI | American Concrete Institute |
| AIEEE | American Institute of Electrical and Electronic Engineers |
| AISC | American Institute of Steel Construction |
| AISI | American Iron and Steel Institute |
| ANSI | American National Standards Institute |
| API | American Petroleum Institute |
| ASA | American Standards Association |
| ASTM | American Society for Testing Materials |
| AWS | American Welding Society |
| AWWA | American Water Works Association |
| FS | Federal Specifications |
| IPCEA | Insulated Power Cable Engineer's Association |
| NEC | National Electric Code |
| NEMA | National Electrical Manufacturer's Association |
| NESC | National Electric Safety Code |
| NFPA | National Fire Protection Association |
| OSHA | Occupational Safety and Health Administration |
| PCA | Portland Cement Association |
| UL | Underwriter's Laboratory |
- 10.06 Some specification items cover construction requirements and materials in comprehensive manner, and only pertinent portions of these items apply.
- 10.07 For construction specifications or details not detailed in plans and/or specifications use relevant City of "San Antonio" standard.
- 10.08 Certain specifications published by the City of "San Antonio" are included in this contract by reference. Items so referenced shall apply as if fully repeated herein and references shall be interpreted to mean the latest revision thereof with any amendments.

11. Other Contracts:

The CONTRACTOR is advised that other work may be underway in the area simultaneously.

Each CONTRACTOR will be required to coordinate his activities with the others.

12. Access to Installation Site(s):

12.01 The site(s) is(are) shown on contract drawings.

12.02 Prior to submitting a bid, CONTRACTOR shall investigate the(se) site(s) and define any potential construction problems and/or delivery route restrictions for the components to be supplied.

13. Partial Payments:

13.01 The payment schedule established by Paragraph 5.04 of the General Conditions shall be modified as follows:

CONTRACTOR shall submit estimates to the ENGINEER for approval on or before the «PayEstimateDate» day of each month.

13.02 Partial payment estimates will be processed on forms supplied by the ENGINEER.

13.03 Payment will be made by check by the «PayDate» day of the following month.

13.04 No payment for mobilization, drawing preparation submittals, or off site activities will be paid for unless specifically provided for in the appropriate Technical Specification.

13.05 Along with the monthly payment estimate, the CONTRACTOR shall submit (1) a certification that all work performed to date complies with the plans and specifications, (2) work schedule with progress to date illustrated, and (3) request for time extensions due to weather delays.

13.06 The CONTRACTOR shall prepare and submit a Schedule of Values for lump sum items for which the CONTRACTOR requests progress payments.

13.07 For lump sum contracts, subdivide the Schedule of Values into logical portions of the Work, such as major work items or work in contiguous geographic areas. Then organize each portion using Section I - Technical Specifications as an outline for listing the value of work by Sections.

13.08 Round off figures for each listed item to the nearest \$100.00 to make the total of all items in the Schedule of Values equal the lump sum price.

13.09 Submit the Schedule of Values at least 10 days prior to submitting the first application for progress payment.

13.10 Revise the Schedule of Values and resubmit for items affected by contract modifications and change orders. After the changes are approved by the Engineer, make the submittal at least 10 days prior to submitting the next application for progress payment.

14. Arbitration:

Item 6.05 Arbitration of Section G - General Conditions of Agreement is deleted from this contract.

15. Schedule:

15.01 CONTRACTOR shall be required to submit a proposed bar schedule for completion of the work. The schedule shall show each major item of work (description of work involved), the number of working days required to complete the item and the estimated start time of each item.

15.02 Each monthly payment request from CONTRACTOR shall be accompanied by a current schedule showing the number of days worked on each item and the estimated start time for each item not started.

15.03 CONTRACTOR shall submit contract time extension requests due to weather or other delays on a monthly basis along with the Application & Certificate for Payment. These forms must be submitted regardless of whether or not any time extensions are being requested. The ENGINEER will review and either approve, modify or deny the requests for time extensions.

16. Liquidated Damages for Delay:

The CONTRACTOR and the OWNER agree that time is of the essence of this CONTRACT. The CONTRACTOR and the OWNER agree that a breach of this CONTRACT by failure to complete the Work in the specified time will cause harm to the OWNER, and further agree that the harm the OWNER would sustain and the actual measure of damages the OWNER would incur from the breach are incapable or very difficult of ascertainment. Therefore, the CONTRACTOR and the OWNER agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit set in the CONTRACT, or as extended under the provisions of the General Conditions, CONTRACTOR shall be liable to OWNER for liquidated damages in the sum of **\$400** per calendar day for each day the project is not completed in the time allowed plus approved extensions, which sum the parties agree is a reasonable forecast of the damages the OWNER will sustain per day that the work remains uncompleted and in no way constitutes a penalty. The OWNER shall have the option to deduct and withhold the amount of any liquidated damages from any monies that the OWNER owes the CONTRACTOR or to recover such amount from the CONTRACTOR or the Sureties on the CONTRACTOR'S bond.

17. General Prosecution of Work and Wet Ground Conditions:

The CONTRACTOR is expected to prosecute the work diligently and continuously, weather permitting, and is also expected to take such reasonable steps as necessary to clean up and dewater the site after rain delays. Examples of reasonable steps include pumping trenches, cutting temporary ditches to relieve standing water, etc. These steps will be expected to be performed at no extra cost by the CONTRACTOR. Extensions of contract time will not be

granted for "wet ground conditions" if no good faith effort is made by the CONTRACTOR to remedy such conditions.

18. Storage of Equipment and Materials:

18.01 CONTRACTOR furnished equipment and materials shall be stored in such a manner as to protect it from the elements, prevent damage to, corrosion of, deterioration of, or loss of materials or components.

18.02 Materials and equipment shall be stored on high ground on a suitable working surface free of mud and water.

19. Award of Contract:

It is anticipated that an award will be made as quickly as possible consistent with the time required to analyze the bids. However, the bid price amounts contained in the Bid Sheet of the Proposal shall remain firm for «Hold» days following submittal of the Bid.

20. Authorization of Work:

CONTRACTOR is informed that no work is to be performed under this contract except as authorized specifically by a work order issued by the ENGINEER. CONTRACTOR is further informed that OWNER reserves the right to construct the project in phases, each phase to be covered by a separate work order.

21. Certificate of Insurance:

The CONTRACTOR and his Subcontractors shall obtain insurance and file valid Certificates of Insurance with the OWNER as required by Section 3.17 and 3.17.1 of the General Conditions, which shall also name the OWNER and the ENGINEER as an "additional insured" and provide that the insurance carrier will provide the OWNER and the ENGINEER with thirty (30) days advance written notice of any change, cancellation, or termination of any such coverages.

21.01 Comprehensive General Liability Insurance for Bodily Injury and Property Damage to a combined single limit of not less than \$1,000,000 each occurrence and \$1,000,000 aggregate. Coverages are to include the following:

- a. Premises and Operations
- b. Blanket Contractual
- c. Personal Injury Liability extending to claims arising from employees of the CONTRACTOR
- d. CONTRACTOR's Protective Liability for work let or sublet
- e. Products and Completed Operations
- f. Broad Form Property Damage
- g. Explosions, collapse and underground damage, as required

21.02 Comprehensive Auto Liability Insurance, including owned, non-owned, hired or leased automobiles used in connection with this work, with bodily injury and property damage

to a combined single limit of \$1,000,000 each occurrence.

- 21.03 Excess and Umbrella Liability Insurance in a form following the underlying coverages in an amount of \$2,000,000 each occurrence and \$2,000,000 aggregate.
- 21.04 The CONTRACTOR shall be responsible for maintaining insurance coverage at his option and expense to cover tools, equipment, etc., owned or rented, the capital value of which is not included in the cost of the work.
- 21.05 Insurance policies are to be written by companies authorized to do business under the laws of the State of Texas and to be acceptable to the OWNER. All insurance policies with the exception of Worker's Compensation shall name the OWNER and the ENGINEER as additional named insureds. The OWNER has the right to demand a copy of all insurance policies.
- 21.06 Each policy must contain an endorsement to the effect that the insurer waives any claim or right in the nature of subrogation to recover against the Owner, Developer, and Engineer, and their respective officers, agents or employees.
- 21.07 CONTRACTOR shall carry and pay premiums for an equipment floater policy to cover equipment while in transit, temporarily in warehouse or elsewhere, and while at job site during installation and until work is completed and turned over to the OWNER.

22. Workers' Compensation Insurance Coverage

22.01 Definitions:

Certificate of coverage ("certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement from the Texas Workers Compensation Commission (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the CONTRACTOR's / person's work on the project has been completed and accepted by the OWNER.

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

- 22.02 The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011 (44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.
- 22.03 The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the contract.
- 22.04 If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the OWNER showing that coverage has been extended.
- 22.05 The CONTRACTOR shall obtain from each person providing services on a project, and provide to the OWNER:
- a. a certificate of coverage, prior to that person beginning work on the project, so the OWNER will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - b. no later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- 22.06 The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- 22.07 The CONTRACTOR shall notify the OWNER and the ENGINEER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- 22.08 The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the TWCC, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage.
- 22.09 The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project to:
- a. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code §401.011(44) for all its employees providing services on the project, for the duration of the project;
 - b. provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all

employees of the person providing services on the project, for the duration of the project;

- c. provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- d. obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - i. a certificate of coverage, prior to the other person beginning work on the project; and
 - ii. a new certificate of coverage showing extension of the coverage period, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- e. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- f. notify the Owner in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- g. contractually require each other person with whom it contracts to perform as required by paragraphs a. through f., with the certificate of coverage to be provided to the person from whom they are providing services.

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

22.11 The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR which entitles the OWNER to declare the contract void if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

23. Final Approval and Guarantee:

- 23.01 The work is to be completed to the satisfaction of the OWNER.
- 23.02 CONTRACTOR to guarantee all work to be free from defect due to faulty workmanship or materials for a period of one year from date of acceptance of the work by the OWNER. CONTRACTOR shall repair defects which develop in construction during that time upon notice by the OWNER to do so. No provisions of this contract shall relieve CONTRACTOR of this guarantee. Failure of the CONTRACTOR to promptly repair or replace defect upon notice shall entitle OWNER to perform the necessary work and recover cost of the same from CONTRACTOR and /or his surety.
- 23.03 All warranties from subcontractors, suppliers, and manufacturers shall be written to the Owner using the Owner's name.
24. Shop Drawings and Performance Data Submittals:
- 24.01 CONTRACTOR will furnish factory certified shop drawings and performance data of reinforcing placement, concrete design mixes, steel structures, mechanical equipment, electrical equipment, and other pertinent items which have been specifically spelled out in the contract drawings or the Technical Specifications, or as deemed necessary by the ENGINEER.
- 24.02 Sufficient time should be allowed for the ENGINEER to check shop drawings. The minimum review time in the ENGINEER's office shall be two weeks.
- 24.03 No work shall commence prior to receipt by CONTRACTOR of ENGINEER's formal response to shop drawings for that sequence of work.
- 24.04 All work shall be performed only in accordance with ENGINEER's formal response to shop drawings, including any exceptions which have been so noted and dated by the ENGINEER.
- 24.05 Review by the ENGINEER of shop drawings will in no way be construed as an approval of the means and methods of construction to be used by the CONTRACTOR. CONTRACTOR IS SOLELY RESPONSIBLE FOR THE MEANS AND METHODS TO BE USED AND THE SAFETY OF ITS EMPLOYEES AND ALL OTHER PERSONS ON THE JOB SITE.
- 24.06 Samples of work to be supplied to the OWNER or ENGINEER as specified in the Technical Specifications shall be presented a minimum of 30 days prior to planned construction.
- 24.07 Submit 4 copies of documents unless otherwise specified in the Specifications.
- 24.08 Apply Contractor's stamp, certifying that the items have been reviewed in detail and are correct and in accordance with Contract Documents, except as noted by any requested variance.
- 24.09 As a minimum, Contractor's Stamp shall include: Contractor's name, job number, submittal number, certification statement that the Contractor has reviewed the submittal and it is in compliance with the Contract Documents, and signature line for

Contractor.

26. Maintenance of Drainage:

During project construction, the Contractor shall maintain the function and capacity of existing drainage channels, overland flow routes, roadside ditches, storm sewers, or other drainage systems in and adjacent to the project site. It shall be the responsibility of the Contractor to include techniques in his construction procedure necessary to avoid limiting the function of existing drainage systems. These techniques include, but are not limited to, cutting temporary swales and/or pumping surface water to facilitate drainage of the project site or adjacent property. No extra pay.

At no time shall the Contractor construct improvements or temporarily place construction materials which may block overland drainage from property adjacent to the project site or which may result in ponding of water on property adjacent to the project site. Where the Contractor believes improvements called for on the construction drawings may block drainage from adjacent properties, the Contractor shall notify the Engineer prior to construction.

27. Limitation of Water Supply Service Shutdown:

Any operations requiring shutdown of existing water supply or distribution facilities must be approved by the ENGINEER. The CONTRACTOR will be responsible for notifying existing users 24 hours prior to any planned shutdown. No shutdown of over 8 hours will be approved.

28. Traffic Control:

Unless otherwise set forth in these specifications, the CONTRACTOR shall receive no direct compensation for furnishing, erecting, and maintaining the necessary barricades, lights, flares, signs or for any other materials necessary for the good and proper safety, convenience, and direction of traffic during the period prior to final inspection and acceptance.

29. Dewatering:

It is the responsibility of the CONTRACTOR to include techniques in his construction procedure consistent with a wet environment. These techniques would include but not be limited to well points, sheet piles, ditches and sump pumping.

30. Working Times:

The Contractor is advised that all construction activity shall be limited to those times included in the definition of working days included in the General Conditions, unless otherwise approved by the Engineer.

31. Sales Taxes:

Owner is exempt from Texas sales and use taxes pursuant to Texas Tax Code §151.309 as a

political subdivision of the State of Texas. Owner shall provide Contractor with a completed Texas Sales and Use Tax Exemption Certification as evidence of the applicability of such exemption and accordingly, Contractor shall not collect Texas sales and use taxes from Owner with respect to this contract. Contractor and all subcontractors to Contractor shall issue a Texas Sales and Use Tax Exemption Certification with respect to, and shall not pay Texas sales and use taxes on, all purchases of the following items that are exempt from Texas sales and use taxes pursuant to Texas Tax Code §151.311: (i) tangible personal property that will be incorporated into Owner's realty; (ii) tangible personal property that is necessary and essential for the performance of this contract and is consumed entirely on the job site; and (iii) taxable services for use in the performance of this contract that are performed at the job site and are either integral to the performance of this contract or expressly required to be provided by this contract. In addition, Contractor and all subcontractors to Contractor (i) shall not include any provisions for Texas sales and use taxes with respect to such exempt items in any bid or contract amount, and (ii) shall pass on to Owner cost savings due to the exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor shall include the foregoing provisions regarding the exemption of Texas sales and use taxes.

32. Labor Classification and Minimum Wage Scale:

32.01 Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall determine the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for bids and in the Contract the applicable minimum wage rates. The statute further provides that the Contractor or subcontractors shall pay, as a penalty, to the Owner sixty dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

32.02 The minimum wage rates that apply to this Contract are specified in the attachment hereto. Contractor and subcontractors shall review and ascertain such wage rates and pay at least such minimum rates.

33. Materials:

All work incorporated into the project shall be constructed with new materials unless otherwise specified.

34. As-Built Drawings:

Prior to final acceptance of the project, CONTRACTOR shall provide project record drawings indicating as-built conditions. Drawings may be red-lined on original plans indicating all field changes in construction.

END OF SECTION H

SECTION I

TECHNICAL SPECIFICATIONS

All standard specifications, special provisions, and special specifications applicable to this Project are identified as follows:

STANDARD SPECIFICATIONS

CITY OF SAN ANTONIO (COSA) STANDARD SPECIFICATIONS FOR CONSTRUCTION JUNE 2008 WITH ANY REVISIONS THERETO:

DIVISION I – EARTHWORK

- 100 Mobilization
- 101 Preparing Right-of-Way
- 103 Remove Concrete

DIVISION II – BASE & SURFACE COURSES

- 205 Hot Mix Asphaltic Concrete Pavement
- 206 Asphalt Treated Base

DIVISION V - INCIDENTAL CONSTRUCTION

- 500 Concrete Curb, Gutter, and Concrete Curb&Gutter.
- 502 Concrete Sidewalks
- 503 Asphaltic Concrete, Portland Cement Concrete, and gravel driveways
- 505 Concrete Riprap
- 512 Adjusting Manholes & Valve Boxes
- 513 Removing and Relocating Mail Boxes
- 516 Sodding
- 530 Barricades, Signs, and Traffic Handling
- 531 Signs
- 536 Preformed Pavement Markings
- 540 Temporary Erosion, Sedimentation and Water Pollution Prevention and Control
- 552 Removing and relocating irrigation systems

In accordance with the use of governing specifications listed in the City of San Antonio Standard Specifications for Public Works Construction as identified above, the terms "City" shall be construed to mean "City of Converse" in the definition of all constructing guidelines and specifications.