

Project Manual

for:

[Project Name]

[Project Limits]



Bid No.: [#####-####]

[Month, 2####]

Prepared By:

[Insert consultant's name, address, logo, etc.]

Project Manual

for:

[Insert Project Name]

[Insert Project Limits]

COB Project No.: [200#-####]

Bid No.: [200#-####]

[Month, 2####]

Prepared By:

[Insert consultant's name, address, logo, etc.]

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Section 00100

INVITATION TO BID
CITY OF BAYTOWN, TEXAS
Lowest Responsible Bidder

Sealed Electronic Bids will be accepted for the following project, in the City’s E-bid System. Electronic bids shall be submitted through the City’s electronic bid web site portal, at: <https://www.baytown.org/city-hall/departments/purchasing>. Electronic Bids shall be submitted per the requirements, instructions, terms and conditions as stated in the submittal instructions of the City’s E-bid System electronic bidding software, QuestCDN. Electronic Bids are submitted directly via the City’s Web based system located at the above link and selecting Bid Opportunities.

If you have any questions, please contact the Purchasing Department via purchasing@baytown.org for more information and/or directions for guiding you through the process. All Bids submitted electronically will remain confidential until the opening date and time when they will be opened and read into the public record.

Bids, shall be submitted through the City’s Electronic -Bid system, QuestCDN and submitted electronically through this system to the attention of the **City Purchasing Officer**. Electronic bids will be accepted until (time) p.m., (day), (date). All Bids shall reference the following project information in the appropriate locations in provided electronic format. All properly submitted bids shall be publicly “opened” and read aloud into the public record following the closing of the acceptance period for the construction of:

Project Name:[Insert Project Name]
City of Baytown, Texas
COB PN:XXXXXXXX
BID NO.:XXXXXX

A mandatory/nonmandatory pre-bid conference will be held at the City of Baytown 2401 Market Street, Baytown, Texas 77520 at (time) p.m. on (day) (date).

[Insert Project Description This project will entail...]

Electronic Bid Documents: including Contract Documents, Plans and Technical Specifications are available for download on the City’s Website at: <https://www.baytown.org/city-hall/departments/purchasing>. These same documents are also available at the following locations.

Amtex Plan Room (281) 376-4577
4001 Sherwood
Houston, TX 77092

The Associated General Contractors of America, Inc. (713) 334-7100
2400 Augusta, Suite 350
Houston, TX 77057

Virtual Builders Exchange (832) 668-5701
7035 W. Tidwell Building J, Suite 112
Houston, TX 77092

McGrawHill Construction – Dodge Reports 1-800-393-6343

No plan fees or deposits are required for plans and bid documents obtained through the City’s E-bid System. BIDDERS MUST REGISTER AS ON THE CITY’S E-BID SYSTEM QuestCDN IN ORDER TO SUBMIT A BID EVEN IF BID DOCUMENTS ARE OBTAINED VIA ONE OF THE PLAN HOUSES.

Bidders accept sole responsibility for downloading all of the required documents, plans, specifications bid forms and addenda required for bidding.

No bid may be withdrawn or terminated for a period of (number of days) days subsequent to the bid opening date without the consent of the City of Baytown. Unless otherwise expressly provided herein, all references to “day(s)” shall mean calendar day(s).

Bid Security and Bonds: Bid Security in the form of Cashier’s Check, Certified Check, or Bid Bond payable to the City of Baytown in the amount of 5% of the total base bid price must accompany each proposal. Bidders submitting bids electronically through the E-bid System shall scan and up-load a copy of the sealed Bid Bond as an attachment to their bid. **Original documents for Bid Security shall be requested by the City from the lowest two bidders and delivered to the City’s Purchasing Officer within 48 business hours of the Bid Opening.** Bid Security shall be delivered to: Office of City Purchasing, Department, 2401 Market Street, Baytown, Texas 77520.

The successful Bidder must furnish Performance and Payment Bonds as required by Chapter 2253 of the Texas Government Code or other applicable law, as amended, upon the form included in the Contract Documents, in the amount of one hundred percent (100%) of the contract price, such bonds to be executed by a corporate surety duly authorized to do business in the State of Texas, and named in the current list of "Treasury Department Circular No. 570", naming the City of Baytown, Texas as Obligee. Additionally, the successful bidder shall be required to provide a one year Maintenance Bond for the improvements installed as part of this work, as provided in the Special Conditions of Agreement.

Equal Opportunity: All responsible bidders will receive consideration for award of contract without regard to race, color, religion, sex, or national origin.

Nondiscrimination: The City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Selection Criteria: The Contract is to be awarded on the basis of **Lowest Responsible Bidder**. In identifying this criteria the City will consider: 1) lowest total bid price for all work listed and specifically requested, including but not limited to: Base Bid, Extra Work items and selected Alternates. The City of Baytown reserves the right to award a contract based on any combination of the above considered to be in its best interests or to reject any or all bids.

A bid that has been "opened" may not be changed for the purposes of correcting an error in the bid price.

(name)(job title)
City Clerk
City of Baytown

First Publication date (date)
Second Publication date (date)

**SECTION 00150
NOTICE TO BIDDERS
CITY OF BAYTOWN, TEXAS**

Sealed Bids will be accepted until xx:00 p.m., xxxxday, month xx, 2020 and read aloud into the public record for the following project:

Project Name
City of Baytown, Texas
COP PN: XXXX
BID NO.: XXXX

The Project entails _____ to provide a fully functioning XXXX as described in the Bid Documents.

A Mandatory/NonMandatory Pre-Bid Conference will be held at the City of Baytown City Hall at 2401 Market Street, Baytown, Texas 77520 at XX:00 p.m. on month XX, 2020.

Bids shall be submitted through the City's Electronic Bid system, QuestCDN and submitted electronically through this system's web site portal, at: <https://www.baytown.org/city-hall/departments/purchasing> and selecting Bid Opportunities.

Bid Security and Bonds: Bid Security in the form of Cashier's Check, Certified Check, or Bid Bond payable to the City of Baytown in the amount of 5% of the total base bid price must accompany each proposal. Bidders submitting bids electronically through the E-bid System shall scan and up-load a copy of the sealed Bid Bond as an attachment to their bid. **Original documents for Bid Security shall be requested by the City from the lowest two bidders and delivered to the City's Purchasing Officer within 48 business hours of the Bid Opening**. Bid Security shall be delivered to: Office of City Purchasing, Department, 2401 Market Street, Baytown, Texas 77520.

The City of Baytown reserves the right to reject any or all bids.

First Publication date _____
Second Publication date _____

Section 00200
INSTRUCTIONS TO BIDDERS
LOWEST RESPONSIBLE BIDDER

1. Defined Terms

1.1 The term “Owner” hereinafter is defined as the City of Baytown and is used interchangeably with the term “the City”. Both terms are synonymous and refer to the City of Baytown and may be used inter-changeably.

1.2 The term "Bidder" means one who submits a Bid Proposal directly to Owner, as distinct from a sub-bidder, who submits a bid to a Bidder. The term "Successful Bidder" means the **Lowest Responsible Bidder** to whom the Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award. The term "Bid Documents" includes the Invitation to Bidders, Instructions to Bidders, the Bid Proposal, and the proposed Contract Documents (plans and specifications including all Addenda issued prior to bid opening).

1.3 The term “E-bid System” refers to the City’s electronic bidding system. This is a web-based system (QuestCDN) that provides all Bid Documents electronically to interested parties (potential Bidders) and forms the pathway for Bidders to submit bids in response to The Invitation to Bid. The term “e-bid” and/ or “electronic bid” means the Bidders’ electronic response submitted on the electronic Bid Proposal with all required attachments to the Owner by way of the E-bid System. The terms “electronic bid” or “e-bid” are used inter-changeably to describe the above bid submittal process to submit a bid to the City in response to an Invitation to Bidders.

1.4 The term “Project Management system” means the City’s web-based contract administration and construction records management software used by the contracting parties to administer the project. This system serves as the web accessed centralized project information hub for communications and document management, pay application processing and record retention for all project documentation. Operational instructions for accessing this system will be issued to the successful Bidder at the pre-Construction Meeting.

1.5 All other definitions set out in the Contract Documents are applicable to terms used in the Bidding Documents.

1.6 Unless otherwise expressly provided herein, all references to “day(s)” shall mean consecutive calendar day(s).

1.7 The term “Alternate(s)” or “Add Alternate(s)” as used here inter-changeably are defined as an additive work item that may be selected or rejected by the Owner based on the Owner’s sole acceptance or rejection of the price proposed for this item. Alternate bid prices shall include all labor, material, equipment and overhead costs to perform the work as specified, complete in place. When selected by the Owner, the costs for an Alternate work item shall be added to the Base Bid price and made a part of the Contract price.

2. Access to the City’s E-bid System

The Owner’s E-bid System is accessible via the City’s web site at <https://www.baytown.org/city-hall/departments/purchasing> and selecting “Bid Opportunities”. Bid documents can be viewed

by selecting a specific project from the BID OPPORTUNITIES list and clicking on VIEW BID DOCUMENTS. . Interested Bidders **MUST REGISTER with QuestCDN to create** an account and an “ On-Line Bid Code” by clicking on the **My Quest Account** button and completing the registration form. Additional information about E-Bid System can be found at the following location on the City’s Purchasing webpage:

<https://www.baytown.org/home/showdocument?id=6767>.

Complete the information providing all required contact information and establish password security for the E-bid System. Downloading any project bid data will automatically place the bidder’s contact information on the list of plan holders and the E-bid System will automatically send any and all updates, addenda, changes or additional information associated with that project. **The electronic Bid Proposal can only be submitted through the E Bid system.** The form can be printed for Bidder’s use, but the Bid Proposal MUST be submitted on the electronic form within the E-bid System.

2.1 Questions regarding use of the E-bid System by email to: purchasing@baytown.org

3. Copies of Bidding Documents

3.1 Complete sets of “electronic” Bidding Documents are available for download to at No Cost from the City’s E-bid System at: <https://www.baytown.org/city-hall/departments/purchasing> and selecting Bid Opportunities. Interested Bidders **MUST REGISTER to create** a “ On-Line Bid Code” by clicking on the **My Quest Account** button and completing the registration form. Interested Bidders must register on this site in order to receive the Bid Documents, and all Addenda or other notifications of changes, including communications from the Owner or Engineer. All Bid Documents are available to download and print and submission of bids is available after an account is created.

3.2 The Bidder accepts sole responsibility for ensuring that he obtains a full set of these documents by completing the registration and executing a full and complete download of the project documents. Downloading of Bid Documents automatically ensures receipt of any and all subsequent communications, addenda or additional information from the City or its Engineer.

3.3 Copies of Bidding Documents are available or may be viewed at any of the Plan Houses listed in the Invitation to Bidders. It is recommended that all interested Bidders, whether bidding directly to the Owner or Sub-bidders/ Vendors providing pricing to a Bidder, register/create an account and download all of the project Bid Documents.

3.4 Complete sets of Bidding Documents must be used in preparing Bid Proposals; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents including, but not limited to all Addenda issued prior to bid.

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

4. Qualifications of Bidders

4.1 In determining to whom to award a contract, the City of Baytown may consider, in addition to the other selection criteria identified in section 16 of these Instructions to Bidders, the following Qualifications of Bidders, and each Bidder must be prepared to submit **within two (2)** days of Owner's request any or all of such Qualifications requested. Failure to provide this information within the specified time frame may be cause for rejection of the Bid.

- 1) A brief narrative of previous experience of the Bidder with projects of a similar nature and scope; specifically including a list of 5 representative projects completed by the Bidder of a similar nature and scope to the work covered by this proposed Contract. The references for the projects provided must include the cost of the project, Owner's name, Engineer or prime contact and telephone number. A list, including owner name and project location, of on-going projects and contracts for construction of projects of the Bidder which are not yet substantially complete including total contract value and current percent complete by payment;
- 2) A list of proposed subcontractors and suppliers for the project being bid and the total value of work awarded to subcontractors as shown on the Subcontractors List Bid Form;
- 3) A list of names, address and telephone number of references for other projects completed by Bidder; and
- 4) A Financial Statement of Bidder, consisting of the balance sheet and annual income statement of Bidder for the Bidder's last fiscal year end preceding the submission of the Bid Proposal, which has been audited or examined by an independent certified public accountant. The Financial Statement of Bidder shall be used to determine a Bidder's net working capital, which is defined as current assets less current liabilities. A Bidder's net working capital shall be considered evidence of the Bidder's ability to provide sufficient financial management of the project being bid. The Bidder's Financial Statement shall be clearly and conspicuously marked as "confidential", and shall be deemed and treated as confidential and excepted from the Public Information disclosure requirements of Texas Government Code Section 552.001 et seq. as such information, if released, would give advantage to a competitor or bidder, and/or would cause substantial competitive harm to Bidder.

5. Examination of Contract Documents and Site

5.1 It is the responsibility of each Bidder before submitting a Bid Proposal, to (a) examine the Bidding Documents thoroughly, (b) visit the site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the Work, (c) consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the Work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors, omissions or discrepancies in the Contract Documents, (f) adequately plan for formal communication, document management, pay application processing, and record retention for all the project documentation. This includes planning to use the City's Project Management software to administer construction processes and simultaneously perform the work of the project.

5.2 Any reports of explorations and tests of conditions at the site which have been utilized by the Engineer in preparation of the Contract Documents will be made available to Bidders for review, but such reports are not part of the Contract Documents. Bidder may not and should not rely upon the accuracy of the data contained in such reports, interpretations or opinions contained therein, or the completeness thereof, for the purposes of bidding or construction.

5.3 Information and data reflected in the Contract Documents with respect to underground utilities, equipment or other underground facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineer by owners of such underground facilities or others, and Owner does not assume responsibility for the accuracy or completeness thereof.

5.4 Before submitting a Bid Proposal, each Bidder will, at Bidder's own expense, make or

obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid Proposal prices for performing and furnishing the Work in accordance with the Contract Time, Contract Price and other terms and conditions of the Contract Documents.

5.5 On request in advance, Owner will provide each prospective Bidder access to the site to conduct such explorations and tests as each prospective Bidder deems necessary for submission of a Bid Proposal. Prospective Bidders shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands, access thereto or contractual arrangements for use by the Contractor required for temporary construction facilities or storage of materials and equipment are to be provided by Contractor. Easements for permanent structures or permanent changes in existing structures are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

5.6 The submission of a Bid Proposal will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 5, that without exception the Bid Proposal is premised upon performing and furnishing all of the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in, required by or reasonably inferred from the Contract Documents, and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6. Interpretations and Addenda

6.1 All questions about the meaning or intent of the Contract Documents are to be directed to Engineer/Architect via the E-bid process. Interpretations or clarifications considered necessary by Engineer/Architect in response to such questions will be issued by Addenda delivered or transmitted by electronic means to all registered Bidders in the City's E-bid System. Questions received less than five (5) days prior to the date for opening of Bid Proposals may not be answered. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer/Architect. **Addenda will automatically be made available to all registered Bidders that have downloaded Bid Documents from the City's E-bid System.**

7. Bid Security

7.1 **Each Bid Proposal must be accompanied by bid security** made payable to Owner in an amount of five percent (5%) of the Bidder's maximum Bid Proposal price, in the form of a certified check, cashier's check or a Bid Bond ("Bid Security").

7.2 Bidders submitting bids through the E-bid System **shall scan and up-load a copy of their Bid Security (sealed Bid Bond, Certified Check or Cashier's Check) as an attachment to their electronic bid. Original documents for Bid Security shall be requested by the City from the lowest two bidders and delivered to the City's Purchasing Officer**

within 48 business hours of the Bid Opening. Bid Security shall be delivered to: City of Baytown Purchasing Department, City Hall, 2401 Market St., Baytown, Texas 77520.

7.3 The Bid Security of the Successful Bidder will be retained until such time as Bidder has executed the Standard Form of Agreement, and furnished the required Performance and Payment Bonds, whereupon the Bid Security of both bidders will be returned. If the Successful Bidder fails to execute and deliver the Standard Form of Agreement and furnish the required performance and payment bonds within ten (10) days after the Notice of Award, Owner may annul the Notice of Award and shall be entitled to make a claim against the Bid Security. The Bid Security of other Bidders will be retained until the Contract is awarded and the Standard Form of Agreement becomes effective, or all bids are rejected, whereupon Bid Security furnished by all such Bidders will be returned.

8. Contract Time

8.1 The number of days in which the Work is to be Substantially Completed, as set forth in the Bid Proposal form and the Standard Form of Agreement, subject to such extension of time as may be due under the terms and conditions of the Contract Documents ("Contract Time"). All references to "time" or "days" shall be interpreted as consecutive calendar days.

9. Liquidated Damages and Early Completion Bonus

9.1 Provisions for liquidated damages and early completion bonus, if any, are set forth in the Standard Form of Agreement.

10 Substitute or "Or-Equal" Items

10.1 The Contract, if awarded, will be on the basis of the specified materials and equipment described in the Plans and Specifications without consideration of possible substitute or "or-equal" items unless otherwise stated. Whenever it is indicated in the Plans or specified in the Specifications that a substitute or "or-equal" item of material or equipment maybe furnished or used by the Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Agreement becomes effective. **All "or-equal" references shall be interpreted to mean "or Owner approved equal". Any substitution made by the Bidder upon which the bid is based shall be at the Bidder's sole risk.** The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in the Contract Documents.

11. Bid Form

11.1 The Bid Proposal form (Section 00300 – Bid Proposal) is included with the Bidding Documents when downloaded. This Document must be printed and signed, as required below, and then uploaded as an Attachment to the Bid. All E-bids must be submitted on the City's official E-bid System Bid Proposal document. All blanks on the Bid Proposal form must be completed or filled in. The Bidder shall bid all Alternates, if any. Incomplete Bid Proposals may be cause for rejection.

11.2 Bid Proposals by corporations must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied be evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature. **Once executed**

the document is to be uploaded as an attachment to the Bid.

11.3 Bid Proposals by partnerships must be executed in the partnership name and signed by a general partner, whose title must appear under the signature, and if a corporate general partner, executed as required above for corporations and the official address of the partnership must be shown below the signature. All names must be typed or printed below the signature. **Once executed the document is to be uploaded as an attachment to the Bid.**

11.4 The Bidder shall acknowledge receipt of all Addenda (the number of which must be filled in on the Bid Proposal form). Failure to do so could be cause for rejection of the Bid.

11.5 The address and telephone number for communications regarding the Bid Proposal must be shown on the Bid Proposal form.

12. Submission of Bid Proposals

12.1 The place, date and/or time designated for opening Bid Proposals may be changed in accordance with applicable laws, codes and ordinances. Any such changes to the Bid Schedule shall be made by Addenda.

12.2 Electronic Bids shall be submitted per the requirements, instructions, terms and conditions as stated in the registration and submittal instructions of the City's E-bid System electronic bidding software. All Bidders utilizing this system MUST register as a Bidder. E-Bids are submitted directly via the City's Web based system located at <https://www.baytown.org/city-hall/departments/purchasing> and selecting Bid Opportunities. Bid Proposals submitted after the bid date and time will be rejected.

13. Modification and Withdrawal of Bid Proposals

13.1 Prior to submission, E-bid Bid Proposals may be modified or withdrawn without prejudice.

13.2 Once Submitted, Bid Proposals may only be modified by an appropriate document duly executed (in the manner that a Bid Proposal must be executed) and delivered to the City of Baytown Purchasing Department, City Hall 2401 Market St., Baytown, Texas 77520 and submitted any time prior to the opening of Bid Proposals.

13.3 A Bidder may not modify or withdraw its Bid Proposal by facsimile or verbal means. A withdrawn Bid Proposal may be resubmitted prior to the designated time for opening Bid Proposals. No bid may be withdrawn or terminated for a period of ninety (90) days subsequent to the bid opening date without the consent of the City of Baytown.

13.4 If, within twenty-four (24) hours after Bid Proposals are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material mistake in the preparation of its Bid Proposal, that Bidder may request to withdraw its Bid Proposal and the bid security may be returned or, at the discretion of the Owner, Owner may make a claim against the bid security. Thereafter, that Bidder will be disqualified from further bidding on the Project to be provided under the Contract Documents.

13.5 Bid securities for unsuccessful Bidders will be returned to bidders once a successful Bidder has been identified and notified of the Owner's intent to award a contract.

14. Opening of Bid Proposals

14.1 Bid Proposals will be opened and (unless obviously non-responsive) read aloud publicly. An abstract of the amounts of the base Bid Proposals and major alternates (if any) will be made available to Bidders after the opening of Bid Proposals through E-Bid. Bid Proposals, in their entirety, shall be open for public inspection after the contract is awarded, with the exception of any trade secrets or confidential information contained therein, provided Bidder has expressly identified any specific information contained therein as being trade secrets or confidential information.

15. Bid Proposals to Remain Subject to Acceptance

15.1 All Bid Proposals will **remain subject to acceptance for ninety (90)** days after the day of the Bid Proposal opening, but Owner may, in its sole discretion, release any Bid Proposal and return the bid security prior to that date.

16. Award of Contract

16.1 Owner reserves the right to reject any and all Bid Proposals, to waive any and all informalities not involving price, time or changes in the Work and to negotiate contract terms with the Successful Bidder. Owner may reject a bid as non-responsive if: 1) Bidder fails to provide required Bid Security; 2) Bidder improperly or illegibly completes or fails to complete all information required by the Bidding Documents; 3) Bidder fails to sign the Bid Proposal or improperly signs the Bid Proposal; 4) Bidder disqualifies its Bid Proposal; 5) Bidder tardily or otherwise improperly submits its Bid Proposal; 6) Bidder fails to submit the Qualifications of Bidder as required under section 4 of these Instructions to Bidders; or 7) Bid Proposal is otherwise non-responsive.

Contracts are awarded on the basis of the:

- A) Provision of the "Best Value," or
- B) Lowest Responsible Bidder

16.2 Best Value. In determining the best value for the Owner, and in determining to whom to award a contract, Owner may consider: 1) purchase price; 2) reputation of the Bidder and Bidder's goods or services; 3) quality of Bidder's goods or services; 4) extent to which the goods or services meet the Owner's needs; 5) Bidder's past relationship with the Owner; 6) impact on the ability of Owner to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities; 7) total long-term cost to Owner to acquire Bidder's goods or services; 8) the Qualifications of Bidder; and 9) any other relevant criteria specifically listed in the Bidding Documents. A contract to be awarded to the Bidder offering the Best Value may be let on either a lump sum basis or a unit cost basis dependent on the Bid Proposal format.

16.3 Lowest Responsible Bidder. In determining Lowest Responsible Bidder, Owner will consider: Lowest Total Bid price for all work including Base Bid, Extra Work and Alternates, if any, and any other cost criteria. Additional evaluation criteria may include: the Qualifications of the Bidders, whether or not the Bid Proposals comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Proposal form or prior to the Notice of Award. Discrepancies in multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

A contract to be awarded to the Lowest Responsible Bidder may be let on either a lump sum basis or a unit cost basis dependent on the Bid Proposal format.

Acceptance of any and all bids may be conditioned on compliance with the requirement for attendance of the mandatory pre-bid meeting, if such was conducted.

16.4 In either case, Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid Proposal and to establish the responsibility, qualifications and financial ability of Bidders, proposed Subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents, to Owner's satisfaction, within the Contract Time.

16.5 Each Bidder agrees to waive any claim it has or may have against the Owner, the Professional/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid.

17. Contract Security

17.1 When the Successful Bidder delivers the executed Standard Form of Agreement to Owner, it must be accompanied by the Performance, Payment, Maintenance and Surface Correction Bonds required by the Contract Documents. Bonds may be on the forms provided herein or an equal form containing no substantive changes, as determined by Owner.

18. Signing of Agreement

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Standard Form of Agreement, and the required Performance and Payment Bond forms. Within ten (10) days thereafter Contractor shall sign and deliver the required number of counterparts of the Standard Form of Agreement to Owner with the required Bonds. Within ten (10) days thereafter, Owner shall deliver one fully signed counterpart to Contractor. There shall be no contract or agreement between Owner and the Successful Bidder until proper execution and attestation of the Standard Form of Agreement by authorized representatives of the Owner.

19. Pre-bid Conference

19.1 A pre-bid conference will be held as indicated in the Invitation to Bid. Attendance at the pre-bid conference is **MANDATORY/ NON MANDATORY** to fulfill the prerequisite requirements for Bidders bidding directly to the Owner.

20. Retainage

20.1 Provisions concerning retainage are set forth in the Contract Documents.

END OF SECTION

**Section 00300
BID PROPOSAL
Lowest Responsible Bid**

Date: _____

Bid of _____, an individual proprietorship / a corporation organized and existing under the laws of the State of Texas / a partnership consisting of _____, for the construction of:

[Insert Project Description]

City of Baytown, Texas

COB PL: XXXX

BID NO.: XXXX

(Submitted in Electronic format)

To: The Honorable Mayor and City Council
c/o City Clerk
City Hall - City of Baytown
2401 Market Street
Baytown, Texas 77520

Pursuant to the published Invitation to Bidders, and Instructions to Bidders, the undersigned Bidder hereby proposes to perform all the work and furnish all necessary superintendence, labor, machinery, equipment, tools and materials, and whatever else may be necessary to complete all the work described in or reasonably inferable from the Contract Documents for the construction of the [Insert Project Description edit as required] with all related appurtenances, complete, tested, and operational, in accordance with the Plans and Specifications prepared by [Company Name/Address/Engineer], for the unit prices or applicable prices set forth in Exhibit "A", the electronic bid form as contained in the City's E-bid system, which, once fully executed and submitted shall constitute a legal and executable proposal from the Bidder. It is understood that, in the event any changes are ordered on any part of the Work, the applicable unit prices bid shall apply as additions to or deductions from the total prices for the parts of the Work so changed.

The Bid Security required under the Instructions to Bidders is included and has been uploaded as an attachment within the E-bid system and, that a fully executed, signed and sealed hard copy has been delivered to the City of Baytown Purchasing Department, City Hall 2401 Market Street, Baytown, Texas 77520.

The Bidder agrees to submit to the Owner the Qualifications of Bidder, including the Financial Statement of Bidder, as required by the Instructions to Bidders if requested to do so as a condition of the Bid process.

The Bidder binds himself, upon acceptance of his proposal, to execute the Standard Form of Agreement and furnish an acceptable Performance and Payment Bond and Maintenance Bond, each in the amount of one hundred percent (100%) of the total Contract Price, according to the forms included in the Contract Documents, for performing and completing the said work within the time stated and for the prices stated in Exhibit A of this proposal along with all required insurance in the required amounts.

Bidder's Initial's: _____

The undersigned Bidder agrees to commence work within 10 days of the date of a written Notice to Proceed. It is understood that the Work is to be Substantially Complete within [insert project duration time] after the date of the Notice to Proceed. Time for Substantial Completion shall begin on the date established by the Notice to Proceed. The Contractor will pay liquidated damages in the amount(s) specified in Section 00500 – Standard Form of Agreement, in the event the Work is not Substantially Complete within the Contract Time.

The undersigned agrees that the amounts bid in this Bid Proposal will not be withdrawn or modified for ninety (90) days following date of Bid Proposal opening, or such longer period as may be agreed to in writing by the City of Baytown and Bidder.

It is understood that in the event the Successful Bidder fails to enter into the Standard Form of Agreement and/or to furnish an acceptable Performance and Payment Bond and Maintenance Bond, each in the amount of one hundred (100) percent of the Contract Price, along with all required insurance in the stated amounts within ten (10) days of the Notice of Award, the Successful Bidder will forfeit the Bid Security as provided in the Instructions to Bidders.

Unless otherwise expressly provided herein, all references to “day(s)” shall mean calendar day(s).

The Bidder acknowledges that the following Addenda have been received. The modifications to the Bidding Documents noted therein have been considered and all costs thereto are included in the Bid Proposal prices.

Addendum No.: _____ Date: _____ Addendum No.: _____ Date: _____
Addendum No.: _____ Date: _____ Addendum No.: _____ Date: _____

Bidder hereby represents that the only person or parties interested in this offer as principals are those named. Bidder has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding.

Firm Name: _____

By: _____

Title: _____

Address: _____

Phone No: _____

ATTEST:

(Typed or Printed Name)

(Seal, if Bidder is a Corporation)

Signature
Date: _____

END OF SECTION

PROPOSAL FORM
EXHIBIT A

Title VI Nondiscrimination Assurances
APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulations relative to nondiscrimination in Federally-Assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sub-Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Sub-Recipient, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Sub-Recipient shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b) cancellation, termination or suspension of the contract, in whole or in part.

- c) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the Sub-Recipient or the **Federal Highway Administration** may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sub-Recipient to enter into such litigation to protect the interests of the Sub-Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Section 00500

STANDARD FORM OF AGREEMENT

THIS AGREEMENT is by and between City of Baytown (hereinafter called OWNER or City) and _____ (hereinafter called CONTRACTOR).

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

Article 1. WORK

CONTRACTOR shall complete all work as specified or indicated in or reasonably inferable from the Contract Documents (hereinafter the "Work"). The Work is generally described as follows:

[Project Name]
[Project Limits]
City of Baytown, Texas
COB PN: [InsertProjectNumber]
BID NO.: [## (Insert Bid No.)]

Article 2. ENGINEER

The Work has been designed by [Engineering firm's name, physical address, and point of contact] who is hereinafter called ENGINEER and who is to assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME

3.1 The Work will be Substantially Complete (as defined in Article 1 of the General Conditions) within [ten (10)/one hundred (100) days edit as required] days (including weekends and holidays) from the date when the Contract Time commences to run as provided in paragraph 5.01 of the General Conditions (as revised in the Special Conditions if applicable), and completed and ready for Final Payment within [thirty (30)/ forty-five (45)/sixty (60)/ ninety (90) edit as required] days from the date when the Contract Time specifies Substantial Completion. No work will be allowed on Sundays.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 5 of the General Conditions. OWNER and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER [Numbers in word]

dollars [(\$###.##) edit as required] for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time set out in the Certificate of Substantial Completion or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER [Numbers in words] dollars [(\$###.##) edit as required] for each day that expires after the time specified in the Certificate of Substantial Completion for completion and readiness for Final Payment.

- 3.3 Inspection Time. Working hours for the Baytown Inspection personnel are from 7:30 a.m. to 4:30 p.m., Monday through Friday, excluding City approved holidays. The Contractor shall notify the OWNER of any required inspection work outside of these hours to allow for an overtime work determination to be made, and assigned at least 48 hours in advance and shall pay the overtime wages for the required City inspections. A request to adjust work hours to earlier times, but equivalent to an eight (8) hour work day must be made in writing and approved by the City.

Article 4. CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in strict accordance with the Contract Documents in current funds [(\$###,###.## edit as required] (the "Contract Price").

The Contract Price includes the Base Bid [and Alternate(s) #, #, #, & #, as accepted by OWNER and edit as required] as shown in Document 00300 – Bid Proposal.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Section 6.0 "Measurement and Payment" of the General Conditions. Application for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Application for Payment as recommended by ENGINEER as provided below. All progress payments will be on the basis of the progress of the Work and actual quantity of Work completed, in accordance with Article 6 "Measurement and Payment" of the General Conditions.
- 5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage or actual quantity of Work complete, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with the General Conditions. The OWNER shall make payment within 30 days of receipt of application for payment by the ENGINEER.
- 5.1.2 Each progress payment shall be less retainage as specified in Paragraph 6.06 of the General Conditions, 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."

- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 6.09 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 6.09

Article 6. INTEREST

Interest on any overdue payment from OWNER to CONTRACTOR shall be paid in accordance with the provisions of Chapter 2251.025 of the Texas Government Code, as amended.

Article 7. CONTRACTOR'S REPRESENTATIONS

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

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all available surveys, assessments, reports of explorations, investigations, and tests of subsurface conditions and drawings of physical conditions of the site. Such technical reports and drawings are not Contract Documents, and Owner makes no representations or warranties as to the accuracy of such documents or information, or to whether or not they are complete, comprehensive, or all-inclusive.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraphs 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work, and CONTRACTOR assumes the risk of such subsurface and physical conditions, and shall furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, and studies or similar information or data are or will be required by CONTRACTOR for such purposes.

- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said underground facilities are or will be required by CONTRACTOR in order to perform and finish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies in the Contract Documents of which Contractor knew or should have known, and CONTRACTOR shall perform the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including any written resolution of any such conflict, error or discrepancy by ENGINEER. In the event of a conflict that was not brought to the OWNER's or ENGINEER's attention prior to the bid, the CONTRACTOR is assumed to have bid the most expensive alternative.

Article 8. CONTRACT DOCUMENTS

The Contract Documents, which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work, consist of the following, each of which are incorporated herein by reference:

8.1 Standard Form of Agreement (Section 00500).

8.2 Performance, Payment, and/or Maintenance Bonds (Sections 00610, 00611, and 00612).

8.28.3 Partial Waiver of Lien(Sections 00615)

8.38.4 General Conditions of Agreement (Section 00700), including Attachment No. 1 Workers' Compensation Insurance Coverage, Attachment No. 2 Agreement for Final Payment and Contractor's Sworn Release, and Attachment No. 3 Owner's Insurance Requirements of Contractor.

8.5 Special Conditions of Agreement (Section 00800).

8.6 Wage Scale for Engineering Construction(Section 00811)

8.48.7 Addendum Form(Section 00900)

8.58.8 Instructions to Bidders and CONTRACTOR's Bid Proposal, including any Addenda referenced therein.

8.68.9 Plans, consisting of sheets numbered 1 through [] edit as required] inclusive with attachments with each sheet bearing the following general title: [Project name (edit as required)]

[8-78.10](#) Technical Specifications for the Work.

[8-88.11](#) The following, which may be delivered or issued after this Agreement becomes effective: Any Change Orders or other documents amending, modifying, or supplementing the Contract Documents in accordance with the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement which are defined in Section 1, “Definitions and Interpretations” of the General Conditions will have the meanings indicated in the General Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representative to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 9.4 CONTRACTOR agrees to warranty the Work for a period of one (1) year from Substantial Completion against defects in materials and workmanship. CONTRACTOR agrees to repair or replace any defective work within this warranty period immediately unless such repairs require long lead time materials and equipment in which case CONTRACTOR shall provide an agreeable schedule for repairs at no additional cost to OWNER.
- 9.5 The Work will be completed according to the Contract Documents and in accordance with codes, ordinances, and construction standards of the City of Baytown, and all applicable laws, codes and regulations of governmental authorities.
- 9.6 In the event any notice period required under the Contract Documents is found to be shorter than any minimum period prescribed by applicable law, the notice period required shall be construed to be the minimum period prescribed by applicable law.
- 9.7 This Contract and the Contract Documents, insofar as they relate in any part or in any way to the Work undertaken therein, constitute the entire agreement between the parties hereto, and it is expressly understood and agreed that there are no agreements

or promises by and between said parties, except as aforesaid, and that any additions thereto or changes shall be in writing.

- 9.8 The provisions of this Contract shall be applied and interpreted in a manner consistent with each other so as to carry out the purposes and the intent of the parties, but if for any reason any provision is unenforceable or invalid, such provisions shall be deemed severed from this Contract and the remaining provisions shall be carried out with the same force and effect as if the severed provision had not been part of this Contract.
- 9.9 The headings of the paragraphs are included solely for the convenience of reference and if there is any conflict between the headings and the text of this Contract, the Contract text shall control.
- 9.10 The waiver of any breach hereof shall not constitute a waiver of any subsequent breach of the same or any other provision hereof. Failure by the OWNER in any instance to insist upon observance or performance by CONTRACTOR shall not be deemed a waiver by CONTRACTOR of any such observance or performance. No waiver will be binding upon OWNER unless in writing and then will be for the particular instance only. Payment of any sum by OWNER to CONTRACTOR with knowledge of any breach or default will not be deemed a waiver of such breach or default or any other breach or default.
- 9.11 The CONTRACTOR acknowledges that the OWNER (through its employee handbook) considers the following to be misconduct that is grounds for termination of an employee of the OWNER: Any fraud, forgery, misappropriation of funds, receiving payment for services not performed or for hours not worked, mishandling or untruthful reporting of money transactions, destruction of assets, embezzlement, accepting materials of value from vendors, or consultants, and/or collecting reimbursement of expenses made for the benefit of the OWNER. The CONTRACTOR agrees that it will not, directly or indirectly; cause an employee of the OWNER to engage in such misconduct.
- 9.12 The CONTRACTOR agrees to comply with Appendix A (attached) of the City of Baytown's Title VI Nondiscrimination Plan Assurances

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and one to CONTRACTOR.

This Agreement will be effective upon execution and attestation by authorized representatives of the City of Baytown and upon the following date: _____, 20__.

OWNER:
CITY OF BAYTOWN

CONTRACTOR:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(Corporate Seal)

ATTEST _____

ATTEST _____

Address for giving notices

Phone: _____

Fax: _____

Agent for service of process:

END OF SECTION

Section 00610

PERFORMANCE BOND

STATE OF TEXAS §
HARRIS COUNTY §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, 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 City of Baytown as Obligee (Owner), in the penal sum of \$_____ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, effective as of the _____ day of _____, 20____, (the "Contract") to commence and complete the construction of certain improvements described as follows:

[Official project name]
[Project limits]
City of Baytown, Texas
COB PN: [X##### (Obtain from City Project Manager)]
BID NO.: [??-??? Obtain from City Purchasing Officer)]

which Contract, including the Contract Documents as defined therein, 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 Work and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions, and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and Contract Documents, then this obligation shall be void; otherwise to remain in full force and effect;

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the Work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way 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: _____

Title: _____

Title: _____

Address:

Address:

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.

END OF SECTION

Section 00611

PAYMENT BOND

STATE OF TEXAS §
HARRIS COUNTY §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, 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 City of Baytown as Obligee (Owner), in the penal sum of \$_____ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, effective as of the _____ day of _____, 20____, (the "Contract") to commence and complete the construction of certain improvements described as follows:

[Official project name]
[Project limits]
City of Baytown, Texas
COB PN: [X##### (Obtain from City Project Manager)]
BID NO.: [??-?? (Obtain from City Purchasing Officer)]

which Contract, including the Contract Documents as defined therein, 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 or material to him or a subcontractor in the prosecution of the Work provided for in said Contract, then, this obligation shall be void; otherwise to remain in full force and effect;

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the Work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way 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: _____

Title: _____

Title: _____

Address:

Address:

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.

END OF SECTION

Section 00612

ONE-YEAR MAINTENANCE BOND

STATE OF TEXAS §
HARRIS COUNTY §

KNOW ALL MEN BY THESE PRESENTS: That _____ of the City of _____, County of _____, and State of Texas, 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 City of Baytown as Obligee (Owner), in the penal sum of \$_____ for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written contract with the Owner, effective as of the _____ day of _____, 20____, (the "Contract") to commence and complete the construction of certain improvements described as follows:

[Official project name]
[Project limits]
City of Baytown, Texas
COB PN: [X##### (Obtain from City Project Manager)]
BID NO.: [??-?? (Obtain from City Purchasing Officer)]

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 correct all such work not in accordance with the Contract Documents discovered within the one-year period from the date of substantial completion, then this obligation shall be void; otherwise to remain in full force and effect;

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

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way 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: _____

Title: _____

Title: _____

Address:

Address:

Telephone: _____

Telephone: _____

Fax: _____

Fax: _____

NOTICE: THE ADDRESS OF THE SURETY COMPANY TO WHICH ANY NOTICE OF CLAIM SHOULD BE SENT MAY BE OBTAINED FROM THE TEXAS DEPARTMENT OF INSURANCE BY CALLING ITS TOLL-FREE TELEPHONE NUMBER; 1-800-252-3439.

END OF SECTION

Section 00615

PARTIAL WAIVER OF LIEN AND PAYMENT AFFIDAVIT

The undersigned contracted with City of Baytown to furnish _____ in connection with certain improvements to real property located in the City of Baytown, TX and owned by the City of Baytown which improvements are described as follows:

_____.

In consideration of Pay Estimate No. _____ in the amount of \$ _____ the undersigned, on oath, states that all persons and firms who supplied labor and materials to the undersigned in connection with said Project will be fully paid within 30 days of the date of this document by the undersigned for such work through _____.

In consideration of the payment herewith made, the undersigned does fully and finally release and hold harmless the City of Baytown and its surety, if any, through the above date from any and all claims, liens, or right to claim or lien, arising out of this Project under any applicable bond, law or statute.

It is understood that this affidavit is submitted to induce payment of the above sum and for use by the City of Baytown in assuring the Owner and others that all liens and claims relating to the said Project furnished by the undersigned are paid.

Signature

Printed Name & Title

Company Name

State of _____
County of _____

Subscribed and sworn to, before me, this _____ day of _____, 20____.

My Commission Expires: _____

Notary Public

Section 00700a

GENERAL CONDITIONS OF AGREEMENT

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Section 00700

GENERAL CONDITIONS OF AGREEMENT**1.0 DEFINITIONS AND INTERPRETATIONS**

1.01 OWNER, CONTRACTOR AND ENGINEER. The OWNER, the CONTRACTOR and the ENGINEER are those persons or organizations identified as such in the Agreement. The term ENGINEER as used in these General Conditions shall refer to the Engineer or Architect identified in the Agreement, as applicable, and means a person authorized to act as a representative of the entity designated by the OWNER to provide professional services required in connection with the preparation of plans and specifications of this Contract. The term CONSTRUCTION MANAGER as used in these General Conditions shall refer to the Construction Manager identified in the Agreement, as applicable, and means a person authorized to act as representative of the entity designated by the OWNER to provide professional services required in connection with the performance of the work of this Contract. The Owner's representative on the project site shall be the CONSTRUCTION MANAGER or ENGINEER as designated.

1.02 CONTRACT DOCUMENTS. The Contract Documents shall consist of all of the documents identified in Article 8 of the Standard Form of Agreement, which documents, excluding such documents as may be delivered or issued after the Effective Date of the Agreement, as referenced in Article 8, shall be bound together in a Project Manual for the Work. All references to the "Contract" or the "Agreement" in these General Conditions of Agreement shall include the Contract Documents.

The Contract Documents are complementary, and what is required by one shall be binding as if required by all. In the event of any conflict among the Contract Documents, the Contract Documents shall govern in the following order:

- (1) Modifications in writing and signed by both parties, including any Change Orders;
- (2) Standard Form of Agreement;
- (3) General Conditions of Agreement, including Attachment No. 1 – Workers' Compensation Insurance Coverage, Attachment No. 2 – Agreement for Final Payment and CONTRACTOR'S Sworn Release, and Attachment No. 3 – Owner's Insurance Requirements of Contractor;
- (4) Special Conditions of Agreement;
- (5) Addenda, if any; Bid Proposal, Instructions to Bidders;
- (6) Plans
- (7) Specifications referenced or included in the Project Manual;

- (9) Exhibits: The following Exhibits, if any, attached hereto, are incorporated herein, and are a part of this Contract:

In the event a conflict or inconsistency remains between or within the Contract Documents, or the Contract Documents and applicable standards, codes and ordinances, CONTRACTOR shall provide the greater quantity or better quality, or CONTRACTOR shall comply with the more stringent requirements, as determined by ENGINEER.

Terms or phrases used in the Contract Documents with a well-known technical or construction industry meaning shall have such recognized meanings. References to standards, specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, shall mean the latest in effect on the effective date of the Contract, unless otherwise stated in the Contract Documents.

1.03 SUBCONTRACTOR. The term "subcontractor", as employed herein, includes those entities having a contract with the CONTRACTOR or a subcontractor for performance of work on the Project. OWNER shall have no responsibility to any subcontractor for performance of work on the Project contemplated by these Contract Documents, and any such subcontractor shall look exclusively to CONTRACTOR for any payments due subcontractor.

1.04 WRITTEN NOTICE. Written Notice shall be deemed to have been duly served if delivered in person or by electronic means through the Project Management program to the individual or to a partner of the partnership or joint venture, or to an officer of the corporation or company for whom it is intended, or if delivered at or sent by Certified Mail, Return Receipt Requested, to the last known business address or registered office of such individual, partnership, joint venture or corporation or company, or to the address for giving notices listed in the Standard Form of Agreement.

1.05 WORK. Unless otherwise stipulated, 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 all other facilities or services of any nature whatsoever necessary for the execution and completion of the Work described in the Standard Form of Agreement. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The CONTRACTOR shall, if required by the ENGINEER as representative of the OWNER, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have well-known, technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials shall be furnished in strict conformity with the Contract Documents.

1.06 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 as representative of the OWNER, to be performed by the CONTRACTOR to accomplish any change, alteration or addition to the work shown in the plans. Extra work shall be authorized in writing by the ENGINEER prior to commencement. Extra Work items are paid for on an as needed, as authorized basis only.

1.07 WORK DAY: As used herein, a "Work Day" is defined as any Monday through Friday, not a legal holiday, and any Saturday or Sunday specifically approved by the OWNER, in which the CONTRACTOR can perform six or more hours of work per the current construction

schedule. CONTRACTOR agrees to request specific approval from the Construction Manager or Owner, in advance, to perform work on Saturdays or Sundays and in so doing agrees to pay all charges and costs for Inspection and or Construction Management services required during the performance of any such approved work. Refer to paragraph 7.04 for procedure to determine cost for Construction Management and Inspection Services for work on non-work days.

1.07-1 RAIN DAY: The City of Baytown's annual rainfall average exceeds 49 inches (124 cm), with an annual average of 82 precipitation days. The contract time shall include the prorated number of rain days to contract time, or 0.225 rain days per contract day rounded to the nearest whole day. As used herein, is defined as any WORK DAY during which weather related conditions prevent the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items as identified in the current construction schedule. CONTRACTOR shall record Rain Days on the Pay Application each month for the review and possible approval by the OWNER. The approved Rain Day is then added to the Contract Time. (See 1.12 Contract Time below).

1.07-2 IMPACT DAY: As used herein, is a day that is added to the CONTRACT TIME by the OWNER by Change Order to extend the Contract Time by one full Work Day. (See 1.12 Contract Time below) Impact Days, once approved by the OWNER, shall extend the Contract Time on a one-to-one basis to replace a Work Day lost to conditions that prevented the CONTRACTOR from performing four (4) or more consecutive hours of work on critical path items. Impact Days are added to the Contract Time by Change Order only at the end of the work and then only if, in the opinion of the OWNER, a time extension is warranted due to delays beyond the control of the Contractor and required to complete the work within the Contract Time.

1.08 CALENDAR DAY. A "calendar day" is any day of the week, month or year no days being excepted. Unless otherwise expressly provided, all references to "day(s)" shall mean calendar day(s).

1.09 SUBSTANTIALLY COMPLETED: The terms "Substantially Completed", or "Substantially Complete" or "Substantial Completion" as used in this Contract, shall mean that all major process components of the facility or work have been made suitable for use or occupancy, including appropriate documentation from the equipment suppliers that all of the individual components have been installed in accordance with the specifications and manufacturer's recommendations, the installations have been approved by the ENGINEER and the items have met the start-up and testing requirements of the contract documents or is deemed to be in a condition to serve its intended purpose or requires only minor miscellaneous work and adjustment to achieve Final Completion and Acceptance as determined by the ENGINEER. Upon compliance with the above referenced criteria, ENGINEER shall issue a Certificate of Substantial Completion.

PARTIAL SUBSTANTIAL COMPLETION: designation will be given on components of the Work that must be placed into service prior to the completion of the entire Work. The contractor's One Year Warranty period for these items shall begin on the date of Partial Substantial Completion as designated by the ENGINEER. The ENGINEER shall determine and make all such designations.

1.10 INTERPRETATION OF WORDS AND PHRASES. Whenever the words "directed", "permitted", "designated", "required", "ordered", "considered necessary", "prescribed" or words of like import are used, it shall be understood that the direction, requirement, permission,

order, opinion designation or prescription of the ENGINEER as the OWNER's representative is intended. Similarly, the words "approved", "acceptable", "satisfactory" or words of like import shall mean that no exception is taken by ENGINEER, but does not relieve CONTRACTOR of responsibility for compliance with the Contract Documents.

Whenever in the Specifications or Plans of the Contract Documents, the terms of description of various qualities relative to finish, workmanship or other qualities of similar kind which cannot, from their nature, be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said Specifications shall be decided by the ENGINEER as the OWNER's representative, and said work shall be done in accordance with his interpretations of the meaning of the words, terms or clauses defining the character of the work.

1.11 REFERENCED STANDARDS. No provision of any referenced standard specification, or manual shall be effective to change the duties and responsibilities of the Owner, Engineer, Contractor, or their consultants, employees, or representatives from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer or its consultants, employees, or representatives any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibilities contrary to provisions of the Contract Documents.

1.12 CONTRACT TIME The term Contract Time as used herein, refers to the number of Calendar days provided to complete the work or the date, stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with Paragraph 6.09 and as modified as a result of any authorized Extensions.

The Contract Time shall only be extended by (a) the addition of Rain Days equal to the number of actual Rain Days (as referenced in Paragraph 1.07) and per the final completion duration and (b) the number of Impact Days granted for delays, in the opinion of the Owner, beyond the control of the Contractor. The extension of the Contract Time shall be the CONTRACTOR's sole and exclusive remedy for delays.

1.13 CONSTRUCTION INSPECTOR The term "Construction Inspector" here in includes those professionals engaged by the OWNER to ensure CONTRACT work's compliance with the specifications and any applicable statutory requirements.

1.14 BALANCING CHANGE ORDER is a change order executed during the close-out process that may add/remove pay items, or adjust quantities of existing items or remove unused pay items or quantities Balancing Change Orders are used to reconcile the unit cost of the work performed or installed by the Contractor.

2.0 RIGHTS AND RESPONSIBILITIES OF THE OWNER

2.01 NO WARRANTY OF DESIGN. It is understood that the OWNER MAKES NO WARRANTY OF THE ADEQUACY, ACCURACY OR SUFFICIENCY OF THE PLANS AND SPECIFICATIONS OR ANY OTHER DESIGN DOCUMENTS, AND OWNER HEREBY EXPRESSLY DISCLAIMS ANY SUCH WARRANTY, EXPRESSED OR IMPLIED. Prior to commencing each portion of the Work, CONTRACTOR shall carefully study and compare the

relevant Contract Documents, shall observe conditions at the site affecting the Work, and shall take field measurements of existing conditions related to the Work. Any errors, omissions or inconsistencies in the Contract Documents noted by the CONTRACTOR, and/or any variance between the Contract Documents and applicable codes, standards or ordinances, shall be promptly reported by CONTRACTOR to ENGINEER in writing as a Request for Information. Work performed prior to a Request for Information shall be at the Contractor's risk. If CONTRACTOR fails to perform its obligations under this paragraph, CONTRACTOR shall pay such costs and damages to OWNER as would have been avoided if CONTRACTOR had reported any errors, omissions, inconsistencies or variances in the Contract Documents noted by CONTRACTOR or which should have been noted by a careful study of the Contract Documents. CONTRACTOR shall comply with the Contract Documents, all approved modifications thereof and additions and alterations thereto approved in writing by the OWNER. The burden of proof of such compliance shall be upon the CONTRACTOR to show that he has complied with the requirements of the Contract Documents and approved modifications thereof and all approved additions and alterations, thereto, as the same shall have been interpreted by the ENGINEER.

2.02 RIGHT OF ENTRY. The OWNER reserves the right to enter the property or location on which the work herein contracted for is to be performed, constructed or installed, for itself or such agent or agents as it may select, for the purpose of inspecting the work, or for the purpose of performing, constructing or installing such collateral work as the OWNER may desire. The OWNER shall have the right to make inspections at all reasonable times, and the CONTRACTOR hereby waives any claims for extension of time and/or compensation for any loss or damage if his work shall be delayed by reason of such inspection, performance, construction or installation of collateral work.

2.03 OWNERSHIP OF PLANS. All plans, specifications and copies thereof furnished by the OWNER shall not be reused on other work and, with the exception of the sets forming the part of the signed Contract Documents, are to be returned to the OWNER on request at the completion of the Work. All plans and models are the property of the OWNER.

2.04 CHANGES AND ALTERATIONS. The CONTRACTOR further agrees that the Owner may make such changes and alterations, additions and deletions as the OWNER may see fit, in the Work, including but not limited to changes in line, grade, form, dimensions, plans or specifications for the Work herein contemplated, or any part thereof, either before or after the beginning of construction, without affecting the validity of this Contract and the corresponding Performance and Payment Bonds.

If such changes or alterations or deletions diminish the quantity or the value of the Work to be done, they shall not constitute the basis for a claim for compensation or damages, including lost or anticipated profits on the Work that may be affected. If the amount of Work is increased and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this Contract, otherwise, such additional work shall be paid for as provided under Article 7 hereof for 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 compensate 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.

2.05 DAMAGES. In the event the OWNER 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.

3.0 RIGHTS AND RESPONSIBILITIES OF THE ENGINEER

3.01 OWNER-ENGINEER RELATIONSHIP. The ENGINEER shall serve as the OWNER'S representative during construction. The duties, responsibilities and limitations on the authority of the ENGINEER as the OWNER'S representative during construction are set forth in the Contract Documents; and the ENGINEER shall not have authority to extend the OWNER'S liability or to bind the OWNER for any additional liability of any nature whatsoever without the written consent of the OWNER. Any communications by the OWNER to the CONTRACTOR regarding the Work shall be issued through the ENGINEER.

It is the intent of this Agreement that there shall be no delay in the execution of the Work; therefore, written decisions or directions rendered by the ENGINEER as the OWNER'S representative shall be promptly carried out, and any claim arising therefrom shall be resolved as provided in Article 7. Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the OWNER'S representative shall have the authority to issue written stop work orders whenever such stoppage may be necessary to insure the performance of the Work in accordance with the Contract Documents.

3.02 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE. The ENGINEER shall furnish the CONTRACTOR with four (4) copies of all Plans and Specifications without expense to the CONTRACTOR, and the CONTRACTOR shall keep one full size copy of the same constantly accessible on the job site, with the latest revisions noted thereon. The CONTRACTOR shall be responsible for preserving the Plans and Specifications, timely and accurately updated, for reference and review by the OWNER or the ENGINEER and submittal of redlines during closeout.

3.03 PRELIMINARY APPROVAL. The ENGINEER shall not have the power to waive the obligations imposed under this Contract for the furnishing by the CONTRACTOR of new material of good quality, and for good and workmanlike performance of the Work as herein described, and in full accordance with the Contract Documents, without alteration, deletion or change. No failure or omission of the OWNER'S representative to discover, object to or condemn any non-conforming or defective work or material, or to stop work, shall release the CONTRACTOR from the obligation to fully and properly perform the Contract, including without limitation, the obligation to at once remove and properly replace any defective work or material at any time prior to final acceptance, upon discovery of such non-conforming or defective work or material.

Any questioned Work may be ordered taken up or removed for inspection by the ENGINEER prior to final acceptance, and if found not to be in accordance with the Contract Documents, all expense of removing, inspection and repair or 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.

3.04 INSPECTION BY ENGINEER. The ENGINEER will make periodic visits to the site to observe the progress and quality of the executed Work and to determine if such Work generally meets the essential performance and design features and the technical, functional /or engineering requirements of the Contract Documents, and is in all other respects being performed in compliance with the Contract Documents. However, the ENGINEER shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site inspections to check the quality and/or quantity of the work, nor shall the ENGINEER 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 to the Work being performed or any part thereof. The ENGINEER shall use reasonable care to prevent deviation from the intent and substance of the Contract Documents by the CONTRACTOR in the performance of the Work and any part thereof and, on the basis of such on-site observations, will keep the OWNER informed of the progress of the work and will endeavor to guard the OWNER against defects and deficiencies in the Work of the CONTRACTOR. 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 subcontractors, agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the Work.

3.05 DETERMINATION OF QUESTIONS AND DISPUTES. In order to prevent delays and disputes and to discourage litigation, it is agreed that the ENGINEER shall, in all cases, determine the quantities and qualities of the several kinds of Work, which are to be paid for under this Contract. The ENGINEER shall address all questions in relation to said Work and the construction thereof, as well as 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. In the event the ENGINEER shall become aware of or shall receive information that there is a dispute or a possible dispute as to the reasonable interpretation of the terms and conditions of the Contract Documents, or any other dispute or question, the ENGINEER shall, within a reasonable time, provide a written interpretation of the Contract Documents or a written decision on all questions arising relative to the execution of the Work, copies of which shall be delivered to all parties to the Contract. If the CONTRACTOR or OWNER desires to take exception to any directions, order, interpretation or instructions of the ENGINEER, CONTRACTOR or OWNER shall present any such claim to the ENGINEER in accordance with the provisions of Section 7.07.

3.06 RECOMMENDATION OF PAYMENT. The ENGINEER shall review the CONTRACTOR's application for payment and supporting documents, shall determine the amount owed to the CONTRACTOR and shall provide written recommendation to the OWNER for payment to the CONTRACTOR in such amount. Such recommendation of payment to CONTRACTOR shall constitute a representation to the OWNER of the ENGINEER's judgment that the work has progressed to the point indicated, to the best of his knowledge, information and belief; however, such recommendation of an application for payment to CONTRACTOR shall not be deemed an acceptance of any defective or non-conforming Work. Any recommendation of payment by the ENGINEER shall be subject to OWNER's rights to withhold payment under Section 6.12 and as otherwise provided in the Contract.

4.0 RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR

4.01 INDEPENDENT CONTRACTOR. CONTRACTOR is, and shall remain, an independent contractor, solely responsible for the manner and method of completing the Work under this Contract, with full and exclusive power and authority to direct, supervise and control his own employees and to determine the means, method and manner of performing such Work, so long as such methods comply with the requirements of the Contract Documents, and do not adversely affect the completed improvements or any other property abutting or adjoining the Work area, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the Plans, Specifications and Contract Documents. The fact that the OWNER or ENGINEER as the Owner's representative shall have the right to observe CONTRACTOR's work during his performance and to carry out the other prerogatives which are expressly reserved to and vested in the OWNER and the ENGINEER hereunder, is not intended to and shall not at any time change or affect the status of the CONTRACTOR as an independent contractor with respect to either the OWNER or the ENGINEER as the OWNER's representative or to the CONTRACTOR's own employees or to any other person, firm or corporation.

4.02 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, including but not limited to weather, access, lay down and storage areas, and all other matters which in any way affect the Work under this Contract. It is further understood that the CONTRACTOR has satisfied himself as to the terms, meaning, intent and requirements of all of the Contract Documents, and applicable laws, codes, regulations and ordinances. CONTRACTOR hereby warrants and represents that it has taken into consideration all of the foregoing factors, and CONTRACTOR shall perform the Work for the Contract Price and within the Contract Time. No verbal agreement or conversation with any officer, agent or employee of the OWNER or the ENGINEER, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

4.03 LAWS AND ORDINANCES. The CONTRACTOR shall at all times observe and comply with all federal, state or local laws, codes, ordinances, permits and regulations, regardless of whether the same are adopted before or after the execution of this Contract, which in any manner affect the Contract or the work, and shall indemnify, save and hold harmless the OWNER and the ENGINEER against any claim arising out of the violation of any such laws, ordinances and regulations, whether by the CONTRACTOR or his agents, employees, subcontractors or vendors. If the CONTRACTOR observes that the Plans and Specifications are at variance with federal or state laws or codes or the ordinances or regulations of the City, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be made as provided in the Contract for changes in the work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, codes, ordinances, rules or regulations, or if CONTRACTOR reasonably should have known of any such violation, and without such notice to the ENGINEER, CONTRACTOR shall bear all costs arising therefrom.

The OWNER is a Political Subdivision of the State of Texas, and 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 contracts, shall be controlling and shall be considered as part of this Contract to the same effect as though embodied herein. Neither the act

of OWNER entering into this Contract, nor OWNER's performance hereunder, shall constitute a waiver of any immunity from suit enjoyed by OWNER under applicable law, all such rights and defenses being hereby expressly reserved, notwithstanding any term or provision herein to the contrary. The Code of Ordinances and other applicable regulations of the OWNER shall be deemed to be embodied in this Contract.

The prevailing wage rates applicable to this Project shall be either Document 00811 — Wage Scale for Engineering Construction, or Document 00813 — Wage Scale for Building Construction, or both, as set out in the Project Manual.

4.04 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, or any rights, duties or obligations arising thereunder, in whole or in part, without the prior written consent of the OWNER, and that no part or feature of the Work will be sublet to anyone objectionable to the ENGINEER or the OWNER. In addition, the OWNER reserves the right to disapprove the subletting of this Contract or any portion hereof on any basis whatsoever. 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 obligations to the OWNER, as provided for by this Agreement.

4.05 PERFORMANCE, PAYMENT AND MAINTENANCE BONDS. In the event the Contract Price shall be in excess of \$25,000.00, the CONTRACTOR shall execute separate Performance, Payment and Maintenance Bonds, each in the sum of one hundred percent (100%) of the Contract Price, and each in accordance with the provisions of Chapter 2253 of the Texas Government Code. If the Contract Price does not exceed \$25,000.00, the statutory bonds will not be required. All required Bonds shall be payable to OWNER and on forms approved by the OWNER, and shall be executed by a corporate surety in accordance with Article 7.19-1 of the Texas Insurance Code. It is agreed that the Contract shall not be in effect until such original Performance, Payment and Maintenance Bonds are delivered to and approved by the OWNER. The cost of the premium for the Performance, Payment and Maintenance Bonds, should Maintenance Bonds be required, shall be included in the CONTRACTOR's Bid Proposal. All bonds shall be issued by Texas Department of Insurance approved surety companies.

4.06 INSURANCE. The CONTRACTOR, at his own expense, shall procure, maintain and keep in force throughout the duration of the Work, and throughout the Guarantee Period, insurance as specified in Attachment No. 1 hereto with regard to Workers' Compensation Insurance, and as specified in Attachment No. 3 hereto with regard to all other Insurance. Such insurance shall be carried with an insurance company licensed to transact business in the State of Texas and shall cover all operations in connection with this Contract, whether performed by the CONTRACTOR or a subcontractor, or others for whom CONTRACTOR is responsible.

4.07 PERMITS AND FEES. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for all permits, licenses, and inspections necessary for proper execution and completion of the Work, and which are legally required at the time bids are received. Permits required by the City of Baytown will be issued as a NO FEE permit.

4.08 TEXAS STATE SALES TAX. Materials incorporated into this project are exempt from State Sales according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

The Contractor must obtain a limited sales, excise and use tax permit or exemption certificate which shall enable him to buy the materials to be incorporated into the Work without paying tax at due time of purchase.

4.09 **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, all satisfactory to the ENGINEER as the OWNER'S representative. The superintendent shall represent the CONTRACTOR in his absence and shall act as the agent of the CONTRACTOR, and all directions given to him shall be binding as if given to the CONTRACTOR. Adequate supervision by competent and reasonable representatives of the CONTRACTOR is essential to the proper performance of the Work, and lack of such supervision shall be an act of default, and grounds for suspending operations of the CONTRACTOR. The Superintendent cannot be removed from the project without the consent of the Owner; the Superintendent must speak and understand the English language; the Superintendent must be on site when any work on the project is being done, even when a subcontractor is performing the work.

The Work, from its commencement to completion, shall be under the exclusive charge and control of the CONTRACTOR, and all risk in connection therewith shall be borne by the CONTRACTOR.

Neither the OWNER nor the ENGINEER as the OWNER's representative will be responsible for the acts or omissions of the CONTRACTOR, its subcontractors or any of its agents or employees, or any other persons performing any of the Work.

4.10 **CHARACTER OF WORKERS.** The CONTRACTOR agrees to employ only orderly and competent workers, 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 worker or workers on the Work are, in his opinion, incompetent, unfaithful or disorderly, or in the ENGINEER's opinion, are not using their best efforts for the progress of the Work, such worker or workers shall be discharged from the Work and shall not again be employed on the Work without the ENGINEER's written consent. OWNER reserves the right to bar any person, subcontractor, or supplier found to be incompetent, unfaithful, disorderly, or not using their best efforts to progress work or considered to be a threat to the health, safety and welfare to the project or workforce.

4.11 **LABOR, EQUIPMENT, MATERIALS, CONSTRUCTION PLANT, AND BUILDINGS.** The CONTRACTOR shall provide all labor, services, tools, equipment, machinery, supplies, facilities, utilities and materials necessary in the prosecution and completion of this Contract where it is not otherwise specifically provided that the OWNER shall furnish same; and further, 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.

The building or placement of structures for housing workers or offices, or the erection of tents or other forms of protection, will be permitted only with the ENGINEER's written permission, and 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. Any structures of any nature constructed, placed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection, placement or construction thereof; and the CONTRACTOR agrees to indemnify and hold the ENGINEER or OWNER harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, placement, construction or maintenance of CONTRACTOR's buildings or structures.

4.12 SANITATION. Necessary sanitary conveniences for the use of laborers and others on the Work site, 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. Any structures of any nature constructed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection or construction thereof, and the CONTRACTOR agrees to indemnify and hold the ENGINEER and OWNER harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, construction or maintenance of CONTRACTOR's buildings.

4.13 CLEANING AND MAINTENANCE. The CONTRACTOR shall at all times keep and maintain the premises free from accumulation of debris, trash and waste. The CONTRACTOR shall remove waste, debris and trash at the end of each work day. CONTRACTOR shall remove all such debris, trash and waste, tools, scaffolding and surplus materials, and shall leave the Work broom-clean or its equivalent, upon completion of the Work. The Work shall be left in good order and condition. In case of dispute, the OWNER may remove the debris, trash, waste and surplus materials, and charge the cost to the CONTRACTOR.

4.14 PERFORMANCE OF WORK. 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 for such materials furnished or work completed, unless otherwise provided in the Contract Documents.

4.15 RIGHT OF OWNER TO ACCELERATE THE WORK. If at any time the methods or equipment used by the CONTRACTOR, or the work force supplied are found to be inadequate to achieve the progress required to Substantially Complete the Work within the Contract Time, the OWNER or the ENGINEER as the OWNER's representative, may order the CONTRACTOR in writing to supplement its forces and/or equipment, or work shifts or overtime, or otherwise improve its efficiency and rate of progress to achieve Substantial Completion of the Work within the Contract Time, and the CONTRACTOR shall comply with such order, at its own cost and expense.

4.16 LAYOUT OF WORK. Except as specifically provided herein, the CONTRACTOR shall be responsible for laying out work by means of construction surveying and shall accomplish this work in a manner acceptable to the ENGINEER and in conformance with the Contract Documents.

4.17 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, six (6) checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades. Contractor will check and approve shop drawings for

compliance with requirements of Contract Documents and will so certify by stamp on each drawing prior to submittal to ENGINEER. Any drawings submitted without Contractor's stamp of approval will not be considered and will be returned to him for proper submission. The ENGINEER shall pass upon them with reasonable promptness, indicating desired corrections.

The CONTRACTOR shall make any corrections required by the ENGINEER, file with him two (2) 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 the Contract Documents, unless he has, in writing, called the ENGINEER's attention to such deviations at the time of the submission, and the ENGINEER has acknowledged and accepted such deviations in writing, 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 Contract Documents, and within the Contract Time.

Such review by the ENGINEER shall be for the sole purpose of determining the apparent sufficiency of said drawings or schedules to result in finished improvements in conformity with the Contract Documents, 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, and any action taken by the ENGINEER shall not relieve the CONTRACTOR of his responsibility and liability to comply with the Contract Documents.

OWNER, CONSTRUCTION MANAGER, ENGINEER, and CONTRACTOR shall make all submittals, review comments, notes, corrections, schedules and updates, testing results, payment applications, instructions and other communications by means of the OWNER'S Project Management program. The OWNER, ENGINEER and CONTRACTOR shall each retain such hard copies from this system as are required for their specific record keeping requirements. No documents shall be removed from this system or destroyed except those being replaced by the systems protocols as a latest version document.

All requirements for written communications, submittals, comments, instructions or other documents processed by means of this system shall have the same legal or time sensitive status as if they had been hand delivered in hard copy to their intended addressee.

4.18 ENGINEER-CONTRACTOR RELATIONSHIP; OBSERVATIONS. It is agreed by the CONTRACTOR that the ENGINEER, as the OWNER's representative, shall be and is hereby authorized to appoint such subordinate engineers, representatives or observers as the said ENGINEER may from time to time deem proper to observe the materials furnished and the Work done under this Agreement. The CONTRACTOR shall furnish all reasonable aid and assistance required by the subordinate engineers, representatives or observers for the proper observation and examination of the work. The CONTRACTOR shall regard and obey the directions and instructions of any subordinate engineers, representatives or observers so appointed, when such directions and instructions are consistent with the obligations of this Agreement and the Contract Documents, provided, however, should the CONTRACTOR object to any orders by any

subordinate engineer, representative or observer, the CONTRACTOR may, within three (3) days, make written appeal to the ENGINEER for his decision.

4.19 OBSERVATION AND TESTING. The OWNER or the ENGINEER as the OWNER's representative shall have the right at all reasonable times to observe, inspect and test the Work. The CONTRACTOR shall make all necessary arrangements and provide proper facilities and access for such observation, inspection and testing at any location wherever Work is in preparation or progress. The CONTRACTOR shall ascertain the scope of any observation, inspection or testing which may be contemplated by the OWNER or the ENGINEER and shall give ample notice as to the time each part of the Work will be ready for such observation, inspection or testing. The OWNER or the ENGINEER may reject any Work found to be defective or not in accordance with the Contract Documents, regardless of the stage of its completion or the time or place of discovery of such deficiencies, and regardless of whether the ENGINEER has previously accepted the Work through oversight or otherwise. If any Work is covered without approval or consent of the OWNER, it must, if requested by the OWNER or the ENGINEER, be uncovered for examination, at the sole expense of the CONTRACTOR. In the event that any part of the Work is being fabricated or manufactured at a location where it is not convenient for the OWNER or the ENGINEER to make observations of such Work or require testing of said Work, then in such event, the OWNER or the ENGINEER may require the CONTRACTOR to furnish the OWNER or the ENGINEER with certificates of inspection, testing or approval made by independent persons competent to perform such tasks at the location where that part of the work is being manufactured or fabricated. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the Contract Documents.

If any Work, which is required to be inspected, tested or approved, is covered up without written approval or consent of the OWNER or the ENGINEER, it must, if requested by the OWNER or the ENGINEER, be uncovered for observation and testing, at the sole expense of the CONTRACTOR. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided herein. Any Work which fails to meet the requirements of such tests, inspections or approval, and any Work which meets the requirements of any such tests or approval but does not meet the requirements of the Contract Documents shall be considered defective. Such defective Work and any other work affected thereby shall be corrected at the CONTRACTOR'S expense.

Neither observations by the OWNER or by the ENGINEER, nor inspections, certifications, tests or approvals made by the OWNER, the ENGINEER or other persons authorized under this Agreement to make such inspections, tests or approvals, shall relieve the CONTRACTOR from his obligation to perform the Work in accordance with the requirements of the Contract Documents.

4.20 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 Contract Documents, 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, It is further agreed that any such remedial action contemplated herein shall be at CONTRACTOR's expense.

4.21 **LIABILITY FOR PROPER PERFORMANCE.** Engineering construction drawings and specifications, as well as any additional instructions and information concerning the Work to be performed, passing from or through the ENGINEER, shall not be interpreted as requiring or allowing the CONTRACTOR to deviate from the Contract Documents, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to Work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable and contractually bound, at his own expense, for design, construction, installation and use or non-use of all items and methods incident to the performance of the Contract, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, similar items or devices used by him during construction, and work performed either directly or incident to construction, and for all loss, damage or injury incident thereto, either to person or property, whether such damage be suffered by the ENGINEER, the OWNER or any other person not a party to this Contract.

Any review of Work in progress or any visit or observation during construction, or any clarification of Contract Documents by the ENGINEER or OWNER, 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 construction or construction processes, or by other means or methods, 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 Contract Documents, or for the purpose of enabling the CONTRACTOR to more fully understand the Contract Documents so that the completed construction Work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for proper performance of his Work on the Project, including, 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. Any action by the ENGINEER or the OWNER in visiting or observing during construction, or any clarification of Contract Documents shall not constitute a waiver of CONTRACTOR'S liability for damages as herein set out. Deviation by the CONTRACTOR from Contract Documents, 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 Contract Documents, and further shall not relieve CONTRACTOR of his liability for loss, damage or injury as herein set out.

4.22 **PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC.** The CONTRACTOR shall be solely responsible for the safety of himself, his employees and persons entering the project site, as well as for the protection of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder. The CONTRACTOR shall take out and procure a policy or policies of Workers' Compensation Insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Workers' Compensation laws of the State of Texas. 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 laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded, as a minimum, 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 all necessary machinery guards, safe walkways, ladders, bridges, gangplanks, barricades, fences, traffic control, warning signs and other safety devices.

No alcoholic beverages, non-prescription drugs, or unsafe practices shall be allowed on the Work site. CONTRACTOR shall dismiss anyone participating in any of the above from the Work site for the duration of the Project. Only prescription drug uses with a doctor's authorization to perform construction activities shall be allowed on the Work site. Violation of this provision is a default under the Contract. The use, possession, sale, transfer, purchase or being under the influence of alcohol, drugs or any other illegal or unlawful substance by CONTRACTOR or CONTRACTOR's employees, or CONTRACTOR's subcontractors and employees at any time at the Work site or while on company business is prohibited. CONTRACTOR shall institute and enforce appropriate drug testing guidelines and program.

All accidents or injuries to CONTRACTOR's employees working on the job site must be reported verbally and in writing to the ENGINEER immediately, and within no more than eight (8) hours.

The safety precautions actually taken and their adequacy shall be the sole responsibility of the CONTRACTOR, in his sole discretion as an independent contractor. Inclusion of this paragraph in the Agreement, as well as any notice which may be given by the OWNER or the ENGINEER as the OWNER's representative concerning omissions under this paragraph as the Work progresses, are intended as reminders to the CONTRACTOR of his duty and shall not be construed as any assumption of duty by ENGINEER, or OWNER's representative to supervise safety precautions by either the CONTRACTOR or any of his subcontractors.

4.23 PROTECTION OF ADJOINING PROPERTY. The CONTRACTOR shall employ 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 adjacent or adjoining property. THE CONTRACTOR AGREES TO INDEMNIFY, DEFEND, SAVE AND HOLD HARMLESS THE CONSTRUCTION MANAGER, OWNER AND ENGINEER AGAINST ANY CLAIM OR CLAIMS FOR DAMAGES, LOSS, COSTS OR EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES, DUE TO ANY INJURY TO ANY ADJACENT OR ADJOINING PROPERTY, ARISING OR GROWING OUT OF THE PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER OR NOT SUCH DAMAGE, LOSS, COST OR EXPENSE IS CAUSED IN PART BY THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY OF OWNER AND/OR ENGINEER.

4.24 PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES. THE CONTRACTOR AGREES THAT HE WILL PROMPTLY PAY WHEN DUE, AND WILL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, 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 OWNER, 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 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.

Any and all communications between any parties under this paragraph shall be in writing. Nothing contained in this paragraph or this Agreement shall create, establish or impose any relationship, contractual or otherwise, between OWNER and any subcontractor, laborer or supplier of CONTRACTOR, nor shall it create, establish or impose any duty upon OWNER to pay or to see to the payment of any subcontractor, laborer or supplier of CONTRACTOR.

4.25 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION. 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 thereof THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT AND SHALL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY LOSS OR LIABILITY ON ACCOUNT THEREOF, EXCEPT SUCH SUITS AND CLAIMS ARISING OUT OF A PARTICULAR DESIGN, DEVICE, MATERIAL OR PROCESS OR THE PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS SPECIFIED OR REQUIRED BY THE OWNER; PROVIDED, HOWEVER, IF CHOICE OF ALTERNATE DESIGN, DEVICE, MATERIAL OR PROCESS IS ALLOWED TO THE CONTRACTOR, OR IF CONTRACTOR KNEW OR SHOULD HAVE KNOWN OF THE PATENT OR COPYRIGHT AND FAILED TO PROMPTLY NOTIFY OWNER IN WRITING, THEN THE CONTRACTOR SHALL INDEMNIFY, DEFEND, SAVE AND HOLD THE OWNER HARMLESS FROM ANY LOSS OR LIABILITY ON ACCOUNT THEREOF.

4.26 INDEMNIFICATION. THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE ENGINEER AND THE OWNER HARMLESS FROM ANY CLAIMS OR DEMANDS OF ANY NATURE WHATSOEVER MADE BY ANY EMPLOYEE, EMPLOYEES, AGENTS OR SUBCONTRACTORS OF CONTRACTOR, OR BY ANY UNION, TRADE ASSOCIATION, WORKER'S ASSOCIATION OR OTHER GROUPS, ASSOCIATIONS OR INDIVIDUALS, ALLEGEDLY REPRESENTING EMPLOYEES OF THE CONTRACTOR, IN ANY DISPUTE BETWEEN THE CONTRACTOR AND HIS EMPLOYEES, DIRECTLY OR INDIRECTLY INVOLVING, GROWING OUT OF OR ARISING FROM CLAIMS BY SUCH EMPLOYEES FOR WAGES, SALARY, COMPENSATION, BENEFITS, WORKING CONDITIONS OR ANY OTHER SIMILAR COMPLAINT OR CLAIM WHICH MAY BE MADE.

THE CONTRACTOR, HIS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER AND THE ENGINEER AND THEIR RESPECTIVE OFFICERS, REPRESENTATIVES, AGENTS AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, LIABILITIES, JUDGMENTS AND COSTS OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, AND SHALL BE REQUIRED TO PAY ANY JUDGMENT THEREFOR, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE OWNER AND/OR THE ENGINEER OR ANY OF THEIR OFFICERS, REPRESENTATIVES, AGENTS OR EMPLOYEES, ARISING OUT OF OR RESULTING FROM OR ALLEGEDLY ARISING OUT OF OR RESULTING FROM THE PERFORMANCE

OF THE WORK, PROVIDED THAT ANY SUCH DAMAGES, CLAIM, LOSS, DEMAND, SUIT, LIABILITY, JUDGMENT, COST OR EXPENSE:

- (A) ARISES OUT OF OR RESULTS FROM IN WHOLE OR IN PART, OR ALLEGEDLY ARISES OUT OF OR RESULTS FROM IN WHOLE OR IN PART, ANY BREACH OF THIS AGREEMENT OR BREACH OF WARRANTY BY CONTRACTOR; OR
- (B) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OR INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY, INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND

IS CAUSED IN WHOLE OR IN PART OR IS ALLEGEDLY CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, THEIR AGENTS OR EMPLOYEES OR 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 OR ALLEGEDLY CAUSED IN PART BY THE NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY OF OWNER, ENGINEER AND/OR A PARTY INDEMNIFIED HEREUNDER.

Notwithstanding the foregoing or anything in the Agreement to the contrary, in accordance with the provisions of Section 130.002 of the Texas Civil Practice and Remedies Code, CONTRACTOR shall not be obligated to indemnify or hold harmless the ENGINEER, his agents, servants or employees, from liability for damage that is caused by or results from defects in plans, designs or specifications prepared, approved or used by the ENGINEER, or negligence of the ENGINEER in the rendition or conduct of professional duties called for or arising out of any construction contract and the plans, designs or specifications that are a part of the construction contract, and arises from personal injury or death, property injury, or any other expense that arises from personal injury, death, or property injury.

This indemnity agreement is a continuing obligation, and shall survive notwithstanding completion of the Work, Final Payment, expiration of the warranty period, termination of the Contract, and abandonment or takeover of the Work.

CONTRACTOR's indemnification obligations hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts, and shall not be limited by any limitation on amounts or coverage of insurance provided or to be provided under this Contract.

4.27 LOSSES FROM NATURAL CAUSES. All loss, cost, expense or damage to the CONTRACTOR arising out of the nature of the Work to be done or from any unforeseen circumstances in the prosecution of the same, or from the action of the elements, 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.

4.28 GUARANTEE. The CONTRACTOR hereby guarantees all the Work under the Contract to be free from defects or deficiencies in material in every particular and free from defects or deficiencies in workmanship; and against unusual damage from proper and usual use; and agrees to replace or to re-execute without cost to the OWNER such Work as may be found to be defective, deficient or otherwise not in conformance with the Contract Documents, and to make good all damages caused to other work or material, due to such defective Work or due to its required replacement or re-execution. This guarantee shall cover a period of one year from the date of Substantial Completion or Partial Substantial Completion of Work under the Contract, as evidenced by the Certificate of Substantial Completion. Neither the Certificate of Substantial Completion, Final Payment, nor any provision in the Contract Documents shall relieve the CONTRACTOR of the responsibility for defective, deficient or non-conforming material or workmanship during the period covered by the guarantee. The one-year period of guarantee will not limit the OWNER'S other rights under common law with respect to any defects, deficiencies or non-conforming Work discovered after one year. If this one-year guarantee conflicts with other warranties or guarantees, the longer period of warranty or guarantee will govern.

5.0 PROSECUTION AND PROGRESS

5.01 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 and the Contract Time; provided, also, that when the OWNER is having other work done, either by contract or by his own forces, 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, and the CONTRACTOR shall fully cooperate and coordinate its Work with OWNER or such other contractors.

The CONTRACTOR shall submit, an updated schedule with every pay estimate for review by the ENGINEER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the Work, with dates on which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts. Such schedules shall show completion of the Work within the Contract Time, and/or shall show such recovery efforts as CONTRACTOR intends to undertake in the event Substantial Completion of the Work is delayed.

5.02 EXTENSION OF TIME. The CONTRACTOR agrees that he has submitted his Bid Proposal in full recognition of the time required for the completion of this Project, taking into consideration the average climatic range and industrial conditions prevailing in this locality, and has considered the liquidated damage provisions as hereinafter set forth, and that he shall not be entitled to, nor will he request, an extension of time on this Contract, except when Substantial Completion of the Work has been delayed solely by strikes, lockouts, fires, Acts of God, or by any other cause which the ENGINEER shall decide justifies the delay. The CONTRACTOR shall give the ENGINEER prompt notice, in writing and within three (3) days of the start of any such delay, of the cause of any such delay, and its estimated effect on the Work and the schedule for completion of the Work. Upon receipt of a written request for an extension of the Contract Time from the CONTRACTOR, supported by relevant and all requested documentation, the ENGINEER shall submit such written request, together with his written recommendation, to the

OWNER for consideration. If the delay is not attributable in whole or in part to any act or omission of CONTRACTOR, its subcontractors or suppliers, and if the OWNER determines that CONTRACTOR is entitled to an extension of time under the terms of the Contract, the OWNER shall grant an extension of time for Substantial Completion of the Work, sufficient to compensate for the delay, and such extension of time shall be CONTRACTOR's sole and exclusive remedy, except as may be otherwise provided herein. No extensions of Contract Time shall be made for delays occurring prior to the Contractor's mobilization as defined in Section 01505 MOBILIZATION.

The Contract Time as defined in the Bid Proposal and other sections herein incorporates rain days as stated in Paragraph 1.07. The CONTRACTOR is required to keep record of all weather related delays and to submit the monthly count on each Pay Application. The Owner's Representative shall review and sign off on this record as a part of the Pay Application approval process every month. If, during preparation of the Balancing Change Order, the status of the work progress requires an extension of the Contract Time, Impact Days shall be added to the Completion Date equal to the total number of Weather or Impact Days approved less the original rain days resident in the original Contract Time. The Addition of Weather or Impact Days will only alter the Contract Time when added by Change Order. If the Work is completed prior to the Completion Date, No Days will be added. The addition of Weather or Impact Days shall be the CONTRACTOR's sole remedy for delays to the completion of the Work and their addition to the Contract Time shall not affect the Contract Price through any "per diem" adjustment to the General Conditions costs, Temporary Facilities costs or any other costs associated with the extension of the Contract Time.

5.03 HINDRANCES AND DELAYS. In executing the Contract, the CONTRACTOR agrees that in undertaking to complete the Work within the time herein fixed, he has taken into consideration and made allowances for all interference, disruption, hindrances and delays incident to such Work, whether growing out of delays in securing material, workmen or otherwise. No claim shall be made by the CONTRACTOR for damages, loss, costs or expense resulting from interference, disruption, hindrances or delays from any cause during the progress of any portion of the Work embraced in this Contract, except where the Work is stopped or suspended by order of the OWNER's representative and such stoppage or suspension is not attributable to any act or omission of CONTRACTOR.

5.04 SUSPENSION OF WORK. OWNER may, without cause, order the CONTRACTOR in writing to suspend the Work, in whole or in part, for such period of time as OWNER may request. The Contract Price and/or Contract Time shall be adjusted for any increase in the cost of or the time required for performance of the Work caused by such suspension. No adjustment shall be made to the extent performance was or would have been suspended by a cause for which CONTRACTOR is responsible, or to the extent an adjustment is made or denied under another provision of the Contract Documents.

5.05 LIQUIDATED DAMAGES FOR DELAY: It is understood and agreed that time is of the essence, and that the CONTRACTOR will commence the Work on the date specified herein or in any Notice to Proceed, and will Substantially Complete the Work within the Contract Time. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the time for the Substantial Completion of the Work described herein is reasonable time for the completion of the same, taking into consideration the average climatic range and conditions and usual industrial conditions prevailing in this locality. The CONTRACTOR further agrees that a failure to complete on time will cause damage to the OWNER and that such damages cannot be

accurately measured or that ascertainment will be difficult. Therefore, the parties agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the Contract Time, the CONTRACTOR shall pay, as liquidated damages and as a reasonable estimate of OWNER's damages, and not as a penalty, the amount set out in the Standard Form of Agreement.

However, the foregoing agreement as to liquidated damages constitutes only an agreement by the OWNER and the CONTRACTOR as to the amount of damages which the OWNER will sustain by reason of the CONTRACTOR'S failure to complete the work within the Contract Time. Should the OWNER suffer damage by reason of any other breach by CONTRACTOR, the OWNER may recover such actual damages in addition to any liquidated damages due.

The OWNER shall have the right to deduct and withhold the amount of any and all such damages whether it be the minimum amount stipulated above or otherwise, from any monies owing by it to said CONTRACTOR, or the OWNER may recover such amount from the CONTRACTOR and the sureties of his bond; all of such remedies shall be cumulative and the OWNER shall not be required to elect any one nor be deemed to have made an election by proceeding to enforce any one remedy.

5.06 CHANGE OF CONTRACT TIME: The Contract Time may only be changed by a Change Order. Any claim for an adjustment of Contract Time shall be based on written notice delivered by the party making such claim to the other party and to the ENGINEER promptly, but in no event later than ten (10) days after the event-giving rise to the claim. Notice of the extent of the claim, along with supporting data, shall be delivered within thirty (30) days of the occurrence and shall be accompanied by the claimant's written representation that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in Contract Time shall be determined by the ENGINEER in accordance with the requirements of this paragraph. Contractor shall submit, as a minimum, the following data:

- A. Information showing that the time requested is not included in the existing Contract and in addition to the Contract.
- B. Information documenting that the number of days requested is accurate for the event.
- C. Revised, current construction schedule showing that the time requested affects the project's critical path.

5.07 DELAYS BEYOND OWNER'S AND CONTRACTOR'S CONTROL: Where CONTRACTOR is prevented from completing any part of the Work within the Contract Time due to delays beyond the control of the OWNER and the CONTRACTOR, including, but not limited to, interference by utility owners or other contractors performing other work, Contractor shall be entitled to an extension of the Contract Time in an amount equal to the time lost. CONTRACTOR shall not be entitled to any increase in Contract Price as a result of such delays. IN NO EVENT SHALL OWNER BE LIABLE TO CONTRACTOR FOR DAMAGES ARISING OUT OF OR RESULTING FROM (i) Delays caused by, or within the control of, the CONTRACTOR, or (ii) Delays beyond the control of both parties including, but not limited to, interference by utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions, acts of God, even if such delays are due in part to the negligence, other fault, breach of contract or warranty, violation of the Texas Deceptive Trade Act, or strict liability without regard to fault of OWNER. An extension of Contract time shall be CONTRACTOR's sole and exclusive

remedy for any such delays. Delays attributed to, and within the control of, a Subcontractor or Supplier shall be deemed to be delays within the control of the CONTRACTOR.

5.08 RECORD RAIN DAYS: The CONTRACTOR is required to keep a record of rain days at the site. The record of rain days must be accepted and signed by the City Inspector monthly, and shall be reported on the monthly pay estimate submittal. At the end of the contract, the CONTRACTOR will be credited only for the number of accepted rain days that exceed the calculation as referenced in 1.07, proportionate to the original Contract Time.

6.0 MEASUREMENT AND PAYMENT

6.01 DISCREPANCIES AND OMISSIONS. If the CONTRACTOR knows or reasonably should have known of any discrepancies or omissions in the Contract Documents, he shall notify the ENGINEER and obtain a clarification by Addendum before the bids are received, and if no such request is received by the ENGINEER prior to the opening of bids, then it shall be considered that the CONTRACTOR fully understands the Work to be performed and has provided sufficient sums in his Bid Proposal to complete the Work in accordance with the Contract Documents. It is further understood that any request for clarification must be submitted no later than five (5) days prior to the opening of bids.

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

6.03 ESTIMATED QUANTITIES. This Agreement, including the Contract Documents, and including any estimates contained therein, is intended to convey 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 Bid Proposals offered for the Work. It is understood and agreed that the actual amount of Work to be done and the materials to be furnished under this Contract may differ from the estimates and that the items listed or estimated quantities stated, and/or any difference between estimated and actual Work, shall not give rise to a claim by the CONTRACTOR against the OWNER for loss, cost, expense, damages, unit price adjustment, quantity differences, unrecovered overhead or lost or anticipated profits, or other compensation.

6.04 PRICE OF WORK. It is agreed that it is the intent of this Contract that all Work described in the Bid Proposal, and Contract Documents, is to be done for the prices bid by the CONTRACTOR and that such prices shall include all appurtenances necessary to complete the Work in accordance with the intent of these Contract Documents as interpreted by the ENGINEER, and all costs, expenses, bond and insurance premiums, taxes, overhead, and profit. In consideration of the furnishing of all the necessary labor, equipment and material and the completion of all Work by the CONTRACTOR, and upon the completion of all Work and the delivery of all materials embraced in this Contract in full conformity with the Contract Documents, the OWNER agrees to pay to the CONTRACTOR the prices set forth in the Standard Form of Agreement, OWNER and CONTRACTOR agree that the Contract is a unit cost agreement, unless stated otherwise, and that the final Contract amount is equal to the unit cost multiplied by the number of units authorized, installed and approved by the Owner.

The OWNER does not assume any obligation to pay for any services or material not actually authorized and used. The CONTRACTOR hereby agrees to receive such prices as payment in full for furnishing all materials and all labor required for the aforesaid Work, and for all expenses incurred by him, and for full performance of the Work and the whole thereof in the manner and according to this Agreement, Contract Documents, and the requirements of the ENGINEER.

6.05 PAYMENTS. No payments made or approvals or certificates given shall be considered as conclusive evidence of the performance of the Contract, either in whole or in part, nor shall any certificate, approval or payment be considered as acceptance of defective, deficient or non-conforming Work. CONTRACTOR shall, at any time requested during the progress of the Work, furnish the OWNER or the ENGINEER with an affidavit showing the CONTRACTOR's total outstanding indebtedness in connection with the Work. Before Final Payment is made, the CONTRACTOR shall satisfy the OWNER, by affidavit or otherwise, that there are no unpaid claims due subcontractors, suppliers or laborers by reason of any Work under the Contract. Acceptance by CONTRACTOR of Final Payment shall constitute a waiver of any and all claims of whatsoever nature against OWNER, arising out of or related to the Contract, or the Work, or any acts or omissions of OWNER or ENGINEER, which have not theretofore been timely filed as provided in this Contract.

6.06 PARTIAL PAYMENTS. When the Contract Price is a lump sum amount, prior to the first Application for Payment, CONTRACTOR shall submit to ENGINEER for review and approval a Schedule of Values, which shall fairly allocate the entire Contract Price among the various portions of the Work and shall be prepared in such form and supported by such data to substantiate its accuracy as the ENGINEER may reasonably require. The Schedule of Values shall follow the trade divisions of the Specifications so far as practicable. Upon approval, this Schedule of Values shall be used by ENGINEER as the basis for reviewing the Contractor's Application for Payment. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

On or before the tenth day of each month, the CONTRACTOR shall prepare and submit to the ENGINEER, for approval or correction, an application for partial payment, being a statement showing as completely as practicable, the agreed unit quantities and extended total value of the Work done by the CONTRACTOR up to and including the twenty-fifth day of the preceding month; said statement shall also include the value of all conforming materials to be fabricated into the Work and stored in accordance with manufacturer's recommendations and as approved by the OWNER or ENGINEER at the Work site only. No payment will be made for materials stored until OWNER has approved in writing storage at the Work site. The ENGINEER shall then review such statement of unit quantities and application for partial payment and the progress of the Work made by the CONTRACTOR and, within ten days after the date ENGINEER receives CONTRACTOR's application for payment, if the application is found to be accurate and correct and the WORK conforming to the requirements of the Contract Documents, the ENGINEER shall certify the application for partial payment and shall deliver his preliminary certification for payment to the OWNER and the CONTRACTOR; or, if the ENGINEER finds that CONTRACTOR's application for payment contains an error or is otherwise disputed, he shall notify CONTRACTOR of such error or dispute, and shall prepare a preliminary certificate for partial payment for the undisputed amount of the application for payment due CONTRACTOR, and deliver it to the OWNER and CONTRACTOR. ENGINEER'S notice to CONTRACTOR that a bona fide dispute for payment exists shall include a list of the specific reasons for nonpayment.

All payment applications made by CONTRACTOR and delivered to ENGINEER and all verifications and certification of such applications shall be made and transmitted within the Project Management program system and signed with the appropriate electronic signatures as provided for in the software. Such applications for payment shall not be considered complete unless accompanied by the CONTRACTOR'S Partial Waiver of Lien and Payment Affidavit, Section 00615, duly executed by an authorized representative of the CONTRACTOR and reflecting the correct corresponding amount of the payment application.

The OWNER shall then pay the CONTRACTOR, within thirty (30) days of the date of ENGINEER's receipt of the application for payment, the undisputed balance due, less applicable retainage, and further less all previous payments and all further sums that may be retained or withheld by the OWNER under the terms of this Agreement. CONTRACTOR may submit a corrected application for payment after its receipt of the ENGINEER's notice of error or dispute, and such corrected application for payment shall be reviewed by the ENGINEER and disputed or paid under the same procedure and within the same time limits set out above.

As a condition of any progress payment under this Agreement, CONTRACTOR shall execute and deliver to ENGINEER and OWNER a full release of all claims, direct or indirect, at law or in equity, arising out of or related to the Work to date, excluding retainage or any claims previously submitted as required under the terms of the Contract, and specifically identified and excluded by CONTRACTOR in the release.

OWNER shall be entitled to retain from each progress payment five percent (5%) of the amount thereof. Such retainage shall be retained until Final Completion and satisfaction of all conditions for Final Payment. It is understood, however, that in case the whole Work be near to completion, as certified by the ENGINEER, and some unexpected or unusual delay occurs, through no neglect or fault 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, at the OWNER'S option, payment of the balance due him under the Contract for Work completed in accordance with the Contract Documents, subject to OWNER's rights to otherwise withhold or retain payments, and subject to the conditions set forth under "6.09 FINAL PAYMENT."

The Owner at its option and in compliance with Texas law may reduce retainage to less than the above-stated percentages.

6.07 USE OF COMPLETED PORTIONS & PUNCHLIST. The OWNER shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that 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 promptly and within three (3) days of OWNER's taking possession, give OWNER written notice of same, and CONTRACTOR may be entitled to such extra compensation or extension of time, or both, as may be determined in accordance with the provisions of this Agreement.

6.08 SUBSTANTIAL COMPLETION. The CONTRACTOR shall notify the OWNER AND ENGINEER, by letter executed by a duly qualified officer of CONTRACTOR that in CONTRACTOR's opinion, the Work of the Contract, or an agreed portion thereof, is

“Substantially Complete”. Such notification shall include a list of all outstanding or incomplete items. Upon receipt, and within a reasonable time thereafter, of such notice, the ENGINEER and the CONTRACTOR shall jointly perform a walk-through and inspection of the Work to determine the status of all or the identified portion of the work, and the ENGINEER shall prepare a detailed list of unfinished, incomplete, defective and/or non-conforming Work (“Punchlist”). If the ENGINEER determines that the Work is Substantially Complete in accordance with the Contract Documents, the ENGINEER shall issue to the OWNER and the CONTRACTOR a Certificate of Substantial Completion. OWNER shall have seven (7) days after receipt of Certificate to make written objection to the ENGINEER as to any provision of the Certificate or the attached list of non-conforming work. If ENGINEER concludes that the Work is not Substantially Complete, ENGINEER will, within fourteen (14) days, notify CONTRACTOR of the reason he believes the Work is not Substantially Complete. Upon Substantial Completion of the Work, ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities, pending final payment and acceptance, with respect to security, maintenance, utilities and damage to the Work, except as otherwise provided in the Certificate of Substantial Completion. NEITHER THE SUBSTANTIAL COMPLETION OF THE WORK, NOR THE OMISSION OF AN ITEM FROM THE PUNCHLIST, SHALL EXCUSE THE CONTRACTOR FROM PERFORMING ALL OF THE WORK UNDERTAKEN, WHETHER OF A MINOR OR MAJOR NATURE, AND THEREBY COMPLETING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS. The Certificate of Substantial Completion shall establish the time period within which CONTRACTOR shall complete the Work for Final Acceptance by the Owner and ENGINEER.

6.08-1 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, for security requirement reasons. OWNER may establish an access procedure to facilitate CONTRACTOR’s uninterrupted access to the Work for the purposes of completing and correcting all items on the Punchlist in an expeditious manner.

6.09 FINAL PAYMENT. Final payment of the Retainage withheld from the Contract Price shall be made by the OWNER to the CONTRACTOR at such time as:

- (a) the Work, including all Change Orders and including all Punchlist work, has been fully completed in strict accordance with the Contract Documents;
- (b) the Contract has been fully performed except for the CONTRACTOR’s responsibility to correct nonconforming Work during the warranty period set forth in the Contract Documents, and to satisfy other requirements, if any, which necessarily survive final payment;
- (c) CONTRACTOR delivers to OWNER a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days prior written notice has been given to OWNER;
- (d) CONTRACTOR delivers to OWNER a Consent of Surety, if any, to final payment;
- (e) CONTRACTOR delivers to OWNER a complete set of As-Built Drawings, reflecting all deviations from the Plans, Specifications and approved shop drawings

in the Work actually constructed, and delivers all maintenance and operating manuals and/or instructions;

- (f) CONTRACTOR delivers to OWNER all building certificates required prior to occupancy and all other required inspections / approvals / acceptances by city, county, state governmental entities or other authorities having jurisdiction;
- (g) CONTRACTOR delivers to OWNER assignments of all guarantees and warranties from subcontractors, vendors, suppliers or manufacturers, as well as names, addresses and telephone numbers of contacts for each subcontractor, vendor, supplier or manufacturer;
- (h) CONTRACTOR removes all equipment, tools, temporary facilities, surplus materials and rubbish from the site, and final cleans the site to OWNER's satisfaction;
- (i) CONTRACTOR delivers to OWNER a Full and Final Release and Affidavit of Bills Paid in the form attached hereto as Attachment No. 2, executed by CONTRACTOR;
- (j) CONTRACTOR delivers to OWNER all other documentation required to be submitted to OWNER pursuant to the Contract Documents, including but not limited to any special guarantees or warranties, operation and maintenance manuals, etc'. in each case in a form satisfactory to OWNER as determined in OWNER's sole discretion; and
- (k) The Final Application for Payment has been approved by the ENGINEER and OWNER.

Acceptance of Final Payment by the CONTRACTOR shall constitute a waiver of all claims by CONTRACTOR against OWNER other than any claims previously made in writing by CONTRACTOR against OWNER, and still unsettled, and except for claims arising out of third party actions, cross-claims and counterclaims. No interest shall be due or payable by OWNER to CONTRACTOR on any sums retained or withheld by OWNER pursuant to the terms or provisions of the Contract Documents, except as otherwise provided by applicable law. Neither the Certificate of Substantial Completion nor the Final Payment nor possession or acceptance of the Work shall relieve the CONTRACTOR of its obligation for correction of defective or non-conforming Work, or for fulfillment of any warranty, which may be required by law or by the Contract Documents.

6.10 CORRECTION OF WORK BEFORE FINAL PAYMENT. The CONTRACTOR shall promptly remove from OWNER's premises all materials, equipment or Work which is defective or otherwise not in conformance with the Contract Documents, whether actually incorporated in the Work or not, and CONTRACTOR shall, at his own expense, promptly replace such materials, equipment or Work with other materials conforming to the requirements of the Contract. The CONTRACTOR shall also bear the expense of restoring all work of CONTRACTOR or other contractors damaged by any such removal or replacement. If CONTRACTOR does not remove and replace any such unsuitable Work within ten (10) business days after receipt of a written

notice from the OWNER or the ENGINEER, the OWNER may remove, replace and remedy such work at CONTRACTOR's expense.

6.11 CORRECTION OF WORK AFTER FINAL PAYMENT. If within one (1) year from the date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR shall, at its sole cost, correct it and any other work affected thereby promptly after receipt of a written notice from OWNER to do so. In addition, CONTRACTOR shall be responsible for any damage to building contents, when such damage results from the CONTRACTOR's use of faulty materials or defective workmanship; to the extent such damage is not covered by OWNER's insurance. This warranty period shall renew and recommence for each corrected item of Work upon completion of the remedial work. This time period for correction by CONTRACTOR is in addition to, and not in lieu of, all warranties or remedies, which exist at common law or by statute. These warranty obligations shall survive the termination of this Contract, and shall be enforceable by a decree of specific performance, in addition to such other rights and remedies available to OWNER at law or in equity.

6.12 PAYMENTS WITHHELD. The OWNER may withhold, or on account of subsequently discovered evidence nullify and demand immediate repayment of, the whole or part of any certificate for payment or payment, to such extent as may be necessary to protect OWNER from loss on account of:

- (a) Defective or non-conforming Work not remedied;
- (b) Claims filed or reasonable evidence indicating probable filing of claims;
- (c) Failure of the CONTRACTOR to make payments promptly to subcontractors or for material or labor;
- (d) Damage to another contractor, OWNER, existing improvements on the site, or to adjacent or adjoining property;
- (e) Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount;
- (f) Reasonable indication that the Work will not be completed within the Contract Time;
- (g) Failure on the part of the CONTRACTOR to execute any and all documents, releases or other documents presented to the CONTRACTOR for execution, as provided for herein or otherwise;
- (h) Liquidated or other damages due to late completion; and/or
- (i) Any breach by CONTRACTOR of this Contract or any other agreement between OWNER and CONTRACTOR.

When the above grounds are removed to OWNER's satisfaction, the withheld payment shall be made promptly. If the said causes are not so remedied, OWNER may remedy the same for CONTRACTOR's account, charge the entire cost thereof to CONTRACTOR and deduct such cost from the Contract Sum or from any payments due or to become due under any other agreement between OWNER and CONTRACTOR.

6.13 DELAYED PAYMENTS. Should the OWNER fail to make payment to the CONTRACTOR when payment is due in accordance with the terms of the Contract Documents, any interest due CONTRACTOR for late payments shall accrue and be paid in accordance with the provisions of Chapter 2251 of the Texas Government Code, as amended, and payment of such interest shall fully liquidate and compensate any injury to the CONTRACTOR growing out of such delay in payment. Should OWNER fail to pay CONTRACTOR an undisputed amount due within the time limits provided in the Contract or applicable law, CONTRACTOR shall give the notice required and comply with the provisions of Section 2251.051 of the Texas Government Code, and shall thereupon be entitled to the rights and remedies provided therein.

7.0 EXTRA WORK AND CLAIMS

7.01 DIFFERING SITE CONDITIONS. During the progress of the work, if subsurface, latent physical conditions or unknown physical conditions of an unusual nature are encountered at the site that differ materially from those indicated in the contract or from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, the CONTRACTOR shall notify the OWNER's Representative in writing within three (3) calendar days of the specific differing conditions before the site is disturbed and before the affected work is performed.

(a) Upon written notification, the ENGINEER will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The ENGINEER will notify the CONTRACTOR in writing of the determination whether or not an adjustment of the contract is warranted.

(b) No contract adjustment which results in a benefit to the CONTRACTOR will be allowed unless the CONTRACTOR has provided the required written notice.

(c) No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

7.02 SUSPENSIONS OF WORK ORDERED BY THE ENGINEER. If the performance of all or any portion of the work is suspended by the ENGINEER in writing for seven (7) calendar days and the CONTRACTOR believes that additional compensation and/or contract time is due as a result of such suspension, the CONTRACTOR shall submit a written request for adjustment to the ENGINEER within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(a) Upon receipt, the ENGINEER will evaluate the CONTRACTOR's request. If the ENGINEER agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the CONTRACTOR, its suppliers, or

subcontractors at any approved tier, and not caused by weather, the ENGINEER will make an adjustment (excluding profit) and modify the contract in writing accordingly. The CONTRACTOR will be notified of the ENGINEER's determination, in writing, whether or not an adjustment of the contract is warranted.

(b) No contract adjustment will be allowed unless the CONTRACTOR has submitted the request for adjustment within the time prescribed.

(c) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

7.03 CHANGE ORDERS. Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, 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.

7.04 In accordance with paragraph 1.06 CONTRACTOR'S request to work weekends, the Owner's Construction Manager shall, upon receipt of written notice by the CONTRACTOR of the need to conduct work on otherwise non-Work Days, prepare a cost estimate for providing Construction Management and Inspection services during the requested period and submit this to both OWNER and CONTRACTOR. If approved by both parties the Construction Manager shall prepare a Deductive Change Order in the amount stated in the estimate for the signature of the CONTRACTOR and the OWNER for inclusion in the next Pay Application. The Deductive Change Order must be signed and executed by both the OWNER and CONTRACTOR prior to start of work on any non-Work Day.

7.05 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 or time. If the CONTRACTOR believes that any minor changes authorized by the ENGINEER involves Extra Work or entitles him to an increase in the Contract Price or the Contract Time, the CONTRACTOR shall give notice of same by written request to the ENGINEER for a written Work Order, with a copy to OWNER. Any such notice and request by the CONTRACTOR shall be given prior to beginning the changed work. CONTRACTOR's commencement of any minor change in the Work prior to such written notice and request shall constitute a waiver of any and all claims for an increase in the Contract Price or the Contract Time arising out of or related to such changed work.

7.06 EXTRA WORK. It is agreed that the CONTRACTOR shall perform all work when presented with a written Change Order, Work Change Directive or Work Order signed by the ENGINEER, subject, however, to the right of the CONTRACTOR to require written confirmation of such Change Order, Work Change Directive or Work Order by the OWNER. It is agreed that the basis of compensation or adjustment to the CONTRACTOR for work either altered, added or deleted by a Change Order or Work Change Directive, or for which a claim for Extra Work is made, shall be determined by one or more of the following methods:

Method (A) --By Contract unit prices applicable to the work, if any; or

Method (B) --By agreed unit prices or agreed stipulated lump sum price; or

Method (C) --If neither Method (A) nor Method (B) can be agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the "Actual Field Cost" of the work plus:

- a) For subcontractors performing work mark-up shall be limited to fifteen percent, ten (10%) for the subcontractor plus five (5%) for the General Contractor or
- b) For the General Contractor alone, self-performing the extra work, without subcontractor, the mark-up shall not exceed ten percent (10%), as full and final compensation for the Extra Work and all costs and expenses, direct or indirect, arising out of or related thereto.

In the event said Extra Work or Change Order or Work Change Directive work is performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "Actual Field Cost" is hereby defined as the cost to the CONTRACTOR of all workers, such as foremen, timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals of machinery and equipment, for the time actually employed or used on such Extra Work or Change Order or Work Change Directive work, plus actual transportation charges necessarily incurred together with all power, fuel, lubricants, water and similar operating expenses, plus 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 Workers' Compensation, and all other insurance as may be required by law or ordinance, or the Contract Documents, plus all payments to subcontractors for such work.

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 one hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America where practicable. The mark-up of the "Actual Field Cost" to be paid to the CONTRACTOR, shall cover and compensate him for his profit, overhead, and all other elements of cost and expense not embraced within the "Actual Field Cost" as herein defined, save that where the CONTRACTOR's field office must be maintained solely 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 by the ENGINEER in a written Work Order. In case any orders 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 Contract Time, he shall make written request to the ENGINEER for a written Work Order authorizing such Extra Work within ten (10) days of ENGINEER's orders or instructions, otherwise the orders or instructions will be considered minor changes. The issuance of a Work Order by the ENGINEER shall not constitute or be construed as an agreement or

acknowledgement by the ENGINEER that the work which is the subject of the Work Order is Extra Work outside the scope of the Contract Work, but shall merely constitute a direction to the CONTRACTOR to perform the work, and the CONTRACTOR shall proceed with the work, and shall keep an accurate account of the "Actual Field Cost" thereof, as provided under Method (C). Upon completion of the alleged Extra Work, the CONTRACTOR shall promptly and within ten (10) days submit his claim to the ENGINEER by proper certification and attestation, on forms provided by the ENGINEER. The ENGINEER shall render a written decision on CONTRACTOR's claim within ten (10) days. It is mutually agreed between the parties that the ENGINEER's decision on all claims or questions in relation to the Work, CONTRACTOR's performance of the Work, any changes in the Work or Extra Work, the Contract Price and/or the Contract Time, shall be final and conclusive and binding upon the parties. If the ENGINEER shall fail to respond in writing to CONTRACTOR's claim within thirty (30) days of the date of submission, or if CONTRACTOR shall dispute or object to ENGINEER's decision on any claim, and CONTRACTOR fails to file a Request for Mediation of such claim in accordance with the provisions of Article 9.0, within sixty (60) days after the date of submission to the ENGINEER, or such longer period as the parties may agree to in writing, the CONTRACTOR shall lose and forfeit his right to make such claim for Extra Work at any later date, and all such claims held by the CONTRACTOR shall be deemed waived, forfeited and forever barred. CONTRACTOR shall continue to diligently prosecute the Work notwithstanding any pending claim, dispute, or dispute resolution process between OWNER and CONTRACTOR.

7.07 TIME OF FILING CLAIMS. Except as otherwise provided herein, all questions of dispute or adjustment shall be made within the Project Management program system and filed with the ENGINEER within three (3) 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, and render his final decision in writing. It is mutually agreed between the parties that the ENGINEER's decision on all claims or questions in relation to the Work, CONTRACTOR's performance of the Work, any changes in the Work or Extra Work, the Contract Price and/or the Contract Time, shall be final and conclusive and binding upon the parties. In case the CONTRACTOR should desire to appeal from the ENGINEER's decision, the CONTRACTOR may request a meeting between representatives of the OWNER and the CONTRACTOR for the purposes of appealing the ENGINEER's decision directly to the OWNER, such meeting to occur within ten (10) days after the date of the CONTRACTOR's request, or such longer period as may be agreed to by the parties in writing. If the CONTRACTOR shall still be aggrieved after a meeting with the OWNER and/or his representative, the CONTRACTOR shall have sixty (60) days after the date of the meeting, or such longer period as the parties may agree to in writing, to file a Request for Mediation of such claim in accordance with the provisions of Article 9.0. In the event the CONTRACTOR shall fail, for any reason, to timely file a Request for Mediation, the OWNER shall be released of any and all liability, and the CONTRACTOR's failure to timely file a Request for Mediation shall constitute a waiver, forfeit and final bar of all such claims held by the CONTRACTOR against the OWNER. CONTRACTOR shall continue to diligently prosecute the Work notwithstanding any pending claim, dispute, or dispute resolution process between OWNER and CONTRACTOR.

8.0 DEFAULT

8.01 DEFAULT BY CONTRACTOR. In case the CONTRACTOR should abandon and fail or refuse to resume Work within five (5) 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, or if the CONTRACTOR otherwise defaults on its obligations under the Contract, OWNER shall have the right, if it so elects and without prejudice to any other rights it may have, after giving five (5) days written notice of default to CONTRACTOR and any surety, to terminate the Contract or any part thereof and/or to take over or cause others to take over the Work or any part thereof, and to complete such Work for the account of CONTRACTOR. Where Performance and Payment Bonds exist, the sureties on these bonds shall be directed to complete the Work in conjunction with the notice of default, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of default, the CONTRACTOR shall promptly and within no more than three (3) days, remove from the Work any machinery, equipment, or tools then on the job, not intended for incorporation into the Work. Should CONTRACTOR fail to promptly remove such machinery, equipment or tools, OWNER may remove such machinery, equipment or tools and store same at CONTRACTOR's expense; return such machinery, equipment or tools to their purported owner; or otherwise dispose of such machinery, equipment or tools as OWNER sees fit. Any materials, supplies and/or equipment delivered for use in the Work, may be used in the completion of the Work by the OWNER or the surety on the Performance Bond, or another contractor in completion of the Work; it being understood that the use of such equipment, supplies and materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement.

Where there is no Performance Bond or in case the surety should fail to commence compliance with the notice for completion hereinabove provided for within ten (10) days after the service of such notice, then the OWNER may provide for completion of the Work in either of the following elective manners:

- (a) The OWNER may thereupon employ such force of workers and use such machinery, equipment, tools, materials and supplies as the OWNER may deem necessary to expeditiously 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 monies as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement or any other agreement between OWNER and CONTRACTOR. 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 be credited with the difference. In case such expense is greater than the sum which would have been payable under this Contract if the same had been completed by such CONTRACTOR, then the CONTRACTOR and/or his surety shall promptly pay the amount of such excess to the OWNER upon demand; or
- (b) The OWNER, under sealed bids, under the times and procedures provided for by law, may let the contract for completion of the Work under substantially the same terms and conditions which are provided in this Contract. In case of any increase in cost to the OWNER under the completion contract, as compared to what would have been the cost under this Contract, such increase shall be charged to the CONTRACTOR, and the amount of such increase may be deducted by the OWNER out of such monies as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement or any

other agreement between OWNER and CONTRACTOR, or the CONTRACTOR and/or his surety shall promptly pay the amount of such increase to the OWNER upon demand. However, should the cost to complete any such completion 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.

In the event of a default by CONTRACTOR, no further payments shall be made to CONTRACTOR under the Contract until the Work is Finally Completed. When the Work shall have been Finally Completed, the CONTRACTOR and his surety shall be so notified. A complete itemized statement of the Contract accounts, certified 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 shall pay the balance due as reflected by said statement. The OWNER, prior to incurring an obligation to make payment hereunder, shall have such statement of completion attested to by the CONTRACTOR and the surety as accurate, and in exchange for payment of the sum stated therein, the OWNER shall be entitled to a full and final release of any claims or demands by the CONTRACTOR or the surety.

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, then all machinery, equipment, tools 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 above, and there remains any machinery, equipment, tools, materials or supplies which are the property of CONTRACTOR 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 the 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 such notice, the OWNER may sell such property, 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 reputed owners.

8.02 SUPPLEMENTATION OF CONTRACTOR FORCES. If CONTRACTOR at any time shall, in OWNER'S sole opinion, fail to furnish skilled workers, suitable materials, supplies or adequate equipment sufficient for the prompt, timely and diligent prosecution of the Work in accordance with OWNER's direction, OWNER shall have the right, without prejudice to the exercise of other remedies for the same default and without fully taking over the Work, to supplement CONTRACTOR's forces and to expedite delivery of and to procure and furnish such workers, materials, tools, supplies or equipment for CONTRACTOR's account by employing other contractors and suppliers engaged in the same class of work and charge the entire cost thereof to CONTRACTOR, said cost to be deducted from sums due or to become due to CONTRACTOR under the Contract or any other agreement with OWNER or any parent, subsidiary or affiliate of OWNER.

8.03 CUMULATIVE REMEDIES & SPECIFIC PERFORMANCE. All rights and remedies of OWNER, under the terms of the Contract and/or available at law or in equity, are cumulative. In the event CONTRACTOR or any of its subcontractors, vendors or suppliers fails or refuses for any reason to provide timely manufacture, fabrication, delivery, installation, erection, construction or completion of any supplies, materials, expendables, equipment, machinery, accessories or appurtenances to be furnished hereunder, CONTRACTOR acknowledges and agrees that such items are required, necessary, essentially unique to the Project and the Work and will cause irreparable harm to OWNER and the Project if not furnished in accordance with the Contract, and OWNER shall have the right to obtain a decree of specific performance and mandatory injunctive relief from any Court of competent jurisdiction to ensure the timely furnishing of such items.

8.04 CROSS-DEFAULT. If, for any reason, CONTRACTOR is declared in default and/or terminated by OWNER under any other agreement with OWNER, whether related to the Project or not related to the Project, OWNER shall have the right to offset and apply any amounts which might be owed to OWNER by CONTRACTOR under any other such agreements against any earned but unpaid amounts owing to CONTRACTOR by OWNER under the Contract, any retainage earned by CONTRACTOR under the Contract or any unearned, unpaid amount under the Contract.

8.05 INSOLVENCY. It is recognized that if CONTRACTOR becomes a debtor in voluntary or involuntary bankruptcy proceedings, makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of his insolvency, such events could seriously impair or frustrate CONTRACTOR's performance of the Work. Accordingly, it is agreed that should CONTRACTOR become a debtor in bankruptcy, either voluntary or involuntary, CONTRACTOR shall notify OWNER in writing within twenty-four (24) hours of the filing with the bankruptcy court. Further, it is agreed that upon occurrence of any one or more such events, OWNER shall be entitled to request of CONTRACTOR or its successors, trustees or receivers, adequate assurances of future performance. In the event such adequate assurances are not given to the reasonable satisfaction of OWNER within seventy-two (72) hours of such request, OWNER shall have the right to immediately invoke the remedies of this Section 8 or as provided by law. Pending receipt of such adequate assurances of such future performance, OWNER may proceed with the Work on a temporary basis and deduct the costs, plus reasonable overhead and profit, from any amounts due or which may become due to CONTRACTOR under the Contract or any other agreement with OWNER. In this regard, OWNER and CONTRACTOR agree that delays in performance could result in more damages to CONTRACTOR than would be sustained if OWNER failed to exercise such remedies.

8.06 CONTINGENT ASSIGNMENT. CONTRACTOR hereby assigns to OWNER, all of CONTRACTOR's rights under and interest in any and all subcontracts and/or purchase orders entered into by CONTRACTOR pursuant to this Agreement, such assignment to become effective upon CONTRACTOR's default under this Agreement or OWNER's termination of this Contract, and OWNER's acceptance of such assignment. Upon CONTRACTOR's default or OWNER's termination of this Contract, OWNER may, in the event there is no performance bond for the Contract, or in the event the performance bond surety fails to complete the Contract, or if OWNER otherwise so elects in its sole discretion, accept such assignment by written notice of such acceptance to CONTRACTOR and subcontractor, and may require subcontractors to perform all of the then unperformed duties and obligations under the subcontract, for the direct benefit of OWNER. In the event OWNER requires such performance by a subcontractor, then OWNER

shall be obligated to pay such subcontractor any amounts due and owing under the terms of the subcontract/purchase order, at the subcontract prices and rates, and subject to any rights of withholding or offset and other terms and conditions of the subcontract, for all work properly performed by such subcontractor, to the date of OWNER's acceptance and thereafter. OWNER's liability in this connection, however, shall not exceed the amount obtained by subtracting all payments made by CONTRACTOR to subcontractor from the Subcontract Price at the time of CONTRACTOR's default or OWNER's termination of CONTRACTOR. CONTRACTOR shall include a provision in its subcontracts that allows such assignment and allows OWNER to take these actions, and further provides that in the event of CONTRACTOR's termination for default, the subcontractor agrees to give the OWNER or its agent the right to inspect all books and records of subcontractor relating to the Work.

8.07 WAIVER OF CONSEQUENTIAL DAMAGES. CONTRACTOR expressly waives any and all claims for consequential damages against OWNER arising out of or related to this Contract, or any other agreements between CONTRACTOR and OWNER, including, but not limited to, claims for damages incurred by CONTRACTOR for principal office expenses, including the compensation of personnel stationed there, losses of financing, bonding capacity, business and reputation, and claims for lost profit, whether on this Contract or otherwise.

8.08 TERMINATION FOR CONVENIENCE. OWNER may at its sole discretion, upon five (5) days written notice to CONTRACTOR, terminate this Contract, in whole or in part, if and when OWNER determines that it is in the best interest of OWNER to do so. Upon receipt of such written notice from OWNER, CONTRACTOR shall cease all terminated Work and take reasonable precautions to protect and preserve such work, and shall take all reasonable measures after consultation with OWNER to terminate or assign to OWNER all subcontracts, purchase orders or other commitments related to the Work or the Project on terms and conditions acceptable to OWNER. CONTRACTOR will be paid for all Work performed in strict accordance with the Contract Documents, based upon the Contract Price and the percentage of completion on the date of termination, and less amounts previously paid, subject to any reasonable backcharges attributable to CONTRACTOR's failure to comply with any of the provisions of this Contract and further subject to the other terms of this Contract regarding payment. In no event will CONTRACTOR receive or be entitled to any payment or compensation whatsoever for interruption of business or loss of business opportunities, any other items of consequential damages, for overhead or loss of profits on the unperformed Work and/or services and unfurnished materials or for any intangible, impact or similarly described cost, damages or expense, and under no circumstances shall the total sum paid to or received by CONTRACTOR under this Contract exceed the Contract Price. The compensation provided herein shall be CONTRACTOR's sole and exclusive remedy arising out of a termination for convenience.

8.09 DEFAULT BY OWNER. In case the OWNER shall default on its material obligations under this Contract, other than OWNER's failure to pay CONTRACTOR a disputed amount due within the time limits provided in the Contract or applicable law, as addressed by Section 6.13 of this Agreement, and shall fail or refuse to cure, or to commence and diligently pursue cure of such default within fifteen (15) 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 the Work that have not been included in payments to the CONTRACTOR and have not been incorporated 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 Contract Prices), 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 the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by the 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 present the same to the OWNER, and OWNER's payment of said sum to the CONTRACTOR, on or before thirty (30) days after OWNER's receipt of such statement, shall satisfy any and all rights, claims or causes of action of CONTRACTOR arising out of or related to such default by OWNER, and shall be CONTRACTOR's sole and exclusive remedy for such default. A disputed or unilateral claim by the Contractor cannot by itself constitute a default hereunder.

9.0 DISPUTE RESOLUTION

Any dispute or pending claim or dispute resolution process between OWNER and CONTRACTOR shall not excuse or relieve CONTRACTOR of its obligations under the Contract, and CONTRACTOR shall diligently prosecute the Work notwithstanding any pending claim, dispute, or dispute resolution process between OWNER and CONTRACTOR.

All claims, disputes and other matters in question arising out of or relating to, the Contract, or the breach thereof, shall be subject to mediation as a condition precedent to any other dispute resolution process as may be selected by OWNER. Unless mutually agreed otherwise the mediation shall be conducted by a third party who will be selected by agreement between OWNER and CONTRACTOR, and Request for Mediation shall be filed with the other party. The parties shall share the mediator's fee and any filing fees equally.

If a claim, dispute or other matter in question between OWNER and CONTRACTOR involves the work of a subcontractor or supplier, OWNER or CONTRACTOR may join such subcontractor or supplier as a party to any mediation proceeding between OWNER and CONTRACTOR hereunder. CONTRACTOR shall include in all subcontracts and/or purchase orders related to the Work a specific provision whereby the subcontractor or supplier consents to being joined in mediation between OWNER and CONTRACTOR involving the work of such subcontractor or supplier.

This Contract shall be governed by the laws of the State of Texas and shall be considered performable in Harris County, Texas, for venue purposes. Further, the OWNER and CONTRACTOR stipulate that venue for any dispute resolution proceeding involving or touching upon the Contract other than the conduct of an arbitration hearing shall be in Harris County, Texas, or, if such choice of venue is prohibited or unenforceable by law, shall be held in the county where the Project is located.

CONTRACTOR agrees to pay OWNER all reasonable attorneys' fees incurred by OWNER in the event OWNER seeks to enforce any provision of this Contract whether by arbitration or other dispute resolution process. Further, in the event OWNER defends any claim instituted by CONTRACTOR against OWNER, whether in arbitration or other dispute resolution process, CONTRACTOR agrees to pay OWNER all reasonable attorneys' fees incurred by OWNER in defending such claim provided OWNER is the prevailing party, in whole or in part, in such proceeding.

ATTACHMENT NO. 1 TO GENERAL CONDITIONS**WORKERS' COMPENSATION INSURANCE COVERAGE****A. 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 (TWCC81, 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 the Project warranty period has expired.

Persons providing services on the project includes 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 due contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, motor carriers and owner-operators, (as defined at Section 406.121 of the Texas Labor Code), leasing companies, and 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.

- B. 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, Title 5 Workers' Compensation, Subtitle A Texas Workers' Compensation Act, for employees of the contractor providing services on the project, for the duration of the project.
- C. The CONTRACTOR must provide a certificate of coverage to the OWNER prior to being awarded the Contract.
- D. 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.
- E. The CONTRACTOR shall obtain from each subcontractor or other person providing services on a project, and provide to the OWNER:
- (1) 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

- (2) no later than seven days after receipt by the CONTRACTOR and 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.
- F. The CONTRACTOR shall retain all required certificates of coverage for the duration of the Project and for one year thereafter.
- G. The CONTRACTOR shall notify the OWNER in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any changes that materially affect the provision of coverage of any person providing services on the Project.
- H. The CONTRACTOR shall post on each Project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

NOTICE
REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at (512) 440-3789 to receive information on the legal requirements for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

- I. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project, too:
- (1) 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, Title 5 Workers' Compensation, Subtitle A Texas Workers' Compensation Act, for all of its employees providing services on the Project, for the duration of the Project;
- (2) 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:

- (3) 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;
 - (4) obtain from each other person with whom it contracts, and provide to the CONTRACTOR:
 - (a) a certificate of coverage, prior to the other person beginning work on the Project; and
 - (b) a new certificate of coverage showing extension of coverage, 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;
 - (5) retain all required certificates of coverage on file for the duration of the Project and for one year thereafter;
 - (6) 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
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. 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 agreements 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.
- K. The CONTRACTOR's failure to comply with any of these provisions is a breach of contract by the CONTRACTOR, which entitles the OWNER to pursue all rights and remedies available to it under the Contract, at law or in equity, if the CONTRACTOR does not remedy the breach within ten days after receipt of notice of breach from the OWNER.

ATTACHMENT NO. 2 TO GENERAL CONDITIONS**AGREEMENT FOR FINAL PAYMENT
AND CONTRACTOR'S SWORN RELEASE**

In consideration of the Final Payment under that certain contract between [Contractor's Company Name] (hereafter "CONTRACTOR") and the City of Baytown (hereafter "OWNER") for the Project known as [Official Project Title] (the "Contract"), the CONTRACTOR makes the following representations to OWNER, either individually if a proprietorship, or jointly and severally by all general partners if a partnership, or if a corporation, by action of the president and secretary of said corporation, as duly authorized by appropriate action of the stockholders and/or board of directors of said corporation, their signatures hereon constituting a representation under oath by said individuals that they have the authority to execute this Agreement for and on behalf of the said corporation:

1. The undersigned CONTRACTOR represents to OWNER that the Application for Payment for the Final Payment under the Contract, and the final Change Order issued under the Contract if any, whether or not modified, corrected or changed in some way by the ENGINEER, the CONTRACTOR or the OWNER, a copy of which are attached hereto and marked Exhibit "A", are true, correct and accurate, and that CONTRACTOR has received payment in full for all other Applications for Payment submitted under the Contract, and that CONTRACTOR has been fully compensated for all labor, materials, equipment and/or services furnished in connection with the Contract, except for the Final Payment.
2. It is agreed and stipulated by the undersigned CONTRACTOR that upon the receipt of Final Payment in the amount as set out on the attached Application for Payment, the CONTRACTOR, by execution of this instrument of release, does, therefore, RELEASE and FOREVER DISCHARGE OWNER of and from all manner of debts, claims, demands, obligations, suits, liabilities and causes of action of any nature whatsoever, at law or in equity, in contract or in tort, now existing or which may hereafter accrue, arising out of or related to the Contract, any Change Orders or Work Orders, the Work, or any labor, materials, equipment or services furnished by CONTRACTOR to OWNER.
3. The CONTRACTOR, acting by and through the person or persons whose names are subscribed hereto, does solemnly swear and affirm that all bills and claims have been paid to all material men, suppliers, laborers, subcontractors, or other entities performing services or supplying materials or equipment, and that OWNER shall not be subject to any bills, claims, demands, litigation or suits in connection therewith.
4. It is further specifically understood and agreed that this Agreement for Final Payment and Contractor's Sworn Release shall constitute a part of the Contract, and it is also specifically understood and agreed that this Agreement shall not act as a modification, waiver or renunciation by OWNER of any of its rights or remedies as set out in the Contract itself, but this Agreement for Final Payment and Contractor's Sworn Release shall constitute a supplement thereto for the additional protection of OWNER.

SIGNED and EXECUTED this, the ___ day of _____, 20__.

CONTRACTOR:

By: _____
Signature

Print Name: _____

Title: _____

[If CONTRACTOR is a proprietorship, owner must sign; if a partnership, each general partner must sign; if a corporation, the following language should be used.]

SIGNED and EXECUTED this, the _____ day of _____, 20__ by _____, a Texas corporation, under authority granted to the undersigned by said corporation as contained in the Charter, By-Laws or Minutes of a meeting of said corporation regularly called and held.

CONTRACTOR:

By: _____

President

ATTEST:

Corporate Secretary
(Corporate Seal)

[This form is for use by either a proprietorship or a partnership. In the event CONTRACTOR is a partnership or a joint proprietorship, additional signature lines should be added for each individual.]

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared the person or persons whose name(s) are subscribed to the above and foregoing Agreement for Final Payment and Contractor’s Sworn Release, who each, after being by me duly sworn, on their oaths deposed and said:

I (We) am (are) the person(s) who signed and executed the above and foregoing Agreement for Final Payment and Contractor’s Sworn Release, and I (we) have read the facts and statements as therein set out and the representations as made therein, and I (we) state that the above and foregoing are true and correct.

CONTRACTOR - Affiant

SWORN TO AND SUBSCRIBED TO before me, the _____ day of 20_.

Notary Public, State of Texas

My Commission Expires:

[This form is for use in the event CONTRACTOR is a corporation.]

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF _____§

BEFORE ME, the undersigned authority, on this day personally appeared the persons who signed and executed the above and foregoing Agreement for Final Payment mid Contractor’s Sworn Release, whose names are set out above, who each, after being by me duly sworn, on their oaths deposed and said:

We each are the persons whose names are subscribed above, and hold respectively the offices in the corporation as set out above, and each state under oath that we have the authority to execute this Agreement for Final Payment and Contractor’s Sworn Release for and on behalf of said corporation, pursuant to authority granted to us in the Charter of said corporation, the By-Laws of said corporation and/or the Minutes of said corporation; and the facts, statements and representations as set out in the instrument to which this Affidavit is attached, are true and correct.

SWORN TO AND SUBSCRIBED TO before me this, the ____ day of _____, 20__.

Notary Public, State of Texas

My Commission Expires:

ATTACHMENT NO. 3 TO GENERAL CONDITIONS

OWNER'S INSURANCE REQUIREMENTS OF CONTRACTOR

1. **Definitions.** For purposes of this Agreement:
 - 1.1 **Owner Parties.** "Owner Parties" means (a) the City of Baytown, its successors and assigns, and the Engineer, (b) any officers, employees, or agents of such persons or entities, and (c) others as required by the Contract Documents, if any.
 - 1.2 **Contractor.** "Contractor" shall mean the vendor providing the service or work to be performed under this Agreement.
 - 1.3 **Subcontractor.** "Subcontractor" shall include subcontractors of any tier.
 - 1.4 **ISO.** "ISO" means Insurance Services Office.
2. **Contractor Insurance Representations to Owner Parties**
 - 2.1 It is expressly understood and agreed that the insurance coverages required herein:
 - 2.1.1 represent Owner Parties' minimum requirements and are not to be construed to void or limit the Contractor's indemnity obligations as contained in this Agreement nor represent in any manner a determination of the insurance coverages the Contractor should or should not maintain for its own protection; and
 - 2.1.2 are being, or have been, obtained by the Contractor in support of the Contractor's liability and indemnity obligations under this Agreement. Neither the requirements as to insurance to be carried as provided for herein, the insolvency, bankruptcy or failure of any insurance company carrying insurance of the Contractor, nor the failure of any insurance company to pay claims accruing, shall be held to affect, negate or waive any of the provisions of this Agreement.
 - 2.2 Failure to obtain and maintain the required insurance shall constitute a material breach of, and default under, this Agreement. If the Contractor shall fail to remedy such breach within five (5) business days after notice by the Owner, the Contractor will be liable for any and all costs, liabilities, damages and penalties resulting to the Owner Parties from such breach, unless a written waiver of the specific insurance requirement(s) is provided to the Contractor by the Owner. In the event of any failure by the Contractor to comply with the provisions of this Agreement, the Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to the Contractor, purchase such insurance, at the Contractor's expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

3. Conditions Affecting All Insurance Required Herein

- 3.1 Cost of Insurance. All insurance coverage shall be provided at the Contractor's sole expense.
- 3.2 Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies authorized to do business in the state in which the work is to be performed and rated no less than A-: VII in the most current edition of A. M. Best's Key Rating Guide.
- 3.3 Restrictive, Limiting, or Exclusionary Endorsements. All insurance coverage shall be provided to the Owner Parties in compliance with the requirements herein and shall contain no endorsements that restrict, limit, or exclude coverage required herein in any manner without the prior express written approval of the Owner.
- 3.4 Limits of Liability. The limits of liability may be provided by a single policy of insurance or by a combination of primary and umbrella policies, but in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required herein.
- 3.5 Notice of Cancellation, Nonrenewal, or Material Reduction in Coverage. All insurance coverage shall contain the following express provision:

In the event of cancellation, non-renewal, or material reduction in coverage affecting the certificate holder, thirty (30) days prior written notice shall be given to the certificate holder by certified mail or registered mail, return receipt requested.

- 3.6 Waiver of Subrogation. The Contractor hereby agrees to waive its rights of recovery from the Owner Parties with regard to all causes of property and/or liability loss and shall cause a waiver of subrogation endorsement to be provided in favor of the Owner Parties on all insurance coverage carried by the Contractor, whether required herein or not.
- 3.7 Deductible/Retention. Except as otherwise specified herein, no insurance required herein shall contain a deductible or self-insured retention in excess of \$25,000 without prior written approval of the Owner. All deductibles and/or retentions shall be paid by, assumed by, for the account of, and at the Contractor's sole risk. The Contractor shall not be reimbursed for same.
4. **Maintenance of Insurance.** The following insurance shall be maintained in effect with limits not less than those set forth below at all times during the term of this Agreement and thereafter as required:

4.1 Commercial General Liability Insurance

4.1.1 Coverage. Such insurance shall cover liability arising out of all locations and operations of the Contractor, including but not limited to liability assumed under this contract (including the tort liability of another assumed in a business contract). Defense shall be provided as an additional benefit and not included within the limit of liability.

4.1.2 Form. Commercial General Liability Occurrence form (at least as broad as an unmodified ISO CG 0001 0798 or its equivalent).

4.1.3 Amount of Insurance. Coverage shall be provided with limits of not less than:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Product-Completed Operations Aggregate Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000

4.1.4 Required Endorsements

a. Additional Insured. Additional insured status shall be provided in favor of the Owner Parties on any of the following:

- i. ISO form CG 20 10 11 85; or
- ii. ISO form CG 20 26 11 85; or
- iii. a combination of ISO forms CG 20 33 10 01 and CG 20 37 10 01; or
- iv. any form providing equivalent protection to Owner.

b. Designated Construction Project(s) Aggregate Limit. The aggregate limit shall apply separately to this Agreement through use of an ISO CG 25 03 03 97 endorsement or its equivalent.

c. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.

d. Personal Injury Liability. The personal injury contractual liability exclusion shall be deleted.

e. Primary and Non-Contributing Liability. It is the intent of the parties to this Agreement that all insurance required herein shall be primary to all insurance available to the Owner Parties. The obligations of the Contractor’s insurance shall not be affected by any other insurance available to the Owner Parties and shall seek no contribution from the Owner Parties’ insurance, whether primary, excess contingent, or on any other basis. The Contractor’s insurance coverage shall be endorsed to provide such primary and non-contributing liability.

f. Waiver of Subrogation, as required in 3.6, above.

4.15 Continuing Commercial General Liability Insurance. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to Owner stating Work completion date.

4.2 Auto Liability Insurance

4.21 Coverage. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned).

4.22 Form. Business Auto form (at least as broad as an unmodified ISO CA 0001 or its equivalent).

4.23 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

4.24 Required Endorsements

- a. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.
- b. Waiver of Subrogation, as required in 3.6, above.

4.3 Employer's Liability Insurance

4.31 Coverage. Employer's Liability Insurance shall be provided as follows:

4.32 Amount of Insurance. Coverage shall be provided with a limit of not less than:

Employer's Liability: \$1,000,000 each accident and each disease.

4.33 Required Endorsements

- a. Notice of Cancellation, Nonrenewal or Material Reduction in Coverage, as required in 3.5, above.
- b. Waiver of Subrogation, as required in 3.6, above.

4.4 Umbrella Liability Insurance

4.41 Coverage. Such insurance shall be excess over and be no less broad than all coverages described above and shall include a drop-down provision for exhaustion of underlying limits.

4.42 Form. This policy shall have the same inception and expiration dates as the commercial general liability insurance required above.

443 Amount of Insurance. Coverage shall be provided with a limit of not less than \$5,000,000.

444 Continuing Umbrella Liability Insurance. The Contractor shall maintain such insurance in identical coverage, form and amount, including required endorsements, for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to the Owner stating Work completion date.

4.5 **Professional Liability Insurance**

451 Coverage. The Contractor shall provide professional liability insurance for any professional design or engineering drawing required by the work. Such insurance shall indemnify the Owner from claims arising from the negligent performance of professional services of any type, including but not limited to design or design/build services as part of the Work to be performed.

452 Form. This insurance shall include prior acts coverage sufficient to cover all services rendered by the Contractor and by its consultants under this Agreement. It is recognized that this coverage may be provided on a Claims-Made basis.

453 Amount of Insurance. Coverage shall be provided with a limit of not less than \$1,000,000.

454 Continuing Professional Liability Insurance. The Contractor shall maintain such insurance in identical coverage, form and amount for at least one (1) year following Date of Substantial Completion of the Work to be performed under this Agreement. The Contractor shall provide written representation to the Owner stating Work completion date.

4.6 **Builder's Risk**

4.6.1 Insureds. Insureds shall include:

- a. Owner, General Contractor and all Loss Payees and Mortgagees as Named Insureds; and
- b. Subcontractors of all tiers in the Work as Additional Insureds.

4.62 Covered Property. Such insurance shall cover:

- a. all structure(s) under construction, including retaining walls, paved surfaces and roadways, bridges, glass, foundation(s), footings, underground pipes and wiring, excavations, grading, backfilling or filling;
- b. all temporary structures (e.g., fencing, scaffolding, cribbing, false work, forms, site lighting, temporary utilities and buildings) located at the site;
- c. all property including materials and supplies on site for installation;
- d. all property including materials and supplies at other locations but intended for use at the site;
- e. all property including materials and supplies in transit to the site for installation by all means of transportation other than ocean transit; and
- f. Other Work at the site identified in the Agreement to which this Exhibit is attached.

Form

- a. Coverage shall be at least as broad as an unmodified ISO Special form, shall be provided on a completed-value basis, and shall be primary to any other coverage insurance available to the insured parties, with that other insurance being excess, secondary and non-contributing.
- b. No protective safeguard warranty shall be permitted.
- c. Required coverage shall further include:
 - i. Additional expenses due to delay in completion of project (where applicable) \$ TBD
 - ii. Agreed value Included without sublimit
 - iii. Damage arising from error, omission or deficiency in construction methods, design, specifications, workmanship or materials, including collapse Included without sublimit
 - iv. Debris removal additional limit 25% of direct damage loss
 - v. Earthquake (where applicable) \$ TBD
 - vi. Earthquake sprinkler leakage (where applicable) \$ TBD
 - vii. Expediting expenses \$ TBD
 - viii. Flood (where applicable) \$ TBD
 - ix. Freezing Included without sublimit
 - x. Mechanical breakdown, including hot & cold testing (where applicable) Included without sublimit
 - xi. Notice of cancellation, non-renewal or Included

	material reduction – 60 days prior written notice to each insured	
xii.	Occupancy clause, as required in F, below	Included
xiii.	Ordinance or law	Included without sublimit
xiv.	Pollutant clean-up and removal	\$ TBD
xv.	Preservation of property	Included without sublimit
xvi.	Replacement cost	Included
xvii.	Theft	Included without sublimit
xviii.	Waiver of subrogation as required in G, below.	Included

4.63 Amount of Insurance. Coverage shall be provided in an amount equal at all times to the full replacement value and cost of debris removal for any single occurrence.

4.64 Deductibles. Deductibles shall not exceed the following:

a.	All Risks of Direct Damage, Per Occurrence, except	\$5,000
b.	Delayed Opening Waiting Period	5 Days
c.	Flood, Per Occurrence	\$25,000 or excess of NFIP if in Flood Zone A, B or V
d.	Earthquake and Earthquake Sprinkler Leakage, Per Occurrence	\$25,000

4.65 Termination of Coverage. The termination of coverage provision shall be endorsed to permit occupancy of the covered property being constructed so long as such occupancy does not exceed 20% of the usable area of the property. This insurance shall be maintained in effect, unless otherwise provided for in the Contract Documents, until the earliest of the following dates:

- a. the date on which all persons and organizations who are insureds under the policy agree that it shall be terminated;
- b. the date on which final payment, as provided for in the Agreement to which this Exhibit is attached, has been made; or
- c. the date on which the insurable interests in the Covered Property of all insureds other than Contractor have ceased.

4.6.6 Waiver of Subrogation. The waiver of subrogation provision shall be endorsed as follows:

- a. A waiver of subrogation shall be provided in favor of all insureds.
- b. The waiver of subrogation provisions shall be endorsed as follows:

Should a covered loss be subrogated, either in whole or in part, your rights to any recovery will come first, and we will be entitled to a recovery only after you have been fully compensated for the loss.

5. Intentionally left blank.

6. **Evidence of Insurance**

6.1 Provision of Evidence. Evidence of the insurance coverage required to be maintained by the Contractor, represented by certificates of insurance, evidence of insurance, and endorsements issued by the insurance company or its legal agent, and must be furnished to the Owner prior to commencement of Work and not later than fifteen (15) days after receipt of this Agreement. New certificates of insurance, evidence of insurance, and endorsements shall be provided to the Owner prior to the termination date of the current certificates of insurance, evidence of insurance, and endorsements.

6.2 Form

6.2.1 All property insurance required herein shall be evidenced by ACORD form 28, "Evidence of Property Insurance".

6.2.2 All liability insurance required herein shall be evidenced by ACORD form 25, "Certificate of Insurance".

6.3 Specifications. Such certificates of insurance, evidence of insurance, and endorsements shall specify:

6.3.1 The Owner as a certificate holder with correct mailing address.

6.3.2 Insured's name, which must match that on this Agreement.

6.3.3 Insurance companies affording each coverage, policy number of each coverage, policy dates of each coverage, all coverages and limits described herein, and signature of authorized representative of insurance company.

6.3.4 Producer of the certificate with correct address and phone number listed.

6.3.5 Additional insured status required herein.

6.3.6 Amount of any deductibles and/or retentions.

6.3.7 Cancellation, non-renewal and material reduction in coverage notification as required by this Agreement. Additionally, the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon Company, its agents or representatives" shall be deleted from the cancellation provision of the ACORD 25 certificate of insurance form.

- 638 Designated Construction Project Aggregate Limits required herein.
 - 639 Personal Injury contractual liability required herein.
 - 63.10 Primary and non-contributing status required herein.
 - 63.11 Waivers of subrogation required herein.
- 6.4 Required Endorsements. A copy of each of the required endorsements shall also be provided.
- 6.5 Failure to Obtain. Failure of any Owner Party to demand such certificate or other evidence of full compliance with these insurance requirements or failure of any Owner Party to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance.
- 6.6 Certified Copies. Upon request of any Owner Party, the Contractor shall provide to the Owner a certified copy of all insurance policies required herein within ten (10) days of any such request. Renewal policies, if necessary, shall be delivered to the Owner prior to the expiration of the previous policy.
- 6.7 Commencement of Work. Commencement of Work without provision of the required certificate of insurance, evidence of insurance and/or required endorsements, or without compliance with any other provision of this Agreement, shall not constitute a waiver by any Owner Party of any rights. The Owner shall have the right, but not the obligation, of prohibiting the Contractor or any subcontractor from performing any Work until such certificate of insurance, evidence of insurance and/or required endorsements are received and approved by the Owner.

7. Insurance Requirements of Contractor's Subcontractors

- 7.1 Insurance similar to that required of the Contractor shall be provided by all subcontractors (or provided by the Contractor on behalf of subcontractors) to cover operations performed under any subcontract agreement. The Contractor shall be held responsible for any modification in these insurance requirements as they apply to subcontractors. The Contractor shall maintain certificates of insurance from all subcontractors containing provisions similar to those listed herein (modified to recognize that the certificate is from subcontractor) enumerating, among other things, the waivers of subrogation, additional insured status, and primary liability as required herein, and make them available to the Owner upon request.
- 7.2 The Contractor is fully responsible for loss and damage to its property on the site, including tools and equipment, and shall take necessary precautions to prevent damage to or vandalism, theft, burglary, pilferage and unexplained disappearance of property. Any insurance covering the Contractor's or its subcontractor's property shall be the Contractor's and its subcontractor's sole and complete means or recovery for any such loss. To the extent any loss is not covered by said insurance or subject to any deductible or co-insurance, the Contractor shall not be reimbursed for same. Should the Contractor or its subcontractors choose to self-insure this risk, it is expressly agreed that the Contractor hereby waives, and shall cause its

subcontractors to waive, any claim for damage or loss to said property in favor of the Owner Parties.

8. **Use of the Owner's Equipment.** The Contractor, its agents, employees, subcontractors or suppliers shall use the Owner's equipment only with express written permission of the Owner's designated representative and in accordance with the Owner's terms and condition for such use. If the Contractor or any of its agents, employees, subcontractors or suppliers utilize any of the Owner's equipment for any purpose, including machinery, tools, scaffolding, hoists, lifts or similar items owned, leased or under the control of the Owner, the Contractor shall defend, indemnify and be liable to the Owner Parties for any and all loss or damage which may arise from such use.

9. **Release and Waiver.** The Contractor hereby releases, and shall cause its subcontractors to release, the Owner Parties from any and all claims or causes of action whatsoever which the Contractor and/or its subcontractors might otherwise now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not, or which should have been covered by insurance required herein, including the deductible and/or uninsured portion thereof, maintained and/or required to be maintained by the Contractor and/or its subcontractors pursuant to this Agreement.

Section 00800

SPECIAL CONDITIONS OF AGREEMENT

The following Special Conditions modify the General Conditions, Document 00700. Where a portion of the General Conditions is modified or deleted by these Special Conditions, the unaltered portions of the General Conditions shall remain in effect.

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.01 Add the following paragraph to the end of Article 1.01:

The OWNER’S representative on the project site is:
_____ telephone: _____

The CONSTRUCTION MANAGER is: _____ telephone: _____

The CONSTRUCTION INSPECTOR is: _____ telephone: _____

ARTICLE 4 RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR

4.05 Add the following paragraph to Article 4.05:

A Maintenance Bond in accordance with Document 00612 of the Project Manual is required for this Project. The cost of this bond shall be included in the CONTRACTOR’S Bid Proposal.

Attachment No. 3 To General Conditions, Owner’s Insurance Requirements of Contractor, Article 4.6 Builder’s Risk – Builder’s Risk Insurance is **Required/ Not Required** for this project.

General Notes:

Section 01500 Temporary Facilities requires CONTRACTOR to provide high speed internet access in the Field Office. BIDDER is **Required/ Not Required** to provide either a Field Office or any internet access for this project. All other requirements remain and will be required per the section

It is the responsibility of the Contractor to coordinate with the Owner for all Traffic Control Documents. Contractor to coordinate with the Owner for procurement of Traffic Control Documents prior to permitting. Contractor is to keep a minimum of one lane open at all times, in both directions. No lane closures to extend beyond the defined work day.

Contractor **Will/ Will Not** be required to provide an on-site construction office for the duration of this project.

END OF SECTION

Section 00811

WAGE SCALE FOR ENGINEERING CONSTRUCTION

- 1.01 In accordance with the Prevailing Wage law on Public Works (Article 2258 of the Texas Government Code), the public body awarding the contract does hereby **specify the rates shown in Table 00811-A** following to be the general prevailing rates in the locality in which the work is being performed.
- 1.02 This prevailing wage rate does not prohibit the payment of more than the rates stated.
- 1.03 The wage scale for engineering construction is to be applied to all site work greater than five (5) feet from an exterior wall of new building under construction or from an exterior wall of an existing building.

(Attach the current wage rates. Number the pages 00811-2, 00811-3, etc.)

Table 00811-A

[INSERT WAGE RATES]

Section 00900

ADDENDUM NO. #

Date: [mm dd, yyyy]

[NOTE TO SPECIFIER: Please read this entire section carefully; edit, add, modify as appropriate and/or necessary for your project; coordinate all changes with the City prior to issuance and; DELET THIS TEXT BOX PRIOR TO PRINTING.]

PROJECT: [Project name; project limits]

BID NO.: [200#-###]

BID DATE: [Date; time]

FROM: [Responsible engineer]
[Title]
[Firm name]
[Firm address]

To: **Prospective Bidders and Interested Parties**

This addendum forms a part of the bidding documents and will be incorporated into the Contract Documents, as applicable. Insofar as the original Contract Documents, Specifications, and Drawings are inconsistent, this Addendum shall govern. Please acknowledge receipt of this Addendum on the Bid Proposal form, Section 00300 submitted to the City of Baytown. **FAILURE TO ACKNOWLEDGE RECEIPT OF ADDENDA ON THE BID PROPOSAL FORM MAY BE CAUSE FOR DISQUALIFICATION.**

CONTRACT DOCUMENTS:

[Insert as needed]

SPECIFICATIONS:

[Insert as needed]

CONSTRUCTION DRAWINGS:

[Insert as needed]

END OF ADDENDUM NO. [#]

[Responsible engineer]
[Title]