

CITY OF ROLLINGWOOD, TEXAS



SPECIFICATIONS AND CONTRACT
DOCUMENTS FOR THE CONSTRUCTION OF

2025 Mill and Overlay Project

Prepared By:

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Austin, Texas 78746

For:

City of Rollingwood

403 Nixon Drive

Rollingwood, Texas 78746



October 2025

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NOTICE TO BIDDERS

Sealed bids addressed to the Honorable Mayor and City Council will be received at the office of Makayla Rodriguez, City Secretary, City of Rollingwood, City Hall; 403 Nixon Drive, Rollingwood, Texas 78746, until 2:00 P.M. on November 12, 2025 for the construction of the **2025 Mill and Overlay Project** in the City of Rollingwood, Texas. The bids shall be labeled:

2025 Mill and Overlay Project Rollingwood, Texas

Bids must be submitted on the Bid Form provided and must be accompanied by a cashier's check, certified check or acceptable bidder's bond payable without recourse to the City of Rollingwood, Texas in an amount not less than five (5) percent of the bid submitted as a guarantee that the bidder will enter into a contract and execute a Performance Bond and a Payment Bond within ten (10) days after the notification of the award of the contract.

The bids will be publicly opened and read aloud at the City of Rollingwood City Hall at 2:00 P.M. on November 12, 2025. The City Council will officially review the bids at their next regularly scheduled meeting and award the contract as soon thereafter as practical.

The estimated cost of the base bid is \$375,000. There is one add alternative bid for this project.

The City of Rollingwood reserves the right to accept or reject any and all bids, as the best interest of the City may require, and to waive any informality in bids received. The City of Rollingwood also reserves the right to award the Contract as may be advantageous to the City. Construction services for this project will be selected through sealed bids in accordance with Chapter 2269, of the Texas Government Code.

Per 2258.022 of the Texas Government Code, the City specifies in this call for bids that the prevailing wage rates determined in the specifications are to be paid.

Plans, specifications and bidding documents may be secured beginning October 24, 2025 at the office of the City of Rollingwood, Makayla Rodriguez, City Secretary, 403 Nixon Drive, Rollingwood, Texas 78746; (512) 327-1838. The plans and specs may be obtained electronically by emailing Makayla Rodriguez at mrodriguez@rollingwoodtx.gov.

A **non-mandatory** pre-bid conference will be held virtually at 10:00 A.M., on November 6, 2025 via **Microsoft Teams**. Meeting ID: 222 492 246 029 3 Passcode: Eb7Cu93Q

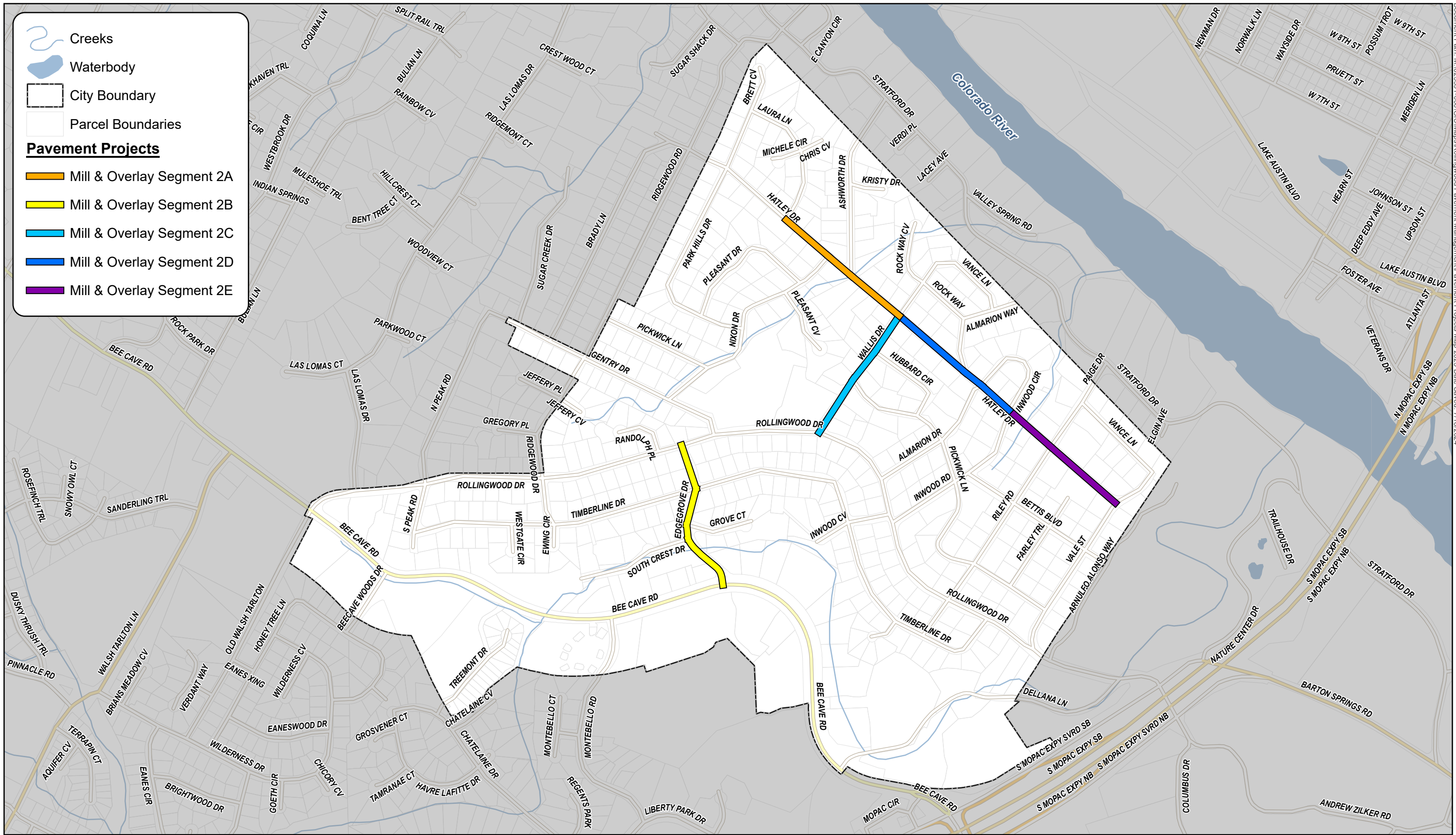
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Publications:
October 26, 2025
November 2, 2025

CITY OF ROLLINGWOOD, TEXAS

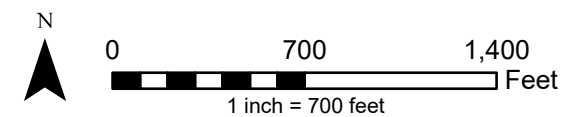
SPECIAL PROJECT INFORMATION TO BIDDERS/CONTRACTORS

- A. **All questions and inquiries about the project should be directed to Makayla Rodriguez, City Secretary, until 5:00 P.M. on November 5, 2025.** Questions after that time and date will not be addressed and the Engineer and/or Owner shall not be bound by any references or dates obtained by the Bidders unless an official addendum is produced and released by the City of Rollingwood by email to the plan holders list. Responses to inquiries that directly affect an interpretation or effect a change to this Issued for Bid (IFB) will be issued in writing by addendum. All such addenda issued by City before the submittal deadline shall be considered part of the IFB. The City will not be bound by any reply to an inquiry unless such reply is made by such formal written addendum. Direct all questions to the City Secretary by email to mrodriguez@rollingwoodtx.gov.
- B. A non-mandatory pre-bid conference will be held prior to bid opening for the project.
- C. Addenda will be forwarded to firms which are on the plan holder's list.
- D. On-site construction observation will be provided by WSB, LLC.
- E. Contract Administration and Pay Estimate Approvals will be provided by WSB, LLC.
- F. Bid Items for Mobilization, Bonds and Insurance shall not exceed 5% of the total amount Bid for any particular Section of the Bid Submitted.
- G. Anticipated Schedule.
 - a. Deadline for submittal of written questions: November 5, 2025 by 5:00 P.M.
 - b. Sealed response to IFB due & opened by City: November 12, 2025 at 2:00 P.M.
 - c. Anticipated bid review: November 13, 2025.
 - d. Week of November 17, 2025 - City to work with Contractor to execute the contract.
 - e. Week of December 3, 2025 - City and WSB will hold the preconstruction meeting. Notice to Proceed will be given to begin the project as December 15, 2025. Weather conditions and holidays will be considered at that time. The contractor shall provide a schedule of activities to the City at the preconstruction meeting.
 - f. Contractors shall submit bids only if they can perform the work and on this anticipated schedule.
- H. The streets to receive a mill and HMAC Type "D" overlay are the following:



2025 Pavement Maintenance Projects

Pavement Management
City of Rollingwood, Texas



Base Bid Streets Include:

Street ID	Treatment	Location	Approx. Square Yards
2A	1.5" Mill and Overlay	Hatley Drive between Laura Lane and Wallis Drive 2A begins at the western radii at the intersection of Hatley and Laura Lane. The work on Hatley will include the radii north of Hatley on Laura Lane. Saw cut perpendicular to Laura Lane. 2A also includes the intersection of Hatley and Wallis Drive. Contractor shall match and sawcut the north line of Hatley across Wallis. Contractor shall include the radii on the east side of Wallis, on Hatley. Contractor shall also include the radii on the south side of Hatley, on Wallis.	4,329
2B	2" Mill and Overlay	Edgewood Drive between Rollingwood Drive and Bee Cave Road 2B does not include pavement on Rollingwood Drive or Bee Caves Road	4,117
2C	1.5" Mill and Overlay	Wallis Drive between Rollingwood Drive and Hatley Drive 2C does not include pavement on Rollingwood Drive	3,759

Alt Bid 1 Streets Include:

Alternative Add Bid No. 1 will include the following full or portion of streets to receive a mill and overlay. City's bid award may include as little as 100 SY on Street 2D up to the full length or square yards listed below. It is to the City's discretion to award none, portions, or all of Alt Bid 1.

Street ID	Treatment	Location	Approx. Square Yards
2D	1.5" Mill and Overlay	Hatley Drive between Wallis Drive and Inwood Drive 2A begins at the western radii at the intersection of Hatley and Laura Lane. The work on Hatley will include the radii north of Hatley on Laura Lane. Saw cut perpendicular to Laura Lane. 2A also includes the intersection of Hatley and Wallis Drive. Contractor shall match and sawcut the north line of Hatley across Wallis. Contractor shall include the radii on the east side of Wallis, on Hatley. Contractor shall also include the radii on the south side of Hatley, on Wallis.	Up to 3,630
2E	2" Mill and Overlay	Hatley Drive between Inwood Drive and Vale Street 2E does not include the intersection of Riley Road. Contractor shall saw cut perpendicular to Hatley Drive	4,028

		starting at the curb returns for both sides of the road. The saw cut will be parallel to Riley Road. The mill and overlay on Hatley will include the full radii connecting to Riley Road. 2E does include the entire intersection of Hatley and Vale Street. The Engineer or City will mark the length to mill and overlay on Vale prior to construction, if this item is awarded in the bid. It is estimated the mill on Vale Street will be 60' in each direction of the centerline of Hatley.	
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- I. Contractor shall familiarize themselves with each roadway.
- J. The Contractor shall make an examination of the project site and completely familiarize himself with the nature and extent of the work to be accomplished. No extra compensation will be allowed for any work made necessary by unusual conditions or obstacles encountered during the progress of the work, which conditions or obstacles are readily apparent upon a visit to the site. If there are questions regarding this or if there are any discrepancies between this IFB and actual site conditions, the Contractor shall notify the engineer prior to the submission of bids.
- K. The bidders for this project shall familiarize themselves with all requirements of working in state and City of Rollingwood rights-of-way and easements. The bidders shall familiarize themselves with all insurance requirements for said work and shall include in their bids, insurance costs and insurance premiums that provide for the City of Rollingwood as additional insureds under the contractor's policies.
- L. Each street above has curb and gutter. Contractor shall mill up to the lip of the curb and gutter and shall not damage or remove the curb and gutter. Any damage to curb and gutter shall be promptly repaired by the Contractor at no cost to the City. Repairs shall be per the City's requirements and standard details. In the event a standard detail is not available, one will be provided.
- M. Each street above has an existing 4" white pavement parking, both sides of the street, skipping intersections. The Contractor shall note the distance between the curb and this stripe prior to milling. Post-overlay, the Contractor shall place the new white stripe in the same location as existing. Contractor shall connect new striping to existing for a smooth, continuous line.
- N. The following streets will also receive a new double yellow stripe per the bid item description.
 - a. 2A Hatley from Ashworth to Wallis, Approximately 475 LF.
 - b. 2B Entire length of Edgegrove Drive, Approximately 1,151 LF.
 - c. 2C Wallis Drive between the intersection at Rollingwood Drive and south of 408 Wallis Drive. Match existing location of the single yellow but post-paving will be double yellow.

- O. White hatching will be placed on Rollingwood Drive at Wallis intersection as part of the 2C street segment work. The white hatching will be field-designed and as anticipated to be placed similar to the following to prevent drivers from taking wide turns.



P. Traffic Control:

1. All barricades signs and traffic control for this project shall conform to the latest edition of Texas Manual on Uniform Traffic Control Devices for streets and highways. Refer to the Definitions of Bid Items for more information.
2. No public or private road shall be entirely closed at any point during the project. It shall be the responsibility of the Contractor to build and maintain one lane of traffic at all times and to properly barricade any lane closures that might be required on and across the roads involved in the work included in this contract.
3. Access to offices, businesses and driveways along the project shall receive priority by the Contractor. Access to mailboxes and trash cans along the project shall receive priority by the Contractor. **Note, there is a postal box at Rollingwood Drive and Wallis Drive. Residents and postal workers will park in this area periodically. Contractor shall not block the postal box and assist in access to this area when needed.**
4. Contractor shall maintain access to public and private facilities at all times and in all weather conditions during construction.

Q. Utilities

1. Contractors shall note manholes and valve covers/boxes to protect during construction. Hand milling may be required around manholes and valve covers/boxes. Any damage to manholes and valve covers/boxes shall be promptly repaired by the Contractor at no cost to the City. Repairs shall be per

the City's requirements and standard details. In the event a standard detail is not available, one will be provided.

2. Utility locates were not performed for this project and therefore, location of existing utilities is not shown or provided. Contractor to field verify locations of existing utilities prior to the commencement of construction. If there are any conflicts between existing utilities and proposed work, then it shall be the contractor's responsibility to notify the city or other affected utility before proceeding with any construction. The Contractor shall be responsible for resolving all conflicts at his expense. The owner will consider any conflicts at said locations on a case-by-case basis in order to determine if the contractor should be reimbursed for this expense in solving conflict.
3. Contractor shall coordinate interruptions of all utilities and services with all applicable utility company or companies. All work to be in accordance with the requirements of the applicable utility company or agency involved.
4. When unlocated or incorrectly located underground piping or a break in a line or other utility and services are encountered during site work operations, the Contractor shall notify the applicable utility company immediately to obtain procedure directions. Contractor to cooperate with the applicable utility company in maintaining active services in operation.
5. The Contractor shall contact the City of Rollingwood at (512) 327-1838 for existing utility locations prior to any excavation. In advance of construction, the Contractor is to verify the locations of all utilities to be extended, tied to or altered or subject to damage/inconvenience by the construction operations.
6. The procurement and transportation of water required for inclusion in the project is the responsibility of the Contractor.

R. General Notes

1. All construction for this project shall conform to the requirement of the City of Rollingwood design and standard details manual and to the requirements of the latest Texas Department of Transportation Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges, unless otherwise stated in the contract documents.
2. The Contractor shall be responsible for protection of his materials and equipment from theft, vandalism, animals, fire, etc. while said materials and equipment are on the project whether stored or installed in place, until the project has been accepted by the City of Rollingwood.
3. The Contractor shall at all times keep the job site as free from all material, debris and rubbish as is practical and shall remove same from any portion of the job site as construction of that portion is completed. Upon completion of the project, the site(s) as defined herein, shall be cleaned of all debris and left in a neat and

presentable condition. Upon completion of the work, the Contractor shall remove from the site all plant, materials, tools and equipment belonging to him and leave the site with an acceptable appearance.

4. The Contractor shall protect millings from entering into storm inlets and manholes. The Contractor shall also sweep gutters and remove millings as the project progresses and not wait until the end of the project construction.

S. Construction Layout/Project Coordination

1. The Contractor is responsible for finding and securing their own laydown area for equipment and materials.
2. The Contractor shall notify the City of Rollingwood a minimum of three (3) working days (Monday-Friday) in advance of construction startup. Contractor shall also give a minimum of three (3) working days (Monday-Friday) notice to all authorized inspectors, superintendents or persons in charge or private and public utilities affected by his operations prior to commencement of work.
3. The City will provide markings for the limits of each street improvement, if requested.
4. In the event other contractors are doing work in the same area simultaneously with this project, the Contractor shall coordinate his proposed construction with that of other contractors.
5. Pre-construction conference
 - a. Prior to beginning work on the project and soon after the award of the contract, a conference will be held among the representatives of the City of Rollingwood and the Contractor and any subcontractor that will be involved in the work. At the time the Contractor shall submit charts or briefs, outlining the manner of execution of the work that is intended in order to complete the specified work within the allotted time. This conference will more completely establish the sequence of work to be followed and establish the estimated progress schedule for completion of the various tasks.
 - b. In addition, at this conference, the Contractor shall be responsible for furnishing the City with all of the following, as specified herein or as directed by the City:
 - i. Samples/shop drawings/submittals of all materials to be used on the project with identification as to product name; name, location, phone number (including area code) and mailing address of product source and manufacturer, if different from source; content product; amount of each ingredient in the product, and manufacturer's directions as to use and application of the product, if applicable.

6. Private property shall be off limits unless written permission is given to the contractor by the owner. The City of Rollingwood will not be responsible for contractor operations or damages to the project site.
7. Where existing pavement adjoins new pavement, the existing pavement shall be sawed to a neat transverse line to permit adequate joining.

T. Site Management/Connection Notes

1. Contractor shall control dust caused by the work and comply with pollution control regulations of governing authorities.
2. Contractor shall remove built up material on adjacent public roadways resulting from his work. Cleaning to be at least once a day.
3. Contractor shall not stockpile material within the 100-year flood plain.
4. Any existing payment, curbs, and/or sidewalk damaged or removed by the contractor that are not a part of this contract are to be repaired by the contractor to at least the preexisting condition at his expense before Owner acceptance of the work.
5. The Contractor's attention is called to the fact that all adjoining pavement sections shall be protected during all phases of construction and any damages incurred due to Contractor's operation shall be repaired and/or replaced at the Contractor's expense.
6. Contractor shall make all due precautions to protect existing facilities from damage. Any damage to existing facilities incurred because of these construction operations is to be repaired immediately by the Contractor to at least the preexisting condition at no additional cost to the owner. No trees or landscaping shall be removed or cut without the Owner's approval.
7. The Contractor shall protect all existing fences. If a fence must be removed, the contractor shall replace said fence or portion thereof with the same type of fencing to a quality of equal or better than the original fence. This will not be a separate pay item, unless specifically noted in these specifications.

U. Testing and Submittals

1. The Contractor shall be responsible for providing material sample submittals as well as any manufactures literature of materials used on this project as required by the engineer. Any cost associated with any materials sampling and testing prior to construction shall be the responsibility of the Contractor. These costs shall be considered as incidental and the contractor will not be entitled to any additional compensation.
2. The City shall coordinate and pay for all initial materials testing during construction. Tests which show unsatisfactory results are to be repeated at the expense of the contractor subsequent to the Contractor's remedial activities.

3. Coordination of Submittal Times: Prepare and transmit each submittal sufficiently in advance of performing the related work or other applicable activities, or within the time specified in the individual work sections, of the Specifications, so that the installation will not be delayed by processing times including disapproval and resubmittal (if required), coordination with other submittals, testing, purchasing, fabrication, delivery and similar sequenced activities. No extension of time will be authorized because of the Contractor's failure to transmit submittals sufficiently in advance of the Work.
4. All submittals submitted by subcontractors for review by the Owner shall be sent directly to the Contractor for checking. The Contractor shall be responsible for their submission at the proper time so as to prevent delays in delivery of materials.
5. The Contractor shall check all subcontractor's submittals regarding measurements, size of members, materials, and details to satisfy himself that they conform to the intent of the Drawings and Specifications. Submittals found to be inaccurate or otherwise in error shall be returned to the subcontractors for correction before submission thereof.
6. All details on submittals submitted for review shall show clearly the relation of the various parts to the main members and lines of the structure, and where correct fabrication of the work depends upon field measurements, such measurements shall be made and noted on the drawings before being submitted for review.
7. The review of submittals, samples or product data by the Engineer shall not relieve the Contractor from his/her responsibility with regard to the fulfillment of the terms of the Contract. All risks of error and omission are assumed by the Contractor and the Engineer will have no responsibility therefor.
8. No portion of the work requiring a submittal, sample, or product data shall be started nor shall any materials be fabricated or installed prior to the review of such item. Fabrication performed, materials purchased or on-site construction accomplished which does not conform to reviewed shop drawings and data shall be at the Contractor's risk. The Owner will not be liable for any expense or delay due to corrections or remedies required to accomplish conformity.
9. When the submittals have been completed to the satisfaction of the Engineer, the Contractor shall carry out the construction in accordance therewith and shall make no further changes therein except upon written instructions from the Engineer.
10. One (1) electronic copy of each submittal shall be submitted for review. The one (1) copy requirement is also applicable to the Traffic Control Plan.

V. Job Site Safety Notes

1. All construction operations for this project shall be accomplished in accordance with applicable regulations of the United States Occupational safety and health administration (OSHA) Copies of the OSHA standards may be purchased from the U.S. Government printing office; information and related reference materials may be obtained from OSHA: 903 San Jacinto, Austin, TX.
2. These plans and contract requirements do not extend to or include designs or systems pertaining to the safety of the contractor or his employees, agents or representatives in the performance of the work. The seal of the City of

registered professional engineer hereon does not extend to any such safety systems that may now or hereafter be incorporated in the work.

3. The Contractor shall be responsible and liable for all job site safety, for management of job site personnel, for supervision of the use of job site equipment and for direction of all construction procedures, methods and elements required to complete the construction of the proposed improvements.
4. Blasting is not permitted on this project.
5. In addition to other safety requirements, all trucks used for hauling material and/or equipment to and/or from this project shall be equipped with an audible backup warning device that is in good operating condition.
6. Protection of vehicular and pedestrian traffic is of the utmost importance for the project. The traffic control and sequence of construction plan shall address all anticipated situations in this regard with sufficient detail. The Contractor's plan will be reviewed by the City of Rollingwood.
7. The City of Rollingwood reserves the right to stop work without additional compensation or granting of additional time when a safety concern is noticed or reported.

W. Environmental Notes

1. Contractor is responsible for providing and maintaining sanitary facilities on this project for employees.
2. The City has the right to not allow the placement of asphalt products within 48 hours of forecasted rain.
3. Contractor shall comply with all applicable local, state, and federal requirements regarding excess and waste material, including methods of handling and disposal.
4. Contractor shall maintain access to public and private facilities during construction. Construction activities to be coordinated with the City of Rollingwood.
5. Contractor shall locate material storage areas away from stormwater conveyance systems. Contractor to provide protected storage areas for chemicals, paints, solvents, fertilizers and other potentially toxic materials.
6. Fuel storage is not allowed on this project.
7. Contractor shall advise owner immediately, verbally and in writing, of any fuel or toxic material spills onto the project construction area and the actions to be taken to remedy the problem.
8. Contractor is responsible for disposing of his fuels, materials and contaminated excavations in a legally approved manner.
9. Contractor is responsible for complying with all applicable environmental laws.
10. In the event that site grading and/or excavation reveals what might be

hazardous materials, all construction operations shall cease. The City of Rollingwood shall be called to the site to evaluate the situation. If required, the City of Rollingwood will authorize the hazardous materials response company which is under contract with the City of Rollingwood to begin remediation of the situation. At that same time, the City of Rollingwood will determine what construction activities may continue that would not endanger construction workers or citizens.

X. Pavement Structure Specification/Notes

1. Hot-mix Asphaltic Concrete Driving Surface shall meet the latest TxDOT Item 340, Type D.
2. Type D HMAC shall meet the following specifications, unless otherwise approved by the City.
 - The Tack Coat and the HMAC overlay shall be placed after a complete sweeping of the street surface to be overlaid and will be paid under the appropriate item as indicated on the Bid Form.
 - The Tack Coat shall be PG Binders; SS-1H, CSS-1H or EAP&T.
 - The Tack Coat shall be applied at a rate for the HMAC Overlay.
 - The Tack Coat is subsidiary to the Bid items for the HMAC Overlay.
 - If asphalt emulsion prime is recommended and used, the mixture shall be 60% oil to 40% water ratio by weight and a target application rate of 0.25 gallons per square yard.
3. When a yellow stripe is required to be replaced: immediately after paving, the Contractor shall install reflective temporary tabs prior to striping the pavement. This task is subsidiary to the striping bid item.
4. All millings are the property of the City. Upon collection of the millings, the Contractor shall transport the millings to the end of Dellana Lane, in the field immediately east of the lift station located at 3600 Dellana Lane. The City or the City's representative will clarify this location during the preconstruction meeting. The Contractor shall place the millings in loose piles.

Y. Bid Item Clarification

1. Bid Item 13 - Items Requested by Owner Not Identified in the Contract. The bid schedule contains one bid item titled "Items Requested by Owner Not Shown in the Construction Drawings, Complete For \$5,000 per Lump Sum". Work under this item is intended to cover those work tasks that could arise during construction that may have not been anticipated or that may be additional work

that the Owner may want completed. Payment for work under this item will be actual direct cost plus 10 percent. Documentation of direct costs are required for inclusion in the pay requests for approval of payment. The intent of this item is to allow for continuous progress on the project if issues are encountered. The authorization to perform any additional work must be made by the City.

2. Payment of Mobilization, Bonds and Insurance: Except for Contracts with callout or emergency work, mobilization will be paid in partial payments as follows:
 - a. Payment will be made upon presentation of a paid invoice for the payment or performance bonds and required insurance,
 - b. Payment will be made upon verification of documented expenditures for plant and facility setup. The combined amount for all these facilities will be no more than 10% of the mobilization lump sum or 1% of the total Contract amount, whichever is less,
 - c. When 1% of the adjusted Contract amount for construction Items is earned, 50% of the mobilization lump sum bid or 5% of the total Contract amount, whichever is less, will be paid. Previous payments under this Item will be deducted from this amount,
 - d. When 5% of the adjusted Contract amount for construction Items is earned, 75% of the mobilization lump sum bid or 10% of the total Contract amount, whichever is less, will be paid. Previous payments under the Item will be deducted from this amount,
 - e. When 10% of the adjusted Contract amount for construction Items is earned, 90% of the mobilization lump sum bid or 10% of the total Contract amount, whichever is less, will be paid. Previous payments under this Item will be deducted from this amount,
 - f. Upon final acceptance, 97% of the mobilization lump sum bid will be paid. Previous payments under this Item will be deducted from this amount, and Payment for the remainder of the lump sum bid for "Mobilization" will be made after all submittals are received, final quantities have been determined and when any separate vegetative establishment and maintenance, test, and performance periods provided for in the Contract have been successfully completed.

INSTRUCTION TO BIDDERS FOR CONSTRUCTION

1. SCOPE OF WORK

The work to be done under the contract documents shall consist of the following:

2025 Mill and Overlay Project

The contractor shall furnish all labor, superintendence, machinery, equipment and all materials necessary to complete this project in accordance with contract documents.

2. CONTRACT DOCUMENTS

All work covered by this contract shall be done in accordance with contract documents described in the General Conditions.

All bidders shall be thoroughly familiar with all of the requirements set forth on the contract documents for the construction of this project and shall be responsible for the satisfactory completion of all work contemplated by said contract documents.

These contract documents include a complete set of bid and contract forms which are for the convenience of the bidders and are not to be detached from the contract document, completed or executed. Separate bid forms are provided for your use.

Notification of Errors or Omissions: Offerors shall promptly notify the City of any omissions, ambiguity, inconsistency or error that they may discover upon examination of this IFB. The City shall not be responsible or liable for any errors and/or misrepresentation that result from the solicitations which are inadvertently incomplete, ambiguous, inconsistent or obviously erroneous.

3. PLANS FOR USE BY BIDDERS

It is the intent of the City of Rollingwood that all parties with an interest in submitting a bid on the project covered by the contract documents be given a reasonable opportunity to examine the documents and prepare a bid without charge or forfeiture of deposit. The contract documents may be examined without charge.

4. INSPECTION OF SITE

Each bidder should visit the site of the proposed work and fully acquaint himself with the existing conditions there and should fully inform himself as to the facilities involved, the difficulties and restrictions attending the performance of the contract. The bidder should thoroughly examine and familiarize himself with the drawings, technical specifications and all other contract documents. The contractor, by the execution of the contract, shall in no way be relieved of any obligation under it due to his failure to receive or examine any form or legal document or to visit the site or acquaint himself with the conditions

there existing. The City will be justified in rejecting any claim based on lack of inspection of the site prior to the bid.

5. INTERPRETATIONS OR ADDENDA

Requests for additional information regarding this solicitation should be directed in writing to the City Secretary, Makayla Rodriguez at mrodriguez@rollingwoodtxgov. Each request for additional information will be in the form of an Addendum to the contract documents and will be distributed to all parties holding contract documents no less than one (1) day prior to the bid opening. It is, however, the bidder's responsibility to make inquiry as to any addenda issued. All such addenda shall become part of the contract documents and all bidders shall be bound by such addenda, whether or not received by the bidder.

6. BIDS

- a) All bids must be submitted on the forms provided and are subject to all requirements of the Contract Documents, including the Drawings. The City may reject bids submitted on something other than the City's forms if the City determines in its sole discretion that the form(s) does not provide the same level of protection or information as the City's form(s).
- b) All blank spaces in the forms shall be correctly filled in and the bidder shall state the price both in words and numerals, for which he proposes to do the work contemplated or furnish the materials required. Such prices shall be written in ink, distinctly and legibly, or typewritten. In case of discrepancy between the price written in words and the price written in figures, the price written in words shall govern.
- c) If the bid is submitted by an individual, his name must be signed by him or his duly authorized partnership, the name and address of each member must be given and the bid signed by a member of the firm, association or partnership, or person duly authorized. If the bid is submitted by a company or corporation, the company or corporate name and business address must be given, and the bid signed by an official or duly authorized agent. Powers of Attorney authorizing agents or others to sign bids must be properly certified and must be in writing and submitted with the bid.
- d) Each bid shall be enclosed in a sealed envelope, addressed as specified in the Notice to Bidders, and endorsed on the outside of the envelope in the following manner:
 - i. Bidder's name
 - ii. Bid for **2025 Mill and Overlay Project**
- e) Bids may be withdrawn and resubmitted at any time prior to the time set for

opening of the bids (with proper identification), but no bid may be withdrawn or altered thereafter.

- f) All bids must be regular in every respect and no interlineation, excisions or special conditions may be made or included by the bidder.
- g) The City may consider as irregular any bid on which there is an alteration of or departure from the bid form and, at its option, may reject any irregular bid.
- h) If contract is awarded, it will be awarded to a responsible bidder on the basis of the lowest/best bid and the selected alternate bid items, if any. The contract will require the completion of the work in accordance with the contract documents. The addition of the alternate bids will be at the discretion of the City at the time of award.
- i) The City reserves the right, after the bids have been opened and before the contract has been awarded, to require of a bidder the following information:
 - i. The experience record of the bidder showing completed jobs of a similar nature to the one covered by the proposed contract and all work in progress with bond amounts and percentages complete.
 - ii. A sworn statement of the current financial condition of the bidder.
 - iii. Equipment schedule.
 - iv. Project completion schedule.
 - v. Signed W-9.
 - vi. House Bill 89 Verification Form: Passed by the Legislature in 2017, House Bill 89 prohibits a governmental entity, including a school district, from entering into a contract for goods or services with a company unless the contract contains a written verification from the company that it does not boycott Israel and will not boycott Israel during the term of the contract (Texas Government Code 2270.002). The form must be completed for the bid award, unless exempted by the statute, in order to ensure compliance with House Bill 89.
 - vii. Conflict of Interest Questionnaire (Form CIQ): Per Chapter 176 of the Texas Local Government Code, a vendor who submits to the City of Rollingwood a response to a request for proposals or bids, shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity that meets the conditions of the statute.

If Offeror falls under the requirements of Chapter 176, and submits a bid in response to this IFB, a conflict-of-interest questionnaire should be completed and included with the bid. The form is also available at <https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each person or agent of a person who is subject to the filing requirement. An offense under Chapter 176 is a Class C misdemeanor.

- i. Local Certifications: Current Certificate of Liability and Workers Compensation Insurance.
- ii. Anti-Terrorism Disclosure: Texas S.B. 252 provides that (1) the City may not enter into a governmental contract with a Provider that is identified on a list prepared and maintained by the comptroller and that does business with Iran, Sudan, or a foreign terrorist organization; and (2) a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter.
- viii. Form 1295 Certificate of Interested Parties: If selected for award of a contract, the Offeror may be requested to file a Form 1295 with the Texas Ethics Commission. Texas law states that a governmental entity or state agency may not enter certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity.

7. REQUIRED INFORMATION AND SUBMISSION FORMAT

a) Required Information:

- i. The offeror's bid response to this solicitation must include information addressing all criteria listed for the submittal to be considered complete and to be fully evaluated by the City.
- ii. To facilitate the efficient review of the responses, offerors shall follow the instructions under the section titled Submission Format. The intent of the format requirements is to expedite review and evaluation. It is not the intent to constrain offerors regarding content, but to assure that the specific requirements set forth in this IFB are addressed in a uniform manner amenable to review and evaluation. Failure to arrange your bid as requested may result in the disqualification.
- iii. Your bid should be prepared in an easy to review format. Attach the documents requested. The response should be prepared as a straightforward concise description of a offeror's ability to meet the requirements of this solicitation. Emphasis should be placed on completeness and clarity of content. It is strongly

recommended that the offeror exactly follow the content order identified in this section of the IFB.

b) **Submission Format:**

In order for a response to this IFB to be considered complete, and to be evaluated for a contract award by the City, bidders must submit all of the following information by the bid opening date and time:

- iii. **Bid Form Pages**
- iv. **Bid Prices: Attach your detailed bid prices for the goods/services offered using the bid form documents provided in this solicitation.**
- v. **Bond Affidavit.**
- vi. **Bid Bond.**
- vii. **Project Experience and References: Offeror shall provide at least three (3) references where Offeror has performed similar to or the same types of goods/services as described herein. Please provide the client contact information including phone and email, project description and date the work was performed.**

c) **Contact:**

No offeror shall directly or indirectly engage in any conduct (other than the submission of the proposal or invited discussions during evaluation) to influence any employee or elected official of the City of Rollingwood concerning award of a contract as a result of this solicitation. Violation of this policy will result in debarment from participation in future City solicitations or contracts.

d) **Confidentiality of Documents:**

ALL PROPOSALS SUBMITTED WILL BE SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT. In the event a request for public information is filed with the City, which involves a Firm or Individual's proprietary information submitted to the City in a proposal, the Firm or Individual affected by such public information request will be notified by the City of the request in order to give the affected Firm or Individual an opportunity to respond to the request. On each page where confidential information appears, the Firm or Individual must label the confidential information. Failure to so label the confidential information shall be considered as a waiver of any confidentiality rights or interests by said Firm or Individual.

Note: Marking your entire Bid or Proposal as CONFIDENTIAL/PROPRIETARY is not in conformance with the Texas Open Records Act.

e) **Award of the Contract:**

The City reserves the right to reject all bids received and terminate the solicitation process at any time

f) Non-Appropriations Clause:

In the event no funds are appropriated by the City Council for this project in a future fiscal year, the City of Rollingwood has the right to terminate any resulting contract without penalties of any sort.

8. BID BOND

- a) A bid bond in the amount of 5% of the bid issued by the acceptable surety shall be submitted with each bid. A certified check or bank draft payable to the City may be submitted in lieu of the Bid Bond.
- b) The bid bond or its comparable, will be returned to the bidder as soon as practical after the opening of the bids.

9. AMOUNT OF CONTRACT

This contract is for an amount as identified in the Standard Form of Agreement. Unit prices are included for situations where quantities increase or decrease through a properly executed change order. Contractor will not be compensated for work performed before they have a written change order signed by the City Administrator in their possession.

10. TIME EXTENSION OF CONTRACT

Any time extension request must be submitted within seven (7) calendar days of the underlying cause for delay. Otherwise, no extension may be granted.

11. UNIT PRICE

The unit price for each of the several items in the bid shall include its pro rata share of overhead so that the sum of the products obtained by multiplying the quantity shown for each item by the unit price bid represents the total bid. Any bid not conforming to this requirement may be rejected as informal. Special attention is drawn to this condition, as the unit prices will be used to determine the amount of any change orders resulting from an increase or decrease in quantities.

12. CORRECTIONS

Erasures or other corrections in the bid must be noted over the signature of the bidder.

13. TIME FOR RECEIVING BIDS

Bids received prior to the advertised hour of opening will be kept securely sealed. The officer appointed to open the bids shall decide when he specified time has arrived and no bid received thereafter will be considered; except that when a bid arrives by mail after the time fixed for opening, but before the reading of all other bids is completed, and it is

shown to satisfaction of the City that the late arrival of the bid was solely due to delay in the mail for which the bidder was not responsible, such bid will be received and considered.

14. OPENING OF BIDS

The City shall, at the time and place fixed for the opening of bids, open each bid and publicly read it aloud, irrespective of any irregularities therein. Bidders and other interested individuals may be present.

15. WITHDRAW OF BIDS

Bidder may withdraw the bid before the time fixed for the opening of bids, by communicating his purpose in writing to the City. Upon receipt of such notice, the unopened bid will be returned to the bidder. The bid guaranty of any bidder withdrawing his bid will be returned promptly.

16. AWARD OF CONTRACT/REJECTION OF BIDS

The contract will be awarded to the responsive, responsible Bidder submitting the lowest/best BASE bid. The bidder selected will be notified at the earliest possible date. The City reserves the right to reject any or all bids and to waive any informality in bids received where such rejection or waiver is in its interest.

- a) Completeness: If a response to the IFB is incomplete or otherwise fails to conform to the requirements of the IFB, City alone will determine whether the variance is so significant as to render the Offeror's proposal non-responsive, or whether the variance may be cured by the Offeror or waived by the City, such that the response to the IFB may be considered for award.
- b) Ambiguity: Any ambiguity in the response to the IFB as a result of omission, error, lack of clarity or non-compliance by the Offeror with specifications, instructions and all conditions shall be construed in the favor of the City. In the event of a conflict between these standard IFB requirements and details provided in Appendix A, the Appendix shall prevail.
- c) Additional Information: City may request any other information necessary to determine Offeror's ability to meet the minimum standards required by this solicitation.
- d) Evaluation and Contract Award Process: The City's intent is to award a contract to the responsible offeror whose proposal is determined to be the most advantageous to the City considering the relative importance of price and the other evaluation factors included in Appendix A of this solicitation.
- e) Unit Prices and Extensions: If unit prices and their extensions are submitted in a

proposal and do not coincide, the unit price shall govern.

- f) **Contract Award:** An award of a contract to provide the services specified herein will be made in accordance with the Texas statute, federal regulations (when applicable) and with the City's purchasing policy. The City will evaluate and rank all responses received. The acceptance and award of a contract is subject to approval by the City executive/and or City Council.
- g) **Contract:** Upon successful completion of revision negotiations, the City will submit to the successful bidder a contract for execution. The City of Rollingwood will offer for execution its standard form of agreement with the successful firm chosen for award. No vendor contracts will be accepted. By submitting a proposal in response to this IFB, the offeror understands and accepts this requirement and that failure to execute the City's contract may result in rejection of the offeror's submitted proposal.
- h) **Partial Contract Award:** City reserves the right to award one contract for some or all the requirements proposed or award multiple contracts for various portions of the requirements to different Offerors based on the responses to this IFB, or to reject any and all responses to the IFB and re-solicit the IFB, when deemed to be in the best interest of City.
- i) **Required Representations:**
 - i. **Required Licenses:** Offeror certifies that he holds any and all applicable licenses required by the State of Texas for a provider of the goods and/or services described by the Scope of Services herein.
 - ii. **Authority to Submit Response and Enter Contract:** The person signing on behalf of Offeror certifies that the signer has authority to submit a proposal on behalf of the Offeror and to bind the Offeror to any resulting contract.
- j) **Insurance Requirements:** The City has the following financial responsibility provisions:
 - i. **Insurance:** The Offeror certifies, consistent with its status as an independent contractor, shall carry, and shall require any of its subcontractors to carry, at least the following insurance in such form, with such companies, and in such amounts (unless otherwise specified) as City may require:
 - a) **Worker's Compensation and Employer's Liability insurance,** including All States Endorsement, to the extent required by federal law and complying with the laws of the State of Texas;
 - b) **Commercial General Liability insurance,** including Blanket

Contractual Liability, Broad Form Property Damage, Personal Injury, Completed Operations/Products Liability, Premises Liability, Medical Payments, Interest of Employees as additional insureds, and Broad Form General Liability Endorsements, for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage on an occurrence basis;

- c) Comprehensive Automobile Liability insurance covering all owned, non-owned or hired automobiles to be used by the Contractor, with coverage for at least One Million Dollars (\$1,000,000) Combined Single Limit Bodily Injury and Property Damage.
- ii. The awarded firm will be required to provide a current certificate of insurance to the City prior to execution of any agreement.
- iii. The City of Rollingwood must be endorsed as a named additional insured to the applicable policies.

The City reserves the right to or not to award the alternative bid as an addition to the contract.

17. EXECUTION OF AGREEMENT/PERFORMANCE AND PAYMENT BONDS

The failure of the successful bidder to execute the agreement and supply the required bonds within ten (10) days after the prescribed forms are presented for signature, or within such extended period as the City may grant, shall constitute a default and the City may, at its option either award the contract to the next lowest responsible bidder, or re-advertise for bids. In either case, the City may charge against the bidder the difference between the amount of the bid, and the amount for which a contract is subsequently executed irrespective of whether this difference exceeds the amount of the bid bond. If a more favorable bid is received through re-advertisement, the defaulting bidder shall have no claim against the City for a refund.

18. TIME AND ORDER FOR COMPLETION

The construction covered by the contract documents shall be fully completed within twenty-one (21) calendar days of the Notice to Proceed as specified in the Notice to Proceed issued by the City to the successful bidder.

The Contractor will be permitted to prosecute the work in the order of his own choosing, provided however, the City reserves the right to require the Contractor to submit a progress schedule of the work contemplated by the contract documents. In the event the City requires a progress schedule to be submitted and it is determined by the City that the progress of the work is not in accordance with the progress schedule so submitted, the City may direct the Contractor to take such action as the City deems necessary to insure

completion of the project within the time specified.

Regardless, any and all work proposed by the Contractor shall be communicated and coordinated with the City Engineer five (5) business days in advance of the proposed work.

19. PERMITS

No permits are required to be obtained by the contractor for this project.

20. PAYMENT

All payments due to Contractor shall be made in accordance with the provisions of the General Conditions of the contract documents.

21. AFFIDAVITS OF BILLS PAID

The City reserves the right, prior to final acceptance of this project, to require the Contractor to execute an affidavit that all bills for labor, materials and incidentals incurred in the construction of the improvements contemplated by the contract documents have been paid in full and that there are no claims pending, of which the Contractor has been notified.

22. MATERIALS AND WORKMANSIP

The intent of these contract documents is that only materials and workmanship of the best quality and grade will be furnished. The fact that the specifications may fail to be sufficiently complete in some detail will not relieve the Contractor of full responsibility for providing materials of high quality and for protecting them adequately until incorporated into the project. The presence or absence of a representative of the City on the construction site will not relieve the Contractor of full responsibility of complying with this provision. The specifications for materials and methods set forth in the contract documents provide minimum standards of quality which the City believes necessary to procure a satisfactory project.

23. GUARANTEES

All equipment and materials incorporated in the project and all construction shall be guaranteed against defective materials and workmanship. Once the project has been accepted by the Engineer, the Engineer will issue a letter officially notifying the Contractor of the start of the one-year warranty period. The one-year warranty period shall begin at final acceptance. The one-year warranty requires the Contractor to remedy any defects in the work, and pay for any and all damages of any nature whatsoever resulting in such defects, when such defects appear within one year from date of final acceptance of the work as a result of defective materials or workmanship, at no cost to the City.

The Contractor shall be responsible for repair and maintenance of all roadways and private and public properties, assets, or infrastructure damaged as a result of the construction of this project for a period of one year after completion or acceptance of the work. This includes as emulsions or oils that mark assets such as cars, mailboxes, planters, homes, etc. during construction.

Within this period of one year time, if it becomes necessary for the Owner to make such repairs, the Contractor shall reimburse the Owner for the cost of such repairs.

24. PLANS FOR THE CONTRACTOR

There are no plan sheets created for this project. The Contractor will be furnished a PDF of the contract documents for their use during construction. The Contractor shall then distribute copies to suppliers, subcontractors, or others, as required for proper prosecution of the work contemplated by the Contractor.

25. PROTECTION OF THE WORK

The Contractor shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, and 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 date the City issues its Letter of Completion to Contractor.

26. TEXAS STATE SALES TAX

Tax Exempt Status: City purchases are exempt from State Sales Tax and Federal Excise Tax. Do not include tax in any cost proposals negotiated as part of this solicitation. City will furnish a sales Tax Exemption Certificate upon request.

27. PROTECTION OF SUBSURFACE LINES AND STRUCTURES

It shall be the Contractor's responsibility to prosecute the work contemplated by the contract documents in such a way as to exercise due care to locate and prevent damage to all underground pipelines, utility lines, conduits or other underground structures which might or could be damaged by Contractor during the construction of the project contemplated by these contract documents. All such underground lines or structures cut or damaged by Contractor during the prosecution of the work contemplated by this contract shall be repaired immediately by Contractor to the satisfaction of the City and/or other utility providers at Contractor's expense. Contractor may be required to work twenty-four (24) hours per day to repair damage.

28. BARRICADES AND SAFETY MEASURES

The Contractor shall, at his own expense, furnish and erect such barricades, fences, lights, and danger signals, and shall take such other precautionary measures for the protection of

persons, property and the work as may be necessary.

The Contractor will be held responsible for all damage to the work due to failure of barricades, signs and lights to protect it, and when damage is incurred, the damaged portion shall be immediately removed and replaced by Contractor at his own cost and expense. The Contractor's responsibility for maintenance of barricades, signs and lights shall not cease until the date of issuance to Contractor of the City's Letter of Acceptance/Completion of the project.

29. EXPLOSIVES

The use of explosives will not be permitted.

Explosive materials shall not be stored or kept at the construction site by the Contractor.

30. CONTRACTOR'S REPRESENTATIVE

The successful bidder shall be required to have a responsible local representative available at all times while the work is in progress under this contract. The successful bidder shall be required to furnish the name, address and telephone number where such local representatives may be reached during the time that the work contemplated by this contract is in progress.

31. INSURANCE

The Contractor shall not commence work under this contract until he has obtained all insurance as required in the General Conditions of the contract documents, from an underwriter authorized to do business in the State of Texas and satisfactory to the City, or in a form approved by the City's Attorney. Proof of Coverage shall be furnished to the City and written Notice of Cancellation or any material change will be provided thirty (30) days in advance of cancellation or change. All "endeavor to" language must be stricken. All language similar to "but failure to mail such notice shall impose no obligations or liability of any kind upon the company," must be stricken. All policies shall contain an agreement on the part of the insurer waiving the right to subrogation.

The insurance certificates furnished shall name the City as an additional insured and shall further state that all subcontractors are named as additional insured, or in the alternative shall be accompanied by a statement from the Contractor to the effect that no work on this particular project shall be subcontracted.

All workers must be covered by worker's compensation insurance. Proof must be provided for all persons working for general or subcontractors, regardless of status as employee or independent contractor. No one may work on the project without such proof.

32. WORKING HOURS

Construction work under this contract will not be performed on weekends or holidays unless the following conditions exist:

- a) The project being constructed is essential to the City's ability to provide the necessary service to its citizens.
- b) Delays in construction are due to factors outside the control of the Contractor. The Contractor is approaching the penalty provisions of the contract and Contractor can show he has made a diligent effort to complete the contract within the allotted time.

Construction work under this contract will adhere to the following timeline and work-day restrictions:

- c) In order to coincide with the Eanes ISD school schedule, Contractor shall not begin lane closures before 7:40am. Contractor shall open lane closures by 4:15pm.
- d) In order to coincide with the City's trash collection service, Contractor shall not close lanes on a Monday or Thursday unless trash has already been collected on both sides of the street. If milling and overlay work is done post-trash collection, the Contractor is responsible for moving trash cans out of the way, carefully placing them upright and near each property's driveway.

Before construction work requiring an inspector is to be performed on weekends or City holidays, the Contractor must notify the City's Representative not less than three full working days prior to the weekend or City holiday he desires to do work and obtain written permission from the City's Representative to do such work. The final decision on whether to allow construction work, requiring an inspector on weekends or holidays will be made by the City's Representative. This City is not obligated to allow work on weekends or after 7:00 pm or before 7:00am.

In any event, if any conditions should occur or arise at the site of this project or from the work being done under this contract which is hazardous or dangerous to property or life, the Contractor shall immediately cease work, regardless of the day of the week or the time of day, to correct or alleviate such conditions so that it is no longer dangerous to property or life.

33. PAYMENT OF EMPLOYEES

The Contractor and each of his subcontractors shall pay each of his employees engaged in work on the project under this contract in full (less mandatory legal deductions) in cash, or by check readily cashable without discount, not less often than once each week.

The Contractor shall forfeit as a penalty to the City on whose behalf this contract is made, ten dollars (\$10) for each laborer, workman, or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the wages

assigned to his particular classification as set forth in the schedule of general prevailing rate of per diem wages included in these contract documents.

34. CONTRACTOR EMPLOYMENT PRACTICES

The Contractor shall be solely responsible for and complete compliance with the Immigration Reform and Control Act of 1986, concerning of unlawful employment of aliens, the requirements for compliance to which statute are contained in Section 274A (8 U.S.C. 1324) (Public Law 99-603), and to which statute reference shall be made by the Contractor to insure compliance.

35. CONFLICT OF INTEREST

The Texas Ethics Commission adopted the attached Conflict of Interest Questionnaire (Form CIQ) pursuant to Texas Local Government Code Chapter 176, as amended. For questions about these forms, please see the Texas Ethics Commission at:

<https://www.ethics.state.tx.us/forms/CIQ.pdf>

See attached Form CIQ in relation to the following individuals. Contractor may be asked to submit a COI before bid award:

Local Government Officer	Title	Local Government Officer	Title
Gavin Massingill	Mayor	Makayla Rodriguez	City Secretary
Brook Brown	Council Member	Abel Campos	Director of Finance
Kevin Glasheen	Council Member	Sarah Teten	Presiding Judge
Sara Hutson	Council Member	Nikki Stautzenberger	Development Services Manager
Phil McDuffee	Council Member	Kristal Muñoz	Chief of Police
Alec Robinson	Council Member	Ismael Parra	Public Works Director
Alun Thomas	City Administrator		

SELECTION COMMITTEE MEMBERS NOT LISTED ABOVE MAY INCLUDE:

- a) Jay Kennedy, WSB LLC, Vice President Municipal
- b) Angellia Points, WSB LLC, Senior Project Manager Municipal
- c) Jeremy Allamon, WSB LLC, Project Manager Municipal

BID FORM - *Submit entire form with Bid Proposal*

ISSUED FOR BID

2025 Mill and Overlay Project

Issued by the City of Rollingwood, Texas

Sealed bids will be accepted until 2:00 P.M., November 12, 2025 and then publicly opened and read aloud thereafter.

Legal Name of Responding Firm

SAM.GOV ID#

Contact Person

Title

Telephone Number

E-Mail Address

Street Address of Principal Place of Business

City/State Zip

Complete Mailing Address

City/State Zip

Acknowledgment of Addenda: #1 _____ #2 _____ #3 _____ #4 _____ #5 _____

Include the following with the bid submission:

Acknowledgement of Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973
Nondiscrimination Statement

(Signature)

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

City of Rollingwood
403 Nixon Drive
Rollingwood, Texas 78746
Attention: Makayla Rodriguez

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

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

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

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the addenda on the first page of this Bid Form.
- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder’s safety precautions and programs.
- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or

discrepancies that Bidder has discovered in the Bidding Documents and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

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

I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER’S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;

2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

**BID FORM
CITY OF ROLLINGWOOD, TX**

**PROJECT
2025 MILL AND OVERLAY PROJECT
BASE BID Submit with Bid Proposal**

V: 10/23/2025

BIDDER: _____

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein. An electronic version of this bid form may be provided. Engineer nor the City is responsible for the formulas, rounding errors, and summation cells. When there is an error or conflict in the submitted bid form, the lowest unit price in words or in numerals may dictate, at the discretion of the City.

BID ITEM	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
1	Mobilization, Bonds, and Insurance, not to exceed 5% of the total base bid, complete for _____ Dollars and _____ cents per Lump Sum.	1	LS		\$ -
2	Implement Traffic Control Plan, complete for _____ Dollars and _____ cents per Lump Sum.	1	LS		\$ -
3	Pavement Milling for the project (1.5" to 2" as specified and to match Bid Items 5 and 6 descriptions) including any saw cutting at adjoining pavement remain, butt milling at intersections, edge milling, hand milling around manholes, hand milling around valve covers/boxes, and at driveways/intersections, and dispose of millings, complete for _____ Dollars and _____ cents per Square Yard.	12205	SY		\$ -
4	Excavate soft spots at directed and provide and place/compact HMAC Type "D" spot level up prior to HMAC overlay, complete for _____ Dollars and _____ cents per Ton of Asphalt Used.	50	TON		\$ -
5	2" HMAC Type "D" Overlay with Tack Coat on Street 2B Edgegrove Drive between Rollingwood Drive and Bee Caves Road, complete for _____ Dollars and _____ cents per Square Yard.	4117	SY		\$ -
6	1.5" HMAC Type "D" Overlay with Tack Coat on Street 2A Hatley Drive between Laura Lane and Wallis Drive and 2C Wallis Drive between Rollingwood Drive and Hatley Drive, complete for _____ Dollars and _____ cents per Square Yard.	8088	SY		\$ -

**BID FORM
CITY OF ROLLINGWOOD, TX**

**PROJECT
2025 MILL AND OVERLAY PROJECT
BASE BID Submit with Bid Proposal**

V: 10/23/2025

BIDDER: _____

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein. An electronic version of this bid form may be provided. Engineer nor the City is responsible for the formulas, rounding errors, and summation cells. When there is an error or conflict in the submitted bid form, the lowest unit price in words or in numerals may dictate, at the discretion of the City.

BID ITEM	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
7	Provide 24" TY- I White Stop Bar Thermoplastic Pavement Marking approximately 10-feet long, 90 MILS in thickness, complete for _____ Dollars and _____ cents per EACH.	6	EA		\$ -
8	Provide 4" TY- I Single White Solid Thermoplastic Pavement Marking approximately 4' from curbline, same place as existing, skipping intersections, 90 MILS in thickness, complete for _____ Dollars and _____ cents per Linear Foot.	6475	LF		\$ -
9	Provide and Install TY- II-B-B Blue Reflective Raised Pavement Markers in the middle of the pavement, complete for _____ Dollars and _____ cents per EACH.	8	EA		\$ -
10	Provide 8" TY- I Single White Solid Thermoplastic Pavement Marking on Edgegrove north of Bee Caves Rd, same place as existing, 90 MILS in thickness, complete for _____ Dollars and _____ cents per Linear Foot.	25	LF		\$ -
11	Provide and Install TY- I White Solid Words (ONLY) Thermoplastic Pavement Marking on Edgegrove north of Bee Caves Rd, same place as existing, 90 MILS in thickness, complete for _____ Dollars and _____ cents per EACH.	1	EA		\$ -
12	Provide and Install TY- I White Solid Shape (ARROW) Thermoplastic Pavement Marking on Edgegrove north of Bee Caves Rd, same place as existing, 90 MILS in thickness, complete for _____ Dollars and _____ cents per EACH.	1	EA		\$ -

**BID FORM
CITY OF ROLLINGWOOD, TX**

**PROJECT
2025 MILL AND OVERLAY PROJECT
BASE BID *Submit with Bid Proposal***

V: 10/23/2025

BIDDER: _____

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein. An electronic version of this bid form may be provided. Engineer nor the City is responsible for the formulas, rounding errors, and summation cells. When there is an error or conflict in the submitted bid form, the lowest unit price in words or in numerals may dictate, at the discretion of the City.

BID ITEM	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
13	Provide TY- I White Solid Hatching Thermoplastic Pavement Marking at the intersection of Wallis and Rollingwood Drive, 90 MILS in thickness, complete for _____ Dollars and _____ cents per Lump Sum.	1	LS		\$ -
14	Provide 2-6" TY- I Double Yellow Solid Thermoplastic Pavement Marking Paid as LF of Double Stripe length, 90 MILS in thickness, complete for _____ Dollars and _____ cents per Linear Foot.	1951	LF		\$ -
15	Items requested by Owner Not Identified in the Contract to be used at the Owner's Discretion, complete for Five Thousand Dollars and Zero cents per Lump Sum.	1	LS	\$ 5,000.00	\$ 5,000.00

TOTAL AMOUNT OF BASE BID

_____ Dollars and _____ Cents

NOTE: THE CITY MAY EITHER REJECT ALL BIDS OR AWARD A CONTRACT TO THE LOWEST AND BEST BID.

**BID FORM
CITY OF ROLLINGWOOD, TX**

**PROJECT
2025 MILL AND OVERLAY PROJECT**

ALT BID 1 *Submit with Bid Proposal*

V: 10/23/2025

BIDDER: _____

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein. An electronic version of this bid form may be provided. Engineer nor the City is responsible for the formulas, rounding errors, and summation cells. When there is an error or conflict in the submitted bid form, the lowest unit price in words or in numerals may dictate, at the discretion of the City.

BID ITEM	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
A1	Pavement Milling for the project (1.5" to 2" as specified and to match Bid Items A3 and A4 descriptions) including any saw cutting at adjoining pavement remain, butt milling at intersections, edge milling, hand milling around manholes, hand milling around valve covers/boxes, and at driveways/intersections, and dispose of millings, complete for _____ Dollars and _____ cents per Square Yard.	7658	SY		
A2	Excavate soft spots at directed and provide and place/compact HMAC Type "D" spot level up prior to HMAC overlay, complete for _____ Dollars and _____ cents per Ton of Asphlat Used.	15	TON		
A3	2" HMAC Type "D" Overlay with Tack Coat on Street 2E Hatley Drive between Inwood Drive and Vale Street, complete for _____ Dollars and _____ cents per Square Yard.	4028	SY		
A4	1.5" HMAC Type "D" Overlay with Tack Coat on Street 2D Hatley Drive between Wallis Drive and Inwood Drive, complete for _____ Dollars and _____ cents per Square Yard.	3630	SY		
A5	Provide 24" TY- I White Stop Bar Thermoplastic Pavement Marking approximately 10-feet long, 90 MILS in thickness, complete for _____ Dollars and _____ cents per EACH.	3	EA		
A6	Provide 4" TY- I Single White Solid Thermoplastic Pavement Marking approximately 4' from curbline, same place as existing, skipping intersections, 90 MILS in thickness, complete for _____ Dollars and _____ cents per Linear Foot.	4424	LF		

**BID FORM
CITY OF ROLLINGWOOD, TX**

**PROJECT
2025 MILL AND OVERLAY PROJECT**

ALT BID 1 *Submit with Bid Proposal*

V: 10/23/2025

BIDDER: _____

Full compensation for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract will be considered as included in the unit prices for the work set forth below, and no separate payment will be made for compliance with each and every provision of the Request for Bids, the Bid, the Specifications, and the Contract, unless separate payment is expressly provided for therein. An electronic version of this bid form may be provided. Engineer nor the City is responsible for the formulas, rounding errors, and summation cells. When there is an error or conflict in the submitted bid form, the lowest unit price in words or in numerals may dictate, at the discretion of the City.

BID ITEM	DESCRIPTION	BID QUANTITY	UNIT MEASURE	UNIT COST	AMOUNT BID
A7	Provide and Install TY- II-B-B Blue Reflective Raised Pavement Markers in the middle of the pavement, complete for _____ Dollars and _____ cents per EACH.	4	EA		

TOTAL AMOUNT OF ALT BID

_____ Dollars and _____ Cents

NOTE: THE CITY MAY EITHER REJECT ALL BIDS OR AWARD A CONTRACT TO THE LOWEST AND BEST BID.

ARTICLE 5 – BASIS OF BID

Note: The following bid sheets are to be completed and included in your bid response.

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

Bonds required under Paragraph 6 of the General Conditions will be based on the Contract Price.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

BID SUMMARY

Submit with Bid Proposal

BASE BID TOTAL: \$ _____
ADD ALT 1 BID TOTAL: \$ _____

1. BIDDER agrees that all Work on each project will be substantially complete and ready for final payment by the dates indicated in the Agreement. BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work on time.
2. The following documents are attached to and made a condition of this Bid:
 - A. Required Bid Security in the form of five percent of the Bidder's maximum base bid price and in the form of certified check of a Bid Bond.
3. Communications concerning this Bid shall be addressed to:

4. The terms used in this Bid which are defined in the General Conditions of the Construction Contract included as part of the Contract Documents have the meanings assigned to them in the General Conditions.

SUBMITTED ON _____, 2025

If BIDDER is:

An Individual

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

Doing business as: _____

Business address: _____

Phone No.: _____

A Partnership

By: _____
(Firm Name)

(General Partner)

Business address: _____

Phone No.: _____

A Corporation

By: _____

By: _____
(Corporation Name)

(State of Incorporation)

By: _____
(Name of Person Authorized to Sign)

(Corporate Seal)

(Title)

Attest: _____
(Secretary)

Business address: _____

Phone No.: _____

A Joint Venture

By: _____
(Name)

Business address: _____

Phone No.: _____

By: _____
(Name)

Business address: _____

Phone No.: _____

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

BID SUBMITTAL

BIDDER: [Indicate correct name of bidding entity]

By:

[Signature] _____

[Printed name] _____

Bidder's License No.: _____

(where applicable)

End Bid Form Pages

BID BOND

Submit with Bid Proposal

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

BIDDER (Name and Address):

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

OWNER (Name and Address):

BID

Bid Due Date: November 12, 2025 by 2:00 P.M.

Description: 2025 Mill and Overlay Project

BOND

Bond Number:

Date:

Penal sum _____ \$ _____
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

_____(Seal) _____(Seal)
Bidder's Name and Corporate Seal Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature (Attach Power of Attorney)

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

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

any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term “Bid” as used herein includes a Bid, offer, or proposal as applicable.

BOND AFFIDAVIT
Submit with Bid Proposal

To be completed by appropriate insurance agent

I, the undersigned Agent/Broker, certify that the bond requirements contained in this bid document have been reviewed by me with the below identified Contractor. If the below identified Contractor is awarded this contract by the City of Rollingwood, I will be able to, within thirty (30) days after being notified of such award, furnish valid bonds and appropriate “power of attorney” to the City meeting all of the requirements defined in this bid.

Agent (Signature)

Agent (Print)

Name of Agent/Broker: _____

Address of Agent/Broker: _____

City/State/Zip: _____

Agent/Broker Telephone Number: _____

Name of Contractor: _____

NOTE TO AGENT/BROKER

If this requirement is not met, the City has the right to reject this bid and award the contract to another meeting the specifications. If you have any questions concerning these bond requirements or concerning the bid, please Makayla Rodriguez, City Secretary, (512) 237-1838.

CITY OF ROLLINGWOOD
STANDARD AGREEMENT

THE STATE OF TEXAS §
 §
TRAVIS COUNTY §

This Agreement (“Agreement”) is made and entered by and between the City of Rollingwood, Texas, (the “City”) a general law municipality organized and existing under the laws of the State of Texas, and _____ (“Contractor”).

Section 1. Duration. This Agreement shall become effective upon execution by the City and shall remain in effect until satisfactory completion of the Scope of Work unless terminated as provided for in this Agreement.

Section 2. Scope of Work.

(A) Contractor shall perform the Services as more particularly described in the Scope of Work attached hereto as Exhibit “A”. The work as described in the Scope of Work constitutes the “Project”. Unless otherwise provided in the Scope of Work, the anticipated submittal of all Project deliverables is immediately upon completion of the Project.

(B) The Quality of Services provided under this Agreement shall be performed with the professional skill and care ordinarily provided by competent Contractors practicing in the same or similar locality and under the same or similar circumstances and professional license, and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Contractor holding the same professional license or performing the same skills and/or services.

(C) The Contractor shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.

(D) The Contractor may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent contractor or when it has actual notice of any defects in the reports and surveys.

Section 3. Compensation.

(A) The Contractor shall be paid in the manner set forth in Exhibit “B” and as provided herein.

(B) *Billing Period:* The Contractor may submit monthly, or less frequently, an invoice for payment based on the estimated completion of the described tasks and approved work schedule. Subject to Chapter 2251, Texas Government Code (the “Prompt Payment Act”), payment is due within thirty (30) days of the City’s receipt of the Contractor’s invoice. Interest on overdue

payments shall be calculated in accordance with the Prompt Payment Act.

(C) *Reimbursable Expenses:* Any and all reimbursable expenses related to the Project shall be included in the scope of services (Exhibit A) and accounted for in the total contract amount in Exhibit "B". If these items are not specifically accounted for in Exhibit A they shall be considered subsidiary to the total contract amount.

Section 4. Changes to the Project Work; Additional Work.

(A) *Changes to Work:* Contractor shall make such revisions to any work that has been completed as are necessary to correct any errors or omissions as may appear in such work. If the City finds it necessary to make changes to previously satisfactorily completed work or parts thereof, the Contractor shall make such revisions if requested and as directed by the City and such services will be considered as additional work and paid for as specified under following paragraph.

(B) *Additional Work:* The City retains the right to make changes to the Scope of Work at any time by a written order. Work that is clearly not within the general description of the Scope of Work and does not otherwise constitute special services under this Agreement must be approved in writing by the City by supplemental agreement before the additional work is undertaken by the Contractor. If the Contractor is of the opinion that any work is beyond that contemplated in this Agreement and the Scope of Work governing the project and therefore constitutes additional work, the Contractor shall promptly notify the City of that opinion, in writing. If the City agrees that such work does constitute additional work, then the City and the Contractor shall execute a supplemental agreement for the additional work and the City shall compensate the Contractor for the additional work on the basis of the rates contained in the Scope of Work. If the changes deduct from the extent of the Scope of Work, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. Any work undertaken by Contractor not previously approved as additional work shall be at risk of the Contractor.

Section 5. Time of Completion.

The prompt completion of the services under the Scope of Work is critical to the City. Unnecessary delays in providing services under a Scope of Work shall be grounds for dismissal of the Contractor and termination of this Agreement without any or further liability to the City other than a prorated payment for necessary, timely, and conforming work done by Contractor prior to the time of termination. The Scope of Work shall provide, in either calendar days or by providing a final date, a time of completion prior to which the Contractor shall have completed all tasks and services described in the Scope of Work.

The undersigned bidder agrees to commence work within ten (10) days after the date of written notice to commence work. The work will be substantially completed in

twenty-one (21) calendar days and final completion within 10 additional calendar days subject to the extensions of time as are provided in the General Conditions of the contract.

Refer to the Special Provisions included in Issued for Bid Documents for Liquidated Damages.

Section 6. Insurance.

Before commencing work under this Agreement, Contractor shall obtain and maintain the liability insurance provided for in attached Exhibit C throughout the term of this Agreement and thereafter as required herein.

In addition to the insurance provided for in Exhibit C, Contractor shall maintain the following limits and types of insurance:

Workers Compensation Insurance: The Contractor shall carry and maintain during the term of this Agreement, workers compensation and employer's liability insurance meeting the requirements of the State of Texas on all the Contractor's employees carrying out the work involved in this contract.

General Liability Insurance: The Contractor shall carry and maintain during the term of this Agreement, general liability insurance on a per occurrence basis with limits of liability not less than \$1,000,000 for each occurrence and for fire damage. For Bodily Injury and Property Damage, coverage shall be no less than \$1,000,000. As a minimum, coverage for Premises, Operations, Products and Completed Operations shall be \$1,000,000. This coverage shall protect the public or any person from injury or property damages sustained by reason of the Contractor or its employees carrying out the work involved in this Agreement. The general aggregate shall be no less than \$1,000,000.

Automobile Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, automobile liability insurance with either a combined limit of at least \$1,000,000 per occurrence for bodily injury and property damage or split limits of at least \$1,000,000 for bodily injury per person per occurrence and \$1,000,000 for property damage per occurrence. Coverage shall include all owned, hired, and non-owned motor vehicles used in the performance of this contract by the Contractor or its employees.

Cyber Security Liability Insurance: Contractor shall carry and maintain during the term of this Agreement, cyber security liability insurance on a per occurrence basis with limits of liability of not less than \$1,000,000 for each occurrence, covering any such unauthorized disclosure of Protected Information caused by a defect or failure of the Software or any electronic communication system maintained or controlled by Contractor.

Subcontractor: In the case of any work sublet, the Contractor shall require subcontractor and independent contractors working under the direction of either the Contractor or a subcontractor

to carry and maintain the same workers compensation and liability insurance required of the Contractor.

Qualifying Insurance: The insurance required by this Agreement shall be written by non-assessable insurance company licensed to do business in the State of Texas and currently rated "B+" or better by the A.M. Best Companies. All policies shall be written on a "per occurrence basis" and not a "claims made" form. The City shall be named as an "additional insured" except for the Contractor Liability policy. Evidence of such insurance shall be attached as Exhibit "C".

Section 7. Miscellaneous Provisions.

(A) *Subletting.* The Contractor shall not sublet or transfer any portion of the work under this Agreement or any Scope of Work issued pursuant to this Agreement unless specifically approved in writing by the City, which approval shall not be unreasonably withheld. Subcontractors shall comply with all provisions of this Agreement and the applicable Scope of Work. The approval or acquiescence of the City in the subletting of any work shall not relieve the Contractor of any responsibility for work done by such subcontractor.

(B) *Ownership of Documents.* Upon completion or termination of this Agreement, all documents prepared by the Contractor or furnished to the Contractor by the City shall be delivered to and become the property of the City. All drawings, charts, calculations, plans, specifications and other data, including electronic files and raw data, prepared under or pursuant to this Agreement shall be made available, upon request, to the City without restriction or limitation on the further use of such materials PROVIDED, HOWEVER, THAT SUCH MATERIALS ARE NOT INTENDED OR REPRESENTED TO BE SUITABLE FOR REUSE BY THE CITY OR OTHERS. ANY REUSE WITHOUT PRIOR VERIFICATION OR ADAPTATION BY THE CONTRACTOR FOR THE SPECIFIC PURPOSE INTENDED WILL BE AT THE CITY'S SOLE RISK AND WITHOUT LIABILITY TO THE CONTRACTOR. Where applicable, Contractor shall retain all pre-existing proprietary rights in the materials provided to the City but shall grant to the City a non-exclusive, perpetual, royalty-free license to use such proprietary information solely for the purposes for which the information was provided. The Contractor may, at Contractor's expense, have copies made of the documents or any other data furnished to the City under or pursuant to this Agreement. The Contractor may utilize all of its work product and deliverables for archival, marketing and promotional purposes.

(C) *Professional's Seal.* Not applicable.

(D) *Compliance with Laws.* The Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts, administrative, or regulatory bodies in any matter affecting the performance of this Agreement, including, without limitation, worker's compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the Contractor shall furnish the City with satisfactory proof of compliance.

(E) *Independent Contractor.* Contractor acknowledges that Contractor is an independent contractor of the City and is not an employee, agent, official or representative of the City. Contractor shall not represent, either expressly or through implication, that Contractor is an employee, agent, official or representative of the City. Income taxes, self-employment taxes, social security taxes and the like are the sole responsibility of the Contractor.

(F) *Non-Collusion.* Contractor represents and warrants that Contractor has not given, made, promised or paid, nor offered to give, make, promise or pay any gift, bonus, commission, money or other consideration to any person as an inducement to or in order to obtain the work to be provided to the City under this Agreement. Contractor further agrees that Contractor shall not accept any gift, bonus, commission, money, or other consideration from any person (other than from the City pursuant to this Agreement) for any of the services performed by Contractor under or related to this Agreement. If any such gift, bonus, commission, money, or other consideration is received by or offered to Contractor, Contractor shall immediately report that fact to the City and, at the sole option of the City, the City may elect to accept the consideration for itself or to take the value of such consideration as a credit against the compensation otherwise owing to Contractor under or pursuant to this Agreement.

(G) *Force Majeure.* If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing force majeure events shall deliver written notice of the commencement of any such delay resulting from such force majeure event not later than seven (7) days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a force majeure event causing such delay and the other party shall not otherwise be aware of such force majeure event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.

(H) In the case of any conflicts between the terms of this Agreement and wording contained within the Scope of Services, this Agreement shall govern. The Scope of Services is intended to detail the technical scope of services, fee schedule, and contract time only and shall not dictate Agreement terms.

Section 8. Termination.

(A) This Agreement may be terminated:

(1) City may, with or without cause, terminate performance of the Work under this Contract or any Job Order in whole or, from time to time, in part, if City determines that

termination is in City's interest. City shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.

(3) By the City, immediately upon notice in writing to the Contractor, as consequence of the failure of Contractor to perform the services contemplated by this Agreement in a timely or satisfactory manner;

(4) By the City, at will and without cause upon not less than thirty (30) days written notice to the Contractor.

(B) If the City terminates this Agreement pursuant to Section 5 or subsection 8(A)(2) or (3), above, the Contractor shall not be entitled to any fees or reimbursable expenses other than the fees and reimbursable expenses then due and payable as of the time of termination and only then for those services that have been timely and adequately performed by the Contractor considering the actual costs incurred by the Contractor in performing work to date of termination, the value of the work that is nonetheless usable to the City, the cost to the City of employing another Contractor to complete the work required and the time required to do so, and other factors that affect the value to the City of the work performed at time of termination. In the event of termination that is not the fault of the Contractor, the Contractor shall be compensated for all basic, special, and additional services actually performed prior to termination, together with any reimbursable expenses then due.

Section 9. Indemnification. Contractor shall indemnify, defend and hold harmless the City of Rollingwood, Texas and its officials, employees and agents (collectively referred to as "Indemnitees") and each of them from and against all loss, costs, penalties, fines, damages, claims, expenses (including reasonable attorney's fees) or liabilities (collectively referred to as "Liabilities") by reason of any injury to or death of any person or damage to or destruction or loss of any property arising out of, resulting from, or in connection with (i) the performance or non-performance of Services contemplated by this Agreement but only to the extent caused by the negligent acts, errors or omissions, intentional torts, intellectual property infringement, or a failure to pay a sub-contractor or supplier committed by Contractor or Contractor's agent, consultant under contract, or another entity over which Contractor exercises control (whether active or passive) of Contractor or its employees, agents or sub-contractors (collectively referred to as "Contractor ") (ii) the failure of Contractor to comply with any of the paragraphs herein or the failure of Contractor to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal, state or local, in connection with the performance of this Agreement. Contractor expressly agrees to indemnify and hold harmless the Indemnitees, or any one of them, from and against all liabilities which may be asserted by an employee or former employee of Contractor, or any of its sub-contractors, as provided above, for which Contractor's liability to such employee or former employee would otherwise be limited to payments under State Workers' Compensation or similar laws. Nothing herein shall require Contractor to indemnify, defend, or hold harmless any Indemnitee for the Indemnitee's own negligence or willful misconduct. Any and all indemnity provided for in

this Agreement shall survive the expiration of this Agreement and the discharge of all other obligations owed by the parties to each other hereunder and shall apply prospectively not only during the term of this Agreement but thereafter so long as any liability could be asserted in regard to any acts or omissions of Contractor in performing Services under this Agreement.

For Contractor Liability Claims, Contractor shall be liable for reasonable defense costs incurred by Indemnitees but only after final adjudication and to the extent and percent that Contractor or Contractor's agents are found negligent or otherwise at fault. As used in this Agreement, final adjudication includes any negotiated settlement and release of claims, without limitation as to when a negotiated settlement and release of claims occurs.

Section 10. Notices. Any notice required or desired to be given from one party to the other party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Section 11. No Assignment. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.

Section 12. Severability. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

Section 13. Waiver. Either City or the Contractor shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.

Section 14. Governing Law; Venue. This Agreement and all of the transactions contemplated herein shall be governed by and construed in accordance with the laws of the State of Texas. The provisions and obligations of this Agreement are performable in Travis County, Texas such

that exclusive venue for any action arising out of this Agreement shall be in Travis County, Texas.

Section 15. Paragraph Headings; Construction. The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the negotiation and preparation of this Agreement and this Agreement shall not be construed either more or less strongly against or for either party.

Section 16. Binding Effect. Except as limited herein, the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal and legal representatives, successors and assigns.

Section 17. Gender. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

Section 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Section 19. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 20. Entire Agreement. It is understood and agreed that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements or understandings between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. This Agreement includes documents Issued for Bid and any issued and signed addendum along with the signed documents provided at the time of Bid Opening and Contract Award, all of which are included in Exhibit A.

Section 21. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between the parties, it being expressly understood and agreed that no provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create any relationship between the parties other than the relationship of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement.

Section 22. Right To Audit. City shall have the right to examine and audit the books and records of Contractor with regards to the work described in Exhibit A, or any subsequent changes, at any reasonable time upon reasonable notice. Such books and records will be maintained in accordance with generally accepted principles of accounting and will be adequate

to enable determination of: (1) the substantiation and accuracy of any payments required to be made under this Agreement; and (2) compliance with the provisions of this Agreement.

23. Dispute Resolution. In accordance with the provisions of Subchapter I, Chapter 271, TEX. LOCAL GOV'T CODE, the parties agree that, prior to instituting any lawsuit or other proceeding arising from a dispute under this agreement, the parties will first attempt to resolve the dispute by taking the following steps: (1) A written notice substantially describing the nature of the dispute shall be delivered by the dissatisfied party to the other party, which notice shall request a written response to be delivered to the dissatisfied party not less than 5 days after receipt of the notice of dispute. (2) If the response does not reasonably resolve the dispute, in the opinion of the dissatisfied party, the dissatisfied party shall give notice to that effect to the other party whereupon each party shall appoint a person having authority over the activities of the respective parties who shall promptly meet, in person, in an effort to resolve the dispute. (3) If those persons cannot or do not resolve the dispute, then the parties shall each appoint a person from the highest tier of managerial responsibility within each respective party, who shall then promptly meet, in person, in an effort to resolve the dispute.

24. Disclosure of Business Relationships/Affiliations; Conflict of Interest Questionnaire. Contractor represents that it is in compliance with the applicable filing and disclosure requirements of Chapter 176 of the Texas Local Government Code and Chapter 2252 of the Texas Government Code.

25. Certificate of Interested Parties (TEC Form 1295). For contracts needing City Council approval, or any subsequent changes thereto requiring City Council approval, the City may not accept or enter into a contract until it has received from the Consultant a completed, signed, and notarized TEC Form 1295 complete with a certificate number assigned by the Texas Ethics Commission ("TEC"), pursuant to Texas Government Code § 2252.908 and the rules promulgated thereunder by the TEC. The Consultant understands that failure to provide said form complete with a certificate number assigned by the TEC may prohibit the City from entering into this Agreement. Pursuant to the rules prescribed by the TEC, the TEC Form 1295 must be completed online through the TEC's website, assigned a certificate number, printed, signed and notarized, and provided to the City. The TEC Form 1295 must be provided to the City prior to the award of the contract. The City does not have the ability to verify the information included in a TEC Form 1295, and does not have an obligation or undertake responsibility for advising Consultant with respect to the proper completion of the TEC Form 1295.

EXECUTED, by the City on this the _____ day of _____, 2025.

CITY:

CONTRACTOR:

By: _____

By: _____

Name: _____
Title: _____

Name: _____
Title: _____

ADDRESS FOR NOTICE:

CITY

City of Rollingwood
Attn: City Administrator
403 Nixon Drive
Rollingwood, TX 78746

CONTRACTOR

Attn: _____

with a copy to:

Denton Navarro Rodriguez Bernal Santee & Zech, P.C.
Attn: Rollingwood City Attorney
2500 W. William Cannon Dr., Suite 609
Austin, Texas 78745-5320

Exhibit “A”

Scope of Services, including Issued Bid Documents

See Issued for Bid and any issued addendum along with the signed documents provided at the time of Bid Opening and Contract Award.

Exhibit "B"

Compensation

Refer to Contractor's bid form or Schedule of Values listed in Exhibit A.

Progress Payments; Retaining

City shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Agreement. All such payments will be measured by the Schedule of Values established as provided in the General Conditions of the Issued for Bid documents (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

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

- a. Ninety-five (95) percent of Work completed (with the balance being retainage).
- b. Ninety-five (95) percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, City shall pay an amount sufficient to increase total payments to Contractor to one-hundred (100) percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less one-hundred (100) percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment

Final Payment

Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions in the Issued Bid documents, City shall pay the remainder of the contract price as listed in the Issued for Bid documents and recommended by Engineer.

Exhibit “C”

Evidence of Insurance

VENDOR COMPLIANCE TO STATE LAW

The 1985 Session of the Texas Legislature passed House Bill 620 relative to the award of contracts to non-resident bidders. This law provides that, in order to be awarded a contract as low bidder, non-resident bidders (out of state contractors whose corporate officers or principal place of business are outside of the state of Texas) bid projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident by the same amount that a Texas resident bidder would be required to underbid a non-resident bidder in order to obtain a comparable contract in the state in which the non-resident's principal place of business is located. The appropriate blanks in Section A must be filled out by all out-of-state or non-resident bidders in order for your bid to meet specifications. The failure of out-of-state or non-resident contractors to do so will automatically disqualify that bidder. Resident bidders must check the line in Section B.

A. Non-resident bidder in _____ (give state), our principal place of business, are required to be _____ percent lower than resident bidders by state law.

Non-resident vendors in _____ (give state), our principal place of business, are not required to underbid resident bidders.

B. Our principal place of business or corporate offices are in the State of Texas:

_____.

BIDDER:

_____ By _____
(Company Name) (please print)

Address: _____ Signature: _____
_____ Title: _____
_____ (please print)

City

State

Zip

CERTIFICATE OF LIABILITY INSURANCE

Successful bidder will be required to submit Certificate of Liability Insurance (ACORD 25 Form).



PAYMENT BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 18

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
 - 5.1 Claimants who do not have a direct contract with the Contractor,
 - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
 - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
 - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
 - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
 - 7.2 Pay or arrange for payment of any undisputed amounts.
 - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.

11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.
16. **Definitions**
 - 16.1 **Claim:** A written statement by the Claimant including at a minimum:
 1. The name of the Claimant;
 2. The name of the person for whom the labor was done, or materials or equipment furnished;
 3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
 4. A brief description of the labor, materials, or equipment furnished;
 5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
 - 16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
 - 16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
 - 16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
 - 16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.
17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.
18. Modifications to this Bond are as follows:
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER *(name and address):*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):*

BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form: ☐ None ☐ See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

Contractor's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____
Signature

By: _____
Signature *(attach power of attorney)*

Print Name

Print Name

Title

Title

Attest: _____
Signature

Attest: _____
Signature

Title

Title

Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the

Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than

the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including

allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

MAINTENANCE BOND

STATE OF TEXAS §

COUNTY OF _____ §

KNOW ALL MEN BY THESE PRESENTS: That _____ as Principal,

hereinafter called Contractor, and _____, as Sureties,

are held and firmly bound unto City of Rollingwood, as Obligee, hereinafter called Owner, in the amount of

_____ and _____ Dollars (\$) [100% of the Original

Contract Price], for the payment whereof Contractor and Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Contractor has completed the construction of _____ in accordance with the drawings and specifications submitted to The City of Rollingwood and;

WHEREAS, the contractor hereby covenants and agrees that he will maintain and keep in repair such

improvements from any defects resulting from improper installation thereof or material defects, for a

period of one (1) year, commencing on the date of issuance of the Certificate of Completion for construction of said project.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Contractor shall promptly and faithfully perform as herein above provided, then this obligation shall be null and void, otherwise, it shall remain in full force and effect.

WHENEVER the Contractor shall be and declared by the Owner to be in default under aforesaid agreement to maintain and keep in repair, the Sureties shall promptly remedy the default or be responsible to the Owners for having performed Contractor's obligation thereunder.

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

By: _____

By: _____

Title: _____

Title: _____

Address: _____

Address: _____

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

**DISCLOSURE OF BUSINESS RELATIONSHIPS WITH IRAN, SUDAN, OR A FOREIGN
TERRORIST ORGANIZATION**

Texas S.B. 252 (Effective 9/1/2017): provides that (1) the City may not enter into a governmental contract with a Provider that is identified on a list prepared and maintained by the comptroller and that does business with Iran, Sudan, or a foreign terrorist organization; and (2) a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to contract prohibition under this subchapter.

By signing below, Offeror acknowledges that it has read and understands that it does not appear on the list maintained by the Texas Comptroller of Public Accounts.

Name of Offeror: _____

Signature of Authorized Representative: _____

Date: _____

**HOUSE BILL 89 VERIFICATION
(REVISED)**

I, _____, [Person Name] the undersigned representative of
_____, [Company or Business Name]
(hereafter referred to as Company) being an adult over the age of eighteen (18) years of age, does hereby
depose and verify that the Company named above, under the provisions of Texas Government Code
Chapter 2271:

1. Does not currently boycott the country of Israel; and
2. Will not boycott the country of Israel during the term of the contract with City of
Rollingwood, Texas.

Pursuant to Section 2270.001, Texas Government Code:

1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise
taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations
specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled
territory, but does not include an action made for ordinary business purposes; and

2. "Company" means a for-profit sole proprietorship, organization, association, corporation,
partnership, joint venture, limited partnership, limited liability partnership, or any limited liability
company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate
of those entities or business associations that exist to make a profit.

3. Pursuant to Section 2270.002 of the Texas Government Code, Respondent certifies that either

- a. it meets an exemption criterion under Section 2270.002; or
- b. it does not boycott Israel and will not boycott Israel during
the term of the contract resulting from this solicitation.
Respondent shall state any facts that make it exempt from
the boycott certification in its Response. (HB 793 –
exemptions).

EXEMPTIONS APPLY TO THE FOLLOWING:

- A. Contract between a governmental entity and a company with less than 10 full-time
employees
- B. Contract has a value of less than \$100,000 paid wholly or partly from public funds of
the governmental entity

Signature: _____ Date: _____

CERTIFICATE OF INTERESTED PARTIES**FORM 1295****OFFICE USE ONLY**

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

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

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

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

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

5 Check only if there is no Interested Party. ☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)

ADD ADDITIONAL PAGES AS NECESSARY

**CONFLICT OF INTEREST
QUESTIONNAIRE**

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		OFFICE USE ONLY
This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session. This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a). By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code. A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.		Date Received
1	Name of person who has a business relationship with local governmental entity.	
2	☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
3	Name of local government officer with whom filer has employment or business relationship. Name of Officer This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary. A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire? ☐ Yes ☐ No B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity? ☐ Yes ☐ No C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more? ☐ Yes ☐ No D. Describe each employment or business relationship with the local government officer named in this section.	
4	Signature of person doing business with the governmental entity Date	

Sample Notice of Award

Date: _____

Project: 2025 Mill and Overlay Project

Owner: City of Rollingwood, Texas

Owner's Contract No.:

Successful Bidder:

Bidder's Address:

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

2025 Mill and Overlay Project

The amount of your Contract is _____.

1 PDF of the proposed Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within [10] days of the date you receive this Notice of Award.

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

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

Within 10 days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Contract Documents.

City of Rollingwood

By: _____
Signature

City Secretary
Title

Sample Notice to Proceed

Date: _____

Contract: 2025 Mill and Overlay Project

Owner's Project No.: _____

To: _____

In accordance with the Agreement dated _____, by and between the City of _____ Rollingwood, Texas (Owner) and _____ (Contractor) for work to be performed in conjunction with 2025 Mill and Overlay Project. Construction shall be completed by _____.

1. Contractor is hereby notified to commence work on _____, 2025 and to complete the work on or before _____.
2. Liquidated damages to be paid by the Contractor for failure to complete the work by the completion date will be assessed at the rate of \$ 500.00 per day for each calendar day after _____. The procedure and basis for the assessment of damages will be in accordance with the Special Conditions, Section 21.

ISSUED ON BEHALF OF

ACCEPTED ON BEHALF OF

The City of Rollingwood, Texas

Makayla Rodriguez
City Secretary

(Contractor Signature)

Date

Date

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

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC® C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC® C-001, 2013 Edition).

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the Glossary of Defined Terms located at the beginning of the Project Construction Manual. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

1.02 *Terminology*

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 - 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day:*
 - 1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective:*
 - 1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. *Furnish, Install, Perform, Provide:*
 - 1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or

some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance*: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents (See Supplementary Conditions for changes)*

- A. Owner shall furnish to Contractor one fully executed contract in electronic form (pdf).

2.03 *Before Starting Construction*

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress

payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent (See Supplementary Conditions for changes)*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

- A. *Reporting Discrepancies:*
 - 1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
 3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. *Resolving Discrepancies:*
1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.

- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas:*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part

by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions (See Supplementary Conditions for changes)*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after

becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site (See Supplementary Conditions for changes)*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions (See Supplementary Conditions for changes)*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is

maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result

of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.

- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 - 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 - 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance (See Supplementary Conditions for changes)*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
 - 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 - 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).

5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.
- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the

policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence (See Supplementary Conditions for changes)

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 Labor; Working Hours (See Supplementary Conditions for changes)

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.03 Services, Materials, and Equipment (See Supplementary Conditions for changes)

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and

guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

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

7.04 "Or Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
 - b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.

- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 Substitutes

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and

- 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.

O. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits (See Supplementary Conditions for changes)*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work

7.09 *Taxes (See Supplementary Conditions for changes)*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
 - C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
 - D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
 - E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
 - F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
 - G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or

exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
- 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to

provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.

D. *Engineer's Review:*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;
 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer;
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop

Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.

- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.

- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during

or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative (See Supplementary Conditions for changes)*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work (See Supplementary Conditions for changes)*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an

adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on

the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under

the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.
 2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim

submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable

thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes

other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work (See Supplementary Conditions for changes)*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to

cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will

include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.

- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications:*
1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
- a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
- a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or

- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner:*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;
 - i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount

remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion (See Supplementary Conditions for changes)*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

- A. *Application for Payment:*
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of

inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

B. *Engineer's Review of Application and Acceptance:*

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation,

including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims (See Supplementary Conditions for changes)*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses,

and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for

expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES *(See Supplementary Conditions for changes)*

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article: 90 day
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS *(See Supplementary Conditions for changes)*

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

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

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

SUPPLEMENTARY CONDITIONS

Prepared by



Issued and Published Jointly by



This **Supplementary Conditions** has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC® C-700, 2013 Edition). Their provisions are interrelated and a change in one may necessitate a change in the other. The suggested language contained in the **Guide to the Preparation of Instructions to Bidders** (EJCDC® C-200, 2013 Edition) is also carefully integrated with the suggested language of this document. The full EJCDC Construction series of documents is discussed in the **Commentary on the 2013 EJCDC Construction Documents** (EJCDC® C-001, 2013 Edition).

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I. SUPPLEMENTARY CONDITIONS

A. *Caption and Introductory Statements*

Supplementary Conditions

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract, EJCDC® C-700 (2013 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the Glossary of Defined Terms.

The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

ARTICLE 2 – PRELIMINARY MATTERS

SC-2.02 *Copies of Documents*

SC-2.02.A. Amend the first sentence of Paragraph 2.02.A. to read as follows:

Owner shall furnish to Contractor one fully executed counterpart of the Agreement in electronic portable document format (PDF).

SC-2.02 Add the following new paragraph immediately after Paragraph 2.02.B:

C. Conformed documents incorporate and integrate Addenda and amendments negotiated prior to the Effective Date of the Contract. The conformed documents are produced for the convenience of the user and are not binding on the Owner nor do conformed documents take the place of the Contract Documents.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

SC-3.01 *Intent*

SC-3.01 Add the following new paragraphs immediately after Paragraph 3.01.E:

F. The Specifications may vary in form, format and style. Some specification sections are written in varying degrees of streamlined or declarative style and some sections may be relatively narrative by comparison. Omissions of such words and phrases as "the Contractor shall," "in conformity with," "as shown," or "as specified" are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making claims for extra Work.

G. The cross referencing of specification sections under the subparagraph heading "Related Sections include but are not necessarily limited to:" and elsewhere within each specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross referencing provided and shall be responsible to coordinate the entire Work under the Contract

Documents and provide a complete Project whether or not the cross referencing is provided in each section or whether or not the cross referencing is complete.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

SC-5.03 Subsurface and Physical Conditions

SC 5.03 Delete Paragraphs 5.03.A and 5.03.B in their entirety and insert the following:

- A. No reports of explorations or tests of subsurface conditions at or adjacent to the Site, or drawings of physical conditions relating to existing surface or subsurface structures at the Site, are known to Owner.**

SC-5.06 Hazardous Environmental Conditions

SC 5.06 Delete Paragraphs 5.06.A and 5.06.B in their entirety and insert the following:

- A. No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.**
- B. Not Used.**

ARTICLE 6 – BONDS AND INSURANCE

SC-6.02 Insurance—General Provisions

SC-6.02 6.03 Contractor’s Insurance

SC 6.03 Add the following new paragraph immediately after Paragraph 6.03.J:

- K. The limits of liability for the insurance required by Paragraph 6.03 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:**

- 1. Workers’ Compensation, and related coverages under Paragraphs 6.03.A.1 and A.2 of the General Conditions:**

State:	<u>Statutory</u>
---------------	------------------

Federal, if applicable (e.g., Longshoreman’s):	<u>Statutory</u>
---	------------------

Jones Act coverage, if applicable:

Bodily injury by accident, each accident	\$ <u> </u>
---	---------------------------------------

Bodily injury by disease, aggregate	\$ <u> </u>
--	---------------------------------------

Employer’s Liability:

Bodily injury, each accident	\$ <u>500,000</u>
-------------------------------------	--------------------------

Bodily injury by disease, each employee	\$ <u>500,000</u>
--	--------------------------

Bodily injury/disease aggregate	\$ <u>500,000</u>
--	--------------------------

For work performed in monopolistic states, stop-gap liability coverage shall be endorsed to either the worker's compensation or commercial general liability policy with a minimum limit of: \$ _____

Foreign voluntary worker compensation Statutory

2. Contractor's Commercial General Liability under Paragraphs 6.03.B and 6.03.C of the General Conditions:

General Aggregate \$ 2,000,000

Products - Completed Operations Aggregate \$ 1,000,000

Personal and Advertising Injury \$ 1,000,000

Each Occurrence (Bodily Injury and Property Damage) \$ 1,000,000

3. Automobile Liability under Paragraph 6.03.D. of the General Conditions:

Bodily Injury:

Each person \$ 500,000

Each accident \$ 1,000,000

Property Damage:

Each accident \$ 1,000,000

[or]

Combined Single Limit of \$ 1,000,000

4. Excess or Umbrella Liability:

Per Occurrence \$ 1,000,000

General Aggregate \$ 1,000,000

5. Contractor's Pollution Liability:

Each Occurrence \$ N/A

General Aggregate \$ N/A

☒ If box is checked, Contractor is not required to provide Contractor's Pollution Liability insurance under this Contract

6. Additional Insureds: In addition to Owner and Engineer, include as additional insureds the following: WSB LLC.

7. Contractor's Professional Liability:

Each Claim	\$ <u>N/A</u>
Annual Aggregate	\$ <u>N/A</u>

SC-6.05 Property Insurance

SC-6.05.A.1 Add the following new subparagraph after subparagraph 6.05.A.1:

- a. In addition to Owner, Contractor, and all Subcontractors, include as insureds the following:

City of Rollingwood, TX and WSB LLC

SC-6.05.A. Add the following to the list of items in Paragraph 6.05.A, as numbered items:

15. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus attorneys fees and engineering or other consultants' fees, if not otherwise covered;
16. include, in addition to the Contract Price amount, the value of the following equipment and materials to be installed by the Contractor but furnished by the Owner or third parties:
- a. *none*
17. include by express endorsement coverage of damage to Contractor's equipment.

7 – CONTRACTOR'S RESPONSIBILITIES

SC-7.01 Supervision and Superintendence

SC-7.01.B. Amend Paragraph 7.01.B to add the following sentences: "The Contractor shall identify their representative at the Site that shall have authority to act on behalf of Contractor. All communications given to or received from this representative shall be binding on Contractor."

SC-7.01.C. Add the following new paragraph immediately after Paragraph 7.01.B:

Any superintendent or other personnel, who repeatedly fails to follow the Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the project. Upon the written request of the Engineer, the Contractor shall immediately remove such superintendent or other personnel and name a replacement in writing. Noncompliance with the Engineer's request to remove and replace personnel at any level shall be grounds for terminating the Contract.

SC-7.02 Labor; Working Hours

SC-7.02.B. Add the following new subparagraphs immediately after Paragraph 7.02.B:

- 1. Regular working hours will be 7 AM through 6 PM**

EICDC® C-800 (Rev. 1), Supplementary Conditions.

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SC-7.03 Services, Materials, and Equipment

SC-7.03.B. Add the following new subparagraphs immediately after Paragraph 7.03.B:

1. Where the Work requires equipment be furnished, due to the lack of standardization of equipment as produced by the various manufacturers, it may become necessary to make minor modifications in the structures, buildings, piping, mechanical work, electrical work, accessories, controls, or other work, to accommodate the particular equipment offered. Contractor's bid price for any equipment offered shall include the cost of making any necessary changes subject to the approval of Engineer.

SC-7.08 Permits

SC-7.08 Union Pacific Railroad License, Right of Entry, Construction, and Maintenance Agreements associated with proposed shared-use ditch in Union Pacific Railroad right-of-way.

SC-7.09 Taxes

SC 7.09 Add the following paragraphs immediately after Paragraph 7.09.A:

- B. Owner is exempt from payment of sales and compensating use taxes of the State of Texas and of cities and counties thereof on all materials to be incorporated into the Work.
 1. Owner will furnish the required certificates of tax exemption to Contractor for use in the purchase of supplies and materials to be incorporated into the Work.
 2. Owner's exemption does not apply to construction tools, machinery, equipment, or other property purchased by or leased by Contractor, or to supplies or materials not incorporated into the Work.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

SC-10.03 Project Representative

SC-10.03 Add the following new paragraphs immediately after Paragraph 10.03.A:

- B. On this Project, by agreement with the Owner, Engineer will not furnish a Resident Project Representative to represent Engineer at the Site or assist Engineer in observing the progress and quality of the Work.

SC-10.06 Determinations for Unit Price Work

- 10.06.A Modify Paragraph GC-10.06.A by adding the following sentence at the end of the first sentence: "Contractor shall, at his own expense, provide help and other assistance as may be required for making measurements of Unit Price Work."

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

SC-13.03 *Unit Price Work*

SC-13.03.B. Amend Paragraph 13.03.B to add the following sentences: “Progress estimates serve only as basis for partial payments. The Engineer may revise progress estimates and/or quantities any time before final acceptance. If the Engineer deems it proper to do so, changes may be made in progress estimates and in the final estimate.”

SC-13.03.C. Amend Paragraph 13.03.C to add the following sentences: “Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items, shall be considered incidental to unit price work listed and the cost of incidental work included as a part of the unit price.”

SC 13.03.E Delete Paragraph 13.03.E in its entirety and insert the following in its place:

- E.** The unit price of an item of Unit Price Work shall be subject to reevaluation and adjustment under the following conditions:
1. if the extended price of a particular item of Unit Price Work amounts to 5 percent or more of the Contract Price (based on estimated quantities at the time of Contract formation) and the variation in the quantity of that particular item of Unit Price Work actually furnished or performed by Contractor differs by more than 25 percent from the estimated quantity of such item indicated in the Agreement; and
 2. if there is no corresponding adjustment with respect to any other item of Work; and
 3. if Contractor believes that Contractor has incurred additional expense as a result thereof, Contractor may submit a Change Proposal, or if Owner believes that the quantity variation entitles Owner to an adjustment in the unit price, Owner may make a Claim, seeking an adjustment in the Contract Price.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

SC-15.03 *Substantial Completion*

SC 15.03.B Add the following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer, the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off against payments due under Article 15.

SC-15.07 *Waiver of Claims*

SC-15.07.B. Amend Paragraph 15.07.B to state "The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner and/or

Engineer other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.”

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

SC-17.02 Arbitration

SC-17.02 Add the following new paragraph immediately after Paragraph 17.01.

SC-17.02 Arbitration

- A. All matters subject to final resolution under this Article will be decided by arbitration in accordance with the rules of *[insert name of selected arbitration agency]*, subject to the conditions and limitations of this paragraph. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction.
- B. The demand for arbitration will be filed in writing with the other party to the Contract and with the selected arbitrator or arbitration provider, and a copy will be sent to Engineer for information. The demand for arbitration will be made within the specific time required in this Article, or if no specified time is applicable within a reasonable time after the matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such matter in question would be barred by the applicable statute of limitations. The demand for arbitration should include specific reference to Paragraph SC-17.02.D below.
- C. No arbitration arising out of or relating to the Contract shall include by consolidation, joinder, or in any other manner any other individual or entity (including Engineer, and Engineer’s consultants and the officers, directors, partners, agents, employees or consultants of any of them) who is not a party to this Contract unless:
 - 1. the inclusion of such other individual or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration; and
 - 2. such other individual or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings.
- D. The award rendered by the arbitrator(s) shall be consistent with the agreement of the parties, in writing, and include a concise breakdown of the award, and a written explanation of the award specifically citing the Contract provisions deemed applicable and relied on in making the award.
- E. The award will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and it will not be subject to modification or appeal, subject to provisions of the Laws and Regulations relating to vacating or modifying an arbitral award.

- F. The fees and expenses of the arbitrators and any arbitration service shall be shared equally by Owner and Contractor.**

ARTICLE ARTICLE 18 – PUBLIC INFORMATION

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter.

The Contractor must:

- (1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract;
- (2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and
- (3) on completion of the contract, either:
 - (A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or
 - (B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

Prevailing Wage Schedule

1. Payment

(A) Employee Certification

CONTRACTOR, Subcontractor, and Sub-subcontractor shall identify in writing, the classification agreed to by all laborers, workmen and mechanics employed by them in the execution of the Contract, and pay not less than rates specified in the attached Wage Rate Schedule(s). If work performed by worker is different than the classification agreed upon, the worker shall be paid the minimum wage for work performed.

(B) Classification Definitions

1. Building

Definitions for building classifications are stated in "Dictionary of Occupational Titles," Department of Labor, 4th Edition, 1977.

2. Highway-Heavy

Definitions for Highway-Heavy classifications shall conform to "Standard Job Classification and Descriptions," AGC of Texas Highway, Heavy, Utilities and Industrial Branch.

3. Federal Building and Highway Heavy

Definitions are stated in "Directory of Occupational Titles," Department of Labor, 4th Edition, 1977.

(C) Minimum Wages

Workers on Project shall be paid not less than wage rates described in this section. Such wage rates shall be used throughout the Contract. If a classification is to be used which is not listed in this section, CONTRACTOR shall request such rates from the Department of Labor and forward a copy of the request and response to OWNER.

Inclusion of wage rates does not relieve CONTRACTOR from responsibility to comply with applicable State or Federal wage laws.

All mechanic and laborers working upon the Work shall be paid unconditionally and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by Secretary of Labor under the Copeland Act, Title 29, CFR, Part 3) full wages accrues and when due, computed at rates not less than wage rates bound herein pertaining to type of Work being performed. When Work is of such a nature that both Building and Highway-Heavy wage scales are incorporated into contract, CONTRACTOR shall pay wage rates to mechanics or laborers performing Work in more than one classification at the rate indicated for each classification for time actually worked as determined by area practice applicable to type (Site Construction Crafts or Building Construction Crafts) of Work being performed without regards to skill. Salaried specialists (project superintendent and administrative personnel only) in the permanent employment of CONTRACTOR do not fall under and wage classification. Wage rates shall be posted by CONTRACTOR at site of Work in a prominent place where they can be easily seen by workers. In the event there are multiple job sites (such as in street or utility construction), wage rates shall be posted at

CONTRACTOR's office and be posted at other places where they would be most likely seen by workers.

(D) Overtime Requirements

No Contractor, Subcontractor, or Sub-subcontractor contracting for any part of contract Work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such Work, to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of forty hours in such workweek.

2. Apprentices and Trainees

(A) Locally Funded Projects

Apprentices and helpers will be permitted to work as such when they are listed on a payroll as an apprentice or helper. Apprentices or helpers are to be paid a minimum of 50 percent of journeymen wages indicated. The allowable ratio of apprentices or helpers in any craft is not to exceed 2:1.

Employees who are not under the apprentice or helper program shall be paid the wage rate provided in contract for Work he actually performed.

3. Withholding of Payments

OWNER may withhold or cause to be withheld from CONTRACTOR as much of the accrued payments which may be determined necessary to pay laborers and mechanics employed by CONTRACTOR, Subcontractors, or Sub-subcontractors on the Work the full amount of wages required by this Contract. In the event of nonpayment of wages to laborers or mechanics working on the site of the Work of this contract, OWNER may, after written notice to CONTRACTOR, take such action as may be necessary to cause suspension of any further payments or advance of funds to CONTRACTOR until such violations have ceased and until restitution has been made.

4. Payroll and Reports

Payrolls relating to this Work shall be maintained during term of Contract and preserved for a period of three (3) years thereafter by CONTRACTOR for all laborers and mechanics working on the Work. Such records shall contain name and address of each such employee, his/her correct classification, rates of pay, including fringe benefit rates when applicable, daily and weekly number of hours worked, deductions made and actual wages paid.

CONTRACTOR shall make payroll records available for inspection by authorized representatives of OWNER upon written request, and shall permit such representatives to observe and/or interview employees during working hours on Work site, for such time as is required to obtain personal verification of selected payroll data. If it is apparent that there is a wage rate violation or improper classification of employees, an investigation will be conducted, and action taken as appropriate.

5. Complaints and Penalty's

CONTRACTOR's attention is directed to House Bill TX 73 RHB 560 amending Art. 5159a, V.T.C.S. relating to the payment of certain laborers, workers, and mechanics under public

works contacts.

6. Area Practice

Highway Heavy Construction Wage Rates shall be used on this Work unless Building Construction Rates are included as follows:

Building Construction Wage Rates shall be used when the following conditions are met: Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be “habitable” to be Building Construction. The installation of heavy machinery and/or equipment does not generally change the project’s character as a building.

Building Construction Wage Rates determination shall include all construction necessary to complete a facility regardless of the number of contracts involved so long as all contract awarded are closely related in purpose, time and place. Demolition or site work preparatory to Building Construction is considered a part of the building Work for wage rate determination purposes.

Incidental Building Construction shall include Highway Heavy Construction Items when the Project cost for the incidental items are less than 20 percent, except when the Building Construction is less than 4 percent of the Project cost the Highway Heavy Construction Rates will apply.

Multiple Classification

A multiple classification shall be used if Highway Heavy Construction items are more than 20 percent of the Project Cost.

Wage rates for this project can be found at this link: <https://www.wdol.gov/dba.aspx> Search for Davis Bacon Wage Decisions for Texas, Travis County, Construction Types: Heavy and Highway.

PREVAILING WAGE RATES

Per 2258.022 of the Texas Government Code, the City of Rollingwood specifies that the prevailing wage rates on the following pages shall be paid under the contract awarded for this project.

PREVAILING WAGE RATES

"General Decision Number: TX20250007 01/03/2025

Superseded General Decision Number: TX20240007

State: Texas

Construction Types: Heavy and Highway

Counties: Atascosa, Bandera, Bastrop, Bell, Bexar, Brazos, Burleson, Caldwell, Comal, Coryell, Guadalupe, Hays, Kendall, Lampasas, McLennan, Medina, Robertson, Travis, Williamson and Wilson Counties in Texas.

HEAVY (excluding tunnels and dams, not to be used for work on Sewage or Water Treatment Plants or Lift / Pump Stations in Bell, Coryell, McClellon and Williamson Counties) and HIGHWAY Construction Projects

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.75 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2025.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/03/2025

SUTX2011-006 08/03/2011

	Rates	Fringes
CEMENT MASON/CONCRETE		
FINISHER (Paving and Structures).....	\$ 12.56	**
ELECTRICIAN.....	\$ 26.35	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 12.94	**
Structures.....	\$ 12.87	**
LABORER		
Asphalt Raker.....	\$ 12.12	**
Flagger.....	\$ 9.45	**
Laborer, Common.....	\$ 10.50	**
Laborer, Utility.....	\$ 12.27	**
Pipelayer.....	\$ 12.79	**
Work Zone Barricade		
Servicer.....	\$ 11.85	**
PAINTER (Structures).....	\$ 18.34	
POWER EQUIPMENT OPERATOR:		
Agricultural Tractor.....	\$ 12.69	**
Asphalt Distributor.....	\$ 15.55	**
Asphalt Paving Machine.....	\$ 14.36	**
Boom Truck.....	\$ 18.36	
Broom or Sweeper.....	\$ 11.04	**
Concrete Pavement		
Finishing Machine.....	\$ 15.48	**
Crane, Hydraulic 80 tons		
or less.....	\$ 18.36	
Crane, Lattice Boom 80		
tons or less.....	\$ 15.87	**
Crane, Lattice Boom over		
80 tons.....	\$ 19.38	
Crawler Tractor.....	\$ 15.67	**
Directional Drilling		
Locator.....	\$ 11.67	**
Directional Drilling		
Operator.....	\$ 17.24	**
Excavator 50,000 lbs or		
Less.....	\$ 12.88	**
Excavator over 50,000 lbs...	\$ 17.71	**
Foundation Drill, Truck		
Mounted.....	\$ 16.93	**
Front End Loader, 3 CY or		
Less.....	\$ 13.04	**
Front End Loader, Over 3 CY.	\$ 13.21	**
Loader/Backhoe.....	\$ 14.12	**
Mechanic.....	\$ 17.10	**
Milling Machine.....	\$ 14.18	**
Motor Grader, Fine Grade....	\$ 18.51	
Motor Grader, Rough.....	\$ 14.63	**
Pavement Marking Machine....	\$ 19.17	
Reclaimer/Pulverizer.....	\$ 12.88	**

Roller, Asphalt.....\$ 12.78 **
Roller, Other.....\$ 10.50 **
Scraper.....\$ 12.27 **
Spreader Box.....\$ 14.04 **
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51 **

Steel Worker

Reinforcing.....\$ 14.00 **
Structural.....\$ 19.29

TRAFFIC SIGNALIZATION:

Traffic Signal Installation

Traffic Signal/Light Pole
Worker.....\$ 16.00 **

TRUCK DRIVER

Lowboy-Float.....\$ 15.66 **
Off Road Hauler.....\$ 11.88 **
Single Axle.....\$ 11.79 **
Single or Tandem Axle Dump
Truck.....\$ 11.68 **
Tandem Axle Tractor w/Semi
Trailer.....\$ 12.81 **

WELDER.....\$ 15.97 **

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

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** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$17.75) or 13658
(\$13.30). Please see the Note at the top of the wage
determination for more information. Please also note that the
minimum wage requirements of Executive Order 14026 are not
currently being enforced as to any contract or subcontract to
which the states of Texas, Louisiana, or Mississippi, including
their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is
like family to the employee) who is a victim of, domestic
violence, sexual assault, or stalking. Additional information
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses

(29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date,

6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to BCWD-Office@dol.gov or by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION"

Item 340

Dense-Graded Hot-Mix Asphalt (Small Quantity)



1. DESCRIPTION

Construct a hot-mix asphalt (HMA) pavement layer composed of a compacted, dense-graded mixture of aggregate and asphalt binder mixed hot in a mixing plant. This specification is intended for small quantity (SQ) HMA projects, typically under 5,000 tons total production.

2. MATERIALS

Furnish uncontaminated materials of uniform quality that meet the requirements of the plans and specifications.

Notify the Engineer of all material sources and before changing any material source or formulation. The Engineer will verify that the specification requirements are met when the Contractor makes a source or formulation change, and may require a new laboratory mixture design, trial batch, or both. The Engineer may sample and test project materials at any time during the project to verify specification compliance in accordance with Item 6, "Control of Materials."

- 2.1. **Aggregate.** Furnish aggregates from sources that conform to the requirements shown in Table 1 and as specified in this Section. Aggregate requirements in this Section, including those shown in Table 1, may be modified or eliminated when shown on the plans. Additional aggregate requirements may be specified when shown on the plans. Provide aggregate stockpiles that meet the definitions in this Section for coarse, intermediate, or fine aggregate. Aggregate from reclaimed asphalt pavement (RAP) is not required to meet Table 1 requirements unless otherwise shown on the plans. Supply aggregates that meet the definitions in [Tex-100-E](#) for crushed gravel or crushed stone. The Engineer will designate the plant or the quarry as the sampling location. Provide samples from materials produced for the project. The Engineer will establish the Surface Aggregate Classification (SAC) and perform Los Angeles abrasion, magnesium sulfate soundness, and Micro-Deval tests. Perform all other aggregate quality tests listed in Table 1. Document all test results on the mixture design report. The Engineer may perform tests on independent or split samples to verify Contractor test results. Stockpile aggregates for each source and type separately. Determine aggregate gradations for mixture design and production testing based on the washed sieve analysis given in [Tex-200-F](#), Part II.

- 2.1.1. **Coarse Aggregate.** Coarse aggregate stockpiles must have no more than 20% material passing the No. 8 sieve. Aggregates from sources listed in the Department's *Bituminous Rated Source Quality Catalog* (BRSQC) are preapproved for use. Use only the rated values for hot-mix listed in the BRSQC. Rated values for surface treatment (ST) do not apply to coarse aggregate sources used in hot-mix asphalt.

For sources not listed on the Department's BRSQC:

- build an individual stockpile for each material;
- request the Department test the stockpile for specification compliance; and
- once approved, do not add material to the stockpile unless otherwise approved.

Provide aggregate from non-listed sources only when tested by the Engineer and approved before use. Allow 30 calendar days for the Engineer to sample, test, and report results for non-listed sources.

Provide coarse aggregate with at least the minimum SAC shown on the plans. SAC requirements only apply to aggregates used on the surface of travel lanes. SAC requirements apply to aggregates used on surfaces other than travel lanes when shown on the plans. The SAC for sources on the Department's *Aggregate Quality Monitoring Program* (AQMP) ([Tex-499-A](#)) is listed in the BRSQC.

- 2.1.1.1. **Blending Class A and Class B Aggregates.** Class B aggregate meeting all other requirements in Table 1 may be blended with a Class A aggregate to meet requirements for Class A materials. Ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source when blending Class A and B aggregates to meet a Class A requirement. Blend by volume if the bulk specific gravities of the Class A and B aggregates differ by more than 0.300. Coarse aggregate from RAP and Recycled Asphalt Shingles (RAS) will be considered as Class B aggregate for blending purposes.

The Engineer may perform tests at any time during production, when the Contractor blends Class A and B aggregates to meet a Class A requirement, to ensure that at least 50% by weight, or volume if required, of the material retained on the No. 4 sieve comes from the Class A aggregate source. The Engineer will use the Department's mix design template, when electing to verify conformance, to calculate the percent of Class A aggregate retained on the No. 4 sieve by inputting the bin percentages shown from readouts in the control room at the time of production and stockpile gradations measured at the time of production. The Engineer may determine the gradations based on either washed or dry sieve analysis from samples obtained from individual aggregate cold feed bins or aggregate stockpiles. The Engineer may perform spot checks using the gradations supplied by the Contractor on the mixture design report as an input for the template; however, a failing spot check will require confirmation with a stockpile gradation determined by the Engineer.

- 2.1.2. **Intermediate Aggregate.** Aggregates not meeting the definition of coarse or fine aggregate will be defined as intermediate aggregate. Supply intermediate aggregates, when used that are free from organic impurities.

The Engineer may test the intermediate aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. Supply intermediate aggregate from coarse aggregate sources, when used that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve, and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

- 2.1.3. **Fine Aggregate.** Fine aggregates consist of manufactured sands, screenings, and field sands. Fine aggregate stockpiles must meet the gradation requirements in Table 2. Supply fine aggregates that are free from organic impurities. The Engineer may test the fine aggregate in accordance with [Tex-408-A](#) to verify the material is free from organic impurities. No more than 15% of the total aggregate may be field sand or other uncrushed fine aggregate. Use fine aggregate, with the exception of field sand, from coarse aggregate sources that meet the requirements shown in Table 1 unless otherwise approved.

Test the stockpile if 10% or more of the stockpile is retained on the No. 4 sieve, and verify that it meets the requirements in Table 1 for crushed face count ([Tex-460-A](#)) and flat and elongated particles ([Tex-280-F](#)).

Table 1
Aggregate Quality Requirements

Property	Test Method	Requirement
Coarse Aggregate		
SAC	Tex-499-A (AQMP)	As shown on the plans
Deleterious material, %, Max	Tex-217-F , Part I	1.5
Decantation, %, Max	Tex-217-F , Part II	1.5
Micro-Deval abrasion, %	Tex-461-A	Note 1
Los Angeles abrasion, %, Max	Tex-410-A	40
Magnesium sulfate soundness, 5 cycles, %, Max	Tex-411-A	30
Crushed face count, ² %, Min	Tex-460-A , Part I	85
Flat and elongated particles @ 5:1, %, Max	Tex-280-F	10
Fine Aggregate		
Linear shrinkage, %, Max	Tex-107-E	3
Combined Aggregate³		
Sand equivalent, %, Min	Tex-203-F	45

1. Not used for acceptance purposes. Optional test used by the Engineer as an indicator of the need for further investigation.
2. Only applies to crushed gravel.
3. Aggregates, without mineral filler, RAP, RAS, or additives, combined as used in the job-mix formula (JMF).

Table 2
Gradation Requirements for Fine Aggregate

Sieve Size	% Passing by Weight or Volume
3/8"	100
#8	70–100
#200	0–30

- 2.2. **Mineral Filler.** Mineral filler consists of finely divided mineral matter such as agricultural lime, crusher fines, hydrated lime, or fly ash. Mineral filler is allowed unless otherwise shown on the plans. Use no more than 2% hydrated lime or fly ash unless otherwise shown on the plans. Use no more than 1% hydrated lime if a substitute binder is used unless otherwise shown on the plans or allowed. Test all mineral fillers except hydrated lime and fly ash in accordance with [Tex-107-E](#) to ensure specification compliance. The plans may require or disallow specific mineral fillers. Provide mineral filler, when used, that:

- is sufficiently dry, free-flowing, and free from clumps and foreign matter as determined by the Engineer;
- does not exceed 3% linear shrinkage when tested in accordance with [Tex-107-E](#); and
- meets the gradation requirements in Table 3.

Table 3
Gradation Requirements for Mineral Filler

Sieve Size	% Passing by Weight or Volume
#8	100
#200	55–100

- 2.3. **Baghouse Fines.** Fines collected by the baghouse or other dust-collecting equipment may be reintroduced into the mixing drum.
- 2.4. **Asphalt Binder.** Furnish the type and grade of performance-graded (PG) asphalt specified on the plans.
- 2.5. **Tack Coat.** Furnish CSS-1H, SS-1H, or a PG binder with a minimum high-temperature grade of PG 58 for tack coat binder in accordance with Item 300, "Asphalts, Oils, and Emulsions." Specialized or preferred tack coat materials may be allowed or required when shown on the plans. Do not dilute emulsified asphalts at the terminal, in the field, or at any other location before use.

The Engineer will obtain at least one sample of the tack coat binder per project in accordance with [Tex-500-C](#), Part III, and test it to verify compliance with Item 300, "Asphalts, Oils, and Emulsions." The Engineer will obtain the sample from the asphalt distributor immediately before use.

2.6. **Additives.** Use the type and rate of additive specified when shown on the plans. Additives that facilitate mixing, compaction, or improve the quality of the mixture are allowed when approved. Provide the Engineer with documentation, such as the bill of lading, showing the quantity of additives used in the project unless otherwise directed.

2.6.1. **Lime and Liquid Antistripping Agent.** When lime or a liquid antistripping agent is used, add in accordance with Item 301, "Asphalt Antistripping Agents." Do not add lime directly into the mixing drum of any plant where lime is removed through the exhaust stream unless the plant has a baghouse or dust collection system that reintroduces the lime into the drum.

2.6.2. **Warm Mix Asphalt (WMA).** Warm Mix Asphalt (WMA) is defined as HMA that is produced within a target temperature discharge range of 215°F and 275°F using approved WMA additives or processes from the Department's MPL.

WMA is allowed for use on all projects and is required when shown on the plans. When WMA is required, the maximum placement or target discharge temperature for WMA will be set at a value below 275°F.

Department-approved WMA additives or processes may be used to facilitate mixing and compaction of HMA produced at target discharge temperatures above 275°F; however, such mixtures will not be defined as WMA.

2.7. **Recycled Materials.** Use of RAP and RAS is permitted unless otherwise shown on the plans. Do not exceed the maximum allowable percentages of RAP and RAS shown in Table 4. The allowable percentages shown in Table 4 may be decreased or increased when shown on the plans. Determine asphalt binder content and gradation of the RAP and RAS stockpiles for mixture design purposes in accordance with [Tex-236-F](#). The Engineer may verify the asphalt binder content of the stockpiles at any time during production. Perform other tests on RAP and RAS when shown on the plans. Asphalt binder from RAP and RAS is designated as recycled asphalt binder. Calculate and ensure that the ratio of the recycled asphalt binder to total binder does not exceed the percentages shown in Table 5 during mixture design and HMA production when RAP or RAS is used. Use a separate cold feed bin for each stockpile of RAP and RAS during HMA production.

Surface, intermediate, and base mixes referenced in Tables 4 and 5 are defined as follows:

- **Surface.** The final HMA lift placed at or near the top of the pavement structure;
- **Intermediate.** Mixtures placed below an HMA surface mix and less than or equal to 8.0 in. from the riding surface; and
- **Base.** Mixtures placed greater than 8.0 in. from the riding surface.

2.7.1. **RAP.** RAP is salvaged, milled, pulverized, broken, or crushed asphalt pavement. Crush or break RAP so that 100% of the particles pass the 2 in. sieve. Fractionated RAP is defined as 2 or more RAP stockpiles, divided into coarse and fine fractions.

Use of Contractor-owned RAP, including HMA plant waste, is permitted unless otherwise shown on the plans. Department-owned RAP stockpiles are available for the Contractor's use when the stockpile locations are shown on the plans. If Department-owned RAP is available for the Contractor's use, the Contractor may use Contractor-owned fractionated RAP and replace it with an equal quantity of Department-owned RAP. This allowance does not apply to a Contractor using unfractionated RAP. Department-owned RAP generated through required work on the Contract is available for the Contractor's use when shown on the plans. Perform any necessary tests to ensure Contractor- or Department-owned RAP is appropriate for use. The Department will not perform any tests or assume any liability for the quality of the Department-owned RAP unless otherwise shown on the plans. The Contractor will retain ownership of RAP generated on the project when shown on the plans.

The coarse RAP stockpile will contain only material retained by processing over a 3/8-in. or 1/2-in. screen unless otherwise approved. The fine RAP stockpile will contain only material passing the 3/8-in. or 1/2-in. screen unless otherwise approved. The Engineer may allow the Contractor to use an alternate to the 3/8-in.

or 1/2-in. screen to fractionate the RAP. The maximum percentages of fractionated RAP may be comprised of coarse or fine fractionated RAP or the combination of both coarse and fine fractionated RAP.

Do not use Department- or Contractor-owned RAP contaminated with dirt or other objectionable materials. Do not use Department- or Contractor-owned RAP if the decantation value exceeds 5% and the plasticity index is greater than 8. Test the stockpiled RAP for decantation in accordance with [Tex-406-A](#), Part I. Determine the plasticity index in accordance with [Tex-106-E](#) if the decantation value exceeds 5%. The decantation and plasticity index requirements do not apply to RAP samples with asphalt removed by extraction or ignition.

Do not intermingle Contractor-owned RAP stockpiles with Department-owned RAP stockpiles. Remove unused Contractor-owned RAP material from the project site upon completion of the project. Return unused Department-owned RAP to the designated stockpile location.

Table 4
Maximum Allowable Amounts of RAP¹

Maximum Allowable Fractionated RAP ² (%)			Maximum Allowable Unfractionated RAP ³ (%)		
Surface	Intermediate	Base	Surface	Intermediate	Base
20.0	30.0	40.0	10.0	10.0	10.0

1. Must also meet the recycled binder to total binder ratio shown in Table 5.
2. Up to 5% RAS may be used separately or as a replacement for fractionated RAP.
3. Unfractionated RAP may not be combined with fractionated RAP or RAS.

2.7.2.

RAS. Use of post-manufactured RAS or post-consumer RAS (tear-offs) is permitted unless otherwise shown on the plans. Up to 5% RAS may be used separately or as a replacement for fractionated RAP in accordance with Table 4 and Table 5. RAS is defined as processed asphalt shingle material from manufacturing of asphalt roofing shingles or from re-roofing residential structures. Post-manufactured RAS is processed manufacturer's shingle scrap by-product. Post-consumer RAS is processed shingle scrap removed from residential structures. Comply with all regulatory requirements stipulated for RAS by the TCEQ. RAS may be used separately or in conjunction with RAP.

Process the RAS by ambient grinding or granulating such that 100% of the particles pass the 3/8 in. sieve when tested in accordance with [Tex-200-F](#), Part I. Perform a sieve analysis on processed RAS material before extraction (or ignition) of the asphalt binder.

Add sand meeting the requirements of Table 1 and Table 2 or fine RAP to RAS stockpiles if needed to keep the processed material workable. Any stockpile that contains RAS will be considered a RAS stockpile and be limited to no more than 5.0% of the HMA mixture in accordance with Table 4.

Certify compliance of the RAS with [DMS-11000](#), "Evaluating and Using Nonhazardous Recyclable Materials Guidelines." Treat RAS as an established nonhazardous recyclable material if it has not come into contact with any hazardous materials. Use RAS from shingle sources on the Department's MPL. Remove substantially all materials before use that are not part of the shingle, such as wood, paper, metal, plastic, and felt paper. Determine the deleterious content of RAS material for mixture design purposes in accordance with [Tex-217-F](#), Part III. Do not use RAS if deleterious materials are more than 0.5% of the stockpiled RAS unless otherwise approved. Submit a sample for approval before submitting the mixture design. The Department will perform the testing for deleterious material of RAS to determine specification compliance.

2.8.

Substitute Binders. Unless otherwise shown on the plans, the Contractor may use a substitute PG binder listed in Table 5 instead of the PG binder originally specified, if the substitute PG binder and mixture made with the substitute PG binder meet the following:

- the substitute binder meets the specification requirements for the substitute binder grade in accordance with Section 300.2.10., "Performance-Graded Binders;" and
- the mixture has less than 10.0 mm of rutting on the Hamburg Wheel test ([Tex-242-F](#)) after the number of passes required for the originally specified binder. Use of substitute PG binders may only be allowed at the discretion of the Engineer if the Hamburg Wheel test results are between 10.0 mm and 12.5 mm.

Table 5
Allowable Substitute PG Binders and Maximum Recycled Binder Ratios

Originally Specified PG Binder	Allowable Substitute PG Binder	Maximum Ratio of Recycled Binder ¹ to Total Binder (%)		
		Surface	Intermediate	Base
HMA				
76-22 ²	70-22 or 64-22	20.0	20.0	20.0
	70-28 or 64-28	30.0	35.0	40.0
70-22 ²	64-22	20.0	20.0	20.0
	64-28 or 58-28	30.0	35.0	40.0
64-22 ²	58-28	30.0	35.0	40.0
76-28 ²	70-28 or 64-28	20.0	20.0	20.0
	64-34	30.0	35.0	40.0
70-28 ²	64-28 or 58-28	20.0	20.0	20.0
	64-34 or 58-34	30.0	35.0	40.0
64-28 ²	58-28	20.0	20.0	20.0
	58-34	30.0	35.0	40.0
WMA ³				
76-22 ²	70-22 or 64-22	30.0	35.0	40.0
70-22 ²	64-22 or 58-28	30.0	35.0	40.0
64-22 ⁴	58-28	30.0	35.0	40.0
76-28 ²	70-28 or 64-28	30.0	35.0	40.0
70-28 ²	64-28 or 58-28	30.0	35.0	40.0
64-28 ⁴	58-28	30.0	35.0	40.0

1. Combined recycled binder from RAP and RAS.
2. Use no more than 20.0% recycled binder when using this originally specified PG binder.
3. WMA as defined in Section 340.2.6.2., "Warm Mix Asphalt (WMA)."
4. When used with WMA, this originally specified PG binder is allowed for use at the maximum recycled binder ratios shown in this table.

3. EQUIPMENT

Provide required or necessary equipment in accordance with Item 320, "Equipment for Asphalt Concrete Pavement."

4. CONSTRUCTION

Produce, haul, place, and compact the specified paving mixture. In addition to tests required by the specification, Contractors may perform other QC tests as deemed necessary. At any time during the project, the Engineer may perform production and placement tests as deemed necessary in accordance with Item 5, "Control of the Work." Schedule and participate in a pre-paving meeting with the Engineer on or before the first day of paving unless otherwise directed.

- 4.1. **Certification.** Personnel certified by the Department-approved hot-mix asphalt certification program must conduct all mixture designs, sampling, and testing in accordance with Table 6. Supply the Engineer with a list of certified personnel and copies of their current certificates before beginning production and when personnel changes are made. Provide a mixture design developed and signed by a Level 2 certified specialist.

Table 6
Test Methods, Test Responsibility, and Minimum Certification Levels

Test Description	Test Method	Contractor	Engineer	Level ¹
1. Aggregate and Recycled Material Testing				
Sampling	Tex-221-F	✓	✓	1A
Dry sieve	Tex-200-F , Part I	✓	✓	1A
Washed sieve	Tex-200-F , Part II	✓	✓	1A
Deleterious material	Tex-217-F , Parts I & III	✓	✓	1A
Decantation	Tex-217-F , Part II	✓	✓	1A
Los Angeles abrasion	Tex-410-A		✓	TxDOT
Magnesium sulfate soundness	Tex-411-A		✓	TxDOT
Micro-Deval abrasion	Tex-461-A		✓	2
Crushed face count	Tex-460-A	✓	✓	2
Flat and elongated particles	Tex-280-F	✓	✓	2
Linear shrinkage	Tex-107-E	✓	✓	2
Sand equivalent	Tex-203-F	✓	✓	2
Organic impurities	Tex-408-A	✓	✓	2
2. Asphalt Binder & Tack Coat Sampling				
Asphalt binder sampling	Tex-500-C , Part II	✓	✓	1A/1B
Tack coat sampling	Tex-500-C , Part III	✓	✓	1A/1B
3. Mix Design & Verification				
Design and JMF changes	Tex-204-F	✓	✓	2
Mixing	Tex-205-F	✓	✓	2
Molding (TGC)	Tex-206-F	✓	✓	1A
Molding (SGC)	Tex-241-F	✓	✓	1A
Laboratory-molded density	Tex-207-F	✓	✓	1A
VMA ² (calculation only)	Tex-204-F	✓	✓	2
Rice gravity	Tex-227-F	✓	✓	1A
Ignition oven correction factors ³	Tex-236-F	✓	✓	2
Indirect tensile strength	Tex-226-F	✓	✓	2
Hamburg Wheel test	Tex-242-F	✓	✓	2
Boil test	Tex-530-C	✓	✓	1A
4. Production Testing				
Mixture sampling	Tex-222-F	✓	✓	1A
Molding (TGC)	Tex-206-F		✓	1A
Molding (SGC)	Tex-241-F		✓	1A
Laboratory-molded density	Tex-207-F		✓	1A
VMA ² (calculation only)	Tex-204-F		✓	1A
Rice gravity	Tex-227-F		✓	1A
Gradation & asphalt binder content ³	Tex-236-F		✓	1A
Moisture content	Tex-212-F		✓	1A
Hamburg Wheel test	Tex-242-F		✓	2
Boil test	Tex-530-C		✓	1A
5. Placement Testing				
Trimming roadway cores	Tex-207-F	✓	✓	1A/1B
In-place air voids	Tex-207-F		✓	1A/1B
Establish rolling pattern	Tex-207-F	✓		1B
Ride quality measurement	Tex-1001-S	✓	✓	Note 4

1. Level 1A, 1B, and 2 are certification levels provided by the Hot Mix Asphalt Center certification program.

2. Voids in mineral aggregates.

3. Refer to Section 340.4.8.3., "Production Testing," for exceptions to using an ignition oven.

4. Profiler and operator are required to be certified at the Texas A&M Transportation Institute facility when Surface Test Type B is specified.

4.2.

Reporting, Testing, and Responsibilities. Use Department-provided templates to record and calculate all test data pertaining to the mixture design. The Engineer will use Department templates for any production and placement testing. Obtain the current version of the templates at <http://www.txdot.gov/inside-txdot/forms-publications/consultants-contractors/forms/site-manager.html> or from the Engineer.

The maximum allowable time for the Engineer to exchange test data with the Contractor is as given in Table 7 unless otherwise approved. The Engineer will immediately report to the Contractor any test result that requires suspension of production or placement or that fails to meet the specification requirements.

Subsequent mix placed after test results are available to the Contractor, which require suspension of operations, may be considered unauthorized work. Unauthorized work will be accepted or rejected at the discretion of the Engineer in accordance with Article 5.3., "Conformity with Plans, Specifications, and Special Provisions."

Table 7
Reporting Schedule

Description		Reported By	Reported To	To Be Reported Within
Production Testing				
Gradation	Engineer	Contractor	1 working day of completion of the test	
Asphalt binder content				
Laboratory-molded density				
VMA (calculation)				
Hamburg Wheel test				
Moisture content				
Boil test				
Binder tests				
Placement Testing				
In-place air voids	Engineer	Contractor	1 working day of completion of the test ¹	

1. 2 days are allowed if cores cannot be dried to constant weight within 1 day.

4.3. Mixture Design.

4.3.1. **Design Requirements.** The Contractor may design the mixture using a Texas Gyratory Compactor (TGC) or a Superpave Gyratory Compactor (SGC) unless otherwise shown on the plans. Use the dense-graded design procedure provided in [Tex-204-F](#). Design the mixture to meet the requirements listed in Tables 1, 2, 3, 4, 5, 8, 9, and 10.

4.3.1.1. **Target Laboratory-Molded Density When The TGC Is Used.** Design the mixture at a 96.5% target laboratory-molded density. Increase the target laboratory-molded density to 97.0% or 97.5% at the Contractor's discretion or when shown on the plans or specification.

4.3.1.2. **Design Number of Gyration (Ndesign) When The SGC Is Used.** Design the mixture at 50 gyrations (Ndesign). Use a target laboratory-molded density of 96.0% to design the mixture; however, adjustments can be made to the Ndesign value as noted in Table 9. The Ndesign level may be reduced to no less than 35 gyrations at the Contractor's discretion.

Use an approved laboratory from the Department's MPL to perform the Hamburg Wheel test in accordance with [Tex-242-F](#), and provide results with the mixture design, or provide the laboratory mixture and request that the Department perform the Hamburg Wheel test. The Engineer will be allowed 10 working days to provide the Contractor with Hamburg Wheel test results on the laboratory mixture design.

The Engineer will provide the mixture design when shown on the plans. The Contractor may submit a new mixture design at any time during the project. The Engineer will verify and approve all mixture designs (JMF1) before the Contractor can begin production.

Provide the Engineer with a mixture design report using the Department-provided template. Include the following items in the report:

- the combined aggregate gradation, source, specific gravity, and percent of each material used;
- asphalt binder content and aggregate gradation of RAP and RAS stockpiles;
- the target laboratory-molded density (or Ndesign level when using the SGC);
- results of all applicable tests;

- the mixing and molding temperatures;
- the signature of the Level 2 person or persons that performed the design;
- the date the mixture design was performed; and
- a unique identification number for the mixture design.

Table 8
Master Gradation Limits (% Passing by Weight or Volume) and VMA Requirements

Sieve Size	A Coarse Base	B Fine Base	C Coarse Surface	D Fine Surface	F Fine Mixture
2"	100.0 ¹	—	—	—	—
1-1/2"	98.0–100.0	100.0 ¹	—	—	—
1"	78.0–94.0	98.0–100.0	100.0 ¹	—	—
3/4"	64.0–85.0	84.0–98.0	95.0–100.0	100.0 ¹	—
1/2"	50.0–70.0	—	—	98.0–100.0	100.0 ¹
3/8"	—	60.0–80.0	70.0–85.0	85.0–100.0	98.0–100.0
#4	30.0–50.0	40.0–60.0	43.0–63.0	50.0–70.0	70.0–90.0
#8	22.0–36.0	29.0–43.0	32.0–44.0	35.0–46.0	38.0–48.0
#30	8.0–23.0	13.0–28.0	14.0–28.0	15.0–29.0	12.0–27.0
#50	3.0–19.0	6.0–20.0	7.0–21.0	7.0–20.0	6.0–19.0
#200	2.0–7.0	2.0–7.0	2.0–7.0	2.0–7.0	2.0–7.0
Design VMA, % Minimum					
—	12.0	13.0	14.0	15.0	16.0
Production (Plant-Produced) VMA, % Minimum					
—	11.5	12.5	13.5	14.5	15.5

1. Defined as maximum sieve size. No tolerance allowed.

Table 9
Laboratory Mixture Design Properties

Mixture Property	Test Method	Requirement
Target laboratory-molded density, % (TGC)	Tex-207-F	96.5 ¹
Design gyrations (Ndesign for SGC)	Tex-241-F	50 ²
Indirect tensile strength (dry), psi	Tex-226-F	85–200 ³
Boil test ⁴	Tex-530-C	—

- Increase to 97.0% or 97.5% at the Contractor's discretion or when shown on the plans or specification.
- Adjust within a range of 35–100 gyrations when shown on the plans or specification or when mutually agreed between the Engineer and Contractor.
- The Engineer may allow the IDT strength to exceed 200 psi if the corresponding Hamburg Wheel rut depth is greater than 3.0 mm and less than 12.5 mm.
- Used to establish baseline for comparison to production results. May be waived when approved.

Table 10
Hamburg Wheel Test Requirements

High-Temperature Binder Grade	Test Method	Minimum # of Passes @ 12.5 mm ¹ Rut Depth, Tested @ 50°C
PG 64 or lower	Tex-242-F	10,000 ²
PG 70		15,000 ³
PG 76 or higher		20,000

- When the rut depth at the required minimum number of passes is less than 3 mm, the Engineer may require the Contractor to increase the target laboratory-molded density (TGC) by 0.5% to no more than 97.5% or lower the Ndesign level (SGC) to no less than 35 gyrations.
- May be decreased to no less than 5,000 passes when shown on the plans.
- May be decreased to no less than 10,000 passes when shown on the plans.

4.3.2.

Job-Mix Formula Approval. The job-mix formula (JMF) is the combined aggregate gradation, target laboratory-molded density (or Ndesign level), and target asphalt percentage used to establish target values for hot-mix production. JMF1 is the original laboratory mixture design used to produce the trial batch. When

WMA is used, JMF1 may be designed and submitted to the Engineer without including the WMA additive. When WMA is used, document the additive or process used and recommended rate on the JMF1 submittal. Furnish a mix design report (JMF1) with representative samples of all component materials and request approval to produce the trial batch. Provide approximately 10,000 g of the design mixture and request that the Department perform the Hamburg Wheel test if opting to have the Department perform the test. The Engineer will verify JMF1 based on plant-produced mixture from the trial batch unless otherwise determined. The Engineer may accept an existing mixture design previously used on a Department project and may waive the trial batch to verify JMF1. Provide split samples of the mixtures and blank samples used to determine the ignition oven correction factors. The Engineer will determine the aggregate and asphalt correction factors from the ignition oven used for production testing in accordance with [Tex-236-F](#).

The Engineer will use a TGC calibrated in accordance with [Tex-914-K](#) in molding production samples. Provide an SGC at the Engineer's field laboratory for use in molding production samples if the SGC is used to design the mix.

The Engineer may perform [Tex-530-C](#) and retain the tested sample for comparison purposes during production. The Engineer may waive the requirement for the boil test.

4.3.3. **JMF Adjustments.** If JMF adjustments are necessary to achieve the specified requirements, the adjusted JMF must:

- be provided to the Engineer in writing before the start of a new lot;
- be numbered in sequence to the previous JMF;
- meet the mixture requirements in Table 4 and Table 5;
- meet the master gradation limits shown in Table 8; and
- be within the operational tolerances of the current JMF listed in Table 11.

The Engineer may adjust the asphalt binder content to maintain desirable laboratory density near the optimum value while achieving other mix requirements.

Table 11
Operational Tolerances

Description	Test Method	Allowable Difference Between Trial Batch and JMF1 Target	Allowable Difference from Current JMF Target
Individual % retained for #8 sieve and larger	Tex-200-F or Tex-236-F	Must be within master grading limits in Table 8	$\pm 5.0^{1,2}$
Individual % retained for sieves smaller than #8 and larger than #200			$\pm 3.0^{1,2}$
% passing the #200 sieve			$\pm 2.0^{1,2}$
Asphalt binder content, %	Tex-236-F	± 0.5	$\pm 0.3^2$
Laboratory-molded density, %	Tex-207-F	± 1.0	± 1.0
VMA, %, min	Tex-204-F	Note 3	Note 3

1. When within these tolerances, mixture production gradations may fall outside the master grading limits; however, the % passing the #200 will be considered out of tolerance when outside the master grading limits.
2. Only applies to mixture produced for Lot 1 and higher.
3. Mixture is required to meet Table 8 requirements.

4.4. **Production Operations.** Perform a new trial batch when the plant or plant location is changed. Take corrective action and receive approval to proceed after any production suspension for noncompliance to the specification. Submit a new mix design and perform a new trial batch when the asphalt binder content of:

- any RAP stockpile used in the mix is more than 0.5% higher than the value shown on the mixture design report; or
- RAS stockpile used in the mix is more than 2.0% higher than the value shown on the mixture design report.

4.4.1. **Storage and Heating of Materials.** Do not heat the asphalt binder above the temperatures specified in Item 300, "Asphalts, Oils, and Emulsions," or outside the manufacturer's recommended values. Provide the Engineer with daily records of asphalt binder and hot-mix asphalt discharge temperatures (in legible and discernible increments) in accordance with Item 320, "Equipment for Asphalt Concrete Pavement," unless

otherwise directed. Do not store mixture for a period long enough to affect the quality of the mixture, nor in any case longer than 12 hr. unless otherwise approved.

- 4.4.2. **Mixing and Discharge of Materials.** Notify the Engineer of the target discharge temperature and produce the mixture within 25°F of the target. Monitor the temperature of the material in the truck before shipping to ensure that it does not exceed 350°F (or 275°F for WMA) and is not lower than 215°F. The Department will not pay for or allow placement of any mixture produced above 350°F.

Produce WMA within the target discharge temperature range of 215°F and 275°F when WMA is required. Take corrective action any time the discharge temperature of the WMA exceeds the target discharge range. The Engineer may suspend production operations if the Contractor's corrective action is not successful at controlling the production temperature within the target discharge range. Note that when WMA is produced, it may be necessary to adjust burners to ensure complete combustion such that no burner fuel residue remains in the mixture.

Control the mixing time and temperature so that substantially all moisture is removed from the mixture before discharging from the plant. The Engineer may determine the moisture content by oven-drying in accordance with [Tex-212-F](#), Part II, and verify that the mixture contains no more than 0.2% of moisture by weight. The Engineer will obtain the sample immediately after discharging the mixture into the truck, and will perform the test promptly.

- 4.5. **Hauling Operations.** Clean all truck beds before use to ensure that mixture is not contaminated. Use a release agent shown on the Department's MPL to coat the inside bed of the truck when necessary.

Use equipment for hauling as defined in Section 340.4.6.3.2., "Hauling Equipment." Use other hauling equipment only when allowed.

- 4.6. **Placement Operations.** Collect haul tickets from each load of mixture delivered to the project and provide the Department's copy to the Engineer approximately every hour, or as directed. Use a hand-held thermal camera or infrared thermometer to measure and record the internal temperature of the mixture as discharged from the truck or Material Transfer Device (MTD) before or as the mix enters the paver and an approximate station number or GPS coordinates on each ticket unless otherwise directed. Calculate the daily yield and cumulative yield for the specified lift and provide to the Engineer at the end of paving operations for each day unless otherwise directed. The Engineer may suspend production if the Contractor fails to produce and provide haul tickets and yield calculations by the end of paving operations for each day.

Prepare the surface by removing raised pavement markers and objectionable material such as moisture, dirt, sand, leaves, and other loose impediments from the surface before placing mixture. Remove vegetation from pavement edges. Place the mixture to meet the typical section requirements and produce a smooth, finished surface with a uniform appearance and texture. Offset longitudinal joints of successive courses of hot-mix by at least 6 in. Place mixture so that longitudinal joints on the surface course coincide with lane lines, or as directed. Ensure that all finished surfaces will drain properly.

Place the mixture at the rate or thickness shown on the plans. The Engineer will use the guidelines in Table 12 to determine the compacted lift thickness of each layer when multiple lifts are required. The thickness determined is based on the rate of 110 lb./sq. yd. for each inch of pavement unless otherwise shown on the plans.

Table 12
Compacted Lift Thickness and Required Core Height

Mixture Type	Compacted Lift Thickness Guidelines		Minimum Untrimmed Core Height (in.) Eligible for Testing
	Minimum (in.)	Maximum (in.)	
A	3.00	6.00	2.00
B	2.50	5.00	1.75
C	2.00	4.00	1.50
D	1.50	3.00	1.25
F	1.25	2.50	1.25

4.6.1. **Weather Conditions.** Place mixture when the roadway surface temperature is at or above 60°F unless otherwise approved. Measure the roadway surface temperature with a hand-held thermal camera or infrared thermometer. The Engineer may allow mixture placement to begin before the roadway surface reaches the required temperature if conditions are such that the roadway surface will reach the required temperature within 2 hr. of beginning placement operations. Place mixtures only when weather conditions and moisture conditions of the roadway surface are suitable as determined by the Engineer. The Engineer may restrict the Contractor from paving if the ambient temperature is likely to drop below 32°F within 12 hr. of paving.

4.6.2. **Tack Coat.** Clean the surface before placing the tack coat. The Engineer will set the rate between 0.04 and 0.10 gal. of residual asphalt per square yard of surface area. Apply a uniform tack coat at the specified rate unless otherwise directed. Apply the tack coat in a uniform manner to avoid streaks and other irregular patterns. Apply a thin, uniform tack coat to all contact surfaces of curbs, structures, and all joints. Allow adequate time for emulsion to break completely before placing any material. Prevent splattering of tack coat when placed adjacent to curb, gutter, and structures. Roll the tack coat with a pneumatic-tire roller to remove streaks and other irregular patterns when directed.

4.6.3. **Lay-Down Operations.**

4.6.3.1. **Windrow Operations.** Operate windrow pickup equipment so that when hot-mix is placed in windrows substantially all the mixture deposited on the roadbed is picked up and loaded into the paver.

4.6.3.2. **Hauling Equipment.** Use belly dumps, live bottom, or end dump trucks to haul and transfer mixture; however, with exception of paving miscellaneous areas, end dump trucks are only allowed when used in conjunction with an MTD with remixing capability unless otherwise allowed.

4.6.3.3. **Screed Heaters.** Turn off screed heaters, to prevent overheating of the mat, if the paver stops for more than 5 min.

4.7. **Compaction.** Compact the pavement uniformly to contain between 3.8% and 8.5% in-place air voids.

Furnish the type, size, and number of rollers required for compaction as approved. Use a pneumatic-tire roller to seal the surface unless excessive pickup of fines occurs. Use additional rollers as required to remove any roller marks. Use only water or an approved release agent on rollers, tamps, and other compaction equipment unless otherwise directed.

Use the control strip method shown in [Tex-207-F](#), Part IV, on the first day of production to establish the rolling pattern that will produce the desired in-place air voids unless otherwise directed.

Use tamps to thoroughly compact the edges of the pavement along curbs, headers, and similar structures and in locations that will not allow thorough compaction with rollers. The Engineer may require rolling with a trench roller on widened areas, in trenches, and in other limited areas.

Complete all compaction operations before the pavement temperature drops below 160°F unless otherwise allowed. The Engineer may allow compaction with a light finish roller operated in static mode for pavement temperatures below 160°F.

Allow the compacted pavement to cool to 160°F or lower before opening to traffic unless otherwise directed. Sprinkle the finished mat with water or limewater, when directed, to expedite opening the roadway to traffic.

4.8. **Production Acceptance.**

4.8.1. **Production Lot.** Each day of production is defined as a production lot. Lots will be sequentially numbered and correspond to each new day of production. Note that lots are not subdivided into sublots for this specification.

4.8.2. **Production Sampling.**

4.8.2.1. **Mixture Sampling.** The Engineer may obtain mixture samples in accordance with [Tex-222-F](#) at any time during production.

4.8.2.2. **Asphalt Binder Sampling.** The Engineer may obtain or require the Contractor to obtain 1 qt. samples of the asphalt binder at any time during production from a port located immediately upstream from the mixing drum or pug mill in accordance with [Tex-500-C](#), Part II. The Engineer may test any of the asphalt binder samples to verify compliance with Item 300, "Asphalts, Oils, and Emulsions."

4.8.3. **Production Testing.** The Engineer will test at the frequency listed in the Department's *Guide Schedule of Sampling and Testing* and this specification. The Engineer may suspend production if production tests do not meet specifications or are not within operational tolerances listed in Table 11. Take immediate corrective action if the Engineer's laboratory-molded density on any sample is less than 95.0% or greater than 98.0%, to bring the mixture within these tolerances. The Engineer may suspend operations if the Contractor's corrective actions do not produce acceptable results. The Engineer will allow production to resume when the proposed corrective action is likely to yield acceptable results.

The Engineer may use alternate methods for determining the asphalt binder content and aggregate gradation if the aggregate mineralogy is such that [Tex-236-F](#) does not yield reliable results. Use the applicable test procedure if an alternate test method is selected.

Table 13
Production and Placement Testing

Description	Test Method
Individual % retained for #8 sieve and larger	Tex-200-F or Tex-236-F
Individual % retained for sieves smaller than #8 and larger than #200	
% passing the #200 sieve	
Laboratory-molded density	Tex-207-F
Laboratory-molded bulk specific gravity	
In-Place air voids	
VMA	Tex-204-F
Moisture content	Tex-212-F , Part II
Theoretical maximum specific (Rice) gravity	Tex-227-F
Asphalt binder content	Tex-236-F
Hamburg Wheel test	Tex-242-F
Recycled Asphalt Shingles (RAS) ¹	Tex-217-F , Part III
Asphalt binder sampling and testing	Tex-500-C
Tack coat sampling and testing	Tex-500-C , Part III
Boil test	Tex-530-C

1. Testing performed by the Construction Division or designated laboratory.

4.8.3.1. **voids in Mineral Aggregates (VMA).** The Engineer may determine the VMA for any production lot. Take immediate corrective action if the VMA value for any lot is less than the minimum VMA requirement for production listed in Table 8. Suspend production and shipment of the mixture if the Engineer's VMA result is more than 0.5% below the minimum VMA requirement for production listed in Table 8. In addition to suspending production, the Engineer may require removal and replacement or may allow the lot to be left in place without payment.

- 4.8.3.2. **Hamburg Wheel Test.** The Engineer may perform a Hamburg Wheel test at any time during production, including when the boil test indicates a change in quality from the materials submitted for JMF1. In addition to testing production samples, the Engineer may obtain cores and perform Hamburg Wheel tests on any areas of the roadway where rutting is observed. Suspend production until further Hamburg Wheel tests meet the specified values when the production or core samples fail the Hamburg Wheel test criteria in Table 10. Core samples, if taken, will be obtained from the center of the finished mat or other areas excluding the vehicle wheel paths. The Engineer may require up to the entire lot of any mixture failing the Hamburg Wheel test to be removed and replaced at the Contractor's expense.

If the Department's or Department-approved laboratory's Hamburg Wheel test results in a "remove and replace" condition, the Contractor may request that the Department confirm the results by re-testing the failing material. The Construction Division will perform the Hamburg Wheel tests and determine the final disposition of the material in question based on the Department's test results.

- 4.8.4. **Individual Loads of Hot-Mix.** The Engineer can reject individual truckloads of hot-mix. When a load of hot-mix is rejected for reasons other than temperature, contamination, or excessive uncoated particles, the Contractor may request that the rejected load be tested. Make this request within 4 hr. of rejection. The Engineer will sample and test the mixture. If test results are within the operational tolerances shown in Table 11, payment will be made for the load. If test results are not within operational tolerances, no payment will be made for the load.

4.9. **Placement Acceptance.**

- 4.9.1. **Placement Lot.** A placement lot is defined as the area placed during a production lot (one day's production). Placement lot numbers will correspond with production lot numbers.

- 4.9.2. **Miscellaneous Areas.** Miscellaneous areas include areas that typically involve significant handwork or discontinuous paving operations, such as temporary detours, driveways, mailbox turnouts, crossovers, gores, spot level-up areas, and other similar areas. Miscellaneous areas also include level-ups and thin overlays when the layer thickness specified on the plans is less than the minimum untrimmed core height eligible for testing shown in Table 12. The specified layer thickness is based on the rate of 110 lb./sq. yd. for each inch of pavement unless another rate is shown on the plans. Compact miscellaneous areas in accordance with Section 340.4.7., "Compaction." Miscellaneous areas are not subject to in-place air void determination except for temporary detours when shown on the plans.

- 4.9.3. **Placement Sampling.** Provide the equipment and means to obtain and trim roadway cores on site. On site is defined as in close proximity to where the cores are taken. Obtain the cores within one working day of the time the placement lot is completed unless otherwise approved. Obtain two 6-in. diameter cores side-by-side at each location selected by the Engineer for in-place air void determination unless otherwise shown on the plans. For Type D and Type F mixtures, 4-in. diameter cores are allowed. Mark the cores for identification, measure and record the untrimmed core height, and provide the information to the Engineer. The Engineer will witness the coring operation and measurement of the core thickness.

Visually inspect each core and verify that the current paving layer is bonded to the underlying layer. Take corrective action if an adequate bond does not exist between the current and underlying layer to ensure that an adequate bond will be achieved during subsequent placement operations.

Trim the cores immediately after obtaining the cores from the roadway in accordance with [Tex-207-F](#) if the core heights meet the minimum untrimmed value listed in Table 12. Trim the cores on site in the presence of the Engineer. Use a permanent marker or paint pen to record the date and lot number on each core as well as the designation as Core A or B. The Engineer may require additional information to be marked on the core and may choose to sign or initial the core. The Engineer will take custody of the cores immediately after they are trimmed and will retain custody of the cores until the Department's testing is completed. Before turning the trimmed cores over to the Engineer, the Contractor may wrap the trimmed cores or secure them in a manner that will reduce the risk of possible damage occurring during transport by the Engineer. After testing, the Engineer will return the cores to the Contractor.

The Engineer may have the cores transported back to the Department's laboratory at the HMA plant via the Contractor's haul truck or other designated vehicle. In such cases where the cores will be out of the Engineer's possession during transport, the Engineer will use Department-provided security bags and the Roadway Core Custody protocol located at <http://www.txdot.gov/business/specifications.htm> to provide a secure means and process that protects the integrity of the cores during transport.

Instead of the Contractor trimming the cores on site immediately after coring, the Engineer and the Contractor may mutually agree to have the trimming operations performed at an alternate location such as a field laboratory or other similar location. In such cases, the Engineer will take possession of the cores immediately after they are obtained from the roadway and will retain custody of the cores until testing is completed. Either the Department or Contractor representative may perform trimming of the cores. The Engineer will witness all trimming operations in cases where the Contractor representative performs the trimming operation.

Dry the core holes and tack the sides and bottom immediately after obtaining the cores. Fill the hole with the same type of mixture and properly compact the mixture. Repair core holes with other methods when approved.

4.9.4. **Placement Testing.** The Engineer may measure in-place air voids at any time during the project to verify specification compliance.

4.9.4.1. **In-Place Air Voids.** The Engineer will measure in-place air voids in accordance with [Tex-207-F](#) and [Tex-227-F](#). Cores not meeting the height requirements in Table 12 will not be tested. Before drying to a constant weight, cores may be pre-dried using a Corelok or similar vacuum device to remove excess moisture. The Engineer will use the corresponding theoretical maximum specific gravity to determine the air void content of each core. The Engineer will use the average air void content of the 2 cores to determine the in-place air voids at the selected location.

The Engineer will use the vacuum method to seal the core if required by [Tex-207-F](#). The Engineer will use the test results from the unsealed core if the sealed core yields a higher specific gravity than the unsealed core. After determining the in-place air void content, the Engineer will return the cores and provide test results to the Contractor.

Take immediate corrective action when the in-place air voids exceed the range of 3.8% and 8.5% to bring the operation within these tolerances. The Engineer may suspend operations or require removal and replacement if the in-place air voids are less than 2.7% or greater than 9.9%. The Engineer will allow paving to resume when the proposed corrective action is likely to yield between 3.8% and 8.5% in-place air voids. Areas defined in Section 340.9.2., "Miscellaneous Areas," are not subject to in-place air void determination.

4.9.5. **Irregularities.** Identify and correct irregularities including segregation, rutting, raveling, flushing, fat spots, mat slippage, irregular color, irregular texture, roller marks, tears, gouges, streaks, uncoated aggregate particles, or broken aggregate particles. The Engineer may also identify irregularities, and in such cases, the Engineer will promptly notify the Contractor. If the Engineer determines that the irregularity will adversely affect pavement performance, the Engineer may require the Contractor to remove and replace (at the Contractor's expense) areas of the pavement that contain irregularities and areas where the mixture does not bond to the existing pavement. If irregularities are detected, the Engineer may require the Contractor to immediately suspend operations or may allow the Contractor to continue operations for no more than one day while the Contractor is taking appropriate corrective action.

4.9.6. **Ride Quality.** Use Surface Test Type A to evaluate ride quality in accordance with Item 585, "Ride Quality for Pavement Surfaces," unless otherwise shown on the plans.

5. MEASUREMENT

Hot mix will be measured by the ton of composite hot-mix, which includes asphalt, aggregate, and additives. Measure the weight on scales in accordance with Item 520, "Weighing and Measuring Equipment."

6. PAYMENT

The work performed and materials furnished in accordance with this Item and measured as provided under Article 340.5., "Measurement," will be paid for at the unit bid price for "Dense Graded Hot-Mix Asphalt (SQ)" of the mixture type, SAC, and binder specified. These prices are full compensation for surface preparation, materials including tack coat, placement, equipment, labor, tools, and incidentals.

Trial batches will not be paid for unless they are included in pavement work approved by the Department.

Payment adjustment for ride quality, if applicable, will be determined in accordance with Item 585, "Ride Quality for Pavement Surfaces."