

CONTRACT DOCUMENTS AND SPECIFICATIONS  
FOR

**WEBB CHAPEL ROAD  
WATER AND WASTEWATER IMPROVEMENTS  
PHASE 1  
BID NO. 25-24**

Prepared by  
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PROFESSIONAL ENGINEERS

DALLAS, TEXAS

Date: **JUNE 2025**

**Mayor**  
TERRY LYNNE

**City Manager**  
BEN WILLIAMSON

**Mayor Pro-Tem**  
TINA BENNETT-BURTON

**Director of Public Works**  
RAY SILVA-REYES

**Deputy Mayor Pro-Tem**  
ROGER NEAL

**City Council**  
OMAR ROMAN  
DAVID REID  
ELIZABETH VILLAFRANCA

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## **I. NOTICE TO BIDDERS**

## **NOTICE TO BIDDERS**

### **1. RECEIPT AND OPENING OF BIDS**

THE CITY OF FARMERS BRANCH, TEXAS (herein called the "Owner"), invites bids for its project, **WEBB CHAPEL WATER AND WASTEWATER IMPROVEMENTS PHASE 1**. Bids will be received by the Owner at the office of the Purchasing Agent until **2:00 PM, JULY 7, 2025** and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed and addressed to Purchasing Agent, City Hall Building, 13000 William Dodson Parkway, Farmers Branch, Texas 75234, with the word "**PROPOSAL**" and the name or description of the project as shown on the front cover of the Contract documents.

Plans, specifications and other documents may be examined or acquired electronically by Bidders through the Civcast website at <http://civcastusa.com>. Civcast is free to all Bidders to view or download plans and documents, however if the contractor requests a printed plan set, there will be a cost. Contractors are required to create an account to sign in to the website in order to access the bid documents. Civcast will alert bidders of any addendums to the projects. If there are any questions about Civcast or the Civcast website, please contact the company by phone at (281) 346-4577 or [support@civcastusa.com](mailto:support@civcastusa.com).

The Owner may consider, at Owner's option, any bid not prepared and submitted in accordance with the provision hereof as an informal bid. The Owner may waive any informality or reject any and all bids. Any bid may be withdrawn in writing prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within Ninety (90) calendar days after the actual date of the opening thereof.

### **2. PROPOSAL FORM**

Bidders shall use the proposal forms included in the documents and all blanks of which must be appropriately filled in. Proposal forms are to be left attached to documents in same manner as received by bidders. Supplemental data to be furnished shall be included in the same sealed envelope with proposal.

### **3. DELIVERY OF PROPOSAL**

It shall be the bidder's responsibility to deliver its proposal to the proper place by the time stated in the Notice to Bidders. The mere fact that a proposal was dispatched will not be considered.

### **4. QUALIFICATION OF BIDDER**

The Owner may make such investigations as it deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted, either by the bidder or from an investigation of the bidder, fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the Contract and therefore to complete the work contemplated herein. Conditional bids will not be accepted.

### **5. BID SECURITY**

Each bid must be accompanied by cashier's or certified check of the bidder, or a bid bond duly executed by the bidder as principal and having a surety thereon, a surety company approved by the Owner (refer to Section #6. Notice to Bidders), in the amount of five percent (5%) of the bid. Such cash, checks or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the Contract or, if no award has been made within ninety (90) days after the date of the opening of bids, upon demand

of the bidder at any time thereafter, so long as the bidder has not been notified of the acceptance of its bid.

## **6. SURETY BONDS**

### **(1) Contractor Surety**

With the execution and delivery of the Contract, the Contractor shall furnish and file with the Owner in the amounts herein required, the surety bonds specified hereunder, Without exception, the Owner's bond forms must be used, and exclusive venue for any lawsuit in connection with such bonds shall be specified as the county in which the Owner's principal office is located. Such surety bonds shall be in accordance with the provisions of Chapter 2253, Texas Government Code and Sections 3503.001-.005 of the Texas Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order which increases the Contract Price with or without notice to the Surety, but in no event shall a change, which reduces the Contract amount, reduce the penal amount of such bonds.

### **(2) Performance Bond**

In accordance with Chapter 2253 of the Texas Government Code, a performance bond in the amount of not less than one-hundred percent (100%) of the Contract Price conditioned upon the faithful performance of the Contract, and upon payment of all persons supplying labor or furnishing materials, for projects with a bid amount in excess of twenty-five thousand dollars (\$25,000.00), will be required upon the forms which are a part of the Contract documents.

Said performance bond shall be a good and sufficient bond in an amount not less than one-hundred percent (100%) of the Contract Price, as evidenced by the proposal tabulation, shall guarantee the full and faithful execution of the work and performance of the Contract in accordance with the plans, specifications and Contract documents, including any extensions thereof, and shall be issued for the protection of the Owner. The bond shall automatically adjust in amount due to any change orders approved by the City. The Contractor shall include in the unit bid prices, the cost of the Performance Bonds and shall pay for said bonds.

### **(3) Payment Bond**

In accordance with Chapter 2253 of the Texas Government Code, payment bonds in the amount of not less than one-hundred percent (100%) of the Contract Price conditioned upon the faithful performance of the Contract, and upon payment of all persons supplying labor or furnishing materials, for projects with a bid amount in excess of twenty-five thousand dollars (\$25,000.00), will be required upon the forms which are a part of the Contract documents.

Said payment bond shall be a good and sufficient bond in an amount not less than one-hundred percent (100%) of the approximate total amount of the Contract, as evidenced by the proposal tabulation, shall guarantee the full and proper protection of all claimants supplying labor and material in the prosecution of the work provided for in said Contract. and shall be issued for the use of each claimant. The bond shall automatically adjust in amount due to any change orders approved by the City. The Contractor shall include in the unit bid prices, the cost of the Payment Bonds and shall pay for said bonds.

### **(4) Maintenance Bond**

The Contractor, upon execution of the Contract and before beginning work, shall furnish to the City a proper Maintenance Bond in the amount of one hundred (100%) percent of the contract amount written by an approved surety company covering the guarantee and maintenance prescribed above. The period of the Maintenance Bond shall be one (1) year from the date of final acceptance of all work done under the Contract, to cover the guarantee as set forth in the Special Conditions.



The Contractor shall include in the unit bid prices, the cost of the Maintenance Bond and shall pay for said bond. Notice to the Contractor that repairs, renewals or reconstruction as required under this provision of the specifications, may be made in the form of a registered letter, signed by the Owner and addressed to the Contractor liable for the cost of expense thereof.

(5) Sureties

A surety who is in default or delinquent on any bonds or who are interested in any litigation against the Owner will not be acceptable. All bonds shall be made on forms furnished by the Owner and shall be executed by not less than one (1) corporate surety authorized to do business in the State of Texas and acceptable to the Owner. The Sureties shall be listed in the most current Federal Register Treasury List. The Contractor and Surety shall execute each bond. Each Surety shall have designated an agent resident in the Owner's jurisdictional area acceptable to the Owner to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety-ship. The Owner reserves the right to reject any and all Sureties.

(6) Additional or Substitute Bond

If at any time the Owner is or becomes dissatisfied with any Surety then upon the performance, payment bond, or maintenance bond, the Contractor shall, within five (5) days after notice from the Owner to do so, substitute an acceptable bond (or bonds), or provide an additional bond, in such form and sum and signed by such other surety or sureties as may be satisfactory to the Owner. The Contractor shall pay the premiums on such bonds without recourse to the Owner. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds shall have been furnished and accepted by the Owner.

**7. POWER OF ATTORNEY**

Attorneys in fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**8. CONTRACT EXECUTION**

Timing is of the essence in the performance of this project. That timing includes the urgency in proceeding with the execution of the Contract documents. Hence, if, within fourteen (14) calendar days after award of the Contract to the successful bidder by the City Council, the successful bidder has not provided to the City four (4) copies of the executed Contract documents and the fully executed bonds as requested herein, the City may, at its sole discretion, declare the award of the Contract null and void and upon such declaration, such award shall be null and void, and the Contract may be awarded to the next lowest most responsible bidder.

The aforementioned executed Contract documents shall include the performance bond, the payment bond, the maintenance bond and certificates of insurance.

**9. CONDITIONS OF WORK**

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of its obligation to furnish all material and labor necessary to carry out the provisions of this Contract. Insofar as possible, the Contractor in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor. Prior to submission of a proposal, bidder shall have made a thorough inspection of the site of the work and a thorough examination of the Drawings and Specifications, and shall become informed as to the nature of the work, labor conditions, and all other matters that may affect the cost and time of completion of the work. Prospective bidders shall make a careful examination of the entire site of the project and shall make such explorations as may be necessary to determine the sub-surface and/or water conditions to be

encountered; improvements and obstructions which may be encountered and especially those to be protected; disposal sites for surplus materials not designated to be salvaged; methods of providing ingress and egress to private as well as public property; methods of handling traffic during construction and maintenance of the entire project as well as any section thereof, and protection of all existing structures both above and below ground; and how the drawings fit the proposed project and especially if any discrepancies exist.

**10. ADDENDA AND INTERPRETATIONS**

No interpretation of the meaning of plans, specifications or other pre-bid documents will be made to any bidder orally. In the event of conflict between the Drawings and the Specifications, the Contractor will be deemed to have assumed the more expensive way of doing the work unless, before submitting a bid, the Contractor shall have asked for and obtained (by addendum) a decision as to which method or material is intended. Every request for such interpretation should be in writing, addressed to DIRECTOR OF PUBLIC WORKS, CITY OF FARMERS BRANCH, P.O. BOX #819010, FARMERS BRANCH, TEXAS 75381-9010 and to be given consideration, must be received at least five (5) working days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be sent via email or through Civcastusa.com to all prospective bidders and not later than two (2) days prior to the date fixed for opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve the bidder from any obligation under his bid submitted. All addenda so issued shall become part of the Contract documents.

**11. NOTICE OF SPECIAL CONDITIONS**

Attention is particularly called to those parts of the Contract documents and specifications that pertain to with the following:

Inspection & testing of materials  
Insurance requirements

Wage rates  
Stated allowances

**12. LAWS AND REGULATIONS**

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

**13. METHOD OF AWARD - LOWEST QUALIFIED BIDDER**

The submitted proposals shall be tabulated for comparison on the basis of bid prices and quantities shown in the proposal. The comparison will also be subject to corrected price totals in the event of mathematical errors. Unit prices are to be shown in both words and figures. In the event of a discrepancy, between the words and figures, the amount shown in words will govern. If at the time this Contract is to be awarded, the lowest base bid submitted by a responsible bidder does not exceed the amount of funds then estimated by the Owner as available to finance the Contract, the Contract will be awarded on the base bid (using unit prices) only. If such bid exceeds such amount, the Owner may reject all bids or may award the Contract on the base bid combined with such deductible alternates applied in numerical order in which they are listed in the Form of Bid, as produces a net amount which is within the available funds. No combined or conditional bids will be accepted.

Unless the bids seem unreasonably high, the Owner anticipates awarding the Contract promptly on the basis of the greatest advantage to the Owner, considering prices bid, ability, standing and reputation of bidder, capabilities for executing the work and such other elements as the awarding authority may deem pertinent. The Owner retains the right to waive formalities and to reject any or all bids. The information in "Contractor's Information" must be completed in its entirety and submitted to the City within twenty-four (24) hours (one working day) after the bid opening. Failure to submit the "Contractor's

Information” within twenty-four (24) hours (one working day) can cause the bid to be deemed non-responsive.

**14. OBLIGATION OF BIDDER**

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and Contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or documents shall in no way relieve the bidder from any obligation in respect of his bid.

**15. BID QUANTITIES**

The estimated quantities of the various classes of work and materials under this Contract are to be used only as a basis for estimating the probable cost of the work. It is understood and agreed that the actual amount of work to be done and material to be furnished will be based upon actual quantities.

**16. STATE AND CITY SALE TAXES**

The Contractor's attention is directed to State of Texas, Tax Code, Section 151.311. This section provides that all items used or consumed by a contractor can be purchased free of State and City sales tax if necessary and essential for the performance of the Contract and completely consumed at the job site and when the project is being performed for an agency exempt under State of Texas, Tax Code, Section 151.309.

This Contract is issued by an agency, which qualified for exemption pursuant to the provisions of State of Texas, Tax Code, Section 151.309.

**17. PRE-BID CONFERENCE**

A Pre-Bid Conference will be held for all bidders at the City of Farmers Branch, Public Works Department, on **10:00 am, June 24, 2025**. Any requests for substitute "or equal" products must be submitted in writing to The Engineer at this meeting. Therefore, although not mandatory, it is highly recommended that each entity submitting a bid have a representative at the pre-bid conference. Shop drawings, details, product data sheets or any other pertinent information to assist The Engineer in determining equivalency shall accompany the written request. **NO REQUESTS FOR PRODUCT SUBSTITUTION WILL BE CONSIDERED SUBSEQUENT TO THE PRE-BID CONFERENCE.**

## **II. CONTRACTOR INFORMATION**

*The information in “Contractor’s Information” must be completed in its entirety and submitted to the City within twenty-four (24) hours (one working day) after the bid opening. Failure to submit the “Contractor’s Information” within twenty-four (24) hours (one working day) may cause the bid to be deemed non- responsive.*

## CONTRACTOR INFORMATION

**Name of Firm:** \_\_\_\_\_

**Type of Firm:** \_\_\_\_\_ *Corporation*      \_\_\_\_\_ *Sole Proprietorship*      \_\_\_\_\_ *Other*

**PHYSICAL  
ADDRESS**

*(NOT P O BOX):*

\_\_\_\_\_

**PHONE NUMBER:** \_\_\_\_\_

**FAX:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**Names and Titles of Principals:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I.R.S. Number:** \_\_\_\_\_

## **EXPERIENCE RECORD**

**List of projects your organization has successfully completed:**

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**List of projects your organization is now engaged in completing:**

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**List of surety bonds in force on above uncompleted work:**

	\$
	\$
	\$
	\$
	\$
	\$

Note:

To demonstrate qualification to perform the work, each bidder must be prepared to submit within Five (5) working days after bid opening upon Owner's request, additional detailed written evidence such as financial data, previous experience, present commitments and disclosure of any legal action against the company.

**DATA SHEET SUBMITTAL INFORMATION**

**List of equipment owned by bidder that is in serviceable condition and available for use on this Project:**

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**Portions of work that bidder proposes to sublet in case of award of Contract, including subcontractor name, amount of work, and type:**

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**Name and qualification of the superintendent:**

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### **III. PROPOSAL & ADDENDA**



**PROPOSAL  
FOR  
Webb Chapel Water & Wastewater Improvements Phase 1**

Farmers Branch, Texas  
\_\_\_\_\_, 2025

**PROPOSAL OF** \_\_\_\_\_

**Check appropriate business entity:**

A corporation organized and existing under the laws of the State of Texas.

A corporation organized and existing under the laws of the State of \_\_\_\_\_  
(If a non-Texas Corporation, please attach a copy of the corporation's Articles of  
Incorporation)

A partnership consisting of \_\_\_\_\_.

A sole proprietorship owned by \_\_\_\_\_, an individual.

To: THE CITY OF FARMERS BRANCH, TEXAS  
P.O. BOX 819010  
FARMERS BRANCH, TEXAS 75381-9010

The undersigned bidder, pursuant to the foregoing advertisement for bids, has carefully examined this proposal, the Contract documents, special provisions, general provisions, special specifications, and the specifications and will provide all necessary labor, superintendence, machinery, equipment, tools, materials, services and other facilities and complete fully all the work as provided for in the specifications and Contract documents; and binds himself upon formal acceptance of this proposal to execute a contract and bonds, according to the prescribed forms, for performing and completing the said work within the required time.

It is understood that the following quantities of work to be done are approximate only, and are intended principally to serve as a guide in figuring out the bids. It is further understood that the quantities of work to be done and materials to be furnished may be increased or decreased as may be considered necessary, in the opinion of the Engineer, to complete the work as fully planned and contemplated, and that all quantities of work whether increased or decreased, are to be performed at the unit prices set forth below except as provided for in the specifications.

Unit prices are to be shown in both words and figures. In the event of a discrepancy, the amount shown in words will govern.

The unit prices shall include all labor, materials, equipment, overhead, profit, insurance, etc., to cover the completed work as requested.

The work proposed to be done shall be accepted when fully completed and finished in accordance with the plans and specifications, to the satisfaction of the Owner.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

The undersigned bidder hereby declares that he has visited the site of the work and has carefully examined the Contract documents and specifications pertaining to the work covered by the above bid, and he further agrees to commence work within ten (10) calendar days after the date of written notice to do so shall have been given to him, and to substantially complete the same within «**CalendarDays**» calendar days after the date of written notice to commence work has been issued.

Enclosed with this proposal is a cashier's check in the amount of \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$ \_\_\_\_\_), or a bidder's bond in the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents (\$ \_\_\_\_\_), which it is agreed shall be collected and retained by the Owner as liquidated damages in the event this proposal is accepted by the owner within Ninety (90) calendar days after the date bids are received and the undersigned bidder fails to execute the Contract and required bonds within ten (10) calendar days after the date said proposal is accepted. Otherwise said check or bond will be returned to the undersigned bidder upon demand.

In the event of the award of a Contract to the bidder, the bidder will furnish Performance and Payment Bonds for the full amount of the Contract, to secure proper compliance with the terms and provisions of the Contract, to insure and guarantee the work until final completion and acceptance, and to guarantee

payment of all lawful claims for labor performed and materials furnished in the fulfillment of the Contract.

**Receipt is acknowledged of the following addenda:**

---

---

---

Respectfully Submitted,

**Name of  
Contractor**

---

**By:**

---

Authorized Signature

Seal if bidder is a corporation

**Name:**

---

**Address:**

---

**City:**

---

**County:**

---

**State:**

---

**Tel:**

---

**Fax:**

---

#### **IV. CERTIFICATIONS AND DISCLOSURES**

**A. HOUSE BILL 793, PROHIBITION OF CONTRACTS WITH COMPANIES  
BOYCOTTING ISREAL**

**House Bill 89, Prohibition of Contracts with Companies Boycotting Israel**

I, \_\_\_\_\_ (Name of certifying official), the  
\_\_\_\_\_ (title or position of certifying official) of  
\_\_\_\_\_ (name of company), does hereby verify on  
behalf of said company to the City that said company does not Boycott Israel and will not  
Boycott Israel (as that term is defined in Texas Government Code Section 808.001, as amended)  
during the term of this contract.

\_\_\_\_\_  
Signature of Certifying Official  
Title:  
Date:

**B. SENATE BILL 252 PROHIBITION OF CONTRACTS WITH CERTAIN  
COMPANIES**

### **Senate Bill 252 Prohibition of Contracts with Certain Companies**

Senate Bill 252 amends Chapter 2252, Texas Government Code, effective September 1, 2017, by adding Subchapter F and, specifically, Tex. Govt. Code §2252.152, prohibiting cities and other governmental entities from entering into a governmental contract (defined to mean “a contract awarded by a governmental entity for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials, or equipment” and including contracts professional or consulting service subject to Texas Govt Code Ch. 2254, (the Professional Procurement Act<sup>1</sup>) with a company that is identified on a list prepared and maintained by the Texas Comptroller and that does business with Iran, Sudan, or a foreign terrorist organization.

The new law will apply to contracts for: general construction work; an improvement; any professional or other service; a public works project; purchase of supplies; purchase of materials; and for the purchase of equipment.

Exception: 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.

For purpose of the new law, “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association whose securities are publicly traded, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

A foreign terrorist organization is defined to mean an organization designated as a foreign terrorist organization by the United States secretary of state as authorized by 8 U.S.C. Section 1189.

Under the new law, the Texas Comptroller is required to prepare, maintain, and provide to each governmental entity in the state (including the City), a list of all companies known to have contracts with or provide supplies or services to a foreign terrorist organization.

Application of new requirements: The new requirements apply to a contract or purchase for which the governmental unit (including the City) first advertises or otherwise solicits bids, proposals, offers or qualifications on or after September 1, 2017. Thus, the new law does not apply to contracts for which bids, proposals, offers, or qualifications have already been solicited, even if the contract is not awarded on or after September 1, 2017.

While not required, the City may wish to consider adding to its solicitation for bids, proposals or offers a statement that the City is prohibited from entering a contract with a company that is identified on a list prepared and maintained by the Texas Comptroller and that does business with Iran, Sudan, or a foreign terrorist organization. The City will of course need to monitor the Comptroller list before award of such contracts to be sure that the bidder is not on the most recent version of the list.



**C. CONFLICT OF INTEREST QUESTIONNAIRE (CIQ)**

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

**FORM CIQ**

<p><b>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</b></p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>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 vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	<b>OFFICE USE ONLY</b>
<p><b>1 Name of vendor who has a business relationship with local governmental entity.</b></p>	<p>Date Received</p>
<p><b>2</b> <input type="checkbox"/> <b>Check this box if you are filing an update to a previously filed questionnaire.</b> (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 on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>	
<p><b>3 Name of local government officer about whom the information is being disclosed.</b></p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>	
<p><b>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</b></p> <p style="text-align: center;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p style="text-align: center;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</p>	
<p><b>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</b></p>	
<p><b>6</b> <input type="checkbox"/> <b>Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</b></p>	
<p><b>7</b></p> <p style="text-align: center;">_____ Signature of vendor doing business with the governmental entity</p> <p style="text-align: right;">_____ Date</p>	

**D. CERTIFICATE OF INTERESTED PARTIES (FORM 1295)**

*The qualified low bidder must electronically file Form 1295 and submit the notarized copy with certificate number to the City within seventy two (72) hours (3 working days) of the bid opening. Failure to submit the "Form 1295" within (72) hours (3 working day) may cause the bid to be deemed non- responsive.*  
Website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

# CERTIFICATE OF INTERESTED PARTIES

FORM 1295

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.

**OFFICE USE ONLY**

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 \_\_\_\_\_  
(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**

**V. TAX PAYER IDENTIFICATION NUMBER AND CERTIFICATION**

Form

**W-9**

(Rev. October 2015)

Department of the Treasury

Internal Revenue Service

Request for Taxpayer

Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the requester. Do not send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

☐ Individual/sole proprietor or single-member LLC
☐ C Corporation
☐ S Corporation
☐ Partnership
☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

☐ Other (see instructions) ►

Exempt payee code (if any) \_\_\_\_\_

Exemption from FATCA reporting code (if any) \_\_\_\_\_

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

6 City, state, and ZIP code

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Social security number

-

or

Employer identification number

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Part II

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and

3. I am a U.S. citizen or other U.S. person (defined below); and

4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here

Signature of U.S. person ►

Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

**Purpose of Form**

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

• Form 1099-DIV (dividends, including those from stocks or mutual funds)

• Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)

• Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)

• Form 1099-S (proceeds from real estate transactions)

• Form 1099-K (merchant card and third party network transactions)

• Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)

• Form 1099-C (canceled debt)

• Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.

Cat. No. 10231X

Form **W-9** (Rev. 10-2018)

## **VI. STANDARD FORM OF AGREEMENT**

CITY OF FARMERS BRANCH  
**STANDARD FORM OF AGREEMENT**  
FOR OWNER-CONTRACTOR PROJECTS

Approved as to Legal Form by  
Legal Counsel

STATE OF TEXAS }

COUNTY OF DALLAS }

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 2025, by and between THE CITY OF FARMERS BRANCH of the County of Dallas and State of Texas, acting through THE CITY MANAGER OF THE CITY OF FARMERS BRANCH, thereunto duly authorized so to do, Party of the First Part, hereinafter termed Owner, and \_\_\_\_\_, of the City of \_\_\_\_\_ County of \_\_\_\_\_ and the State of Texas, Party of the Second Part, hereinafter termed Contractor.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (Owner), and under the conditions expressed in the bond bearing even date herewith, the said Part of the Second Part (Contractor), hereby agrees with the said Party of the First Part (Owner) to commence and complete the construction of certain improvements described as follows:

**Webb Chapel Water & Wastewater Improvements Phase 1** and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefore, as prepared by **Birkhoff Hendricks & Carter LLP** herein entitled the Engineer, each of which has been identified by the Contractor and the Engineer, together with the Contractor's written proposal, the General Conditions of the Agreement, the Performance, Payment, and Maintenance Bonds hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire Contract.

**{READ THE FOLLOWING INSTRUCTIONS: THE FOLLOWING PARAGRAPH SHALL BE MODIFIED DEPENDING ON WHETHER THE BID IS PROJECT BASED ON UNIT PRICE BASED. UNIT PRICE BASED OR BIDS WITH RENEWALS SHALL STATE THE TERMS OF THE RENEWALS IN THE PARAGRAPH BELOW. DELETE THESE INSTRUCTIONS BEFORE ISSUING THE BID.}**



The Contractor hereby agrees to commence work within ten (10) calendar days after the date written notice to do so shall have been given to him, and to substantially complete the same within **One Hundred Eighty (180)** calendar days after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

**{READ THE FOLLOWING INSTRUCTIONS: THE FOLLOWING PARAGRAPH SHALL BE MODIFIED DEPENDING ON WHETHER THE BID IS PROJECT BASED ON UNIT PRICE BASED. UNIT PRICE BASED OR BIDS WITH RENEWALS SHALL STATE THE TERMS OF ANY ANNUAL COST INCREASES PER CPI OR OTHER INFLATIONARY ADJUSTMENTS IN THE PARAGRAPH BELOW. DELETE THESE INSTRUCTIONS BEFORE ISSUING THE BID.}**

The Owner agrees to pay the Contractor in current funds the price or prices shown in the proposal, attached hereto and incorporated herein as part of this Contract, such payments to be subject to the General and Special Conditions of the Contract.

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

<div>City of Farmers Branch</div> <div>Party of the First Part</div> <div>(Owner)</div>	<div></div> <div>Party of the Second Part</div> <div>(Contractor)</div>
By: _____	By: _____
Name: <div>Ben Williamson</div>	Name: _____
Title: <div>City Manager</div>	Title: _____
Attest: _____	Attest: _____
_____	Name: _____
<div>City Secretary</div>	Title: _____
_____	_____

**Approved As To Form:**

\_\_\_\_\_

City Attorney

## **VII. PERFORMANCE BOND**

**PERFORMANCE BOND**

STATE OF TEXAS }

COUNTY OF DALLAS }

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, of the City of \_\_\_\_\_ County of \_\_\_\_\_, and State of \_\_\_\_\_ as principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as surety on bonds for principals, are held and firmly bound unto CITY OF FARMERS BRANCH, TEXAS (Owner), in the penal sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner dated the \_\_\_\_ day of \_\_\_\_\_, 2025, to **Webb Chapel Water & Wastewater Improvements Phase 1** which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein. This bond shall automatically adjust in amount due to any change orders approved by the City.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said Contract agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

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

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

Surety holds a Certificate of Authority from the Department of the United States Treasury and is an acceptable surety on Federal Bonds or is an acceptable reinsurer and is in compliance with Texas Government Code, Section 2253.021, Texas Insurance Code, Sections 3503.001-.005 and any other applicable State or federal law, rule, or regulation, as amended.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_day of \_\_\_\_, 2025.

	Principal		Surety
By:		By:	
	Name:		Name:
Title:		Title:	
Address:		Address:	

The name, address and phone number of the Resident Agent of Surety is:


## **VIII. PAYMENT BOND**

**PAYMENT BOND**

STATE OF TEXAS }

COUNTY OF DALLAS }

KNOW ALL MEN BY THESE PRESENTS: That \_\_\_\_\_, of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_ as Principal, and \_\_\_\_\_ authorized under the laws of the State of Texas to act as Surety on bonds for Principals, are held and firmly bound unto City of Farmers Branch, Texas (Owner), in the penal sum of \_\_\_\_\_ Dollars (\_\_\_\_\_) of the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Contract with the Owner, dated the \_\_\_\_ day of \_\_\_\_\_, 2025, to **Webb Chapel Water & Wastewater Improvements Phase 1** which Contract is hereby referred to and made a part hereto as fully and to the same extent as if copied at length herein.

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

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

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

Surety holds a Certificate of Authority from the Department of the United States Treasury and is an acceptable surety on Federal Bonds or is an acceptable reinsurer and is in compliance with Texas Government Code, Section 2253.021, Texas Insurance Code, Sections 3503.001-.005 and any other applicable State or federal law, rule, or regulation, as amended.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

	Principal		Surety
By:	_____	By:	_____
	Name: _____		Name: _____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____

The name, address and phone number of the Resident Agent of Surety is:

_____
_____
_____

## **IX. MAINTENANCE BOND**

*Contractor shall provide a maintenance bond to the Owner for a term of one (1) year from date of Final Acceptance by the Owner. The amount of this maintenance bond shall be one hundred percent (100%) of the final Contract Price.*



**MAINTENANCE BOND**

THE STATE OF TEXAS }

COUNTY OF DALLAS }

KNOW ALL MEN BY THESE PRESENT:

That \_\_\_\_\_, hereinafter called Contractor, as Principal, and \_\_\_\_\_ as Surety, do hereby acknowledge themselves to be held and bound to pay unto the City of Farmers Branch, Texas, hereafter "the City", the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), which is one-hundred percent (100%) of said Contract amount in lawful money of the United States, for the payment of which sum well and truly to be made unto said City of Farmers Branch, Texas, and its successors, said Contractor and Surety do hereby bind themselves, their heirs, executors, administrators and assigns and successors, jointly and severally and firmly by these presents:

This obligation is conditioned, however, that whereas, said Contractor entered into a written contract on the \_\_\_\_ day of \_\_\_\_\_, 2025, with the City for the construction of **Webb Chapel Water & Wastewater Improvements Phase 1** with miscellaneous construction in the City as provided in said Contract and specifications which are expressly made a part hereof, as though written herein in full and, Whereas, in said Contract, the Contractor binds itself to use first class materials and workmanship and of such kind and quality that for a period of one (1) year from the completion and final acceptance of the improvements by the City, the said improvements shall require no repairs, the necessity for which shall be occasioned by defects in workmanship or materials and during the period of one (1) year following the date of the final acceptance of the work by the City, the Contractor binds itself to repair or reconstruct the said improvements in whole or part at any time within said period of process employed in the construction of such improvements and that it will upon receiving notice, repair or reconstruct said improvements within such period of time from the date of such notice as the Engineer of said City shall determine to be necessary for the preservation of public health, safety, or welfare. If said Contractor does not repair or reconstruct the improvements within the time period designated then the City shall be entitled to have said repairs made and charge said Contractor and/or Surety the cost of same under the terms of this maintenance bond.

Now, therefore, if said Contractor shall keep and perform its said work and keep the same in repair for the said maintenance period of one (1) year, as provided, then these presents shall be null and void, and have no further effect, but if default shall be made by said work then these presents shall have full force and effect, and the City, shall have and recover from the said Contractor and its Surety, damages in the premises as provided in plans and specifications and contract.

Provided, however, that the Contractor hereby holds harmless and indemnifies said City from any claim or liability for personal injury or property damage caused by and occurring during the performance of said maintenance and repair operation. However, there shall be no liability on the Surety for and damages resulting from fire, acts of God, accident, or careless or malicious handling.

Surety holds a Certificate of Authority from the Department of the United States Treasury and is an acceptable surety on Federal Bonds or is an acceptable reinsurer and is in compliance with Texas Government Code,

Section 2253.021, Texas Insurance Code, Sections 3503.001-.005 and any other applicable State or federal law, rule, or regulation as amended.

IN WITNESS WHEREOF, this instrument is executed this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

	<b>Principal</b>		<b>Surety</b>
By:	_____	By:	_____
	Name: _____		Name: _____
Title:	_____	Title:	_____
Address:	_____	Address:	_____
	_____		_____
	_____		_____
	_____		_____
	_____		_____

The name, address and phone number of the Resident Agent of Surety is:

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

## **X. CERTIFICATION OF INSURANCE**

**Certificate of Insurance**  
(Please Use This Form Or Approved Equal)

**To:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Owner:** \_\_\_\_\_

**Project No.:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Type of Project:** \_\_\_\_\_

**THIS IS TO CERTIFY** \_\_\_\_\_

(Name and address of insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

TYPE OF INSURANCE				
DESCRIPTION	POLICY #	EFFECTIVE	EXPIRES	LIMITS OF LIABILITY
WORKER'S COMPENSATION				
PUBLIC LIABILITY				
CONTINGENT LIABILITY				
PROPERTY DAMAGE				
BUILDER'S RISK				
AUTOMOBILE				
OTHER				

**The foregoing policies (do) (do not) cover all sub-contractors.**

**Locations Covered:** \_\_\_\_\_

**Descriptions of Operations Covered:** \_\_\_\_\_

The above referenced policies may not be changed, cancelled, or reduced in coverage without at least thirty (30) days advance written notice of such change or cancellation being given to the Owner. Where applicable local laws or regulations require more than thirty (30) days actual notice of change or cancellation to the insured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

**Name of Insurer:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

## **XI. AFFIDAVIT OF CONTRACTOR**

STATE OF TEXAS}  
COUNTY OF DALLAS}

**AFFIDAVIT OF CONTRACTOR**

I hereby certify that all bills for labor and materials due Subcontractors on the following City of Farmers Branch, Texas Project **Webb Chapel Water & Wastewater Improvements Phase 1** have been paid by the undersigned and that no outstanding bills for labor or materials exist on the above referenced Project.

**IN CONSIDERATION OF RECEIVING FINAL PAYMENT, AND UPON RECEIPT OF FINAL PAYMENT, THE UNDERSIGNED DOES HEREBY HOLD HARMLESS AND INDEMNIFY THE CITY OF FARMERS BRANCH, TEXAS, FROM ANY AND ALL LIABILITY, AND WILL REIMBURSE THE CITY OF FARMERS BRANCH, TEXAS, FOR ALL ITS COSTS, EXPENSES, COURT COSTS, REASONABLE ATTORNEYS' FEES AND DAMAGES, ON ANY SUCH CLAIMS OR LAWSUITS HEREINAFTER MADE IN CONNECTION WITH THE ABOVE PROJECT FOR ANY SUBCONTRACTOR FOR SUPPLYING OF LABOR OR MATERIALS ON SAID PROJECT.**

I sign this affidavit with full authority and knowledge of the facts contained herein.

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

**Its:**

SUBSCRIBED AND SWORN to before me by this \_\_\_\_\_ day  
of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public, State of Texas

(SEAL)

My Commission Expires:

## **XII. GENERAL CONDITIONS OF AGREEMENT**

## **GENERAL CONDITIONS OF AGREEMENT**

### **A. DEFINITION OF TERMS**

#### **1. OWNER, CONTRACTOR AND ENGINEER**

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

#### **2. CONTRACT DOCUMENTS**

The Contract Documents shall consist of the Notice to Bidders, Proposal, Standard Form of Agreement, Performance Bond, Payment Bond, Maintenance Bond, Certification of Insurance, General Conditions of Agreement, Special Conditions, Minimum Wage Rates, Construction Specifications, Construction Plans, and all modifications thereof incorporated in any of the documents before the execution of the Agreement.

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

#### **3. SUB-CONTRACTOR**

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

#### **4. WRITTEN NOTICE**

Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the entity for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.

#### **5. WORK**

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

#### **6. EXTRA WORK**

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



**7. WORKING DAY**

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

**8. CALENDAR DAY**

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

**9. SUBSTANTIALLY COMPLETED**

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

**10. FULFILLMENT OF CONTRACT**

The Contract will be considered fulfilled, save as provided in any maintenance stipulations, bond, or by law, when all the work has been completed, the final inspection made by the Engineer, and final acceptance and final payment made by the Owner.

**B. RESPONSIBILITIES OF THE ENGINEER AND THE CONTRACTOR**

**1. OWNER-ENGINEER RELATIONSHIP**

The Engineer will be the Owner's representative during construction. The duties, responsibilities and limitations of authority of the Engineer as the Owner's representative during construction are as set forth in the Contract documents and shall not be extended or limited without written consent of the Owner and Engineer. The Engineer will advise and consult with the Owner, and all of Owner's instructions to the Contractor shall be issued through the Engineer.

**2. PROFESSIONAL INSPECTION BY ENGINEER**

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

**3. PAYMENTS FOR WORK**

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

**4. INITIAL DETERMINATIONS**

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

**5. OBJECTIONS**

In the event the Engineer renders any decision which, in the opinion of either party hereto, is not in accordance with the meaning and intent of this Contract, either party may file with the Engineer within thirty (30) days his written objection to the decision, and by such action may reserve the right to submit the question so raised to arbitration as hereinafter provided.

**6. LINES AND GRADES**

The Engineer shall furnish horizontal control as shown in the plans and benchmarks as shown in the plans. The Contractor shall be responsible for all further alignment and grade staking which may be required through his construction operations based on the control points provided by the Engineer. All survey work shall be performed by a Texas registered land surveyor.

**7. CONTRACTOR'S DUTY AND SUPERINTENDENCE**

The Contractor shall give adequate attention to the faithful prosecution and completion of this Contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor.

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

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

Any review of work in progress, or any visit or observation during construction, or any clarification of plans and specifications by the Engineer, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction processes, or by other means or method, is agreed by the Contractor to be for the purpose of observing the extent and nature of the work completed or being performed, as measured against the drawings and specifications constituting the Contract, or for the purpose of enabling Contractor to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the Contractor from full and complete responsibility

for the proper performance of his work on the project, including but without limitation the propriety of means and methods of the Contractor in performing said Contract, and the adequacy of any designs, plans or facilities for accomplishing such performance. Deviation by the Contractor from plans and specifications that may have been in evidence during any such visitation or observation by the Engineer, or any of his representatives, whether called to the Contractor's attention or not shall in no way relieve Contractor from his responsibility to complete all work in accordance with said plans and specifications. The Contractor shall schedule and coordinate his work to result in a minimum interference with the work of other contractors or if the Owner and the Contractor hereunder is required to cooperate with other Contractors of the Owner in all reasonable and proper ways to avoid conflict and interference.

**8. CONTRACTOR'S UNDERSTANDING**

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

**9. CHARACTER OF WORKMEN**

The Contractor agrees to employ only orderly and competent individuals, skillful in the performance of the type of work required under this Contract, to do the work; and agrees that whenever the Engineer shall inform him in writing that any individual on the work is, in his opinion, incompetent, unfaithful or disorderly, such individual shall be discharged from the work and shall not again be employed on the work without the Engineer's written consent.

**10. NONDISCRIMINATION**

The Contractor shall not discriminate against any employee or applicant for employment because of race, gender, age, color, religion, sex, ancestry, national origin, or place of birth. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, gender, age, color, religion, sex ancestry, national origin or place of birth. This action shall include, but not be limited to, the following: employment, upgrading, demotion or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The Contractor shall, in all solicitations or advertisements for employees placed by, or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, gender, color, religion, sex, age, ancestry, national origin, or place of birth.

The Contractor shall furnish all information and reports required by the Owner, or his designee, to investigate his payrolls and personnel records which pertain to current construction contracts with the Owner, for purposes of ascertaining compliance with this Equal Employment Opportunity clause.

The Contractor shall file compliance reports with the Owner as may be required by the Owner, or his designee. Compliance reports must be filed within the time, must contain information as to the employment practices, policies, programs, and statistics of the Contractor, and must be in the form that the Owner, or his designee, prescribes. If the Contractor fails to comply with the Equal Employment Opportunity provisions of this Contract, it is agreed that, the Owner, at its option, may do either or both of the following:

1. Cancel, terminate, or suspend the Contract in whole, or in part;

2. Declare the Contractor ineligible for further contracts until he is determined to be in compliance.

**11. CONTRACTOR'S BUILDINGS**

The building of structures of housing employees, or the erection of tents or other forms of protection, will be permitted only at such places as the Engineer shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the Engineer.

**12. SANITATION**

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

**13. SHOP DRAWINGS**

The Contractor shall submit to the Engineer, with such promptness as to cause no delay in his own work or in that of any other Contractor, four (4) checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the Engineer shall pass upon them with reasonable promptness, making desired corrections. The Contractor shall make any corrections required by the Engineer, file with him two (2) corrected copies and furnish such other copies as may be needed. The Engineer's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications unless he has in writing called the Engineer's attention to such deviations at the time of submission, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules.

It shall be the Contractor's responsibility to fully and completely review all shop drawings to ascertain their effort on his ability to perform the required Contract work in accordance with the plans and specifications and within the Contract time.

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

**14. PRELIMINARY APPROVAL**

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

Any questioned work may be ordered taken up or removed for re-examination, by the Engineer, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the Contractor, otherwise the expense thus incurred shall be allowed as "Extra Work"

Under Section A.6., and shall be paid for by the Owner; provided that, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the Contractor proceed with such work without requesting prior inspection or approval he shall bear all expense of taking up, removing and replacing this work if so directed by the Engineer.

**15. DEFECTS AND THEIR REMEDIES**

All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be immediately removed and replaced at the Contractor's expense. Defective materials shall be immediately removed from the site of the work. Work done without line and grade having been given, work done beyond the lines or not in conformity with the grades shown on the drawings or as given, save as herein provided, work done without proper inspection, or any extra or unclassified work done without written authority and prior agreement in writing as to prices, shall be done at the Contractor's risk, and will be considered unauthorized, and at the option of the Owner, may not be measured and paid for, and may be ordered removed at the Contractor's expense. Upon failure of the Contractor to repair satisfactorily or to remove and replace, if so directed, rejected, unauthorized and condemned work or materials immediately after receiving notice from the Owner, the Owner will, after giving written notice to the Contractor, have the authority to cause defective work to be remedied or removed and replaced, or to cause unauthorized work to be removed and to deduct the cost thereof from any monies due or to become due the Contractor.

**16. CHANGES AND ALTERATIONS**

The Contractor further agrees that the Owner may make such changes and alterations as the Owner may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this Contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under Section E "Measurement and Payment."

If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this Contract, except as provided for unit price items under Section E "Measurement and Payment;" otherwise, such additional work shall be paid for as provided under Section A.6. "Extra Work." In case the Owner shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the Owner shall recompense the Contractor for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

**17. PROJECT MAINTENANCE**

The Contractor shall maintain and keep in good repair the improvements covered by these drawings and specifications during the life of his Contract.

During such time, he shall, at his own expense, furnish all labor, materials, tools and equipment required and shall make such repairs and renewals, or shall perform such work or reconstruction as may be made necessary by any structural or functional defect or failure, resulting from neglect, faulty workmanship or faulty materials, in any part of the work performed.

Notice to the Contractor that repairs, renewals, or reconstruction is required under this Contract, may be made in writing, signed by the Engineer and addressed to the Contractor at his address as set forth in the Contract.

In the event the Contractor fails to proceed to remedy the defects of which he has thus been notified within ten (10) days of the date of such notice, the Owner reserves the right to cause the required materials to be procured and the work to be done and to hold the Contractor liable for the cost and expense thereof and to deduct such cost from any money due the Contractor by the Owner.

**18. FINAL CLEANUP**

Upon completion of the work and before acceptance and final payment is made, the Contractor shall clean, remove rubbish and temporary structures from the site of the work, restore in an acceptable manner all property; both public and private which has been damaged during the prosecution of the work, and leave the site of the work in a neat and presentable condition throughout. Material cleaned from the site of the work and deposited on property adjacent thereto will not be considered as satisfactorily disposed of, unless approved by the Engineer. No payment will be made for this work, its cost being included in the unit prices bid.

**19. SUB-CONTRACTING**

The Contractor may utilize the services of specialty Sub-contractors on those parts of the work which, under normal contracting practices, are performed by specialty Subcontractors.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his sub-contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind Sub-contractors to the documents insofar as applicable to the work of Sub-contractors and to give the Contractor the same power as regards to terminating any subcontract that the Owner may exercise over the Contractor under any provisions of the Contract Documents.

Nothing contained in this Contract shall create any contractual relation between any Sub-contractor and the Owner.

**C. GENERAL OBLIGATIONS AND RESPONSIBILITIES**

**1. KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE**

The Engineer shall furnish the Contractor with five (5) sets of plans and Contract documents without expense to him, additional copies may be purchased from the Engineer. The Contractor shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

**2. OWNERSHIP OF DRAWINGS**

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

**3. ADEQUACY OF DESIGN**

It is understood that the Owner believes it has employed competent engineers and designers. It is, therefore, agreed that the Owner shall be responsible for the adequacy of the design, sufficiency of the Contract documents, the safety of the structure and the practicability of the operations of the completed project; provided the Contractor has complied with the requirements of the said Contract documents, all approved modifications thereof, and additions and alterations thereto approved in writing by the Owner. The burden of proof of such compliance shall be upon the Contractor to show that he has complied with the said requirements of the Contract documents, approved modifications thereof and all approved additions and alterations thereto.

**4. RIGHT OF ENTRY**

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

**5. COLLATERAL CONTRACTS**

The Owner agrees to provide by separate Contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of work, or damage said Contractor, except where such delays are specifically mentioned elsewhere in the Contract documents.

**6. DISCREPANCIES AND OMISSIONS**

It is further agreed that it is the intent of this Contract that all work must be done and all material must be furnished in accordance with the Contract Documents, and in the event of any discrepancies between the separate Contract Documents, the priority of interpretation defined under the "Contract Documents" shall govern. In the event that there is still any doubt as to the meaning and intent of any portion of the Contract, specifications or drawings, the Engineer shall define which is intended to apply to the work. In general, figured dimensions shall govern over scaled dimensions; plans shall govern over specifications; and special conditions shall govern over plans and specifications. The Contractor shall not take advantage of any apparent error or omission in the plans and specifications and the Engineer shall be permitted to make such corrections or interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications. In the event the Contractor discovers an apparent error discrepancy, he shall immediately call this to the attention of the Engineer.

**7. EQUIPMENT, MATERIALS AND CONSTRUCTION PLANT**

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

**8. DAMAGES**

In the event the Contractor is damaged in the course of the completion of the work by the act, neglect, omission, mistake or default of the Owner, or of the Engineer, or of any other Contractor employed by the Owner, upon the work, thereby causing loss to the Contractor, the Owner agrees that it will reimburse the Contractor for such loss. In the event the Owner is damaged in the course of the work by the act, negligence, omission, mistake or default of the Contractor, or should the Contractor unreasonably delay the progress of the work being done by others on the job so as to cause loss for which the Owner becomes liable, then the Contractor shall reimburse the Owner for such loss.

**9. PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC**

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

**10. PERFORMANCE, PAYMENT AND MAINTENANCE BONDS**

Unless otherwise specified, it is further agreed by the parties to this Contract that the Contractor will execute separate performance and payment bonds, each in the sum of one- hundred percent (100%) of the total Contract Price, in standard forms for this purpose, guaranteeing faithful performance of the work and the fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the Owner. The Contractor must furnish to the City a fully executed performance and payment bond to reflect an automatic adjustment in the amount of the bonds due to any change orders approved by the City. Unless otherwise approved in writing by the Owner, the Surety Company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States. Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the Contractor's proposal.

The surety Company providing the performance, Payment and Maintenance Bonds shall provide a Certificate of Authority from the United States Treasury that reflects that said Bonding Company is an acceptable surety on Federal Bonds, Department Circular 570, in compliance with Texas Government Code, Section 2253.021 and Texas Insurance Code, Sections 3503.001. The Surety Company shall also provide from the State Board of Insurance the amount of its allowed capital and surplus as of the date of the last Annual Statutory Financial Statement for a Surety or Reinsurer, and that such Surety is authorized to issue statutory Performance and Payment Bonds in the State of Texas and authorized to do business in the State of Texas.

**11. LOSSES FROM NATURAL CAUSES**

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

**12. PROTECTION OF ADJOINING PROPERTY**

The said Contractor shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. **THE CONTRACTOR AGREES TO INDEMNIFY, SAVE, AND HOLD HARMLESS THE OWNER AND ENGINEER AGAINST ANY AND ALL CLAIMS FOR DAMAGES DUE TO ANY INJURY TO ANY ADJACENT OR ADJOINING PROPERTY, ARISING OUT OF OR IN CONNECTION WITH PERFORMANCE OF THE CONTRACT; BUT ANY SUCH INDEMNITY SHALL NOT APPLY TO ANY CLAIM OF ANY KIND ARISING OUT OF THE EXISTENCE OR CHARACTER OF THE WORK.**

**13. PROTECTION AGAINST CLAIMS**

The Contractor agrees that he will indemnify and save the Owner and Engineer harmless from all claims growing out of the lawful demands of Sub-contractors, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. When so desired by the Owner, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails so to do, then the Owner may at the option of the Contractor either pay directly any unpaid bills, of which the Owner has written notice, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the Contractor shall be resumed in full,



in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligation upon the Owner by either the Contractor or his Surety.

**14. PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION**

The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letters patent or copyright by suitable legal agreement with the patentee or owner. The Contractor shall defend all suits or claims for infringement of any patent or copyright rights and shall indemnify and save the Owner and Engineer harmless from any loss on account thereof, except that the Owner shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required by the Owner; provided, however, if choice of alternate design, device, material or process is allowed to the Contractor, then Contractor shall indemnify and save Owner harmless from any loss on account thereof. If the material or process specified or required by the Owner is an infringement, the Contractor shall be responsible for such loss unless he promptly gives such information to the Owner.

**15. LAWS AND ORDINANCES**

**THE CONTRACTOR SHALL AT ALL TIMES OBSERVE AND COMPLY WITH ALL FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, AND REGULATIONS, WHICH IN ANY MANNER AFFECT THE CONTRACT OR THE WORK, AND SHALL INDEMNIFY AND SAVE HARMLESS THE OWNER AND ENGINEER AGAINST ANY AND ALL CLAIMS ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES, AND REGULATIONS, WHETHER BY THE CONTRACTOR OR ITS EMPLOYEES.** If the Contractor observes that the plans and specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Engineer, he shall bear all costs arising therefrom. In case the Owner is a body politic and corporate, the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the Owner may enter into Contract, shall be controlling, and shall be considered as part of this Contract, to the same effect as though embodied herein.

The Contractor shall comply with all applicable laws including the Occupational Safety and Health Act of 1970 (as amended), ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property to protect them from damage, injury, or loss. He shall erect and maintain, as required by existing conditions and progress of the work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. The Contractor shall conform to the Texas Manual on Uniform Traffic Control Devices for Streets and Highways, as amended.

Contractor shall at all times observe and comply with all applicable Federal labor and immigration laws with respect to performance of work relative to this Contract.

**16. ASSIGNMENT AND SUBLETTING**

The Contractor further agrees that he will retain personal control and will give his personal attention to the fulfillment of this Contract and that he will not assign by Power of Attorney, or otherwise, or sublet said Contract without the written consent of the Engineer, and that no part or feature of the work will be sublet to anyone objectionable to the Engineer or the Owner. The Contractor further agrees that the subletting of any portion or feature of the work, or materials required in performance of this Contract, shall not relieve the Contractor from his full obligations to the Owner, as provided by this Agreement.

17. **INDEMNIFICATION**

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

- (1) ARE ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OR TO INJURY TO OR THE DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND,**
- (2) IS CAUSED IN WHOLE OR IN PART BY ANY NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUB-CONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY ONE OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT IT IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER.**

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

18. **CONTRACTOR'S LIABILITY INSURANCE**

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

- (1) Workers' Compensation claims;
- (2) Claims for damages because of bodily injury, occupational sickness or disease or death of his employees, and claims insured by usual bodily injury liability coverage;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual bodily injury liability coverage; and
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

The insurance required to be furnished by Contractor and all Subcontractors and Sub-subcontractors shall be written in the form and for coverage and limits not less than the following:

- (1) **Workers' Compensation** (including occupational disease) Insurance to cover full liability under the Workers' Compensation Laws of the State of Texas with Employer's Liability coverage in limits not less than the following:

\$1,000,000.....per accident  
\$1,000,000.....per person for disease  
\$1,000,000.....for disease aggregate

THE FOLLOWING INSURANCE POLICIES MUST BE ENDORSED WITH WAIVER OF SUBROGATION ENDORSEMENT, WAIVING THE CARRIER'S RIGHT OF SUBROGATION WITH RESPECT TO OWNER AND ENGINEER.

- (2) **Comprehensive General Liability Insurance**, including, on an "occurrence" basis, insurance for Hazards of Operations, Elevators, Independent Contractors, products and Completed Operations. Contractual Liability Insurance either designating this contract or written "Blanket" designating all written agreements. Such Comprehensive General Liability and Contractual Liability Insurance must be endorsed with Broad Form Property Damage Endorsement (including Completed Operations) and afford coverage for explosion, collapse, and underground hazards. The insurance required by this clause (2) shall be in limits not less than the following:

Bodily Injury or Death Liability and Property Damage Liability  
Combined single limit of \$2,000,000 per occurrence

Personal Injury Liability  
\$2,000,000.....each occurrence  
\$2,000,000.....aggregate

- (3) **Automobile Liability Insurance** covering all owned, non-owned and hired automobiles used in connection with the Work with the following minimum limits:

Bodily Injury and Property Damage  
Combined single limit of \$1,000,000 per occurrence

- (4) **Comprehensive Catastrophe Liability (Umbrella)** indemnifying for ultimate net loss, sustained by reason of liability imposed by law or assumed under contract arising out of:

- (a) Personal Injury, including death at any time resulting therefrom, sustained by any person or persons:
- (b) Property damage for damages because of injury to or destruction of tangible property including consequential loss resulting therefrom, caused by an occurrence;
- (c) Advertising, for damages because of libel, slander, defamation, infringement of copyright, title or slogan, piracy, unfair competition, idea misappropriation or invasion of rights of privacy arising out of advertising activities. As respects Contractor, such insurance shall be in limits not less than the difference between:

- A. \$2,000,000 with respect to each occurrence for each annual period with respect to the Products Hazard; and
- B. The applicable limits of the insurance set forth in (1), (2), and (3) above.

As respects Subcontractors and Sub-subcontractors, such insurance shall be in limits not less than the difference between:

- C. \$1,000,000 with respect to each occurrence; for each annual period with respect to the Products Hazard; and

- D. The applicable limits of the insurance set forth in (1), (2) and (3) above. This insurance shall include property damage coverage for property in care, custody, or control of the insured at least to the extent such coverage is provided by the Broad Form property damage Endorsement required in (2) above.

Certain minor Subcontractors and Sub-subcontractors may have less than limits outlined above coverage, subject to Owner expressed approval. Insurance described herein shall be written in company or companies, satisfactory to Owner. If the Contractor, all Subcontractors and Sub-subcontractors fail to procure and maintain the said insurance, Owner shall have the right, but not the obligation, to procure and maintain the said insurance for and in the name of such parties and such parties shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance. Such parties will not violate or knowingly permit to be violated any conditions of insurance described herein. All such policies and any other policies of insurance which Contractor and all subcontractors and Sub-subcontractors may elect to secure and maintain to the work shall and which are in any way related to the work shall also be endorsed waiving carrier's rights of subrogation with respect to Owner.

## **19. CERTIFICATE OF INSURANCE**

Proof of insurability must be submitted to the Owner before award of Contract. Before commencing any of the work, Contractor shall file with the Owner valid Certificates of Insurance acceptable to the Owner and the Engineer. Such Certificates shall contain a provision that coverage afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to the Owner. It is agreed that the City of Farmers Branch, Texas and its officers, employees and elected officials are included as additional insured as their interest may appear.

ADDITIONALLY A WAIVER OF SUBROGATION IN FAVOR OF THE CITY OF FARMERS BRANCH AND ITS OFFICERS, EMPLOYEES AND ELECTED OFFICIALS SHALL APPLY.

The Contractor shall also file with the Owner valid Certificates of Insurance covering all Sub-contractors. The insurance carrier shall be an admitted insurance company to do business in Texas and exception shall be approved by Owner.

## **20. WORKERS' COMPENSATION**

A. Definitions:

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

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

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

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the Owner prior to being awarded the Contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the Owner showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the City:

(1) A certificate of coverage, prior to that person beginning work on the project, so the Owner will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) No later than seven (7) days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one (1) year thereafter.

G. The Contractor shall notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) Provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) Provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) Obtain from each other person with whom it Contracts, and provide to the Contractor:

- (a) A certificate of coverage, prior to the other person beginning work on the project; and
    - (b) A new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
  - (5) Retain all required certificates of coverage on file for the duration of the project and for one (1) year thereafter;
  - (6) Notify the Owner in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
  - (7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this Contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the Owner, that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner, to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from, the Owner.

#### **D. PROSECUTION AND PROGRESS**

##### **1. TIME AND ORDER OF COMPLETION**

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

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

##### **2. EXTENSION OF TIME**

Should the Contractor be delayed in the completion of the work by any act or neglect of the Owner or Engineer, or of any employee of either, or by other contractors employed by the Owner, or by changes

ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the Contractor's control, or by any cause which the Engineer shall decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the Engineer provided, however, that the Contractor shall give the Engineer prompt notice in writing of the cause of such delay.

**3. HINDRANCES AND DELAYS**

No claims shall be made by the Contractor for damages resulting from hindrances and delays from any cause (except where the work is stopped by order of the Owner) during the progress of any portion of the work embraced in this Contract. In case said work shall be stopped by the act of the Owner, then such expense as in the judgment of the Engineer is caused by such stoppage of said work shall be paid by the Owner to the Contractor.

**4. OWNER MAY STOP THE WORK**

The Owner shall have authority to suspend the work wholly or in part for such period or periods of time as he may deem necessary due to unsuitable conditions considered unfavorable for the suitable prosecution of the work; or for the failure of the Contractor to carry out instructions or to perform any provisions of the Contract. During periods of suspension, the Contractor shall properly protect the work from possible injury.

**5. OWNERS RIGHT TO DO WORK**

If the Contractor should neglect to prosecute the work properly, or fail to perform any provision of this Contract, the Owner, after seven (7) days written notice to the Contractor, may, without prejudice to any other remedy the Owner may have, make good such deficiency and may deduct the cost thereof from the payment then or thereafter due the Contractor. Any money due the Owner after such deduction shall be paid by the Contractor or his Sureties, who hereby agree to these provision.

**6. SUSPENSION BY COURT ORDER**

The Contractor shall suspend such part or parts of the work ordered by the court and will not be entitled to additional compensation by virtue of such court order. Neither will he be liable to the Owner in the event the work is suspended by such court order.

**E. MEASUREMENT AND PAYMENT**

**1. QUANTITIES AND MEASUREMENTS**

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

**2. ESTIMATED QUANTITIES**

This Contract, including the specifications, plans, and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for actual amount of such work done and the material furnished. Where payment is based on the unit price method, the Contractor agrees that he will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under this Contract and estimated quantities contemplated and contained in the

proposal; provided, however, that in case the actual quantity of any major item should become as much as twenty percent (20%) less than the estimated or contemplated quantity for such items, then either party to this Contract, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below twenty percent (20%) of the estimated quantity. A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total Contract cost, computed on the basis of the proposal quantities and the Contract unit prices. Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of this Contract, as provided under "Extra Work."

**3. PRICE OF WORK**

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

The Contractor shall obtain and pay for any and all permits and licenses required by the City, County and/or State and shall include all costs of same in the amounts of bid. Cost of royalties or patent fees in connection with any equipment item or operation employed by the Contractor shall be included in the bid price.

**4. PARTIAL PAYMENTS**

On or before the twenty-fifth (25<sup>th</sup>) day of each month, the Contractor shall prepare and submit to the Engineer for approval or modification a statement showing as completely as practicable the total value of the work done by the Contractor up to and including the twenty-fifth (25<sup>th</sup>) day of the month; said statement shall also include the value of materials delivered on the site of the work that are to be fabricated into the work. The Owner shall within thirty (30) days pay the Contractor the total amount of the Engineer's statement, less (i) five percent (5%) of the amount thereof, for Contracts with a total Contract Price of four hundred thousand dollars (\$400,000.00) or more, or (ii) ten percent (10%) for contracts with a total Contract Price of less than four hundred thousand dollars (\$400,000.00), (which shall be retained until final payment). All previous payments and all further sums that may be retained by the Owner under the terms of this Contract will also be deducted. It is understood, however, that in case the whole work is near completion and some unexpected and unusual delay occurs as the result of no fault or neglect on the part of the Contractor, the Owner may, upon written recommendation of the Engineer, pay a reasonable and equitable portion of the retained percentage to the Contractor, or the Contractor at the Owner's option, may be relieved of the obligation to fully complete the work and, thereupon, the Contractor shall receive payment of the balance due him under the contract subject only to the conditions stated under "Final Payment."

**5. USE OF COMPLETED PORTIONS**

The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Engineer may determine. The Contractor shall notify the Engineer when, in the Contractor's opinion, the Contract is "substantially completed" and when so notifying the Engineer, the Contractor shall furnish to the Engineer in writing a detailed list of unfinished work. The Engineer will review the Contractor's list of unfinished work and will add thereto such items as the Contractor has failed to include. The "substantial completion" of the structure or facility shall not excuse the Contractor from



performing all of the work undertaken, whether of a minor or major nature, and thereby completing the structure or facility in accordance with the Contract Documents.

**6. FINAL COMPLETION AND ACCEPTANCE**

Within ten (10) days after the Contractor has given the Engineer written notice that the work has been completed, the Engineer and the Owner shall inspect the work and within said time, if the work be found to be completed in accordance with the Contract Documents, the Engineer shall issue to the Owner and the Contractor his Certificate of Completion, and or to advise the Contractor in writing of the reason for non-acceptance.

**7. FINAL PAYMENT**

Upon the issuance of the Certificate of Completion, the Engineer shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Contract and shall certify same to the Owner, who shall pay to the Contractor on or after the thirtieth (30<sup>th</sup>) day, and before the thirty-fifth (35<sup>th</sup>) day, after the date of the Certificate of Completion, the balance due the Contractor under the terms of this Contract, provided he has fully performed his contractual obligations under the terms of this Contract; and said payment shall become due in any event upon said performance by the Contractor. Neither the Certificate of Completion nor the final payment, nor any provision in the Contract documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required.

**8. PAYMENTS WITHHELD**

The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate to such extent as may be necessary to protect itself from loss on account of:

- (a) Defective work not remedied.
- (b) Claims filed or reasonable evidence indicating probable filing of claims.
- (c) Failure of the Contractor to make payments properly to Sub-contractors or for material or labor.
- (d) Damage to another contractor.
- (e) Reasonable doubt that the work can be completed for the unpaid balance of the Contract amount.
- (f) Reasonable indication that the work will not be completed within the Contract time. When the above grounds are removed or the Contractor provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

**9. AFFIDAVIT OF CONTRACTOR**

Pursuant to the General Conditions of Contract, E.7, E.8, the retainage on the Contract Price will be paid to the Contractor when the Contractor submits to the Owner certification that all invoices for labor and materials due Sub-contractors are paid by the Contractor. Certification will be provided with an "Affidavit of Contractor" submitted by the Contractor on a standard form available from the Owner.

**10. DELAYED PAYMENTS**

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

**11. PAYMENT NO EVIDENCE OF PERFORMANCE**

No progress or final estimate certificate given or payment made under this Contract shall be evidence of the performance of this contract, or construed to be acceptance of defective work or improper materials, either wholly, or in part.

**F. EXTRA WORK AND CLAIMS**

**1. CHANGE ORDERS**

Without invalidating this Contract, the Owner may, at any time or from time to time, order additions, deletions or revisions to the work; such changes will be authorized by Change Order to be prepared by the Engineer for execution by the Owner and the Contractor. The Change Order shall set forth the basis for any change in Contract time which may result from the change.

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

**2. MINOR CHANGES**

The Engineer may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract Price. If the Contractor believes that any minor change or alteration authorized by the Engineer involves Extra Work and entitles him to an increase in the Contract price, the Contractor shall make written request to the Engineer for a written Field Order. In such case, the Contractor by copy of his communication to the Engineer or otherwise in writing shall advise the Owner of his request to the Engineer for a written Field Order and that the work involved may result in an increase in the Contract Price.

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

**3. EXTRA WORK**

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

- Method (A) - By agreed unit prices; or
- Method (B) - By agreed lump sum; or
- Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then the Contractor shall be paid the "actual field cost" of the work, plus fifteen percent (15%).

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the Contractor of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a rateable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen's Compensation, and all other insurance as may be required by any law or ordinance, or directed by the Owner, or by them agreed to. The Engineer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Engineer. The Engineer or Owner may also specify in writing, before the work

commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen percent (15%) of the "actual field cost" to be paid the Contractor shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost."

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

#### **4. TIME OF FILING CLAIMS**

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Engineer within thirty (30) days after the Engineer has given any directions, order or instruction to which the Contractor desires to take exception. The Engineer shall reply within thirty (30) days to such written exceptions by the Contractor and render his final decision in writing. It is further agreed that final acceptance of the work by the Owner and the acceptance by the Contractor of the final payment shall be a bar to any claims by either party, except where noted otherwise in the Contract documents.

### **G. ABANDONMENT OF CONTRACT**

#### **1. ABANDONMENT BY CONTRACTOR**

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

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

When there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such

notice, then the Owner may provide for completion of the work in either of the following elective manners:

1.1 The Owner may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as said Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said Contractor, and expense so charged shall be deducted and paid by the Owner out of such moneys as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this Contract, if the same had been completed by the Contractor, then said Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under this Contract, if the same had been completed by said Contractor, then the Contractor and/or his Surety shall pay the amount of such excess to the Owner; or

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

When the work shall have been substantially completed, the Contractor and his Surety shall be so notified and Certificates of Completion- and Acceptance, as provided in Paragraph E.6 hereinabove, shall be issued. A complete itemized statement of the Contract accounts, certified to by the Engineer as being correct, shall then be prepared and delivered to the Contractor and/or his Surety, or the Owner as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion.

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

## **2. ABANDONMENT OF OWNER**

In case the Owner shall fail to comply with the terms of this Contract, and should fail or refuse to comply with said terms within ten (10) days after written notification by the Contractor, then the Contractor may

suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment-, and all materials on the site of work that have not been included in payments to the Contractor and have not been wrought into the work. And thereupon the Engineer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the attached proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by the Contractor to carry the whole work to completion and which cannot be utilized. The Engineer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Agreement and shall certify same to the Owner who shall pay to the Contractor on or before thirty (30) days after the date of the notification by the Contractor the balance shown by said final statement as due the Contractor, under the terms of this Agreement.

**3. EFFECT OF BANKRUPTCY**

It is recognized that if the Contractor is adjudged bankrupt, or if he makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, such could impair or frustrate Contractor's performance under the agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurances of future performance in accordance with the terms and conditions hereof. Should Contractor or its successor in interest fail to comply with such request within ten (10) days of delivery thereof, Owner shall have immediate resort without notice to the rights and remedies as provided in Section G, Abandonment of Contract, or elsewhere in the Contract documents, or as provided by law. Pending receipt of such adequate assurances of future performance, Owner may provide for completion of the work in either of the manners described in Subsections G.1.1 and G.1.2.

**4. RIGHT OF OWNER TO TERMINATE CONTRACT**

The Owner may, at its option, with or without cause, terminate the performance of the work in accordance with this section, in whole, or from time to time in part, at any time by written notice thereof the Contractor, whether or not the Contractor is in default.

Upon any such termination, Contractor shall waive any claims for damages, including loss of anticipated profits, on account thereof, but as the sole right and remedy of the Contractor, the Owner shall pay Contractor in accordance with subparagraph (b) below, provided, however, that those provisions of the Contract documents which by their very nature survive final acceptance under the Contract documents shall remain in full force and effect after such termination.

- (a) Upon receipt of any such notice, the Contractor shall, unless the notice requires otherwise:
  - (1) Immediately discontinue work on the date and to the extent specified in the notice;
  - (2) Place no further order or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of work under the Contract that is not terminated;
  - (3) Promptly make every reasonable effort to obtain cancellation upon terms satisfactory to the Owner of all order and sub-contracts to the extent they relate to the performance of work terminated, or assign to the Owner those orders and sub-contracts, and revoke agreements specified in such notice; and
  - (4) Assist the Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by the Owner under the Contract.

- (b) Upon any such termination, the Owner will pay the Contractor an amount determined in accordance with the following (without duplication of any item):
- (1) All amounts due and not previously paid to the Contractor for work completed in accordance with the Contract prior to such notice, and for work thereafter completed as specified in such notice;
  - (2) The cost of settling and paying claims arising out of the termination of work under sub-contracts or orders as provided in subparagraph (a) (3) above;
  - (3) The reasonable cost incurred pursuant to subparagraph (a) (4) above;
  - (4) Any other reasonable costs incidental to such termination of work.

### **XIII. SPECIAL CONDITIONS**

## **SPECIAL CONDITIONS**

### **1. GENERAL**

The provisions of this section of the specifications shall govern in the event of any conflict between them and the General Conditions.

### **2. ENGINEER**

The "Engineer" as referred to in this Contract is to be understood as referring to the Director of Public Works, City of Farmers Branch, Texas, or such other Engineer, Supervisor or Inspector as may be authorized by said Owner to act in any particular instance. The Engineer's representative for preparation of the plans and technical specifications is Birkhoff Hendricks & Carter LLP shall be included within the meaning of "Engineer" as Birkhoff Hendricks & Carter LLP shall appear. In particular, but without limitation to other matters, Birkhoff Hendricks & Carter LLP shall be included under the indemnifications in General Conditions Sections C.12, C.13, C.14, and C.16.

### **3. CONTRACT DOCUMENTS**

All items listed are part of the Contract Documents:

- A. **Webb Chapel Water & Wastewater Improvements Phase 1** Contract Documents and Specifications.
- B. Plans for the Construction **Webb Chapel Water & Wastewater Improvements Phase 1** consisting of sheets 1 through 12 inclusive.

All modifications thereof incorporated in any of the documents.

### **4. GENERAL SPECIFICATIONS**

All work shall comply with the Standard Specifications for Public Works Construction by North Central Texas Council of Governments, Divisions 2 through 8, most recent amendments. This document may be obtained from the North Central Texas Council of Governments.

### **5. PRECONSTRUCTION CONFERENCE**

Before the construction work begins, a meeting will be arranged by the Owner wherein the Contractor and representatives of the Public Works Department will discuss procedures for the work. The Contractor will present his proposed "sequence of construction procedure" to be studied for effect on public convenience, work progress, and for approval of the engineer. The Contractor will provide a visual layout of his proposed program.

### **6. WORK ON SATURDAY, SUNDAY & HOLIDAYS**

When work must be performed on these days the Contractor must request permission to work at least forty-eight (48) hours in advance. The Contractor shall bear the entire cost of inspection (4 hour minimum) for this work with said amount to be withheld from any monies to be due or to become due to the Contractor upon completion of this Contract. Any additional costs associated with working on these days shall be borne by the Contractor.

### **7. MATERIAL STORAGE**

Materials may be stockpiled at locations approved by the Engineer. All stockpiling methods must be approved by the Owner.

The storage site shall be determined at the preconstruction meeting after the award of Contract.

Contractor shall be fully responsible for the storage site.



If necessitated, Contractor shall erect a temporary fence and store materials inside of the fenced area.

The Contractor shall maintain the storage area in a neat and orderly manner. If, in the opinion of the Engineer, the storage site becomes unsightly, the Contractor shall clean up the storage site within two (2) days of notification to do so.

At the completion of the Contract, the Contractor shall remove the temporary storage fence and all debris in the area. The Contractor shall restore the storage site to the original condition, including, if necessary, grading and turf re-establishment.

**8. SITE**

The Contractor shall limit his work to the right-of-ways, easements, or construction limits shown on the Drawings.

**9. WARNING DEVICES**

The Contractor shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law to protect persons and property while said persons or property are approaching, leaving or within the work site or any area adjacent to said work site. No separate compensation will be paid to the Contractor for the installation or maintenance of any warning devices, barricades, lights, signs or any other precautionary measures required by law for the protection of persons or property.

The Contractor shall assume all duties owned by the Owner to the general public in connection with the general public's immediate approach to and travel through the work site and the area adjacent to said work site.

Where the work is carried on, in, or adjacent to, any street, alley, sidewalk, public right-of-way or public place, the Contractor shall, at his own cost and expense, provide such flagmen and watchmen and furnish, erect and maintain such warning devices, barricades, signs, and lights, and other precautionary measures shall not cease until the project shall have been accepted by the Owner.

If the Engineer discovers that the Contractor has failed to comply with the applicable Federal and State law (by failing to furnish the necessary flagmen, warning devices, barricades, lights, signs or other precautionary measures for the protection of persons or property), the Engineer may order such additional precautionary measures, as required by law, to be taken to protect persons and property, and to be reimbursed by the Contractor for any expense incurred by the Owner, in ordering such additional precautionary measures.

In addition, the Contractor will be held responsible for all damages to the work and other public or private property due to the failure of warning devices, barricades, signs, lights, or other precautionary measures in protecting said property, and whenever evidence is found of such damage, the Owner may order the damaged portion immediately removed and replaced by, and at the cost and expense of, the Contractor. All of this work is considered incidental and shall not be separate pay items.

**10. EXISTING UTILITIES, STRUCTURES AND OTHER PROPERTY**

The Contractor's attention is directed to the necessity of taking adequate measures to protect all existing structures, improvements and utilities which may be encountered. These may include, but are not limited to the following:

a. Utilities: Including water mains and services, water meter boxes, oil and air lines, gas mains and services, sanitary sewers and service connections, storm sewers, telephone conduits, and electric conduits.

b. Street and Drives: Contractor shall at all times maintain streets and drives in a condition which will provide easy ingress and egress.

It shall be the responsibility of the Contractor to cooperate with the Owners of all utilities to locate, prior to opening trench, existing underground facilities and to notify the Engineer at once of any conflicts in grades and alignment. Every effort will be made by the Engineer to control alignment and grading to avoid conflict with existing utilities but should change in alignment and grade be necessary, such changes will be made by the Contractor at his expense and no extra payment beyond the unit prices bid will be allowed by the Owner.

Where excavation endangers adjacent structures and utilities, the Contractor shall at his own expense carefully support and protect all such structures and/or utilities so that there will be no failure due to settlement, where it is necessary to move services, poles, guy and he shall cooperate with the utility owner.

Except as indicated on the drawings that utilities are to be moved by others, any costs of temporarily or permanently relocating utilities shall be borne by the Contractor without extra compensation from the Owner. In case damage to an existing structure or utility occurs, whether failure or settlement; the Contractor shall restore the structure or utility to its original condition and position without compensation from the Owner. Before beginning work on this project the Contractor shall submit, for approval by the Engineer, a plan of construction operations outlining in detail a sequence of work to be followed, setting out the method of handling traffic.

The Contractor shall, plan his construction phasing in such a manner as to cause minimal interference with traffic during the construction operations.

The Contractor shall provide, construct and maintain barricades and signs in accordance with the "Texas Manual on Uniform Control Devices for Streets and Highways" and "Standard Highway Signs for Texas."

The Contractor shall keep travelled surfaces clean and free of debris and other materials of construction.

To facilitate shifting, barricades and signs used in lane closure or traffic staging may be erected and mounted on portable supports, the design of these being subject to the approval of the Engineer.

#### **11. LOCATE OF CITY-OWNED LINES**

The Public Works Department, Utility Division (972.919-2597), shall to be contacted to locate City-owned water lines and sanitary sewer lines. The Parks and Recreation Department (972.919-2620) shall be contacted to locate City-owned irrigation lines and electric (lighting) lines. The Public Works Department, Traffic Division (972.919-2597) shall to be contacted to locate City-owned fiber optic lines and traffic signal lines.

When the City-owned lines are located by any City department, the locates shall be considered valid up to two weeks, after which new locates shall be required. Unless the lines are physically uncovered, surface locates of City-owned lines shall be considered to be approximate. For any facilities to be constructed within 3 feet of the surface locates, additional subsurface investigation should be considered to ensure that the City-owned lines are appropriately located.

#### **12. RECORD OF EXISTING CONDITIONS**

Prior to the start of construction, the Contractor shall videotape, in DVD or VHS format, the area of construction in its entirety. The DVD or tape will be indexed with the date and time. Identifying physical structures such as street signs and house numbers shall be shown in order to identify locations. This tape

will be given to the Owner for its approval prior to the start of construction. This will become the record of existing project conditions.

**13. TESTING**

Unless specified otherwise, testing and laboratory services will be performed by independent testing agencies at the Contractor's expense.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials.

The inspections and tests made by the Owner, its inspectors or agents shall ordinarily be made without cost to the Contractor unless otherwise expressly specified in the Contract Documents. The Contractor shall furnish without additional cost to the Owner such materials for testing as may be reasonably necessary. Retesting after failure to pass tests shall be at the expense of the Contractor. Should the percentage of rejected material or equipment be unreasonably large, the additional cost of such inspection and tests resulting therefrom shall be borne by the Contractor. The Owner shall judge what warrants extra inspection and shall determine the additional cost incurred thereby and payable by the Contractor.

**14. MAINTENANCE PROVISIONS FULFILLMENT**

Prior to the expiration of the specified maintenance period provided for in the Contract, the Owner will make a detailed inspection of the project and will advise the Contractor and his Surety of the items that require correction. The Owner will make subsequent inspection and if the corrections have been properly performed, the Owner will issue a letter of release on the maintenance stipulations to the Contractor and his Surety. If, for any reason, the Contractor has not made the required corrections before the expiration of the maintenance period, the maintenance stipulations, as provided for in the Contract, shall remain in effect until the corrections have been properly performed and a letter of release issued.

**15. LIQUIDATED DAMAGES**

The Contractor agrees that time is of the essence of this Contract, and that for each day of delay beyond the number of calendar days herein agreed upon for the completion of the work herein specified and contracted for (after due allowance for such extension of time as is provided for extension of time hereinabove), the Owner may withhold permanently from the Contract's total compensation as stipulated liquidated damages for such delay, the sum indicated by the following table:

<b>AMOUNT OF CONTRACT</b>	<b>AMOUNT OF LIQUIDATED DAMAGE PER DAY</b>
Less than \$ 5,000	\$ 60.00
\$ 5,000.00 to \$ 14,999.99	\$ 80.00
\$ 15,000.00 to \$ 24,999.99	\$ 100.00
\$ 25,000.00 to \$ 49,999.99	\$ 120.00
\$ 50,000.00 to \$99,999.99	\$ 160.00
\$100,000.00 to \$1,000,000.00	\$ 240.00
More than \$1,000,000.00	\$ 500.00

The sum of money thus deducted for such delay, failure of non-completion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, since it would be impracticable and extremely difficult to fix the actual damages. No plea of ignorance of conditions that exist or may hereafter exist, or of conditions or difficulties that may be encountered in the execution of the work under this Contract, as a result of failure to make the necessary examinations and investigations, shall be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill, in every detail, all requirements of the Contract Documents, or will be accepted as a basis for any claims whatsoever for extra compensation or for an extension of time.

**16. CHANGE ORDERS**

Pursuant to Section F of the General Conditions of Contract, the City Council of the City of Farmers Branch, Texas does hereby give the City Manager the authorization to execute change orders to this Contract in an amount not to exceed fifty thousand dollars (\$50,000). Change orders to this Contract in the amount of or greater than fifty thousand dollars (\$50,000) must be authorized by the City Council of the City of Farmers Branch, Texas. Those change orders include additions and deletions.

**17. ACCESS TO PROPERTY**

To the fullest extent practicable, the Contractor shall conduct his operations and work in such a manner that necessary ingress and egress will be provided to the tenants of both residential and commercial property. During all construction operations bridges; or other means of crossing trenches, ditches, and the Contractor at his expense shall provide other excavation and all operations shall be conducted in a manner which will result in a minimum of inconvenience to tenants of property adjacent to the work.

**18. NOTIFICATION OF RESIDENTS - UTILITIES**

The Contractor shall notify in writing all residents and businesses that abut the limits of the project, forty eight (48) hours in advance of work that may cause interruption to utility service regardless of the length of interruption. The notice shall include the approximate time construction is to begin and the estimated length of the anticipated interruption. No resident shall have any utility interrupted for more than two hours in a twenty-four (24) hour period.

**19. NOTIFICATION OF RESIDENTS**

The Contractor shall notify in writing all residents and businesses that abut the street to be resurfaced or reconstructed, forty-eight (48) hours in advance of any work.

**20. SPECIAL MEETING**

Five (5) days prior to any landscaping work, the Contractor shall notify the Engineering Inspector for a special meeting. The meeting will be held with the Parks and Public Works Departments to discuss the landscaping portion of the Contract.

**21. LANDSCAPE & TREE TREATMENTS**

Where trees, plants, shrubbery, etc., are adjacent to the line of the work and are not to be removed or are to be removed and replaced, the Contractor shall protect such trees, plants, shrubbery, etc., by substantial wooden boxes or guards to be installed beyond the dripline, and shall not permit machinery or employees to scrape, tear the limbs from, damage or attach guy cables to them and if, in the opinion of the Engineer, such trees, plants, shrubbery, etc., would be damaged by machinery, etc., hand excavation may be required. The Contractor shall be responsible for all damages to adjacent trees, plants, shrubbery, etc.

Existing trees, plants, shrubbery, etc., encountered on the site, which are not indicated on the plans, shall be considered as trees to remain and shall be protected. If these trees are in conflict with construction, the Contractor shall relocate the trees to an approved location, unless otherwise directed by the Engineer, at no additional cost to the Owner.

All disturbed turf shall be reestablished to original condition prior to completion of construction. This Turf Re-establishment shall not be a separate pay item and shall be subsidiary to the entire project, unless noted otherwise.

**22. MOWING AND DEBRIS MAINTENANCE**

During construction and through to final acceptance, the Contractor, at his expense, shall be responsible for maintaining the existing turf areas within the easements and rights-of-way as shown on the plans. The Contractor shall mow these areas as often as necessary to maintain the turf areas, at a two to two and one-half inches (2" to 2 ½") maximum height. Minimum cutting height for the turf shall be one and

one-half inches (1 ½"). At no time shall weeds within the maintenance limits reach a height greater than twelve inches (12") in compliance with City Ordinance 908.

If, in the opinion of the Engineer, the site becomes unsightly, the Contractor shall mow the site within two (2) days after notification from Engineer to do so.

The Contractor at all times shall keep the construction site free from accumulation of waste materials, rubbish, debris, etc. Caused by his operations. Waste materials, rubbish, debris, etc. Shall be cleaned up daily and removed from the project site at least once a week.

No payment will be made for this work, its cost being subsidiary to the entire project.

**23. INCIDENTAL WORK**

All minor details of work which are not shown on the plans, as well as such items which are not specifically mentioned in the specifications, but are obviously necessary for the proper completion of the work, shall be considered as incidental, and as being a part of and included with the work for which prices are given in the proposal, and no extra compensation shall be allowed the Contractor for the performance thereof.

**24. DUST CONTROL**

Water Sprinkling as ordered by the Engineer to allay dust on this project will not be paid for directly but shall be considered subsidiary to the various bid items.

**25. TRADE NAMES AND ALTERNATIVES**

For convenience in designation on the plans or in the specifications, certain articles or materials to be incorporated in the work may be designated under a trade name or the name of a manufacturer and its catalogue information. The use of an alternative article or material which is of equal quality and of required characteristics for the purpose intended, will be permitted subject to the following requirements:

The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and the Contractor shall furnish all necessary information required by the engineer. The Owner shall be the sole judge as to the quality and suitability of alternative articles or materials, and the Owner's decision shall be final.

Whenever the specifications permit the substitution of a similar or equivalent material or article, no test or action relating to the approval of such substitution will be made until the request for substitution is made in writing by the Contractor, accompanied by the complete data as to the quality of the material or article proposed. Such request shall be made in accordance with the section of these documents entitled **NOTICE TO BIDDERS** item 17. **PRE-BID CONFERENCE**.

**26. SITE DRAINAGE**

The Contractor shall maintain adequate site drainage at all times. Drainage runoff will be confined to the limits of the construction project and shall not be diverted over private property. Any runoff presently traversing private property shall not be increased by cause of construction.

**27. WATER SERVICE INTERRUPTION**

Water service shall not be interrupted for any reason. The Contractor shall be responsible for maintaining adequate water service for the duration of the project.

**28. SEWER SERVICE INTERRUPTION**

Sewer service shall not be interrupted for any reason. The Contractor shall be responsible for maintaining adequate sewage removal for the duration of the project.

**29. TIME & ORDER OF COMPLETION**

The Contractor will not be authorized to work on more than one location at a time, unless he provides separate work crews and receives authorization from the Engineer. The Contractor, under this contract, shall substantially complete the work at one location before relocating to a second location.

**30. CONSTRUCTION PHASING**

A recommended procedure for construction phasing is shown in the construction plans. The Contractor shall submit to the owner for approval a schedule outlining the Contractor's construction operations at the pre-construction meeting. Start of work shall be contingent upon approved construction phasing. All work and material necessary for barricading the project will not be paid for directly, but shall be considered as subsidiary to various bid items.

**31. CONSTRUCTION SEQUENCING**

The Contractor shall submit a construction sequence plan to the Engineer in accordance with item #5 PRE-CONSTRUCTION CONFERENCE of this section. Start of work shall be contingent upon approval of the construction sequencing.

It is of utmost importance that the Contractor maintain access to the businesses by keeping at least one driveway open to each establishment at all time. Driveways that are allowed to be open cut per the plans shall be backfilled and topped with crushed rock or steel plated over at the end of each day to return the driveways to use.

The Contractor shall stage his activities to maintain access to and thru fire lanes at all times.

**32. EMBANKMENT CONSTRUCTION**

Failed slopes shall be cut back beyond the limits of the slide area with embankment construction beginning at the bottom of the slope. The slopes shall be reconstructed according to the plans and specifications section of this document. The Contractor shall slope and terrace excavated areas as necessary to maintain safe working conditions and eliminate potential additional slope failures.

**33. FILL OR EXCAVATION REQUIRED TO MAKE GRADE**

Any excavation or fill required to make grade after removing the existing concrete pavement, curbs, and drive approaches will not be a pay item. Payment for this work should be included in the concrete pavement pay item.

**34. DISPOSAL OF EXCESS SPOIL EXCAVATION**

All excess excavation not used in backfill shall be offered the right of refusal to the owner. If refused, the spoil shall be disposed of by the Contractor daily, at his own expense, outside the limits of the right of way. If accepted, the spoil shall be delivered by the Contractor, at his own expense, as directed and approved by the Engineer.

**35. OBJECTS WITHIN THE TEMPORARY CONSTRUCTION EASEMENT**

The Contractor shall not relocate, remove or otherwise damage any existing structures, fences, shrubs, plants or trees within the temporary construction easement. Should it become necessary to relocate or remove any above mentioned item, not specifically detailed on the construction plans, the Contractor shall notify the Engineer before commencing with work in that area.

**36. REMOVAL OF PARKED VEHICLES**

The Contractor shall notify, in writing, the City of Farmers Branch Police Department, 3723 Valley View Lane, forty-eight (48) hours prior to performing any work within a residential area. Any removal of vehicles, which are parked within the limits of the work area, will be the responsibility of the Police Department.

**37. REMOVAL OF PAVEMENT MARKINGS**

All pavement markings, including raised markings, will be removed prior to placement of any overlay materials. This item is considered incidental and shall not be a separate pay item. All raised pavement markers that are removed intact and in a reusable condition, will become the property of the Owner.

**38. PAVEMENT REMOVAL**

All of the existing old pavement material to be removed on this project will become the property of the Contractor and be disposed of by him outside the limits of the right-of-way at his own expense.

**39. CONCRETE REMOVAL**

All of the existing old concrete material to be removed on this project will become the property of the Contractor and be disposed of by him outside the limits of the right-of-way at his own expense.

**40. LIMITS OF PLACEMENT**

No asphaltic material or asphaltic concrete pavement shall be placed between November 1 to May 1 except by written permission of the Engineer.

**41. INSTALLATION OF UTILITY ADJUSTING RINGS**

The Contractor shall be responsible for installation of all utility adjustment rings. In the case of a standard adjusting ring assembly being of an unacceptable height, the Contractor shall be responsible for the work required to make the ring to an acceptable height.

**42. OPENING PAVEMENT TO TRAFFIC**

After concrete in any sections has obtained 3600 PSI, the Contractor shall open these sections to all traffic. On those sections of the pavement open to traffic, all joints shall be first cleaned, the pavement sealed, earth placed against the pavement edges and all other work performed as required for the safety of traffic. Such openings, however, shall in no manner relieve the contractor from his responsibility for the work.

**43. TRENCH SAFETY**

The Contractor shall install a trench safety system to provide safety for all trenches exceeding a depth of five (5) feet as per Occupational Safety and Health Administration (OSHA) requirements, Texas House Bill 1569 effective as of September 1, 1989, as amended. It shall be the responsibility of the Contractor to provide and maintain a viable trench safety system at all times during construction activities. The Contractor is directed to become knowledgeable and familiar with the standards as set forth by OSHA for trench safety that will be in effect during the period of construction of the project and the Contractor is responsible for conforming to such regulations as prescribed by OSHA standards.

The Contractor is responsible for obtaining any additional borings and soil analysis as required for determining Trench Safety and Support and accepts sole responsibility for compliance with all applicable safety requirements.

The Contractor's attention is directed to Bid Item Trench Safety and Support, under which full compensation at unit bid price will be made for all materials, equipment, and labor required to furnish, install, and remove the trench safety system.

**44. FENCING**

All areas, which have greater than a five (5) foot vertical drop, or where designated on the plans shall be protected by the Contractor installing an orange plastic safety fence (Up to 400 LF). The cost of the fence shall be subsidiary to other items of the project.

**45. OZONE ACTION DAYS**

The Owner can require the Contractor to suspend until 12:00 noon, any work activity which would contribute to the production of ozone on any day designated as an Ozone Action Day by the Texas Commission on Environmental Quality (TCEQ). Such work may include, but is not limited to, lane closures, the use of gasoline-powered engines and the use of petroleum distillates. The Contractor will be notified of any suspension of work before 3:30 p.m. on the day prior to an Ozone Action Day. The Contract shall be extended one calendar day for each Ozone Action Day in which work is suspended.

**46. BORING IN CITY R.O.W. AND EASEMENT**

All boring in City of Farmers Branch rights-of-way and easements must be performed with a steerable, traceable boring machine.

**47. PROJECT SIGN**

The Contractor shall furnish a maximum of two (2) project signs at the beginning and end of the project. The location of each sign shall be within the project limits and at the locations specified by the Engineer. The project signs must be erected within fourteen (14) calendar days of the date of the Notice to Proceed. The cost of the signs shall be included in the Contract price and not a separate pay item.

The project signs shall be constructed as shown on Exhibit "Project Sign". Stickers are available from the Public Works Department.



**48. UNFORESEEN ITEMS – BID ITEM**

An allowance is allotted to the Contractor for the purpose of adjusting and repairing Unforeseen Items during the construction of the project. These items shall not have been previously covered by any notes to be subsidiary to other items. When such items occur, City Inspector shall be informed to review said item and approval obtained from City Engineer prior to any work commencing on said work. Contractor shall submit detailed expense receipts to the City for reimbursement on approved work. Any damage to existing facilities as a result of neglect on the part of the Contractor shall be repaired by the Contractor at his expense. Payment on this bid item shall only be for work approved by the City Engineer.

**49. CONSTRUCTION MATERIAL TESTING**

It is the contractor's responsibility to hire a professional engineering company for the Construction Material Testing Services in connection with the project and it is a separate pay item under the bid proposal section.

#### **XIV. MINIMUM WAGE RATES**

### **MINIMUM WAGE SCALE**

This is a "Public Work" project, as defined in Section 2258.002 of the Texas Government Code, as amended, and as such is subject to the provisions of said Statute.

The Contractor, and each Sub-contractor, shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him in connection with the said "Public Work" project, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the Owner.

In accordance with the provisions of said Statute, the Owner ascertained that the following wage rates per hour, for each craft or type of workman or mechanic needed to execute this Contract, now prevail in the locality in which this work is to be performed. The Contractor shall pay not less than the wage rates shown (attached herein) for each craft or type of labor, workman or mechanic employed in the execution of this Contract. The Contractor shall forfeit as penalty to the City of Farmers Branch, Ten Dollars (\$10.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, such laborer, is paid less than the said stipulated rates of any work done under said Contract by him, or by any Sub-Contractor under him. All money forfeited pursuant to the above stipulation shall be withheld from the estimate.

**SUPPLEMENTARY SPECIAL PROVISIONS TO REQUIRED**

**CONTRACT PROVISIONS FOR CITY PROJECT**

The Owner has ascertained that the following wage rates for each craft or type of laborer, workman or mechanic needed to fully perform this Contract are the current rates of per hour wages for like work in the locality where the Work is to be performed. The Contractor shall pay not less than the wage rates shown below for each craft or type of laborer, workman and mechanic employed in the performance of this Contract.

**PREVAILING WAGE RATES IN THE LOCALITY OF THIS PROJECT FOR LABORERS,  
WORKMEN, AND MECHANICS FOR THE ROADWAY EXCAVATION, SITE GRADING,  
DRAINAGE, AND PAVING TRADES.**

	Rates	Fringes
CONCRETE FINISHER (Paving and Structures).....	\$ 14.12	
ELECTRICIAN.....	\$ 19.80	
FORM BUILDER/FORM SETTER		
Paving & Curb.....	\$ 13.16	
Structures.....	\$ 13.84	
LABORER		
Asphalt Raker.....	\$ 12.69	
Flagger.....	\$ 10.06	
Laborer, Common.....	\$ 10.72	
Laborer, Utility.....	\$ 12.32	
Pipelayer.....	\$ 13.24	
Work Zone Barricade Servicer.....	\$ 11.68	
POWER EQUIPMENT OPERATOR:		
Asphalt Distributor.....	\$ 15.32	
Asphalt Paving Machine.....	\$ 13.99	
Broom or Sweeper.....	\$ 11.74	
Concrete Pavement Finishing Machine.....	\$ 16.05	
Concrete Saw.....	\$ 14.48	
Crane Operator, Lattice Boom 80 Tons or Less.....	\$ 17.27	
Crane Operator, Lattice Boom over 80 Tons.....	\$ 20.52	
Crane, Hydraulic 80 Tons or Less.....	\$ 18.12	
Crawler Tractor.....	\$ 14.07	
Excavator, 50,000 pounds or less.....	\$ 17.19	
Excavator, over 50,000		

pounds.....	\$ 16.99
Foundation Drill , Truck Mounted.....	\$ 21.07
Foundation Drill, Crawler Mounted.....	\$ 17.99
Front End Loader 3 CY or Less.....	\$ 13.69
Front End Loader, over 3 CY.	\$ 14.72
Loader/Backhoe.....	\$ 15.18
Mechanic.....	\$ 17.68
Milling Machine.....	\$ 14.32
Motor Grader, Fine Grade....	\$ 17.19
Motor Grader, Rough.....	\$ 16.02
Pavement Marking Machine....	\$ 13.63
Reclaimer/Pulverizer.....	\$ 11.01
Roller, Asphalt.....	\$ 13.08
Roller, Other.....	\$ 11.51
Scraper.....	\$ 12.96
Small Slipform Machine.....	\$ 15.96
Spreader Box.....	\$ 14.73
 Servicer.....	\$ 14.58
 Steel Worker (Reinforcing).....	\$ 16.18
 TRUCK DRIVER	
Lowboy-Float.....	\$ 16.24
Off Road Hauler.....	\$ 12.25
Single Axle.....	\$ 12.31
Single or Tandem Axle Dump Truck.....	\$ 12.62
Tandem Axle Tractor with Semi Trailer.....	\$ 12.86
Transit-Mix.....	\$ 14.14
 WELDER.....	\$ 14.84

## **XV. CONSTRUCTION SPECIFICATIONS**

### **CONSTRUCTION SPECIFICATIONS**

The "Standard Specifications for Public Works Construction" by North Central Texas Council of Governments (NCTCOG) most recent amendment, shall be the construction specifications for this project with supplements and additions provided herein.

The "Standard Specifications for Public Works Construction" by NCTCOG shall be considered part of these Contract Documents.

## **XVI. EXHIBITS**



## **XVII. PROJECT SIGN**

## **XVIII. SOILS REPORT**