CITY OF TEXARKANA

CITY COUNCIL

AGENDA • FEBRUARY 26, 2024

Council Chambers | **Regular Meeting** | **6:00 PM**

220 TEXAS BLVD., TEXARKANA, TX 75501

Mayor

Bob Bruggeman

Ward 1	Ward 3	Ward 5
Jean H. Matlock	Betty Williams	Cole Meador
Ward 2	**Ward 4**	**Ward 6**
Mary Hart	Christie Page	Jay Davis



Vision

The vision of the City is to be a thriving regional center for education, business, and culture which attracts and serves our residents and visitors.

Mission

The mission of the City is to provide customer-focused public services and regional leadership that serve our residents and visitors while offering a safe, vibrant, and welcoming community.

The City Council reserves the right to convene into closed session on any agenda item or issue if applicable pursuant to authorization by the Texas Open Meetings Act (Title 5, Chapter 551 of the Texas Government Code), and will reconvene into open session before taking any final action, decision, or vote on a matter deliberated.

I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

II. INVOCATION AND PLEDGE LED BY COUNCIL MEMBER JEAN MATLOCK

III. YOUTH ADVISORY COUNCIL PRESENTATION

2024 Texas Youth Advisory Council Summit

IV. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

Upcoming City Council Meetings
Monday, March 11, 2024 at 6:00 p.m.
Monday, March 25, 2024 at 6:00 p.m.

Arbor Day Tree Giveaway
The 10th Annual Arbor Day tree giveaway will take place on Saturday, March 2nd. The drive-thru event will start at 8:30 a.m. at Spring Lake Park across from the Rotary Splash Pad and end at 10:30 a.m. or when all seedlings have been given out. For more information, contact Brooke Stone at (903) 798-3901.

Parks & Recreation Activities

March 2nd - 3rd	NCS Softball Tournament	Wallace Park
March 9th	TYSA-USA Softball Tournament	Karrh Park

Additional Parks & Recreation information can be found on the city's website at <http://www.texarkanatexas.gov>

V. OPEN FORUM: COMMENTS FROM THE PUBLIC

Per Council rules, comment time is limited to five minutes, or ten minutes if using a translator. Before comments are made, a speaker must complete an information sheet and give to the City Secretary. If your comment pertains to an agenda item with a scheduled public hearing or public comment, the Council requires that you make your comment at that time; you do not need to complete an information sheet.

VI. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

VII. ITEMS FOR CONSIDERATION

Consent Items

1. Consider approval of the minutes of the Regular Meeting of the City Council held on February 12, 2024 at 6:00 PM.

2. Resolution No. 2024-026 authorizing the City Manager to execute a contract with Norris Design for consultation and development of the Parks Master Plan in an amount not to exceed $32,400 with funds budgeted in the General Fund (Fund 101).

   Public Hearing:
   Council Vote: February 26, 2024

Action Items

3. Ordinance No. 2024-023 authorizing the City Manager to accept a grant from the State Energy Conservation Office (SECO) in the amount of fifty thousand dollars ($50,000); execute a contract with Holistic Utility Solutions in an amount not to exceed eighty-two thousand three hundred fifty-five dollars ($82,355) for Southwest Center Lighting repairs and upgrades, to be paid for with grant funds of fifty thousand dollars ($50,000), a SWEPCO incentive of four thousand one hundred dollars ($4,100), and funding from the Parks Department in the General Fund (Fund 101) of twenty-eight thousand two hundred fifty-five dollars ($28,255); and amending the budget for fiscal year beginning October 1, 2023 and ending September 30, 2024 to include the SECO Grant Fund (Fund 247) and appropriate additional revenue and expenditures, in this fund, of eighty-two thousand three hundred fifty-five dollars ($82,355).

   Public Hearing:
   Council Vote: February 26, 2024

VIII. FIRST BRIEFINGS

1. Resolution No. 2024-024 authorizing the City Manager to execute a contract with Symmetry Sports (TIPS 230104-02) in the amount of $3,049,622, for construction at the soccer complex located at Grady T. Wallace Park and allocating additional funds in the amount of $150,000, for contingency items, for a total project cost not to exceed $3,199,622 with funds budgeted in the 2023 Bond Fund (Fund 426) and the General Fund (Fund 101).

   Public Hearing: March 11, 2024
   Council Vote: March 11, 2024

2. Resolution No. 2024-025 authorizing the City Manager to execute a contract with Symmetry Sports (TIPS 230104-02) in the amount of $7,884,710, for construction at Swanger Complex located at Spring Lake Park and allocating additional funds in the amount of $395,000, for contingency items, for a total project cost not to exceed $8,279,710 with funds budgeted in the 2023 Bond Fund (Fund 426).

   Public Hearing: March 11, 2024
   Council Vote: March 11, 2024

IX. PUBLIC HEARINGS

1. Ordinance No. 2024-016 amending Ordinance No. 2015-029 for a TIRZ agreement for Caldera I East in the TIRZ #1 District and providing a map of agreed upon properties on which to base reimbursement.

   Public Hearing: February 26, 2024
   Council Vote: February 26, 2024

2. Resolution No. 2024-022 authorizing the City Manager to terminate the current Natural Resource Damage Assessment (NRDA) Interlocal Agreement and directing staff to work with the NRDA Trustees on restoration alternatives.

   Public Hearing: February 26, 2024
   Council Vote: February 26, 2024

X. CITY MANAGER'S REPORT

XI. ADMINISTRATIVE COMMENTS

1. City Council

2. City Staff

XII. ADJOURNMENT

Jennifer Evans
City Secretary

This open meeting of a governmental entity is subject to the Texas Open Meetings Act (Chapter 551, Government Code). The "Council Chambers" is the room or property where the City Council will hold this meeting.

Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun.

Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly.

Pursuant to Section 46.03, Penal Code (places weapons prohibited), subsection (a)(14), a person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon [listed in Penal Code Section 46.05(a)] in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and if the entity provided notice as required by that chapter.

This facility is wheelchair accessible and handicap parking is available. If you plan to attend this public meeting and you have a disability that requires special arrangements or accommodations, please call 903-798-3900 or (TTY) 1-800-RELAY TX (1-800-735-2989) at least 48 hours in advance.

CITY OF TEXARKANA

CITY COUNCIL

MINUTES • FEBRUARY 12, 2024

Council Chambers | **Regular Meeting** | **6:00 PM**

220 TEXAS BLVD., TEXARKANA, TX 75501

I. CALL TO ORDER, ROLL CALL, ESTABLISHMENT OF QUORUM

ee Name	Title	Status	Arrived
uggeman	Mayor	Present	
Matlock	Ward 1	Present	
art	Ward 2	Present	
illiams	Ward 3	Present	
Page	Ward 4	Present	
eador	Ward 5	Present	
is	Ward 6	Present	

Staff Present: City Manager David Orr, Jennifer Evans, Kristin Peeples, Scott Eudy, Laura Puckett, Chris Black, J.W. Bramlett, Lisa Thompson, Robby Robertson, Keith Beason, Kenny Icenhower, Vashil Fernandez, and Chiquita Burks.

Municipal Court: Judge Sherry Jackson Hawkins.

Legal Counsel: Jeff Lewis.

II. INVOCATION AND PLEDGE LED BY COUNCIL MEMBER BETTY WILLIAMS

III. TEXARKANA REGIONAL AIRPORT QUARTERLY UPDATE - BY PAUL MEHRLICH

Mr. Mehrlich shared the airport's 4th quarter budget totals and finishing out totals for 2023. He said the ribbon cutting for the new terminal is **tentatively** scheduled for June 28th, pending the availability of both the Texas and the Arkansas governor to attend.

It is anticipated that when Texarkana College's Airframe and Powerplant training program begins, it will have a flight school portion that will be operated out of the old airport terminal building, thereby, being the first tenant to occupy its space.

Mayor Bruggeman said he's received several comments from citizens complimenting the look and design of the new terminal. He thanked Mr. Mehrlich and his team for all of the great work and progress being made at the airport.

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

IV. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

Upcoming City Council Meetings
Monday, February 26, 2024 at 6:00 p.m.
Monday, March 11, 2024 at 6:00 p.m.
Monday, March 25, 2024 at 6:00 p.m.

Perot Theatre Show
Wheel of Fortune - February 17, 2024

Poverty Simulation Learning Model
The Texarkana Homeless Coalition will host a Poverty Simulator on Thursday, February 29th from 9:00 a.m. to 12:00 p.m. at First Baptist Church, 3015 Moores Lane.

The experimental learning model is designed to simulate common, everyday experiences among people living in poverty.

If you would like to be a volunteer, participant, or would like more information, contact Vashil Fernandez at vashil.fernandez@texarkanatexas.gov or call (903) 798.3904.

Parks & Recreation Activities

February 17th	NCS Softball Tournament	Wallace Park
February 18th	Run the Line - hosted by Partnership for the Pathway	
February 22nd - 23rd	Parks and Recreation Fishing Derby	Spring Lake Park
February 24th	TYSA Softball Tournament	Karrh Park

Additional Parks & Recreation information can be found on the city's website at <http://www.texarkanatexas.gov>

Mayor Bruggeman thanked Mayor Pro Tem/Council Member Matlock for attending the past weekend's events in representing the city for him while he was under the weather.

The Mayor welcomed the new LifeNet administrative team, as Dave Snavely is retiring effective March 1st. Alyssa Haley, former VP/CFO, has accepted her new position as President/CEO. The new Chief Operations Officer/COO is Brett Peine. Longtime employee and Texas Area Director, Darren Higgs, was also in attendance.

V. OPEN FORUM: COMMENTS FROM THE PUBLIC

Per Council rules, comment time is limited to five minutes, or ten minutes if using a translator. Before comments are made, a speaker must complete an information sheet and give to the City Secretary. If your comment pertains to an agenda item with a scheduled public hearing or public comment, the Council requires that you make your comment at that time; you do not need to complete an information sheet.

William Jones expressed comments related to meters not being used in a cab to appropriately charge the fare when a rider receives transportation.

VI. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

There were no appointments or reappointments made to any board, commission, or committee.

VII. ITEMS FOR CONSIDERATION

Consent Items

(6:20 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Hart, Ward 2
SECONDER:	Betty Williams, Ward 3
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

1. Consider approval of the minutes of the Regular Meeting of the City Council held on January 22, 2024 at 6:00 PM.

2. Resolution No. 2024-018 renewing and approving a Municipal Maintenance Agreement and Amendment #1 with the State of Texas for the maintenance, control, supervision, and regulation of certain state highways and/or portions of state highways in the City.

   Public Hearing:
   Council Vote: February 12, 2024

3. Ordinance No. 2024-019 amending budgeted expenditures for the Fiscal Year ending September 30, 2024, by authorizing a roll over to the General Fund (Fund 101) of an unexpended fund balance allocation for one-time use of fund balance of expenditures in the amount of $7,993,029.10 previously approved by the City Council for the Fiscal Year ending September 30, 2023, and authorizing for the current fiscal year additional allocations of one-time use of fund balance from the General Fund (Fund 101) in the aggregate amount of $2,744,215.03 for improvements to the Bi-State Justice Building, Wallace Park, and Bringle Lake Trail and Bike System.

   Public Hearing:
   Council Vote: February 12, 2024

4. Resolution No. 2024-020 authorizing the City Manager to execute a contract to repair the Wright Patman Water Treatment Plant Low Service Pump in the amount of $85,705. This amount is budgeted and will be paid from the Lake Texarkana Water Supply Corporation (LTWSC) Fund.

   Public Hearing:
   Council Vote: February 12, 2024

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

Action Items

[No Action Items were considered at this meeting.]

VIII. FIRST BRIEFINGS

1. Ordinance No. 2024-016 amending Ordinance No. 2015-029 for a TIRZ agreement for Caldera I East in the TIRZ #1 District and providing a map of agreed upon properties on which to base reimbursement.

   Public Hearing: February 26, 2024
   Council Vote: February 26, 2024

   Lisa Thompson briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 2/26/2024 6:00 PM**

2. Resolution No. 2024-022 authorizing the City Manager to terminate the current Natural Resource Damage Assessment (NRDA) Interlocal Agreement and directing staff to work with the NRDA Trustees on restoration alternatives.

   Public Hearing: February 26, 2024
   Council Vote: February 26, 2024

   Keith Beason briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 2/26/2024 6:00 PM**

IX. PUBLIC HEARINGS

1. Ordinance No. 2024-007 amending PD-05-7 for site plan approval on an approximate 4-acre tract of land (being part of Tracts 71, 71B, 71A, and 71C), George Brinlee HRS, A18, located at 1 Roundabout Way. Cheney Pruett, owner and Kayla Wood, MTG Engineers and Surveyors, agent.

   Public Hearing: February 12, 2024
   Council Vote: February 12, 2024

   Laura Puckett said the proposed ordinance had significant changes to the site plan, and therefore, has gone through Planning & Zoning again before being presented to the council at this meeting. There were no public comments made at this hearing.
   (6:26 p.m.)

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jay Davis, Ward 6
SECONDER:	Christie Page, Ward 4
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

2. Resolution No. 2024-010 approving Amendment No. 4 to the City's Agreement with Waste Management of Texas, Inc. (including changes to residential waste and bulky waste collection).

Public Hearing: February 12, 2024
Council Vote: February 12, 2024

Sheila Howard addressed council seeking a solution for where to place her garbage can on her dead end street on pick-up day. She does not want to place it in her neighbor's yard, across the street from her house, to accommodate the automated sideload collection truck.

Jarrod Miller, of Waste Management, said the sideload trucks will not be permitted to collect trash on her street because cans are not to be moved away from their own property. He will ensure the old style truck will be used to collect garbage from both sides of the street in front of each residence.
(6:33 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jean H. Matlock, Ward 1
SECONDER:	Mary Hart, Ward 2
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

3. Ordinance No. 2024-011 amending PD-01-10 for site plan approval on Lot 1, Texarkana Shopping Center Subdivision located at 4110 St. Michael Drive. Suzanne Russo for Home Depot, owner and Cassie Permenter, agent.

Public Hearing: February 12, 2024
Council Vote: February 12, 2024

There were no public comments made at this hearing.
(6:34 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Christie Page, Ward 4
SECONDER:	Jay Davis, Ward 6
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

4. Ordinance No. 2024-012 amending PD-20-6 for site plan approval on Lot 1, Richmond-Moores Subdivision, located at 5605 Richmond Road. GVH Moores, LLC, owner and Kayla Wood, MTG Engineers and Surveyors, agent.

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

Public Hearing: February 12, 2024
Council Vote: February 12, 2024

There were no public comments made at this hearing.
(6:35 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Betty Williams, Ward 3
SECONDER:	Mary Hart, Ward 2
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

X. CITY MANAGER'S REPORT

Sales Tax Update
Sales tax receipts for the month of January (November sales) totaled $1,837,393, an increase of 4.27% compared to the same month in the prior year. Fiscal year-to-date collections totaled $3,499,460, an increase of $30,761 (0.89%) compared to last year. As a reminder, staff budgeted to end fiscal year 2024 with an increase of 2% over the prior fiscal year.

Annual Texas Youth Advisory Commission (YAC) Summit
As a part of the recently formed Texarkana Youth Advisory Council, the city sent nine students, councilmembers and staff to the Annual Texas Youth Advisory Commission (YAC) Summit sponsored by the Texas Municipal League and hosted by the City of Lewisville this past weekend February 2-4, 2024. The conference was very informative with representation from youth councils across the state. The Texarkana youth council will be at the next meeting on Feb. 26th to give a full report and presentation on the summit.

SAVE THE DATE: Quarterly Police Awards Ceremony, Feb. 13th at 2:00 p.m. at the Special Operations Training Facility (SOTC).

XI. ADMINISTRATIVE COMMENTS

1. City Council

   Council had no administrative comments for staff.

2. City Staff

   Staff had no administrative comments for council.

XII. ADJOURNMENT

A motion was made to adjourn the meeting.
(6:38 p.m.)

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Hart, Ward 2
SECONDER:	Betty Williams, Ward 3
AYES:	Matlock, Hart, Williams, Page, Meador, Davis

Minutes Acceptance: Minutes of Feb 12, 2024 6:00 PM (Consent Items)

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 2/23/2024 10:11 AM

Lead Department: Parks, Recreation & Health **Action Officer:** Keith Beason,

Subject: Resolution No. 2024-026 authorizing the City Manager to execute a contract with Norris Design for consultation and development of the Parks Master Plan in an amount not to exceed $32,400 with funds budgeted in the General Fund (Fund 101).

Briefing: 2/26/2024 **Public Hearing:** **Council Vote:** 2/26/2024

Item Schedule

Schedule 3: No briefing required (one week)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The Parks and Recreation Staff requests approval to enter a contract with Norris Design to consult and help develop the Parks Master Plan in an amount not to exceed $32,400.00 with funds budgeted in the General Fund (Fund 101).

Potential Options:

- Approve
- Deny

Fiscal Implications:

Funds are budgeted in the General Fund (Fund 101).

Staff Recommendation:

Staff recommend approval of this request.

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-026 RES Auth CM to enter into contract with Norris Design for Parks Master Plan (DOCX)
b. 2024-026 EXH 'A' Contract_Texarkana Parks & Trails MP - Norris Design - 15feb2024 (PDF)
c. 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (PDF)
d. 2024-026 EXH 'C' Tex Parks System MP - TimelineV02_feb2024 (PDF)
e. 2024-026 Goals & Perspectives (DOCX)

Staff Coordination

Parks, Recreation & Health	Completed	Robby Robertson	Department Head Review	02/21/2024 4:03 PM
Finance Department	Kristin Peeples	Finance Review	Completed	02/22/2024 1:06 PM
City Manager	David Orr	City Manager Review	Completed	02/23/2024 12:39 PM
City Council	Vicky Coopwood	Meeting	Pending	02/26/2024 6:00 PM

Meeting History

RESOLUTION NO. 2024-026

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH NORRIS DESIGN FOR CONSULTATION AND DEVELOPMENT OF A NEW PARKS AND TRAILS MASTER PLAN IN AN AMOUNT NOT TO EXCEED THIRTY-TWO THOUSAND FOUR HUNDRED DOLLARS ($32,400), TO BE PAID WITH FUNDS BUDGETED IN THE GENERAL FUND (FUND 101); AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the existing Parks and Trails Master Plan was developed in 2010 and all projects were completed; and

WHEREAS, the City's partners at Norris Design were able to help with consulting and development of the City of Texarkana Comprehensive Plan; and

WHEREAS, Norris Design has submitted a proposal **(Exhibit "A")** for consultation and development of a new Parks and Trails Master Plan with a total cost of **Thirty-Two Thousand Four Hundred Dollars ($32,400)** through the TIPS Buy Board Purchasing Cooperative; and

WHEREAS, funds are budgeted in the General Fund (Fund 101) for this project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: The City Manager be and is hereby authorized to execute a contract with Norris Design through the TIPS Buy Board Purchasing Cooperative in an amount not to exceed **Thirty-Two Thousand Four Hundred Dollars ($32,400).**

SECTION 2: This Resolution shall be in full force and in effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **26th day of February, 2024**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2024-026 RES Auth CM to enter into contract with Norris Design for Parks Master Plan (4186 : 2024-026 RES Auth CM to enter into

NORRIS DESIGN
PEOPLE + PLACEMAKING
208 North Market Street, Suite #250
Dallas, Texas 75202
972.232.4169

19 February 2024

City of Texarkana, Texas
Parks and Recreation Department
Robby Robertson, Director
and
Keith Beason, Community Engagement and Parks Projects Manager
220 Texas Blvd.
Texarkana, TX 75501

PARKS AND TRAILS MASTER PLAN

Texarkana, Texas

PROJECT DESCRIPTION

This Parks and Trails Master Plan should be the basis for future development and fiscal planning of the Texarkana, TX park system for the next ten to twenty years. Annual reviews of the Master Plan should be performed by the city to ensure that the implementation is on course and addresses any specific changes in priorities and/or needs.

The general purpose of this Master Plan; Provide the framework for orderly and consistent planning and development; Provide detailed research and facts concerning the community and the roles of parks and trails; Establish priorities and statements of direction based on researched, documented facts and a community based needs analysis; Provide direction in the area of acquisition and development of park land to meet future needs; and conform to the preparation suggestions and/or guidelines for local Park, Recreation and Open Space Plans, prepared by the National Recreation and Parks Association (NRPA).

SCOPE OF SERVICES

Norris Design (ND and consultant) will work to develop a Parks and Trails Master Plan for the City of Texarkana, Texas (city and/or client). The Scope of Services is detailed on "Exhibit A" a separate document attached with this agreement/signature section.

For all tasks on "Exhibit A" Norris Design has defined the task in bullet or paragraph form and deliverables produced in part during the task and/or this park planning process.

OPTIONAL TASKS

Norris Design has the ability to provide graphic design and marketing services to assist with future marketing goals. This can include but is not limited to:

- exterior identity and wayfinding signage design
- interpretive signage
- signage design guideline development
- promotional video
- copywriting
- photography

AGREEMENT QUALIFICATIONS

Attachment: 2024-026 EXH 'A' Contract_Texarkana Parks & Trails MP - Norris Design - 15feb2024 (4186 : 2024-026 RES Auth CM to enter into

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208 North Market Street, Suite #250
Dallas, Texas 75202
972.232.4169

A. Assumptions
The client shall provide to Norris Design the following information or services as required for performance of the work. Norris Design assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein. Should Norris Design be required to provide services in obtaining or coordinating compilation of this information, such services shall be billed as Additional Services. In order to begin work, we may require the following information.

1. Aerial Photography
2. City GIS data files, park boundaries, and City boundary
3. Wetlands Reports
4. Market Research Reports
5. Traffic Study

B. Exclusions
All specific deliverables for this project are identified within the Scope of Work portion of this agreement. The following information is not a part of the agreement and would be provided under a separate agreement or as Additional Services if required.

1. Illustrative Graphics (other than those identified within this agreement)
2. Engineering (i.e. – Civil, Electrical, Structural, Mechanical, Traffic, etc.)
3. Construction Documents
4. Construction Bidding
5. Construction Administration

C. Definitions

The following definitions are provided to give clear understanding of terms that may be used to describe the Scope of Work within Tasks listed throughout this agreement.

Term	Definition
Attend	Norris Design will be present at meetings and hearings as described in the task action items
Review	Analysis of documents necessary to understand the project, provide feedback to the Owner or consultant team and to understand the impacts of the consultant teams work on the services provided by Norris Design
Assist	Provide input and/or information to the Owner or consultant team to assist them with their work and products
Develop	Plans, documents, and products generated by Norris Design
Coordinate	Plans, documents, products, people, schedules, and information gathered, organized and/or submitted by Norris Design
Provide	Plans, documents, and products made available by Norris Design
Minor Revisions	Revisions requiring less than 25 percent of the original time spent on a drawing, document, or total task item

TERMS AND CONDITIONS

A. Standard Terms

1. This agreement is based on the understanding that the client will proceed with the project in an expeditious manner from acceptance of contract terms. If the project is delayed more than one-

Attachment: 2024-026 EXH 'A' Contract_Texarkana Parks & Trails MP - Norris Design - 15feb2024 (4186 : 2024-026 RES Auth CM to enter into

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hundred twenty (120) days from the start of work, it is understood and agreed that the standard hourly rates and the Total Fee may be subject to change requiring a new agreement.

2. Request to perform tasks, acceptance of documents or knowledge by the Client or Client's Representative of work being performed constitutes acceptance of the Scope of Work, Fees Schedule, Agreement Qualifications, Terms and Conditions and Additional Services provisions as identified in this proposal.
3. Norris Design will invoice work on a monthly basis based on a percentage (%) of work completed.
4. Fees for each task are an estimate. Services and fees will not exceed the total contract amount unless agreed upon as additional services.
5. Expenses, including but not limited to printing costs, mileage and other miscellaneous project costs will be billed at cost. Mileage will be reimbursed at the Federal Government allowable rate. Technology expenses related to services provided may be billed at cost, as they are incurred beyond the typical base level required to provide such services.
6. Client agrees to pay all invoiced fees and costs within 30 days of billing.
7. Payment will not be subject to the approval of the project and/or the cash flow status of the project.
8. Past due invoices shall be assessed a 1.5 percent late charge for each month past due. In the event fees and/or costs are not paid when due, Client agrees to pay all costs of collection including reasonable attorney's fees.
9. Norris Design may stop work on the project if fees are not paid and reserves the right to file liens or utilize other legal methods to secure payment.
10. The fees indicated herein are based on the applicable jurisdictional codes. Unless otherwise specified in the terms of this agreement, any request made by the Client to vary, waive or modify existing code requirements may be considered as an additional service requiring additional fees.
11. Revisions exceeding Minor Revisions or additional tasks requested by the Client will be billed at the Standard Hourly rates in addition to the fixed fees or a specific fee will be authorized for the additional work prior to commencement.
12. Any revisions, additional meetings or public hearings not identified in this proposal will be considered additional services.
13. All documents and products developed under this agreement shall remain the property of Norris Design until all fees have been paid in full. Norris Design reserves the right to request the return of any documents or products from the Client, municipal governments or other third party entities if fees have not been paid in full. Norris Design shall retain full ownership of all documents and products that have not been paid for under the terms of this agreement.
14. The Client shall have the rights to utilize documents and products, provided under this agreement, for their intended purpose once all fees have been paid in accordance with this agreement.
15. If the Client utilizes any documents or products covered under this agreement, the Client acknowledges that they have reviewed and understand the information conveyed within said document or product.
16. Any documents or products developed under this agreement by Norris Design shall only be utilized by the Client or their successors for the project or for services, which have been contracted. The Client or their successors shall not utilize these documents or products on other projects or provide these documents or products to others for use on other projects.
17. Norris Design maintains a policy of supplying single layered graphics files and videos for the client's unrestricted use and retaining the layered files and 3D models under intellectual property rights.
18. Norris Design shall not be responsible for any harm to the Client or their successors if documents or products developed under this agreement are utilized in ways that they are not intended. This includes, but is not limited to, preliminary level designs being utilized for entitlement documents, entitlement level documents being utilized for construction and revisions to construction documents that are not performed by Norris Design.

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Dallas, Texas 75202
972.232.4169

19. Norris Design shall not be responsible for any harm to the Client or their successors if the Client or their successors direct the recipient of any documents or products to deviate from the direction or purpose of the information provided in said document or product.
20. Norris Design shall not be responsible for information provided to Norris Design by the Client or other project team members not subcontracted by Norris Design. Norris Design assumes no responsibility for the accuracy of such information or services and shall not be liable for errors or omissions therein unless specifically contracted to review and verify the accuracy of such information.
21. Norris Design reserves the right to utilize any documents or products developed under this agreement for marketing and promotional purposes. The Client may restrict Norris Design in the use of these documents or products upon written notice to Norris Design prior to development of these documents or products.
22. Either party may terminate this agreement upon 30 days written notice to the other. Upon termination Norris Design will provide Client all task items billed and paid for and Client shall pay all fees and costs for tasks completed at time of termination.
23. If any part of this agreement shall be held unenforceable, the rest of this agreement shall nevertheless remain in full force and effect.

B. Schedule and Specific Terms

1. A project timeline (attached) has been created to define the order and pattern of tasks by phase generally in months to assist the city in scheduling.
2. Any project schedule(s) included in this scope of work will only be used to guide the team during the process based on the best information available to the team. Milestone dates on the project schedule will be identified as goals for the team to attain.
3. Periodic changes to the schedule are typical and should be anticipated by the client.
4. Due to circumstances beyond control, Norris Design does not guarantee that specific dates on the schedule will be met.

C. Standard Hourly Rates

Principal	$ 150.00 - $ 260.00/Hour
Senior Staff Member	$ 110.00 - $ 150.00/Hour
Staff Member	$ 85.00 - $ 110.00/Hour
Clerical	$ 70.00 - $ 85.00/Hour

D. Fee Schedule

Phase 1 -	$ 11,250
Phase 2 -	$ 7,250
Phase 3 -	$ 11,500
Total Fee (Not to Exceed)	$ 30,000
Project Expenses	$ 2,400
(website hosting and overnight travel to Texarkana)	
Total Fee (Not to Exceed)	$ 32,400

E. Acceptance and Agreement

Attachment: 2024-026 EXH 'A' Contract_Texarkana Parks & Trails MP - Norris Design - 15feb2024 (4186 : 2024-026 RES Auth CM to enter into

NORRIS DESIGN
PEOPLE + PLACEMAKING
208 North Market Street, Suite #250
Dallas, Texas 75202
972.232.4169

Norris Design shall provide the services described within the Scope of Work per the Fee Schedule as identified in this proposal. The undersigned shall provide payment based on the Agreement Qualifications and the Terms and Conditions as identified in this proposal.

If the conditions of this contract are acceptable, please sign and return a copy for our files.

We look forward to working with you on this project.

NORRIS DESIGN	CITY OF TEXARKANA, TEXAS
Rick Leisner	Name
Principal	Title
19 Feb 2024	
Date	Date

Attachment: 2024-026 EXH 'A' Contract_Texarkana Parks & Trails MP - Norris Design - 15feb2024 (4186 : 2024-026 RES Auth CM to enter into

EXHIBIT A
SCOPE OF SERVICES

City of Texarkana, TX - Parks and Trails Master Plan
9 Aug 23
Revised 19 Feb 24

Phase 1 Project Initiation and Existing Park & Trail System Status

CLIENT – CONSULTANT INTERACTION
Interaction between Norris Design (ND) and the City of Texarkana, TX (City) staff will take place either by means of face-to-face meetings, Zoom, or by means of conference call meetings.

1.01 KICK-OFF MEETING (1)

ND staff will conduct a Zoom meeting with appropriate staff as designated by the city. Key team members from ND will attend. This meeting will accomplish several pre-planning objectives:

A. Orientation. The City of Texarkana and the primary ND team will become familiar with the project team structure and organization and arrive at a complete understanding of the roles and responsibilities of all project participants.
B. Schedule. Review contract schedule and establish key milestone dates.
C. Information exchange. Discuss documentation needs and receive information as available.

Deliverables:
a. ND shall prepare a meeting agenda and list of needed informational items.
b. Total number of meetings: One (1) meeting Items

1.02 PROJECT MANAGEMENT

The ND Project Manager will coordinate internal and sub-consultant team members, maintain the project schedule; and be available for phone or in-person meetings to address client needs.

Deliverables:
a. Monthly project update meetings or phone discussions.
b. Total number of meetings: As needed.

1.03 ADVISORY COMMITTEE

ND shall assist the City to select and set up an advisory committee. This committee shall meet monthly in person and/or via Zoom and may be 5-9 members in size. The committee will assist the ND team with input and advice during the planning process.

Deliverables:
a. Monthly meetings primarily via Zoom having agendas sent the day prior.

1.04 PREPARATION OF BASE MAP

A. ND shall prepare base mapping that is comprehensive and sufficiently detailed for the project. ND shall prepare the base mapping in a digital form for future use by the City. Regional level – Including all areas in the City ETJ, as well as relationship to surrounding cities. City-wide

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

level – Including study limits/sectors established by prior park master plans and other pertinent sectors as provided by the City of Texarkana in digital format.

Deliverables:
a. ND shall prepare bases for city maps with information.
Items Provided by City of Texarkana: The City shall provide GIS files, of most recent City mapping, citywide maps illustrating land use & parks, city boundaries, ETJ will be provided in digital form.

1.05 REVIEW RELEVANT and RELATED STUDIES

For background and information purposes, ND shall review other past or ongoing efforts that may influence the city's Parks and Trails MP. This will include, but is not limited to: Previous Parks Master Plan, Comprehensive Plan, Thoroughfare Plan, Individual Park Master Plans, and Previous Facility Plans/Feasibility Studies.

Deliverables:
a. ND shall review past studies & reports, as provided by City.
Items Provided by City of Texarkana: One digital and/or hard copy of all reports and documents.

1.06 PROJECT WEB SITE

The ND staff will use a project webpage to convey general project information such as meeting dates, background information, and contact information. It will also provide a means for obtaining public input and serve as the main portal for videos, presentations, schedule data, and workshop information. The site will be maintained by ND and documents to be uploaded by ND.

Deliverables:
a. Create website, secure website address, manage site for 12-months.

1.07 ONLINE COMMUNITY SURVEY (input SurveyMonkey)

The ND team will prepare a questionnaire for a community-wide survey to be administered by a website. ND will review the questionnaire with City staff via conference call and modify as appropriate. The city will send a Facebook and email "blast" announcement suitable for being transmitted to residents of the city using available email lists and databases provided and administered by City. ND will analyze responses and prepare a summary of key responses.

Deliverables:
a. ND shall prepare documentation for community-wide survey and survey results.
b. ND shall prepare documentation of survey results for presentation via Public Workshop #2
Items Provided by City of: The City shall assist in the development of the survey questionnaire; and promote the survey to residents via city newsletters, announcements, etc.

1.08 PUBLIC WORKSHOP #1 (2 Days in TEX)

During a set of three (3) public workshops staff from ND will meet with the community to solicit input for the development of the Parks and Trails Master Plan. Workshop #1 will be a two-day effort and is detailed below. ND will conduct the workshop meetings in the evening hours to maximize attendance with citizens collectively for public input.

Day 1 :: Includes meetings, inputs, and discussions:

- Individual active sports programs and associations: (agenda set prior/date & time set)

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

- Current program metrics: numbers, teams, fields, etc. *(meetings 1-hour each)*
- Goals for future

- Indoor Recreation Programs for City to offer; *(meeting 1-hour each)*
  - Current program metrics: numbers, teams, fields, etc.
  - Goals for future
- Desire for special programs/etc. (Texas A&M Tex and/or others - *(meeting 1-hour each)*
  - Current program metrics: numbers, teams, fields, etc.
  - Goals for future
- Tour city parks and trails (photographic reconnaissance)

Day 2 :: Includes meetings, inputs, and discussions:

- Tour city parks and trails (photo recon)
- Advisory Committee meeting (in person during the day)
- Public Workshop #1 (6:00pm start) with citizen input.
  - Agenda to be established.

Deliverables:

a. ND shall prepare a summary of findings and comments made during meetings.
b. Texarkana *Park LOS (by acreage and population)*
c. Two ND staff will travel to Texarkana for the 2-day event.

Items Provided by City of Texarkana: The City shall secure locations of the Public Workshop #1 venue, promote workshop #1, day 1 meeting rooms, and attend meetings as desired.

Phase 2 — Level of Service and Parks and Trails Master Plan

2.01 EXISTING CITY PARKS and TRAILS TOUR

As a follow-up to the Public Workshop meeting ND staff will tour the city park and trails to gain a thorough understanding of issues as identified by the City.

Deliverables:

a. ND shall take photos of existing parks and trails during their use.

2.02 DEMOGRAPHIC REVIEW and COMMUNITY PROFILE

ND will utilize demographic data as provided by the City, which may include Census, ESRI data. This data will be used to develop a community profile that will include: current population, future growth forecasts projections as provided by city, and typical pop/employment profile, sex, age, ethnicity, income, and education.

Deliverables:

a. ND shall review information, as provided by the City, and prepare the community profile.
Items provided by City of Texarkana: The City shall provide population information (in digital form), including existing population, population projections, and demographic characteristics. If data is not available, ND will use the most current Census Bureau data.

2.03 REVIEW OF EXISTING and PLANNED PARK INITIATIVES / LOS

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

ND will analyze the City's current existing parks, determine the suitability of currently planned park expansions, and build upon the city's network. Analyze area park benchmarks, determine level of service (LOS) of Texarkana's existing park system, and recommend target levels of service. Apply draft / desired Texarkana LOS and citizen's goals for park development.

Deliverables:
a. Summary of benchmark / level of service analysis.

2.04 DEVELOP STANDARDS FOR PARK DESIGN

Develop general standards for Texarkana's park system. Develop design standards for each park type desired; (can adjust specifics). Includes: Pocket Parks, Neighborhood Parks, Community Parks, Special Use Parks, Regional Parks, Trail Greenbelts, and Natural Areas.

Deliverables:
a. Draft park facility standards for Texarkana in graphic, written and tablature format.
Items Provided by City of Texarkana: Review and comment on proposed park & trail standards.

2.05 PUBLIC WORKSHOP #2 (1 Day in TEX)

Workshop #2 will be an evening effort and is detailed below: Current level of service (LOS), draft goals, draft parks standards, demographic review, and citizen input.

Deliverables:
a. ND shall prepare a powerpoint presentation.
b. Texarkana Park LOS (by acreage and population)
c. One or two ND staff will travel to Texarkana for the full 1-day event.
Items Provided by City of Texarkana: City shall secure locations of the Public Workshop #2 venue.

Phase 3 PARK and TRAILS TECHNICAL MASTER PLAN

3.01 DEVELOP INDOOR RECREATIONAL FACILITIES

Consider indoor recreation system - program, schedule, and level of service (LOS). Use best practices in developing a long term systemwide schedule for delivery of indoor recreation include suggestions on funding through a bond program/establishing funding partners. Includes: multi-use facilities, recreation centers, and indoor aquatic centers.

Deliverables:
a. Summary of the facility type and summary detailing draft options for facility types.
Items Provided by City of Texarkana: Review and comment as appropriate.

3.02 INDOOR and OUTDOOR RECREATION PROGRAMS

These future programs will be honed and sharpened based on comparative analysis of benchmark communities and similar levels of service facilities. The ND team will present current trends in rec programs and youth sports. The team will provide additional comparative programs as developed by private organizations for review. Best practices as a guide, identify level of service (LOS) expectations and produce written recommendations to be included in the Master Plan for indoor and outdoor recreation needs.

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

Deliverables:
a. Draft alignment and evaluations for recreation programs.
Items Provided by City of Texarkana: Review and comment as appropriate.

3.03 PLANNING LEVEL COST ESTIMATES and PRIORITIZE FACITILIES

Using the analysis performed, ND shall prepare estimates of probable cost for the major spine corridors in the city. Create criteria to rank and prioritize parks based on ease of implementation, connectivity to destinations, and proximity to residences and prioritize parks based on these criteria. Review with staff and modify, as necessary. ND shall develop planning level cost estimates for construction overall park system on a gross unit basis.

Deliverables:
a. Preliminary cost estimates and prioritization criteria in table format.
Items Provided by City of Texarkana: Review and comment as appropriate.

3.04 DEVELOP STANDARDS FOR PARK DESIGN

Develop general park and trail standards for Texarkana's park system:

Develop design standards for each park type desired; (can adjust specifics). Includes: HOA Park Standards, Pocket/Ornamental Parks, Neighborhood Parks, Community Parks, Special Use Parks, Regional Parks, Trail Greenbelts, and Natural Areas.

Deliverables:
b. Draft park facility standards for Texarkana in graphic, written and tablature format.
c. Number of meetings: One (1) review meeting
Items Provided by City of Texarkana: Review and comment on proposed trail standards.

3.05 PREPARE PARKS MASTER PLAN and DEVELOP POLICY RECOMMENDATIONS

Prepare the Parks Master Plan report and a summary. Include a detailed implementation schedule with costs and priorities and develop strategic policy recommendations to:

- Define the implementation of parks and related facilities.
- Coordinate with other projects.
- Recommend short-term and long-term improvements.

Deliverables:
a. A written summary of the parks master planning process and recommendations to be delivered as part of report and provide written/graphic summary.
Items Provided by City of Texarkana: Review and comment as appropriate.

3.06 COST ESTIMATES

The ND Team shall prepare cost estimates for components of the Parks Master Plan. Use previous bids, current contractor costs where available, or other locally based estimates; Include maintenance costs for new facility (indoor and outdoor) improvements; Use an average dollar amount per acre for land acquisition.

Deliverables:
a. ND will incorporate the results of the cost estimates in the Action Plan.
b. Number of meetings: One (1) conference call or in-person meeting.

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

Items Provided by City of Texarkana: City will provide 2-3 sets of the most recent park and/or trail construction bids to review in part for current East Texas construction prices.
Also, the city shall review final estimates and comment as appropriate.

3.07 IMPLEMENTATION and ACTION PLAN

A. The team shall prepare an implementation component for the Parks Master Plan illustrating the items that are recommended. This plan will include four key elements:

1. Short range improvements to meet immediate needs.
2. Long range improvements to meet growth, enhance the system.
3. Prioritization of improvements, to fund most critical projects first.
4. Funding strategies to provide predictable funding resources for improvements.

B. ND shall prepare a master plan that will describe the recommended improvements in the following main categories:

- Park development and land acquisition needs
- Recreation programs (facilities, employees and equipment need)
- Supporting indoor facility development (phasing and costs)

C. ND shall prepare an Action Plan Schedule for the recommended plan components.

* Develop a 5-year incremental funding level analysis to implement the Master Plan.
* Use a 5-year short-range time frame, and a 10-year long-range time frame.

Deliverables:

a. ND shall prepare prioritization of recommended improvements, an Action Plan in table format, and an implementation strategy in written format.

Items Provided by City of Texarkana: The City shall provide current and past citywide and Park Department budgets (for past three years); provide records of past grants and other non-city funding sources; and review Implementation and Action Plan.

3.08 PUBLIC WORKSHOP #3 (1 Day in TEX)

Workshop #3 will be an evening effort and is detailed below: Purpose of the plan, methodology, community profile, assessment of existing conditions, standards analysis (LOS), short and long-term recommendations, and citizen input.

Deliverables:

a. ND shall prepare a powerpoint presentation.
b. Citizen input into draft plan topics and recommendations
c. One or two ND staff will travel to Texarkana for the full 1-day event.

Items Provided by City of Texarkana: City shall secure locations of the Public Workshop #3 venue.

3.09 REPORT PREPARATION, REVIEW, and FINAL

The ND team shall combine the information compiled in each of the tasks above into a Final Report. ND will assist in reviewing the report with City staff and City Council. Elements in this task will include:

A. Preparation of Report and Submittal (PDF format) draft to Texarkana staff for review.
B. Report outlines generally:

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

1. Introduction
   - Purpose of the Plan
2. Community Profile
3. Assessment of Existing Conditions
4. Standards Analysis
   - Survey Results
   - Level of Service
5. Recommendations
   - Facility Improvements
   - Short and Long Term Actions
   - Funding Options

Deliverables:

a. Report final product shall be in an Adobe (InDesign/Illustrator) that can be edited by the City.
b. ND shall prepare electronic (PDF format) draft report.
c. ND shall prepare electronic (PDF format) final report. (after city comments)

Items Provided by City of Texarkana: The City shall review a draft report, set up meetings and agenda items for review and approval of master plan, and distribute electronic or hard copies of the report to staff and City Council.

3.10 ADOPTION (1 Day in TEX)

ND shall produce a high-resolution, full-color digital (PDF format) original of the Master Plan Report for use in immediate printing as part of this contract, as well as future printing and digital use via city website by the community. ND will attend and present the plan to a City Council meeting (1) for adoption consideration.

Deliverables:

a. Provide a final digital original of the Parks and Trails Master Plan Report and print 10 copies.
b. One ND staff will travel to Texarkana for the 1-day event.

Items Provided by City of Texarkana: The City shall schedule a City Council hearing and adopt the Parks and Trails Master Plan.

- End of Scope of Services -

Attachment: 2024-026 EXH 'B' TEX - Parks MP scope_Exhibit A - NorrisDesign_11feb2024 (4186 : 2024-026 RES Auth CM to enter into contract

Park & Trails System Master Plan

City of Texarkana, TX

PROJECT DURATION : 11-12 Months

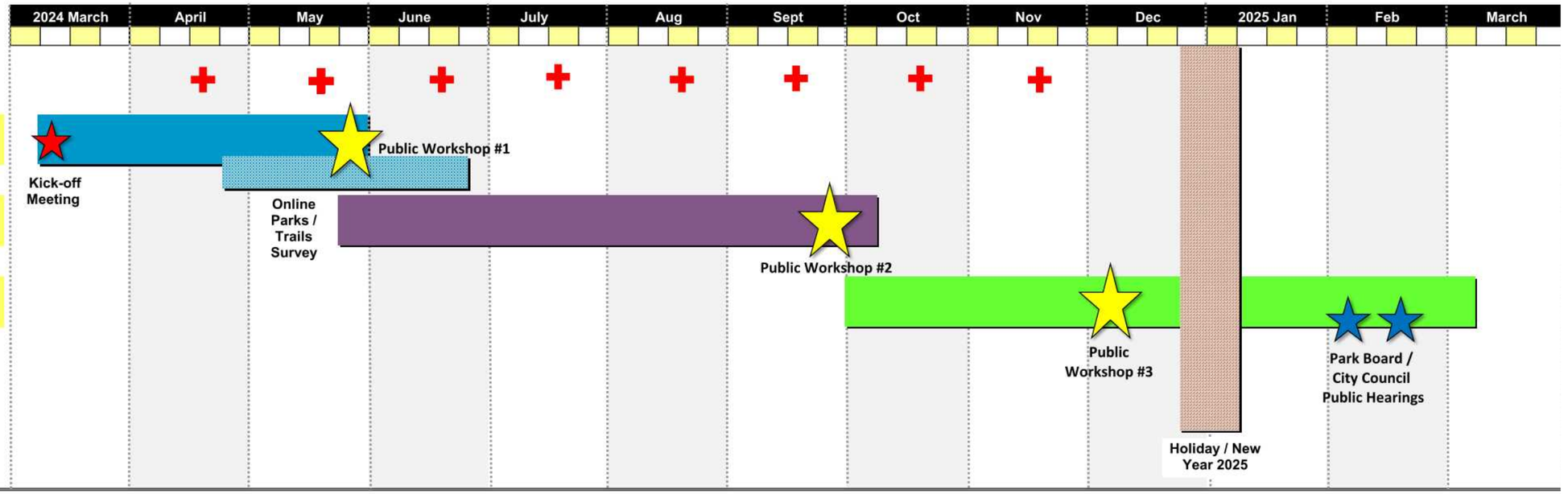
DATE: FEB 2024

Phase 1 - Project Initiation and the Existing Status of Parks & Trails System

Phase 2 - Level of Service and Master Plan

Phase 3 - Technical Plan Document and Implementation

Project Timeline



LEGEND

- Monthly Advisory Committee Meetings
- Public Workshop Meetings
- Adoption Meetings and Public Hearings

Attachment: 2024-026 EXH 'C' Tex Parks System MP - TimelineV02_feb 2024 (4186 : 2024-026 RES Auth CM to enter into contract with Norris

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:		
Perspectives		**Goals**
Serve the Community	☑	Promote an Environmentally Sensitive & Livable Community
	☑	Provide a Safe Community
	☑	Deliver Quality Services
	☑	Foster a Healthy Community
Run the Operations	☑	Enhance Community Preparedness & Responsiveness
	☑	Maximize Partnership Opportunities
	☑	Provide Courteous & Responsive Customer Service
	☑	Model a Positive City Image
	☑	Deliver Efficient Services
	☑	Cultivate Community Involvement & Access
Manage the Resources	☑	Maintain Fiscal Strength
	☑	Maximize Utilization & Resources
	☑	Invest in Infrastructure & Transportation
Develop Personnel	☑	Develop a Skilled & Diverse Workforce
	☐	Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved:	No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:			
☐	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☑	Press Release
☐	E-News Distribution	☑	Website Notice
☑	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☑	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	
Other:			

Attachment: 2024-026 Goals & Perspectives (4186 : 2024-026 RES Auth CM to enter into contract with Norris Design for Development for Parks

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 2/23/2024 10:44 AM

Lead Department: Parks, Recreation & Health **Action Officer:** Keith Beason,

Subject: Ordinance No. 2024-023 authorizing the City Manager to accept a grant from the State Energy Conservation Office (SECO) in the amount of fifty thousand dollars ($50,000); execute a contract with Holistic Utility Solutions in an amount not to exceed eighty-two thousand three hundred fifty-five dollars ($82,355) for Southwest Center Lighting repairs and upgrades, to be paid for with grant funds of fifty thousand dollars ($50,000), a SWEPCO incentive of four thousand one hundred dollars ($4,100), and funding from the Parks Department in the General Fund (Fund 101) of twenty-eight thousand two hundred fifty-five dollars ($28,255); and amending the budget for fiscal year beginning October 1, 2023 and ending September 30, 2024 to include the SECO Grant Fund (Fund 247) and appropriate additional revenue and expenditures, in this fund, of eighty-two thousand three hundred fifty-five dollars ($82,355).

Briefing: 2/26/2024 **Public Hearing:** **Council Vote:** 2/26/2024

Item Schedule

Schedule 3: No briefing required (one week)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The Parks and Recreation Staff requests approval to accept a grant award from the State Energy Conservation Office (SECO) in the amount of $50,000.00 and enter into a contract for energy efficient LED lighting upgrades at the Southwest Center Parking Lot and Tennis/Pickleball Courts in the amount of $82,355.00. The estimated incentive amount from SWEPCO is $4,100.00 leaving $28,255.00 as the estimated cost to come from the Parks Department in the General Fund (Fund 101). Staff is also requesting to amend the budget to include the SECO Grant Fund (Fund 247) and appropriate revenue and expenditures in the fund in the amount of $82,355.00.

Potential Options:

- Approve
- Deny

Fiscal Implications:

Cost of work $82,355.00
$50,000.00 grant award from SECO
$4,100.00 incentive from SWEPCO
$28,255.00 from the Parks Department in the General Fund (Fund 101)

Staff Recommendation:

Staff recommend approval of this request.

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-023 ORD Auth CM to accept SECO grant award and enter contract with Holistic Utility for SWC Lighting (DOCX)
b. 2024-023 EXH 'A' City of Texarkana FINAL Contract RFA MUN-G1-2024 7692-9JM_For signature (PDF)
c. 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (PDF)
d. 2024-023 Goals & Perspectives (DOCX)

Staff Coordination

Parks, Recreation & Health	Robby Robertson	Department Head Review	Completed	02/21/2024 4:01 PM
Finance Department	Kristin Peeples	Finance Review	Completed	02/22/2024 11:36 AM
City Manager	David Orr	City Manager Review	Completed	02/23/2024 12:40 PM
City Council	Vicky Coopwood	Meeting	Pending	02/26/2024 6:00 PM

Meeting History

Attachment: 2024-023 ORD Auth CM to accept SECO grant award and enter contract with Holistic Utility for SWC Lighting (4183 : 2024-023 ORD

ORDINANCE NO. 2024-023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT AWARD FROM THE STATE ENERGY CONSERVATION OFFICE (SECO) OF FIFTY THOUSAND DOLLARS ($50,000) FOR LIGHTING UPGRADES AT THE SOUTHWEST CENTER AND TO EXECUTE A CONTRACT WITH HOLISTIC UTILITY SOLUTIONS TO INSTALL THE LIGHTING AT THE SOUTHWEST CENTER FOR EIGHTY-TWO THOUSAND THREE HUNDRED FIFTY-FIVE DOLLARS ($82,355) WITH THE REMAINDER TO BE PAID FROM A SWEPCO INCENTIVE IN THE AMOUNT OF FOUR THOUSAND ONE HUNDRED DOLLARS ($4,100) AND FUNDS SET ASIDE IN THE PARKS DEPARTMENT OF THE GENERAL FUND (FUND 101) IN THE AMOUNT OF TWENTY-EIGHT THOUSAND TWO HUNDRED FIFTY-FIVE DOLLARS ($28,255) AND AMENDING THE BUDGET FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2024 TO INCLUDE THE SECO GRANT FUND (FUND 247) AND APPROPRIATE ADDITIONAL REVENUE AND EXPENDITURES OF EIGHTY-TWO THOUSAND THREE HUNDRED FIFTY-FIVE DOLLARS ($82,355); AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the lighting at the Southwest Center parking lot and tennis/pickleball courts are in need of upgrades; and

WHEREAS, the City has received a grant from SECO in the amount of **Fifty Thousand Dollars ($50,000)**; and

WHEREAS, Holistic Utility Solutions submitted a proposal for a total cost of **Eighty-Two Thousand Three Hundred Fifty-Five Dollars ($82,355)** through the TIPS Buy Board Purchasing Cooperative (Contract #23010402); and

WHEREAS, it is estimated that the City will receive revenue from a SWEPCO incentive in the amount of **Four Thousand One Hundred Dollars ($4,100)**; and

WHEREAS, the remainder of the cost of the project, **Twenty-Eight Thousand Two Hundred Fifty-Five Dollars ($28,255**) will be funded from the Parks Department of the General Fund (Fund 101); and

WHEREAS, the SECO Grant Fund (Fund 247) and the corresponding revenue and expenditures were not included in the original budget for the fiscal year beginning October 1, 2023, and ending September 30, 2024; and

WHEREAS, staff recommends amending the budget for the fiscal year beginning October 1, 2023, and ending September 30, 2024, to include the SECO Grant Fund (Fund 247) with revenue and expenditures appropriated of **Eighty-Two Thousand Three Hundred Fifty-Five Dollars ($82,355)**; and

WHEREAS, the grant award from SECO is attached as **Exhibit "A";** and

WHEREAS, the proposal from Holistic Utility Solutions is attached as **Exhibit "B"**.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: The City Manager be and is hereby authorized to accept the SECO grant award of **Fifty Thousand Dollars ($50,000).**

SECTION 2: The City Manager be and is hereby authorized to execute a contract with Holistic Utility Solutions through the TIPS Buy Board Purchasing Cooperative in an amount not to exceed **Eighty-Two Thousand Three Hundred Fifty-Five Dollars ($82,355).**

SECTION 3: The budget estimate of the revenue and expenditures of the City as prepared by the City Manager and appropriated by the City Council for the fiscal year beginning October 1, 2023, and ending September 30, 2024, be amended to include the SECO Grant Fund (Fund 247) and appropriate additional revenue and expenditures in this fund in the amount of **Eighty Two Thousand Three Hundred Fifty-Five Dollars ($82,355).**

SECTION 4: This Ordinance shall be in full force and in effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **26th day of February, 2024**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2024-023 ORD Auth CM to accept SECO grant award and enter contract with Holistic Utility for SWC Lighting (4183 : 2024-023 ORD

STATE OF TEXAS **STATE ENERGY CONSERVATION OFFICE AGREEMENT**

COUNTY OF TRAVIS **# CM24005**

INTERAGENCY AGREEMENT FOR THE MUNICIPAL GOVERNMENT LIGHTING CONVERSION TO LED LIGHTS PROGRAM

This interlocal agreement ("Agreement") is entered into by and between the Texas Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office ("SECO") and the City of Texarkana (sometime referred to as "Contractor" or "Applicant") located at 220 Texas Blvd, Texarkana, Texas 75501.

I. Recitals

Whereas, on August 11, 2023, Comptroller issued a Request for Applications No. MUN-G1-2024 ("RFA") for municipal governments to convert existing lighting to energy efficient LED lighting;

Whereas, City of Texarkana submitted an application on or before September 22, 2023, in response to Comptroller's RFA ("Application");

Whereas, City of Texarkana was selected as a Successful Applicant;

hereas, under this Agreement, City of Texarkana shall fully comply with all terms, conditions, requirements and other provisions of this Contract, including those set forth in the Attachments attached hereto and incorporated herein for all purposes; and

Whereas, in consideration of the City of Texarkana's compliance with all requirements of this Contract, Comptroller awards this Contract to the City of Texarkana.

Now, therefore, the parties hereby agree as follows:

II. Authority

This Agreement is entered into pursuant to the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code; the Interagency Cooperation Act, Chapter 771, Texas Government Code; and the State of Texas Oil Overcharge Funds Disbursement Plan. Funding for this program is provided by state funds approved by the United States Department of Energy ("DOE").

III. Services

The City of Texarkana shall provide to Comptroller all of the services and deliverables described in and in the manner required by this Agreement all of the following documents ("Services") as attached hereto and incorporated as part of this Agreement for all purposes. All terms and conditions of Comptroller's RFA shall apply.

Attachment A:	Statement of Services to be Performed;
Attachment B:	Budget;
Attachment C-1:	Assurance of Compliance, Nondiscrimination in State Assisted Programs;
Attachment C-2:	Assurance of Compliance, Nondiscrimination in State Assisted Programs;

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Attachment D:	Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions;
Attachment E:	Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements;
Attachment F:	Disclosure of Lobbying Activities;
Attachment G:	Assurances – Non-Construction Programs;
Attachment H:	Intellectual Property Provisions;
Attachment I:	Subcontracting Provisions; Mandatory Flowdown Provision;
Attachment J:	Execution of Application;
Attachment K:	Nondisclosure Agreement;
Attachment L:	Comptroller's RFA;
Attachment M:	City of Texarkana's Application;
Attachment N:	Certification Regarding Davis-Bacon Act.

In the event of a conflict, the documents shall control in the following order of precedence:

1. This Agreement, excluding Attachments;
2. Attachments A and B;
3. Attachments C-1 through H;
4. Attachment I;
5. Attachment N;
6. Attachment J;
7. Attachment K;
8. Attachment L;
9. Attachment M;

City of Texarkana's performance under this Agreement is limited to the requirements set forth in this Agreement, including services reasonably related to satisfying those requirements.

City of Texarkana represents and warrants that it has the requisite qualifications, experience, personnel and other resources to provide all of the required Services to Comptroller in the manner required by this Agreement. Comptroller shall look solely to City of Texarkana for performance of this Agreement. City of Texarkana shall provide the services under the direction of Comptroller. City of Texarkana shall be the sole point of Contract responsibility. City of Texarkana shall be liable, both individually and severally, for the performance of all obligations under this Contract, and shall not be relieved of the non-performance of any subcontractor.

IV. Payments

Total payments to City of Texarkana under this Agreement shall not exceed **FIFTY THOUSAND AND 00/100 DOLLARS ($50,000.00)**. City of Texarkana's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment B. No other amounts shall be paid. Each month, City of Texarkana shall submit to Comptroller each request for payment by submitting a detailed invoice to Comptroller, listing expenses by budget categories. City of Texarkana shall submit invoices that are fully supported by receipts and such other documentation. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which City of Texarkana does not submit documentation acceptable to Comptroller. City of Texarkana shall submit monthly invoices for equipment purchased, services performed and costs incurred in the prior month.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through its execution of a written amendment to this Agreement. City of Texarkana may submit a request for reimbursement after contract termination provided the eligible expenses were incurred during the term of the Agreement.

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V. Term

The term of this Agreement shall begin on the date executed by Comptroller, after having first been signed by City of Texarkana and shall be effective until August 31, 2024 ("Termination Date") unless terminated earlier in accordance with other provisions of this Agreement. Notwithstanding the termination or expiration of this Agreement, the provisions of this Agreement regarding confidentiality, indemnification, payments, records, and dispute resolution shall survive the termination or expiration dates of this Contract.

VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to City of Texarkana.

Upon receipt of notice of termination from Comptroller, City of Texarkana shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs. City of Texarkana cannot incur new costs after termination but can seek reimbursement for eligible costs incurred during the Agreement term. Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination for a breach of this Agreement or failure to comply with the terms of this Agreement, City of Texarkana may be required to return any or all grant funds to Comptroller.

VII. Records Retention, Right to Audit, and Monitoring

A. Retention of Records. City of Texarkana shall maintain and retain fiscal records and supporting documentation for all expenditures related to this Agreement at its principal office adequate to ensure that claims for grant funds are in accordance with applicable Comptroller and State of Texas requirements. City of Texarkana shall maintain all such documents and other records relating to this Agreement for a period of seven (7) years after the date of submission of the final invoice or until a resolution of all billing questions, whichever is later.

B. Access to Records. City of Texarkana shall give DOE, the Inspector General, the General Accounting Office, the Auditor of the State of Texas, Comptroller, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, other papers, things or property belonging to or in use by City of Texarkana pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by City of Texarkana. City of Texarkana shall cooperate with auditors and other authorized representatives of Comptroller and the State of Texas and shall provide them with prompt access to all such property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, the City of Texarkana's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. City of Texarkana agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

C. Right to Audit. Comptroller may require, at City of Texarkana's sole cost and expense, independent audits by a qualified certified public accounting firm of City of Texarkana's books and records or the State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to City of Texarkana. Comptroller retains the right to issue a request for applications for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of City of Texarkana or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by City of Texarkana or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, City

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of Texarkana or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code. City of Texarkana shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors or sub-contractors through the City of Texarkana and the requirement to cooperate is included in any subcontract it awards. The state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the City of Texarkana relating to this Agreement.

D. Monitoring. Comptroller may also carry out monitoring and evaluation activities to ensure City of Texarkana's compliance with the programs that are the subject of this Agreement and to make available copies of all financial audits and related management letters of City of Texarkana and any subcontractors as required under any applicable federal or state law or guidelines.

VIII. Indemnification

TO THE EXTENT PERMITTED BY THE CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, THE CITY OF TEXARKANA SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND COMPTROLLER, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CITY OF TEXARKANA OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THIS CONTRACT. THE DEFENSE SHALL BE COORDINATED BY CITY OF TEXARKANA WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CITY OF TEXARKANA MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CITY OF TEXARKANA AND COMPTROLLER AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

IX. Subcontracting

City of Texarkana may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

X. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Section XVIII.

XI. Notice

Any notice relating to this Agreement, which is required or permitted to be given under this Agreement by one party to the other party shall be in writing and shall be addressed to the receiving party at the address specified below. The notice shall be deemed to have been given immediately if delivered in person to the recipient's address specified below. It shall be deemed to have been given on the date of certified receipt if placed in the United States mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the receiving party at the address specified below. Registered or certified mail with return receipt is not required for copies.

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Comptroller: Texas Comptroller of Public Accounts
State Energy Conservation Office
111 E. 17th Street
Austin, Texas 78774

City of Texarkana: City of Texarkana
220 Texas Blvd
Texarkana, TX 75501

XII. Funding

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Section, Comptroller shall not be required to give notice and not be liable for damages or losses caused or associated with such termination or cancellation.

XIII. Insurance

City of Texarkana has and will maintain in force during the term of this Agreement insurance coverage or an adequate program of self-insurance to cover its indemnification obligations under this Agreement. As a political subdivision of the State of Texas, City of Texarkana will address issues of general liability in accordance with the Texas Civil Practice and Remedies Code, Chapter 101 (the Texas Tort Claims Act) and Chapter 102 (Tort Claims Payments by Local Governments). City of Texarkana will maintain Workers' Compensation insurance in the amounts required by state and federal law.

XIV. Assignment

City of Texarkana shall not transfer or assign any rights or duties under or any interest in this Agreement. City of Texarkana shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

For the purposes of this Agreement, the term "Work" is defined as all reports, work papers, work products, materials, approaches, designs, specification, systems, documentation, methodologies, concepts, intellectual property or other property developed, produced or generated in connection with the services provided under this Agreement. City of Texarkana owns and will continue to own all right, title and interest and all proprietary rights in and to the Work and any and all documentation or other products and results of the services rendered by City of Texarkana, including all trade secret, copyright, patent, trademark, and other proprietary rights.

City of Texarkana hereby grants Comptroller a perpetual, royalty-free, nonexclusive, irrevocable, transferable, worldwide license for governmental purposes to use, reproduce, distribute, display, and perform the Work and to prepare derivative works based thereon. Additionally, upon delivery of the Work to Comptroller, and upon full payment to City of Texarkana hereunder by Comptroller for such Work, Comptroller shall be deemed to have paid all non-commercial license, support, maintenance, subscription, and other fees of any kind, and City of Texarkana understands and agrees to this provision.

In the event that either party intends to use, reproduce, display, or perform such Work for commercial purposes, the parties agree in good faith to negotiate the applicable license.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, City of Texarkana shall deliver to Comptroller all completed, or partially completed, Work and any and all documentation or other products and results of these services. Failure to timely deliver such Work and any and all documentation or other products and results of services shall be considered a material breach of this Agreement.

In the event of any conflicting provisions between this Section and Attachment H, Attachment H shall control.

Title to and control over equipment or license of any software so purchased for City of Texarkana's performance under this Agreement shall remain with City of Texarkana so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. City of Texarkana shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Comptroller and City of Texarkana to attempt to resolve any claim for breach of contract made by City of Texarkana under this Agreement:

(A) City of Texarkana's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, City of Texarkana shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and City of Texarkana otherwise entitled to notice under this Agreement. Compliance by City of Texarkana with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

(B) The contested case process provided in Chapter 2260 is City of Texarkana's sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.

(C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practice and Remedies Code. Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

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Should a dispute arise out of this Agreement, Comptroller and City of Texarkana shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and City of Texarkana within fifteen (15) days after written notice by one of them demanding mediation under this Section. City of Texarkana and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and City of Texarkana may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and City of Texarkana shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of: (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an agency of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

City of Texarkana shall comply with all state and federal laws, regulations, requirements and guidelines applicable to a City of Texarkana providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller's or City of Texarkana's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. Additional Provisions

19.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

19.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or otherwise available to Comptroller or City of Texarkana. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller or City of Texarkana under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller or City of Texarkana do not waive any privileges, rights, defenses, or immunities available to them by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller or City of Texarkana must be in writing, must reference this Section, and must be signed by Comptroller and City of Texarkana to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

19.3 No Liability upon Termination

If this Agreement is terminated for any reason, Comptroller and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts arising from or related to any such termination.

19.4 Limitation on Authority; No Other Obligations

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City of Texarkana shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. City of Texarkana may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

19.5 No Other Benefits

City of Texarkana shall have no exclusive rights or benefits other than those set forth herein.

19.6 Force Majeure

Except as otherwise provided, neither City of Texarkana nor Comptroller shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

19.7 Debts or Delinquencies to State

City of Texarkana acknowledges and agrees that, to the extent City of Texarkana owes any debt or delinquent taxes to the State of Texas, any payments or other amounts City of Texarkana is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes City of Texarkana owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time City of Texarkana owes any such debt or delinquency. City of Texarkana shall comply with rules adopted by the Comptroller under Sections 403.055, 403.0551, and 2252.903 of the Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, City of Texarkana acknowledges and agrees that any obligation to refund or return grant funds based on termination or breach of this Agreement entered into by City of Texarkana and Comptroller creates “a debt to the state” for purposes of Section 403.055 of the Texas Government Code. City of Texarkana further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the City of Texarkana and Comptroller. Comptroller agrees that it shall provide City of Texarkana the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Comptroller. Applicant’s failure to return any amount owed upon conclusion of Comptroller’s administrative review process shall allow Comptroller to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing City of Texarkana’s compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by City of Texarkana under the terms of this Agreement.

If City of Texarkana is a “local government entity” as defined under Section 271.151 of the Texas Local Government Code, City of Texarkana acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to City of Texarkana, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.

19.8 Report of Fraud, Waste and Abuse; Texas Government Code, Section 321.022

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the City of Texarkana or by a client or contractor of the City of Texarkana may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred

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in relation to the operation of the City of Texarkana, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the City of Texarkana. See http://sao.fraud.state.tx.us/.

19.9 Actual or Potential Conflicts of Interest Prohibited

City of Texarkana hereby represents and warrants that it and its personnel, including the City of Texarkana's subcontractors, have no actual or potential conflicts of interest in performing this Agreement and related activities throughout the term of this Agreement and the performance of this Agreement would not create any appearance of impropriety. This representation, warranty, and certification includes all past (defined as within the two (2) calendar years prior to the deadline for submission of applications) and present contractual, business, financial, or personal relationships between City of Texarkana and its subcontractors, if any, and between the City of Texarkana and Comptroller. For purposes of this provision, "personal relationship" is defined as a current or past connection other than a clearly contractual, business, financial or similar relationship and includes family relationships or other connections. "Family relationship" is defined as a relationship within the third degree of consanguinity or second degree of affinity as set forth in Chapter 573 of the Texas Government Code. The connections are relevant if a reasonable person could expect the connection to diminish the City of Texarkana's independence of judgment or effectiveness in the performance of this Agreement. The City of Texarkana shall at all times comply with the conflict of interest provisions under Chapter 171 of the Local Government Code and Chapter 573 of the Texas Government Code.

19.10 Comptroller's Anti-Fraud Policy

Comptroller's Anti-Fraud Policy. City of Texarkana represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy located on Comptroller's website at https://comptroller.texas.gov/about/policies/ethics.php, as such Policy currently reads and as it is amended throughout the term of this Agreement.

19.11 Texas Family Code

Under Section 231.006, Texas Family Code (relating to child support), Contractor certifies that the individual or business entity named in this Agreement is eligible to receive payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

19.12 Criminal Conviction Certification

Contractor certifies that neither Contractor or any of its employees, agents, or representative, including any subcontractors and employees, agents, or representative of such subcontractors, to be assigned to the services hereunder, has been convicted of a felony criminal offense, or that if such a conviction has occurred or occurs during the term of this Agreement, Contractor will immediately fully advise Comptroller as to the facts and circumstances.

19.13 Financial Interests; Gifts

Contractor represents and warrants that neither contractor nor any person or entity which will participate financially in this Agreement has received compensation from Comptroller for participation in preparation of specifications for this Agreement. In addition, under Section 2155.004, Texas Government Code, Contractor certifies that it is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate. Contractor represents and warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this Agreement. Contractor certifies that it is in compliance with Section 669.003, Texas Government Code, relating to contracting with executive head of a state agency.

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19.14 Buy Texas

Contractor represents and warrants that, in accordance with Section 2155.4441, Texas Government Code, it shall purchase products and materials produced in Texas when they are available at a comparable price and in a comparable period of time.

19.15 False Statements; Breach of Representations

By signature to this Agreement, Contractor makes all the representations, warranties, covenants, and certifications included in this Agreement. Notwithstanding any provision of this Agreement to the contrary, if Contractor signs this Agreement with a false statement or it is subsequently determined that Contractor has violated any of the representations, warranties, covenants or certifications included in this Agreement, Contractor shall be in default under this Agreement and Comptroller may terminate or void this Agreement for cause and pursue other remedies available to Comptroller under this Agreement and applicable law.

19.16 Prohibited Use of Appropriated or Other Funds under Control of State Agency; Lobbying

Contractor represents and warrants that Comptroller's payment to Contractor and Contractor's receipt of appropriated or other funds under this Agreement are not prohibited by Sections 556.005, 556.0055, or 556.008, Texas Government Code.

19.17 Certification Concerning Hurricane Relief

Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certifications inaccurate.

19.18 Debarred Vendors List

Contractor represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.sam.gov.

19.19 Drug Free Workplace

Contractor represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

19.20 No Boycott-State of Israel

Pursuant to Section 2270.002 of the Texas Government Code, Contractor does not boycott Israel and will not boycott Israel during the term of the Contract.

19.21 Human Trafficking Prohibition

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Under Section 2155.0061 of the Texas Government Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

19.22 Foreign Terrorist Organizations

Contractor represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152 of the Texas Government Code.

19.23 Energy Company Boycotts

Contractor represents and warrants that: (1) it does not, and will not for the duration of this Agreement, boycott energy companies or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term this Agreement, Contractor shall promptly notify CPA.

19.24 Firearm Entities and Trade Associations Discrimination

Contractor verifies that: (1) it does not, and will not for the duration of this Agreement, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association or (2) the verification required by Section 2274.002 of the Texas Government Code does not apply to this Agreement. If circumstances relevant to this provision change during the term of this Agreement, Contractor shall promptly notify CPA.

19.25 COVID-19 Vaccine Passport Prohibition

Under Section 161.0085 of the Texas Health and Safety Code, Contractor certifies that the individual or business entity named in this Agreement is not ineligible to receive this Agreement.

XX. Merger

This Agreement, and its accompanying attachments, contain the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

XXI. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties. This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

Texas Comptroller of Public Accounts

By:_____

Lisa Craven
Deputy Comptroller

Date: _____

City of Texarkana

By:_____

David Orr
City Manager

Date: _____

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ATTACHMENT A

STATEMENT OF SERVICES TO BE PERFORMED AND DELIVERABLES

A. The City of Texarkana shall perform all of the deliverables described in this Attachment A, or otherwise required by this Agreement. These deliverables include, but are not limited to, the furnishing of all personnel and the procurement of all equipment, supplies, and other items necessary to provide those deliverables in compliance with this Agreement. City of Texarkana shall provide all services in accordance with the Standards of Performance of this Agreement. City of Texarkana shall review and implement Comptroller recommendations, as Comptroller adopts them from time to time, so that the deliverables may be expeditiously and satisfactorily completed. City of Texarkana shall meet with Comptroller at such times as Comptroller may reasonably request to discuss the progress of deliverables and any other matters that may arise in regard to this Agreement.

B. City of Texarkana shall perform the following services during the period of this Agreement:

1. Ensure standard warranty for all labor and materials for one (1) year from date of substantial completion. All new fixtures and/or lamps shall have a minimum five-year warranty.
2. Furnish all labor, materials, and equipment necessary for completing the lighting retrofit.
3. Program and test new LED lighting control equipment with the current operating schedules.
4. Ensure specifications/requirements for construction and installation of the retrofits replacement systems meet or exceed equipment and system efficiency standards established in the 2018 IECC or later versions as may be adopted by any local authority having jurisdiction over the project.
5. Ensure the proposed retrofits and any impacts on existing building systems complies with applicable building codes such as the National Electrical Code (“NEC”), and the National Fire Protection Association (NFPA).
6. Light Levels: City of Texarkana shall conduct pre-retrofit survey of existing fixture light levels, wattage, and reflector distribution. Post retrofit foot-candles (FC) must meet or exceed existing FC levels and be in compliance with IES standards for the application. Installation shall comply with the City of Texarkana’s outdoor lighting ordinance(s). Proposed retrofits shall comply with dark-sky ordinance(s) as applicable.
7. For the parking lot lighting retrofit, City of Texarkana shall ensure a vendor generated photometric lighting plan be generated for review and approval by the code official.
8. Parking lot LED Fixtures Recommended Lumen Maintenance shall (meet or exceed: 100,000 hours expected life (L85).
9. Wall Packs LED Fixtures Recommended Lumen Maintenance shall meet or exceed 50,000 hours expected life (L70).
10. Exterior covered walkway LED fixtures Recommended Lumen Maintenance shall meet or exceed 50,000 hours expected life (L70).
11. During the lighting retrofit, City of Texarkana shall ensure, the function and operation of all other existing control systems (timeclock, Building Automation System (BAS), and/or photocell) shall be preserved.
12. New LED lighting control equipment shall be programmed and tested with the current operating schedules.
13. All LED equipment proposed shall be new, manufactured, rated, and certified for use proposed by the installer. Installations or combinations of equipment proposed under this contract shall at no time violate, invalidate, or disallow any rating or certification such as Underwriter’s Laboratories (UL), etc.
14. Ensure existing lighting systems in the community or recreation center facilities shall be audited and retrofitted in accordance with UIL and local building code requirements. The lighting system retrofits shall be conducted in a safe manner to achieve energy efficiency and reduce municipal facility operating costs, while maintaining or improving occupant visual comfort.

15. Ensure all work to install equipment, luminaires, lamps, ballasts, and systems used shall be complete and fully operational. All equipment shall be new in condition and appearance and have never been used.
16. Commissioning of the LED lighting retrofit, and the associated lighting controls/systems shall be performed.
17. City of Texarkana shall provide installation documentation to include a signed letter that contains the professional engineer's seal certifying that all installation code design requirements have been met.

C. **Deliverables** – The City of Texarkana shall:

1. Provide to SECO a 20% match letter of the reimbursable grant funds. The match letter must be approved by United States Department of Energy (DOE) prior to full contract execution.
2. Furnish itemized list of all LED equipment installed (type and quantity) with detail electrical equipment cut sheet/specifications and efficiencies for each different type and LED system. Monthly invoices should also itemize the total labor, materials, and equipment of the LED installation project including electrical control equipment. All installations must comply with the current codes and original manufacturers product specifications.
3. Provide building name, areas, and physical address and location(s) of all new replaced LED lighting equipment and controls to SECO and include the completed follow up inspection reporting required to SECO.
4. Submit with each reimbursement request, a:
    - Texas Master/ Journeyman Electrician Name and License number who supervised the work;
    - Texas Master/ Journeyman Electrician certification that the replaced LED lighting systems and control equipment was installed in accordance with current codes and manufacturer's recommendations.
    - Final inspection reports and close out warranty information, spec sheets, and ongoing maintenance procedures for all LED equipment installed.
5. Notify SECO on a monthly basis on the status of each project and identify any current issues or concerns of the LED lighting retrofits.

D. **Reporting** – City of Texarkana shall provide a monthly, quarterly, and final reports. The reports along with all project findings report shall be submitted through the SECO contract portal located on the SECO home page.

1. **Monthly Reports**: shall be submitted each month no later than the 10th day of the following month. The report shall include, at a minimum and as applicable, the following information:
    a. Building(s) retrofitted; and
    b. Number of buildings retrofitted.

2. **Quarterly Reports** – City of Texarkana shall submit quarterly reports every 3 months (based on the state fiscal year quarters timeline:
    Q1: 9/1 – 11/30 (Due 12/10).
    Q2: 12/1 – 2/28 (Due 3/10).
    Q3: 3/1 – 5/31 (Due 6/10).
    Q4: 6/1 – 8/31 (Due 9/10).

The report shall include at a minimum a recap of the monthly report activities.

3. **Final Report** – City of Texarkana shall submit a Final Report due 30 days after the completion of the project. The report shall include, at a minimum, a summary of all monthly reporting along with photos of completed LED lighting retrofits.

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E. **Milestones –** Comptroller may request additional records, information or reports related to the Services and Deliverables hereinafter described. At a minimum, the deliverables and milestones identified in the following chart must be provided by City of Texarkana to Comptroller by the specified due date:

Deliverables and Milestones	Schedule
Project implementation schedule.	Within 30 days of project start date
Monthly update of project activities report submitted electronically with voucher claim for reimbursement.	10th day of month
Quarterly progress reports (State Fiscal Year Quarters).	December 10th, March 10th, June 10th, and September 10th
Prepare the Final report. The report shall include, at a minimum and as applicable, the summary of all monthly reports.	Within 30 days of project completion, but no later than 9/15/2024

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ATTACHMENT B

BUDGET

Budget – The following Budget includes all costs for performing the MUNICIPAL GOVERNMENT LIGHTING CONVERSION TO LED LIGHTS retrofits as described in the Agreement. Comptroller will **not** prepay any amounts. All costs in this Attachment B are not-to-exceed Total costs.

Subcontract	**$ 50,000.00**
TOTAL	**$ 50,000.00**
City of Texarkana Provided 20% Match	**$ 10,000.00**

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ATTACHMENT C-1

DOE F 1600.5
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OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs
OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

City of Texarkana (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation
In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices
Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance
The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records
The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable

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to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification
The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Name and Title (Printed or Typed)	**Telephone Number**
Signature	**Date**

City of Texarkana	903-798-3902
Name of Organization	**Telephone Number**
220 Texas Blvd, Texarkana, Texas 75501	
Address	

Authorized Official:

David Orr, City Manager	903-798-3902
Name and Title (Printed or Typed)	**Telephone Number**
Signature	**Date**

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ATTACHMENT C-2

DOE F 1600.5
(06-94)
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OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

(Enter name of Recipient's Subcontractor) Holistic Utility Solutions (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1975 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation
In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices
Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance
The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws and regulations cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

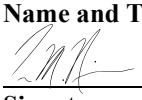
The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signatures appear below and who are authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

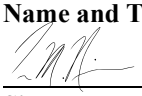
Designated Responsible Employee of Subcontractor

Ira Nicodemus, President	214-384-3819
Name and Title (Printed or Typed)	**Telephone Number**
	02/13/2024
Signature	**Date**

Subcontractor:

Holistic Utility Solutions	214-384-3819
Name of Organization	**Telephone Number**
129 S. Main St. STE 260, Grapevine, TX 76051	
Address	

Authorized Official of Subcontractor:

Ira Nicodemus, President	214-384-3819
Name and Title (Printed or Typed)	**Telephone Number**
	02/13/2024
Signature	**Date**

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ATTACHMENT D
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

   (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
   (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

City of Texarkana
Organization Name

David Orr, City Manager
Name and Title of Authorized Representative

Signature Date

Attachment: 2024-023 EXH 'A' City of Texarkana FINAL Contract RFA MUN-G1-2024 7692-9JM_For signature (4183 : 2024-023 ORD Auth CM to

ATTACHMENT E
CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

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2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period receding this application/proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application/proposal.

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3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)

(1) The Sub-recipient certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Sub-recipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:
  (1) The dangers of drug abuse in the workplace;
  (2) The Sub-recipient's policy of maintaining a drug-free workplace;
  (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  (1) Abide by the terms of the statement; and
  (2) Notify the employer in writing, of his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
  (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
  (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(2) The Sub-recipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:
(Street address, city, county, state, zip code)

_____
_____
_____

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☐ Check if there are workplaces on file that are not identified here.

ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)

(1) The Sub-recipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

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4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended ["Simpson-Craig Amendment," see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

City of Texarkana
Name of Applicant

Pre/Award Number and/or Project Name

David Orr, City Manager
Printed Name and Title of Authorized Representative

Signature

Date

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ATTACHMENT F

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: ____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ___ a. bid/offer/application b. initial award c. post award	3. Report Type: ___ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report ____

. Name and Address of Reporting Entity: Name Address ___ Prime ___ Subawardee Tier, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
6. Federal Department/Agency:	7. Federal Program Name/Description CFDA Number, if applicable:
8. Federal Action Number, If known:	9. Award Amount, if known:
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including addre if different from No. 10A) (last name, first name MI):
11. Amount of Payment (check all that apply): $_____ ___ actual ___ Planned	12. Form of Payment (check all that apply): a. cash b. in-kind; specify: nature ____ value ____

13. Type of Payment (check all that apply):

___ a. retainer ___ c. commission ___ e. deferred
___ b.one-time fee ___ d.contingent fee ___ f. other; specify _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

15. Continuation Sheet(s) SF-LLL-A attached: ___ Yes ___ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure	Authorized Representative: David Orr Title: City Manager Signature: _____ Telephone: 903-798-3902 Date: _____

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ATTACHMENT G

ASSURANCES -- NON-CONSTRUCTION PROGRAMS
OMB Approval No. 0348-0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

19. Will comply with the requirements of Section 160(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under this award.

20. SAM Registration – Recipients and their first-tier Subrecipients must register and maintain "active registration" status in the System for Award Management (https://sam.gov/content/home) database at all times during which they have active SECO awards. The registration process includes obtaining a Unique Entity Identifier (UEI). While the UEI does not expire, registrations must be updated annually and remain in "active registration" status for the award duration. Recipients must ensure that all potential subrecipients do not enter into a contractual relationship with the recipient unless the subrecipient is in "active registration" status and has an UEI number in the legally prescribed manner."

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21. Compliance with Davis-Bacon Act – Recipients must ensure bids, contracts, and subcontracts contain the applicable wage determination and the Davis-Bacon labor standards clauses found in 29 CFR § 5.5 (Code of Federal Regulations), titled Contract Provisions and Related Matters. The labor standards describe contractor responsibilities and provide remedies for noncompliance. A wage determination (WD) is a set of wages, fringe benefits, and work rules that the United States Department of Labor has ruled to be prevailing for a given labor category in a given locality. Note that if federal and state wage rates apply, contracts must contain both wage decisions/contract standards and employers must pay the higher of the two rates. Upon request, recipients must provide the prevailing WD information (www.sam.gov) of the project location to SECO and provide certified payrolls for all labor on the site. The certified payrolls and all data shall be created using form WH-347 or equivalent. No submitted hand-written forms will be accepted.

Signature of Authorized Certifying Official

City Manager
Title

City of Texarkana
Applicant Organization

Date Submitted

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ATTACHMENT H
Intellectual Property Provisions

AUTHORIZATION AND CONSENT – ALTERNATE I (48 CFR 52.227-1)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. the entire liability to the Government for infringement of a United States patent shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, does not affect this authorization and consent.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (48 CFR 52.227-2)

The provisions of this clause shall be applicable only if the amount of this grant exceeds $250.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (48 CFR 52.227-6)

If this grant is in an amount which exceeds $250 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Contractor agrees to report in writing to the Patent Counsel (with notification by Patent Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensers to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

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RIGHTS IN TECHNICAL - GENERAL – ALTERNATE IV (48 CFR 52.227-14)

(a) Definitions. As used in this clause -

Computer database or database means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software - (1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

Computer software documentation means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

Data means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

Limited rights means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

Limited rights data means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

Restricted computer software means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See 41 U.S.C. 116).

Unlimited rights means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in -

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to -
(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.
(c) Copyright -
(1) Data first produced in the performance of the contract. Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.
(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).
(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.
(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor -
(i) Identifies the data; and
(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.
(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.
(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except -
(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);
(2) As expressly set forth in this contract; or
(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.
(e) Unauthorized marking of data.
(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g) (4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return

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the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 4703, the following procedures shall apply prior to canceling or ignoring the markings.
(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;
(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.
(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.
(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.
(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.
(f) Omitted or incorrect markings.
(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.
(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor -
(i) Identifies the data to which the omitted notice is to be applied;
(ii) Demonstrates that the omission of the notice was inadvertent;
(iii) Establishes that the proposed notice is authorized; and
(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.
(3) If data has been marked with an incorrect notice, the Contracting Officer may -
(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or
(ii) Correct any incorrect notices.
(g) Protection of limited rights data and restricted computer software.
(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall -
(i) Identify the data being withheld; and
(ii) Furnish form, fit, and function data instead.
(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.
(3) [Reserved]

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(h) Subcontracting. The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.
(i) Relationship to patents or other rights. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)
It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

City of Texarkana
Organization Name

David Orr, City Manager
Name and Title of Authorized Representative

Signature Date

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ATTACHMENT I

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

The City of Texarkana, if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such Subcontractorubcontractors subject to all the duties, requirements, and obligations of City of Texarkana under this Agreement. City of Texarkana shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

City of Texarkana represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subcontractors under this Agreement. In no event shall any provision of this Attachment I, including, but not limited to, the requirement that City of Texarkana obtain the prior approval of Comptroller on City of Texarkana's proposed subcontracts, be construed as relieving City of Texarkana of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by City of Texarkana. City of Texarkana shall, upon request, furnish Comptroller with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from Comptroller, City of Texarkana shall provide any and all documentation deemed necessary by Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the City of Texarkana, I hereby certify that City of Texarkana and subcontractor will comply with the above requirements.

City of Texarkana:

By: _____

Name: David Orr, City Manager

Date: _____

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ATTACHMENT J
EXECUTION OF APPLICATION

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.

2. By signature hereon, Applicant represents and warrants its intent to purchase the subject items at the prices quoted in its Application.

3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at https://comptroller.texas.gov/about/policies/ethics.php as such Policy currently reads and as it is amended throughout the term of any resulting contract.

4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Application.

5. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.

6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.

7. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.

8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.

9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq*. and Tex. Bus. & Comm. Code Sec. 15.01, *et seq*., neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.

10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.

11. By signature hereon, Applicant represents and warrants that the individual signing this document and

the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Application.

12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

13. Check below if preference claimed under 34 Texas Administrative Code §20.38:
    - ☐ Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
    - ☐ Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
    - ☐ Agricultural products grown in Texas
    - ☐ Agricultural products offered by a Texas bidder
    - ☐ Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
    - ☐ Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
    - ☐ Texas Vegetation Native to the Region
    - ☐ USA produced supplies, materials or equipment
    - ☐ Products of persons with mental or physical disabilities
    - ☐ Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
    - ☐ Energy Efficient Products
    - ☐ Rubberized asphalt paving material
    - ☐ Recycled motor oil and lubricants
    - ☐ Products produced at facilities located on formerly contaminated property
    - ☐ Products and services from economically depressed or blighted areas
    - ☐ Vendors that meet or exceed air quality standards
    - ☐ Recycled or Reused Computer Equipment of Other Manufacturers
    - ☐ Foods of Higher Nutritional Value
    - ☐ Commercial production company or advertising agency located in Texas

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative,

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business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any Comptroller component within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive:_____
Name of State Agency:_____
Date of Separation from State Agency:_____
Position with Applicant: _____
Date of Employment with Applicant:_____

All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.

17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.

18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.

19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.

20. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.

22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant

is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at http://www.sam.gov.

23. Sections 2155.006(b) and 2261.053 of the Texas Government Code, prohibit state agencies from awarding a contract to any person who, in the past five (5) years has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005. By signature hereon, the Applicant represents and warrants, in accordance with Section 2155.006 of the Texas Government Code, that the individual or business entity named in its Application is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

24. By signature hereon, Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Part 1 of this document within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. If Applicant is unable to make the preceding representation and warranty, then Applicant instead represents and warrants that it has included as a detailed attachment in its Application a complete disclosure of any such court or governmental agency actions, proceedings, or investigations, etc. that would or could impair Applicant's performance under any agreement resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to Comptroller's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this clause and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the Agreement.

25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

Authorized Signature	_____
Printed Name	David Orr
Title	City Manager
Email Address	david.orr@txkusa.org
Company Name	City of Texarkana
Federal Employer Identification Number	75-6000689
Phone Number	903-798-3902
Physical Address	220 Texas Blvd, Texarkana, Texas 75501
Mailing Address	220 Texas Blvd, Texarkana, Texas 75501

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ATTACHMENT K

NONDISCLOSURE AGREEMENT

In consideration of the Texas Comptroller of Public Accounts ("Comptroller"), considering an application/proposal from or meeting with City of Texarkana ("Contractor") regarding proposed services and because of the sensitivity of certain information which may be provided to Contractor, both parties agree that all information regarding Comptroller, or gathered, produced, collected or derived from or related to these services or provided to Contractor as a result of these services ("Confidential Information") must remain confidential subject to release only upon prior written approval of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.

2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as contractor to Comptroller.

3. Contractor agrees to maintain the confidentiality of any and all Confidential Information related to the Agreement in the same manner that it protects the confidentiality of its own proprietary information of like kind.

4. The Confidential Information may not be copied, reproduced, disclosed or distributed without Comptroller's prior written consent.

5. All Confidential Information made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of: (a) termination or expiration of the Agreement or (b) request by Comptroller.

6. The foregoing must not prohibit or limit Contractor's use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach by Contractor of this agreement.

7. This Nondisclosure Agreement shall become effective as of the date Confidential Information is first made available to Contractor and shall survive any contract resulting from the RFA and be a continuing requirement.

8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate this Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of $5,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor of this Nondisclosure Agreement. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Nondisclosure Agreement.

City of Texarkana
Contractor Name

David Orr, City Manager
Name and Title of Authorized Representative

_____ _____
Signature Date

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ATTACHMENT L

Comptroller's RFA

Comptroller's RFA No. MUN-G1-2024, issued August 11, 2023, and Comptroller's Official Responses to Questions from Potential Applicants issued September 5, 2023 (collectively "RFA"), are incorporated by reference for all purposes into this Agreement as Attachment A of this Agreement. In the event of a conflict between Comptroller's RFA and a RFA Addendum, the RFA Addendum shall control.

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ATTACHMENT M

City of Texarkana's Application

City of Texarkana's Application dated September 19, 2023, is incorporated by reference for all purposes into this Agreement as Attachment M of this Agreement.

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ATTACHMENT N
CERTIFICATION REGARDING DAVIS-BACON ACT

As the duly authorized representative of the Contractor, I certify that the Contractor will comply with the applicable requirements of the Davis-Bacon Act (41 U.S.C. 3141 et seq.), including but not limited to:

- Obtain wage determination ("WD") and monitor it through contract award.
- Ensure all bid, contract, and subcontract documents and sole source contracts contain the WD and Davis-Bacon labor standards clauses (prime contractor and sub-contractors).
- For prime contracts over $100,000, comply with Contract Work Hours and Safety Standards Act (CWHSSA).
- Ensure no contracts are awarded to ineligible contractors.
- Ensure the Davis-Bacon poster and wage determination are posted at work site.
- Collect certified payroll reports and statements of Davis-Bacon compliance weekly.
- Spot-check payroll reports/related records.
- Conduct confidential, onsite interviews using Standard Form 1445, Labor Standards Interview.
- Periodically review use of apprentices and trainees.
- Report all alleged Davis-Bacon violations.
- Maintain full documentation of payrolls, certifications, interview forms, etc., for 3 years after project completion in the event the Office of Inspector General examines the project.

Wage Determination (WD)
Prior to issuing a request for bids or proposals, the Contractor must obtain the WD for the project area by accessing Wage Determinations at SAM.gov/content/wage-determinations, then Public Building or Works or Service Contracts option, the state and county where the work will be performed, and the DBA construction type. Make sure the checked Status box is active. The Contractor must include the generated WD document in all bid specifications and resulting contracts. If you are unsure about the funding source, a project can be bid with alternates—one including federal wage rates and one without. (Note: SAM.gov replaced WDOL.gov)

DBA construction types
The construction types are building, residential, highway, and heavy. The "building" type is for sheltered enclosures, especially with windows, doors, and roofs, that will be occupied at times. Municipalities, county governments, public higher education institutions, and school districts should ask their consulting engineer what type to use if they are unsure. A contract can contain more than one construction type. If over 80% of the project cost falls into one construction type, the municipalities, county governments, public higher education institutions, and school districts can use that type for the WD; this may be a benefit or a detriment depending on the project. Contact your Construction Management Team (CMT) with questions.

Monitor the WD
Once the bids have been opened, the wage determination is valid for 90 days. During the bid advertisement period, municipalities, county governments, public higher education institutions, and school districts or their consulting engineers must monitor SAM.gov to ensure DOL has not changed the WD. If the WD changes more than 10 days before bid opening, the bid specifications must be amended with the new WD. If contract award is more than 90 days after bid opening, the WD must be updated. The Davis-Bacon wage determination included in the contract at the time of contract award stays in effect for the duration of the project.

Request additional classifications
If the WD is missing a wage rate needed for a specific work/job classification, construction type, and/or project location, contact your CMT for guidance on requesting a conformance using the Request for

Authorization of Additional Classification and Rate Standard Form 1444. The municipalities, county governments, public higher education institutions, and school districts should incorporate the final conformance rate into the bid specifications and construction contracts, and copies of the conformance letter should be kept on file.

Ineligible Contractors
Municipalities, county governments, public higher education institutions, and school districts cannot knowingly award a construction project to a contractor who has been debarred or suspended by the Federal government. During the bid evaluation period, municipalities, county governments, public higher education institutions, and school districts must look up all bidders at SAM.gov/content/exclusions to determine if they are ineligible contractors. Municipalities should make a note of verification in the contract file. Contractors are responsible for verifying the eligibility of sub-contractors. (Note: SAM.gov replaced Excluded Parties List System (EPLS))

Payroll Reports
Municipalities, county governments, public higher education institutions, and school districts must collect certified payroll reports and compliance statements from the prime contractor and sub-contractors for every week of contract work and keep them on file for at least three years after project completion. Prime contractors are responsible for preparing and submitting payroll reports for its own employees and submitting payroll reports for all sub-contractor employees. Per 29 CFR 5.5(a)(3)(ii), payroll reports do **not** include full social security numbers and home addresses. The optional Payroll Form WH-347 (see instructions) may be used to collect and report all of the necessary information.
A weekly payroll statement must provide the following information:

- Name of contractor or sub-contractor (indicate which)
- Project and location
- Project or contract number
- Name of employee
- Employee identification number (e.g., last four digits of social security number – Do not use full SSN)
- Work/Job classification
- Hourly rate of pay (straight and overtime)
- Daily and weekly number of hours worked
- Deductions made
- Actual wages paid

Along with each payroll report, the contractor (or payment supervisor) must submit to the Contractor a signed statement of Davis-Bacon compliance, such as the one on the back of Payroll Form WH-347.

Review Payroll Reports
To verify that contractors and sub-contractors are paying appropriate wage rates and fringe benefits, municipalities, county governments, public higher education, and school districts must spot-check a representative sample of weekly payroll reports for accuracy at least twice for each contract and subcontract during the project—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll.
Note: The check boxes on page 1 of the Request for Disbursement Form 8700-215 replaced the DBRA Payroll Certification page. The check boxes serve the purpose of assurance from the Contractor to CMT certifying that Davis-Bacon has been satisfied for each week employees are paid.

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Interview Employees
Municipalities, county governments, public higher education, and school districts should periodically conduct confidential, onsite interviews with a sampling of the contractor and sub-contractors' employees to determine whether laborers, mechanics, apprentices, and trainees are being paid in accordance with Davis-Bacon requirements—a minimum of once within 2 weeks of initial payroll and once within 2 weeks of final payroll is suggested. The Labor Standards Interview Standard Form 1445 must be completed with every interview and kept on file for at least three years after project completion.

Verify Apprentice and Trainee Registrations
While municipalities, county governments, public higher education institutions, and school districts (or their designated representatives) are onsite conducting Davis-Bacon interviews, they should take the opportunity to review the apprentice and trainee registrations and certifications that the contractor should be able to easily provide upon request. Municipalities, county governments, public higher education institutions, and school districts can use the relevant documents to confirm that the number of apprentices does not exceed the ratio to journeymen allowed by the apprenticeship program plan.

Report Violations
Additional interviews may be completed at the Municipalities, county governments, public higher education institutions, and school districts discretion and are required in the case of questionable payroll reports or employee complaints. Report alleged violations to the EPA Davis-Bacon Coordinator listed in the assistance agreement and to the DOL WHD District Office.
Violations include:

- Misclassification of laborers and mechanics.
- Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours).
- Inadequate recordkeeping, such as not counting all hours worked by an individual in two or more classifications during a day.
- Failure to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices.
- Failure to submit certified weekly payrolls.
- Failure to post the Davis-Bacon poster and applicable wage determination.

Final Closeout
When the construction activities have reached 95% disbursement of the project amount, CMT will send a final closeout letter to the municipality, county governments, public higher education, or school district, including a Wage Rate Compliance Certification. The municipality, county governments, public higher education, or school district must prepare the certification on letterhead and submit it to SECO prior to receiving the final fund disbursement.

Davis-Bacon Applicability

Site of work
Davis-Bacon applies only to laborers and mechanics employed "directly upon the site of the work." The site of work is the physical place or places where the construction is called for in the contract or will remain after work has been completed, and any other site where a significant portion of the building or work is construction, provided that such site is established specifically for the contract. It may also include job headquarters, tool yards, batch plants, borrow pits, etc., provided the properties are located adjacent or virtually adjacent to the "site of work" and dedicated exclusively or nearly so to the performance of the contract or project.

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Laborers and mechanics
Laborers and mechanics are employees who work with their hands, have manual or physical duties, or are in specific trades. They include carpenters, plumbers, sheet metal workers, etc., including apprentices and trainees. **The DOL focuses on the actual work being performed by the person, not necessarily the title**. As a general rule, an employee who spends the majority of time in a supervisory position onsite and who spends less than 20% of the work week engaged in skilled labor, is exempt from Davis-Bacon requirements for the percentage of time spent in that skilled time. Clerical staff (timekeepers), professionals (architects, engineers, inspectors), and certain utility installers are also exempt.

Force account employees
Davis-Bacon does not apply to "force account" work in which the Contractor performs the construction in-house with its own "force account" employees rather than contracting out the construction work. Furthermore, the DOL does not consider a state or local government to be a contractor, even if it enters into a contract to perform construction work (see 29 CFR 5.2(h)).

Business owners
Davis-Bacon requirements do **not** apply to the owner of a construction company. However, to be exempt, the owner must be a "business owner" as defined under 29 CFR § 541.101 and be actively engaged in the management of their business. Davis-Bacon would **apply** if the owner were not engaged in management but predominantly performs manual or physical duties of construction work.

Truck drivers
Davis-Bacon does **not** apply to truck drivers employed by the contractor who come on the job site to deliver construction materials because they are not employed "directly upon the site of the work." Davis-Bacon **does** apply to truck drivers employed by the contractor to move materials on the site of work or from a property located adjacent or virtually adjacent to it. Davis-Bacon does **not** apply to truck drivers employed by the contractor to move materials at any location that existed prior to bid opening (e.g., contractor's headquarters).

City of Texarkana
Contractor Name

David Orr, City Manager
Name and Title of Authorized Representative

Signature

Date

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Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Robby Robertson
Director of Parks & Recreation
City of Texarkana
220 Texas Blvd
Texarkana, TX 75501

February 13, 2024

Dear Mr. Robertson;

Please see the attached proposal for LED lighting at Southwest Center, the adjacent Tennis Court, and Collins Center. This project will accomplish the following objectives:

1. Increase Energy Efficiency
2. Improve Light Levels
3. Lower Maintenance Costs

In order to minimize costs, this scope utilizes existing fixtures in the majority of interior spaces and replace the existing fluorescent lamps with 3500K LED direct wire (ballast bypass) replacements.

The gymnasium, the Southwest parking lot, and the tennis courts will receive new fixtures.

We also included wall mounted motion sensor controls for applicable areas and addition of combo exit signs (LED + bugeye) at Southwest Center. Installation will be completed by R&W Electric. Equipment cutsheets and detailed fixtures schedules have been included in the Appendices.

Total project cost before incentives is $82,355.

The gross project cost will be offset by an estimated $4,100 SWEPCO incentive and $50,000 SECO grant. This reduces net cost to $28,255. When weighed against estimated annual energy & maintenance savings of $6,100, we forecast a **simple payback of 4.6 Years** on this investment.

This proposal includes detail on the scope of work and associated product cut sheets.

Assuming standard equipment lead times, once we receive notice to proceed, we can complete installation within 4-8 weeks.

Sincerely,

Ira Nicodemus
President
Holistic Utility Solutions
ira@holisus.com

Proposal #01102024-02

TIPS Contract #23010402

From: **Holistic Utility Solutions**
129 S. Main St. Suite 260
Grapevine, TX 76051
Website: www.holisus.com

Contact: Ira Nicodemus
Phone: 214-384-3819
Email: ira@holisus.com

To: **Robby Robertson**
City of Texarkana
220 Texas Blvd
Texarkana, TX 75501

Date: February 13, 2024
Project: Southwest & Collins Lighting

Remit to: Holisus LLC (d.b.a. Holistic Utility Solutions), Tax EIN 88-4198985

Turnkey LED Conversion……$82,355

- Southwest Center – Hallways & Rooms
  - Replace existing fluorescent tubes with 3500K Type-B (direct wire) LED replacements. Existing fixtures will be retained. Approximately 223 LED tubes.
  - Replace two existing fixtures near TV in large conference room with recessed LED lights
  - Install up to 8 wall mounted motion sensors
  - Install up to 3 LED exit signs with bugeye emergency lights
- Southwest Center – Parking Lot
  - Replace two existing metal halide flood lights with new LED floods. Provide associated mounts.
  - Add two new LED flood lights on existing tennis court lighting poles for a total of 4 new LED lights directed onto the parking lot
- Southwest Center – Gymnasium
  - Replace existing 20 T5 fluorescent fixtures with new LED fixtures
  - Add 4 additional LED fixtures over bleacher seating
  - Install up to 3 LED exit signs with bugeye emergency lights
- Southwest Center – Tennis Courts
  - Replace existing 16 fixtures with new LED fixtures. Utilize existing poles.
  - Replace manual controls with astronomical time clock
- Collins
  - Replace existing fluorescent tubes with 3500K LED replacements. Existing fixtures will be retained. Approximately 72 LED tubes.
  - Install up to 4 wall mounted motion sensors

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Financial Summary

Item	Cost
Total Cost – Gross	$ 82,355
Estimated SWEPCO Incentive	$ 4,100
SECO Grant	$ 50,000
Total Cost - Net	$ 28,255
Estimated Annual Energy Savings	$ 4,600
Estimated Annual Maintenance Savings	$ 1,500
Simple Payback (yrs)	4.6

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Payment Terms:

- Prices valid for 30 days
- Payment per Schedule of Values (SOV) to be provided within 1 week of contract approval
- Terms are net ten days from the invoice date, and past due after thirty days

This proposal includes:

- One-year workmanship warranty
- Installation by local licensed electrical contractor (R&W Electric) using Davis-Bacon prevailing wages
- Lift rental and miscellaneous electrical material
- Proper disposal of existing fluorescent lamps

This proposal DOES NOT include:

- Overtime, double time, or any additional labor. Services assumed to be performed during normal business hours (8AM-5PM, Monday through Friday) unless explicitly expressed otherwise.
- Any engineering or other items considered licensed Professional Services
- Providing work outside what is listed
- Repair of existing issues outside this scope
- We will reuse existing conduit, wiring, and mounting hardware where applicable
- Guarantee of energy savings
- Any environmental remediation
- Taxes, titles, bonds and engineered drawings

Proposal Acceptance

_____ _____
Signature Date

_____ _____
Printed Name Title

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

("Proposal") is conditioned upon the following terms and conditions, which are incorporated by reference and, together with the Proposal, form the Contract between the parties:

1. Warranty. Holistic Utility Solutions shall furnish to Customer all manufacturers' parts and equipment warranties received by Holistic Utility Solutions. For a period of one (1) year from the date of the respective work, repair or installation performed by Holistic Utility Solutions, Holistic Utility Solutions agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in parts or materials supplied by Holistic Utility Solutions that are not covered under a manufacturer's warranty and that are adversely affecting the performance of the equipment installed by Holistic Utility Solutions, if any. Holistic Utility Solutions warrants to Customer that all labor performed or provided shall be performed by licensed personnel, if required by applicable law, and will be performed in a good workman like manner. For a period of ninety (90) days from the date of the respective work, repair or installation performed by Holistic Utility Solutions, Holistic Utility Solutions agrees to repair, replace or otherwise make good to the satisfaction of Customer, any defects in workmanship that is adversely affecting the performance of the equipment installed by Holistic Utility Solutions, if any.

2. Insurance. So long as any of the Work remains to be completed, Holistic Utility Solutions shall, at Holistic Utility Solutions' sole cost and expense, carry and maintain in full force and effect, the following insurance coverages:
   a. Workers' compensation insurance coverage on all individuals employed upon or about the Property according to the requirements of the laws of the State of Texas;
   b. General liability insurance coverage with the limits maintained by Holistic Utility Solutions at the time of this Proposal (which are: $1M each occurrence; $1M personal/advertising injury; $2M general aggregate; $2M products/completed operations aggregate; $5,000 medical expense (any one person)).

   The policies will be issued by companies reasonably acceptable to Customer. In the event of any covered loss, or upon Customer's reasonable request, Holistic Utility Solutions shall deliver to Customer copies of the insurance policies. Holistic Utility Solutions and Customer mutually agree to a waiver by their respective insurer(s) of any and all rights to subrogation.

3. General Limitations on Scope of Work. Notwithstanding any other provision to the contrary in this Contract, including the incorporated Proposal, the scope excludes:
   a. Maintenance or repair of Equipment cabinets;
   b. Moving or relocation of the subject equipment;
   c. Repairs due to freezing;
   d. Work made necessary by the enforcement of government codes, building and union regulations or as recommended by insurance companies;
   e. Damage of any kind due to corrosion, erosion, electrolytic actions, acts of God, power failure, vandalism, or any other cause whatsoever beyond the control of Holistic Utility Solutions;
   f. Electrical components associated with the Equipment including: disconnect switches, fuses, circuit breakers, and electrical wiring not specifically identified within the scope of work;
   g. Piping systems of any nature.

4. Hoisting/Rigging Operations. Prior to the use of heavy commercial hoisting or rigging equipment that could potentially cause damage to the Property or injury, Holistic Utility Solutions will notify Customer in writing and shall not proceed without Customer's prior written consent. While all precautions will be exercised to protect Customer's Property, Holistic Utility Solutions will not accept any responsibility for damage to parking lots, driveways, or landscaping that may occur as a result of normal hoisting and rigging operations, except to the extent that the damage is caused by Holistic Utility Solutions' gross negligence or willful misconduct.
5. Work Hours. Unless indicated otherwise, all pricing is based upon work being performed during regular working hours of 8:00 am to 5:00 pm, Monday through Friday, except holidays. If work is required at times other than normal working hours, Customer agrees to pay the Holistic Utility Solutions' standard overtime charge rates.
6. Payments. Customer agrees to pay Holistic Utility Solutions all sums due with respect to this Proposal in accordance with the terms specified. Payments are due upon receipt of invoice. In the event payment is not received by Holistic Utility Solutions within thirty (30) days following billing, such payment shall be considered past due. Beginning with the thirty-first (31st) day following billing, such payment shall bear interest at the maximum rate allowable by law until payment is received. If default is made in the payment of any sums due hereunder and it becomes necessary that this Contract be placed in the hands of an attorney for collection, Customer agrees to pay to Holistic Utility Solutions all costs of collection, including reasonable attorney's fee. Holistic Utility Solutions shall have the right to cancel this Contract at any time, upon five (5) business days' written notice, if payments as called for herein are not made.
7. Cancellation. This Contract may be cancelled by either party upon thirty (30) day written notice. In the event of cancellation by the Customer, Holistic Utility Solutions reserves the right to invoice and be paid for work performed thru cancellation date.
8. No Liability from System Design or Existing Equipment Installation. Unless Holistic Utility Solutions was the engineer of record for the existing system design under a prior and separate construction/design-build contract or system design is expressly included within the scope of the Proposal (and, in either case, to the extent of that design), Customer acknowledges and stipulates that Holistic Utility Solutions did not select, advise Customer regarding, engineer, design or install the system, equipment or any component part thereof to be maintained under this Contract. Accordingly, Holistic Utility Solutions shall not be liable in any capacity, under any theory of recovery for any claims or damages related to or originating from prior or existing defects, deficiencies, injuries, or damage (whether to the system, equipment or Property) associated therewith or as a result of prior ineffective maintenance. Holistic Utility Solutions agrees, however, to advise the Customer about the existence of such conditions upon discovery in accordance with the terms of the Contract.

Accepted by Customer: _____ Holistic Utility Solutions: IN

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

9. No Liability for Incidental Microbiological Growth/Mold. Customer acknowledges that the Heating, Ventilation, and Air-Conditioning equipment and systems repaired or serviced as a part of this Contract may, under certain conditions, become conducive to or incidentally support microbiological growth. Holistic Utility Solutions assumes no liability for nor warrants its work to protect against, eliminate or inhibit any type of incidental microbiological growth including, but not limited to, molds, fungi and other related matter, in or around duct systems, HVAC and related equipment or areas. Holistic Utility Solutions agrees, however, to advise the Customer about the existence of such conditions upon discovery and to take measures to discourage such growth as required and in accordance with the terms of the Contract.
10. Limitation of Damages for Breach of Contract. The full extent of Holistic Utility Solutions' liability and Customer's exclusive remedy for damages from any breach of this Contract, including, but not limited to, nonperformance or misrepresentation, and regardless of the form of action, shall be limited to the annual Contract fee of the current year.
11. Mutual Waiver of Consequential and Punitive Damages. Notwithstanding any other provision to the contrary, Holistic Utility Solutions and Customer mutually waive all claims against each other for any and all consequential/special/indirect/incidental and, to the extent allowable by law, all punitive/exemplary damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to, damages incurred for rental expenses, loss of use, lost revenue or profit, lost opportunity, loss of goodwill, loss of management or employee productivity, cost of capital, and cost of substitute facilities, services or goods regardless of the foreseeability of such damages. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to waive claims for and recovery of such damages on behalf of the property owner as well as for itself.
12. Indemnity. To the fullest extent permitted by law, to the PROPORTIONATE extent OF CUSTOMER'S AND HOLISTIC UTILITY SOLUTIONS' RESPECTIVE negligence and except as otherwise limited herein, CUSTOMER AND HOLISTIC UTILITY SOLUTIONS agree to indemnify, defend, and hold ONE ANOTHER AND THEIR RESPECTIVE officers, directors, agents, assigns, successors and employees HARMLESS against all claims and damages, losses and expenses (including, but not limited to, REASONABLE attorney's fees) arising out of OR RELATED TO the performance of this contract. NOTWITHSTANDING THE FOREGOING PROVISION, THIS INDEMNITY IS SUBJECT TO THE LIMITATIONS OF LIABILITY IN SECTIONS 8-11 ABOVE.
13. Hazardous Materials. If Holistic Utility Solutions encounters asbestos, polychlorinated biphenyl (PCB) or other hazardous materials on the Property, Holistic Utility Solutions will immediately stop work and report in writing the evidence of such to Customer. Holistic Utility Solutions will not resume work in the affected area until the hazardous material has been removed or determined harmless by a qualified laboratory at Customer's expense.
14. Dispute Resolution and Governing Law. This Contract shall be interpreted and construed according to the laws of the State of Texas. Any disputes arising out of or related to this Contract will be resolved by agreement through a meeting of executive representatives of each party. If no resolution can be reached, the dispute will be resolved through binding arbitration before an arbitrator experienced in construction law and according to the rules promulgated by the American Arbitration Association. The parties agree that the arbitration will be commenced within sixty (60) days of occurrence of the meeting of executive representatives. This Contract shall be governed by the laws of the State of Texas without regard to conflicts of laws principles.
15. Property Manager. If Customer is a property manager or other legal agent or representative of the property owner, Customer represents and warrants that it has the express requisite authority to enter into all of the terms of this Contract including, without limitation, the authority to waive claims for and recovery of consequential (special/indirect/incidental) and punitive damages on behalf of the property owner as well as for itself.
16. Entire Agreement. This Contract constitutes the entire agreement and is not assignable by either party without the express written consent of the other party. This Contract may be modified or amended only by written agreement of both parties.

Accepted by Customer: _____ Holistic Utility Solutions: IN

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Packet Pg. 84

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Appendix A

SWEPCO Incentive Estimate

Texarkana Rec Facilities Lighting Estimates

David Geeganage <DGeeganage@frontierenergy.com>

Mon 12/11/2023 12:46 PM

To:Ira Nicodemus <ira@holisus.com>
Cc:Kawona D Abmas (kdabmas@aep.com) <kdabmas@aep.com>;Michael Nix (mrnix@aep.com) <mrnix@aep.com>; Scott Wishart <swishart@frontierenergy.com>

Good afternoon,

Thank you for reaching out to us about the project taking place at the Texarkana rec center and senior center. Based on the scope you provided us, please see below for our estimates on energy savings and incentive opportunities from SWEPCO:

Estimated kW Savings: 10
Estimated Annual kWh Savings: 36,000
Estimated Incentive: $4,100

Please note, these are estimates and can change based on verification of the finalized project.

If you have any questions, please let us know.

Thanks,
David Geeganage
He/him/his
Energy Analyst
Frontier Energy | Minnesota Office
(952)-967-2618
DGeeganage@FrontierEnergy.com
Read our monthly blog at frontierenergy.com/resources/#blogs

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

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Appendix B

Fixture Schedule & Cutsheets

Facility	Area	Qty.	Existing Type	Lamp type	Lamp per Fixture	Height	Proposed Qty	Proposed Type	Model	Existing Controls	Controls Added?
Collins	Common Areas & Activity Room	48	2Lamp T12 (quantity is total tubes)	F32T8	2	8	48	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Collins	Offices	24	4lamp T12 (quantity is total tubes)	F34T12	4	8	24	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Southwest	Gymnasium	20	4lamp 54W T5 HO	54WT5	4	20	24	Replacement LED Fixture	RB4-14L/21L/28L-U-CCTS-WHT-RB4-PEN-WHT	No	No
Southwest	Hallways	62	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	124	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Southwest	Hallways	22	1-lamp T8 surface mounted (quantity is total tubes)	F32T8	1	9	22	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Southwest	Game Room	16	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	32	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Southwest	Activity Room	24	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	48	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Southwest	Restrooms	20	2x4 Recessed T8 (quantity is total tubes)	F32T8	2	9	40	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Southwest	Restrooms	4	2x2 Recessed T8 (quantity is total tubes)	U-bend T8	2	9	8	T8 LED Tubes (quantity is total tubes)	17T8U6/835/BYP/R 35460	No	No
Southwest	Restrooms	8	Surface Mounted fixtures (above sink), (quantity is total tubes)	F32T8	2	9	16	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Exit Signs	Gym & Hall	6	Exit Sign (no Bugeye)	F32T8	1	9	6	Exit with Bugeye	VLED-U-WH-EL90-G2-R COMBO UNIVERSAL LED PLASTIC NIC	No	No
Southwest	Spin Room	12	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	24	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Southwest	Kitchen	14	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	28	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Southwest	Small Conference Room	12	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	24	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	Yes	Yes
Southwest	Big Conference Room	32	2-lamp T8 surface mounted (quantity is total tubes)	F32T8	2	9	24	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	No
Southwest	Big Conference Room	[redacted]				9	2	Recessed Can	LBR6 AL02 35K AR LSS-MWD MVOLT D10	No	No
Southwest	Offices (x3)	24	2-lamp T8 (quantity is total tubes)	F32T8	2	9	40	T8 LED Tubes (quantity is total tubes)	13T8/4F/835/BYP/RC 36970	No	Yes
Southwest	Parking Lot Lighting	2	Metal Halide	1500W MH	1	20	4	Area Flood Light	BL3 30H-3RM-740-STD-10-1PS-00-SBZ-KM	Yes	No
Southwest	Tennis Courts	[redacted]					2	Astronomical Timeclock		Yes	No
Southwest	Tennis Courts	16	Metal Halide	1500W MH	1	29	16	Sports Light	GL4-C-56H-4WS-740-STD-10--1-PS00-SBZ-KM-SOL28-8S	Yes	No

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023

Project Name:	Type:
Part Number:	Date:

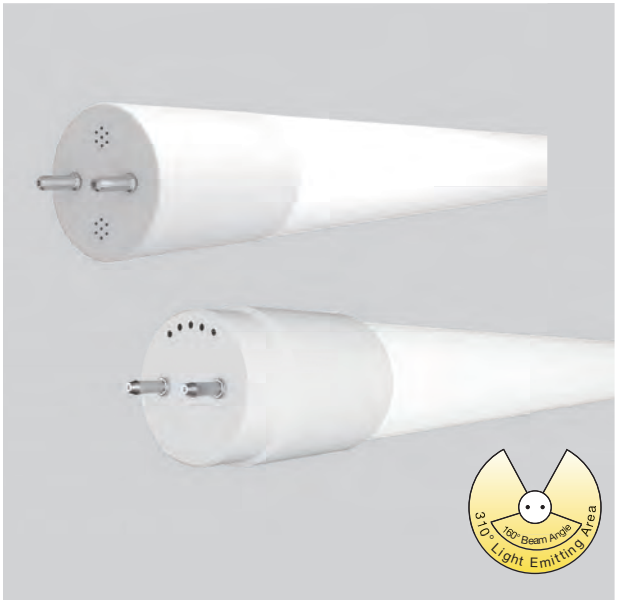
2024-023 EXH 'B'

GREENCREATIVE

SINGLE ENDED BYPASS T8

FEATURES

- T8 tube 2' / 3' / 4' / Ubent
- CCT: 3000K, 3500K, 4000K, 5000K
- Ultra high efficacy version up to 167lm/W available
- Built-in universal voltage driver, operates on 120-277V line input
- Opaque glass provides glare free, even lighting with a 310° light emitting area
- Suitable for damp locations and totally enclosed fixtures
- NSF (National Sanitation Foundation) certified for Food Zone (Non-Contact), Splash, and Non-Food Zones
- Fixture operating temperature: -4°F to 95°F (-20°C to 35°C)
- Lamp ambient temperature: -4°F to 113°F (-20°C to 45°C)
- Rated lifetime(L70) up to: 60,000hrs
- 5 year limited warranty* / 10 year available
  (see EXTENDED WARRANTIES table for information)



SPECIFICATIONS

Product	Model	Nominal Length	Equiv.	Input Voltage	Life (hrs)	Wattage	Lumens	CCT	CRI	Efficacy (LPW)	Power Factor	THD	Beam Angle	DLC / NSF
36961	8T8/2F/830/BYP/RC	2'	17W	120-277V	60,000	8	1,000	3000K	82	125	0.9	<20%	160°	√ / √
36962	8T8/2F/835/BYP/RC	2'	17W	120-277V	60,000	8	1,000	3500K	82	125	0.9	<20%	160°	√ / √
36963	8T8/2F/840/BYP/RC	2'	17W	120-277V	60,000	8	1,050	4000K	82	131	0.9	<20%	160°	√ / √
36964	8T8/2F/850/BYP/RC	2'	17W	120-277V	60,000	8	1,050	5000K	82	131	0.9	<20%	160°	√ / √
36965	12T8/3F/830/BYP/RC	3'	25W	120-277V	60,000	12	1,500	3000K	82	125	0.9	<20%	160°	√ / √
36966	12T8/3F/835/BYP/RC	3'	25W	120-277V	60,000	12	1,500	3500K	82	125	0.9	<20%	160°	√ / √
36967	12T8/3F/840/BYP/RC	3'	25W	120-277V	60,000	12	1,550	4000K	82	129	0.9	<20%	160°	√ / √
36968	12T8/3F/850/BYP/R	3'	25W	120-277V	60,000	12	1,550	5000K	82	129	0.9	<20%	160°	√ / √
98379	10.5T8/4F/830/BYP	4'	32W	120-277V	60,000	10.5	1,650	3000K	82	157	0.9	<20%	160°	√ / √
98380	10.5T8/4F/835/BYP	4'	32W	120-277V	60,000	10.5	1,650	3500K	82	157	0.9	<20%	160°	√ / √
98381	10.5T8/4F/840/BYP	4'	32W	120-277V	60,000	10.5	1,750	4000K	82	167	0.9	<20%	160°	√ / √
98382	10.5T8/4F/850/BYP	4'	32W	120-277V	60,000	10.5	1,750	5000K	82	167	0.9	<20%	160°	√ / √
36969	13T8/4F/830/BYP/RC	4'	32W	120-277V	60,000	13	1,700	3000K	82	131	0.9	<20%	160°	√ / √
36970	13T8/4F/835/BYP/RC	4'	32W	120-277V	60,000	13	1,700	3500K	82	131	0.9	<20%	160°	√ / √
36971	13T8/4F/840/BYP/RC	4'	32W	120-277V	60,000	13	1,750	4000K	82	134	0.9	<20%	160°	√ / √
36972	13T8/4F/850/BYP/RC	4'	32W	120-277V	60,000	13	1,750	5000K	82	134	0.9	<20%	160°	√ / √
98476	14.5T8/4F/835/BYP	4'	32W	120-277V	60,000	14.5	2,100	3500K	82	145	0.9	<20%	160°	√ / √
98473	14.5T8/4F/840/BYP	4'	32W	120-277V	60,000	14.5	2,200	4000K	82	152	0.9	<20%	160°	√ / √
98474	14.5T8/4F/850/BYP	4'	32W	120-277V	60,000	14.5	2,200	5000K	82	152	0.9	<20%	160°	√ / √
36973	16T8/4F/840/BYP/RC	4'	32W	120-277V	60,000	16	2,100	4000K	82	131	0.9	<20%	160°	√ / √
36974	16T8/4F/850/BYP/RC	4'	32W	120-277V	60,000	16	2,100	5000K	82	131	0.9	<20%	160°	√ / √
36975	20.5T8/4F/840/BYP/R	4'	40W**	120-277V	60,000	20.5	2,950	4000K	82	141	0.9	<20%	160°	√ / √
36976	20.5T8/4F/850/BYP/R	4'	40W**	120-277V	60,000	20.5	2,950	5000K	82	141	0.9	<20%	160°	√ / √
98162	17T8U6/830/BYP/R	U-6	32W	120-277V	60,000	17	2,100	3000K	82	124	0.9	<20%	160°	√ / N.A.
35460	17T8U6/835/BYP/R	U-6	32W	120-277V	60,000	17	2,100	3500K	82	124	0.9	<20%	160°	√ / N.A.
98163	17T8U6/840/BYP/R	U-6	32W	120-277V	60,000	17	2,300	4000K	82	135	0.9	<20%	160°	√ / N.A.
98164	17T8U6/850/BYP/R	U-6	32W	120-277V	60,000	17	2,300	5000K	82	135	0.9	<20%	160°	√ / N.A.

* Please visit www.greencreative.com for Limited Warranty terms.
** Replace 40W T10/T12 lamps or 32W T8 lamps.

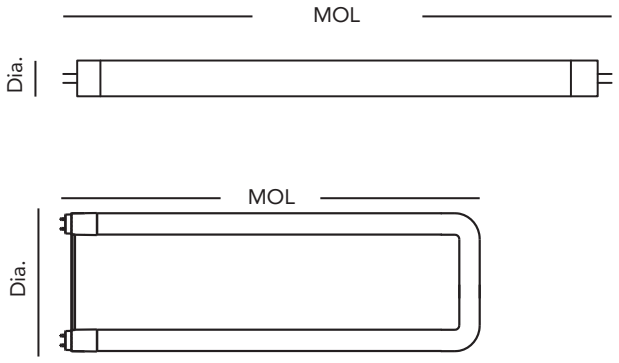
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2024-023 EXH 'B'

GREENCREATIVE

SINGLE ENDED BYPASS T8

DIMENSION & WEIGHT



Model	Base	MOL	Dia.	Weight
8T8/2F/8xx/BYP/RC	G13	23-3/4"	1.0"	0.24lb
12T8/3F/8xx/BYP/RC	G13	35-3/4"	1.0"	0.32lb
10.5T8/4F/8xx/BYP	G13	47-13/16"	1.0"	0.57lb
13T8/4F/8xx/BYP/RC	G13	47-13/16"	1.0"	0.47lb
14.5T8/4F/8xx/BYP	G13	47-13/16"	1.0"	0.57lb
16T8/4F/8xx/BYP/RC	G13	47-13/16"	1.0"	0.47lb
20.5T8/4F/8xx/BYP/R	G13	47-13/16"	1.0"	0.53lb
17T8U6/8xx/BYP/R	G13	22-7/16"	7-1/16"	0.53lb

Where xxx means 824-965 which indicates CRI and color temperature

INSTALLATION

Diagram A – Non-Shunted

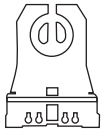
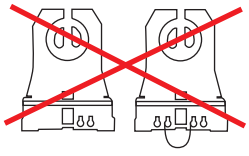
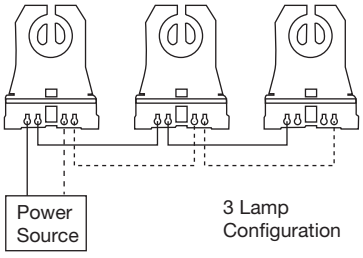


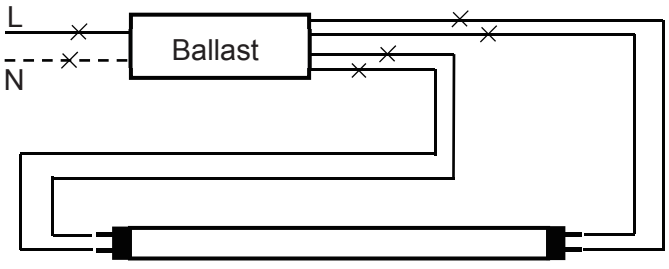
Diagram B – Shunted

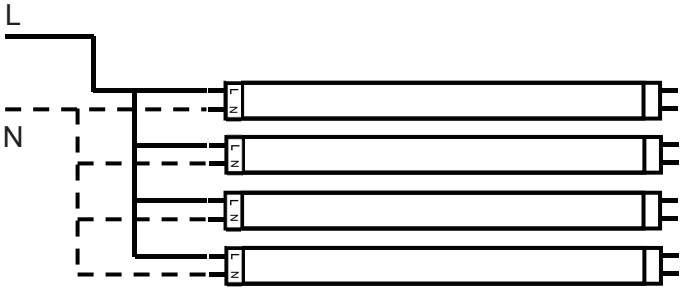


This lamp is compatible with non-shunted lamp holder ONLY.



TUBE





Step 1. Cut all wires connected to the existing ballast, remove the ballast.

Step 2. If shunted lamp holders are used in the existing fixture, replace them with non-shunted holders first. Wire the holders and lamps according to the diagram.

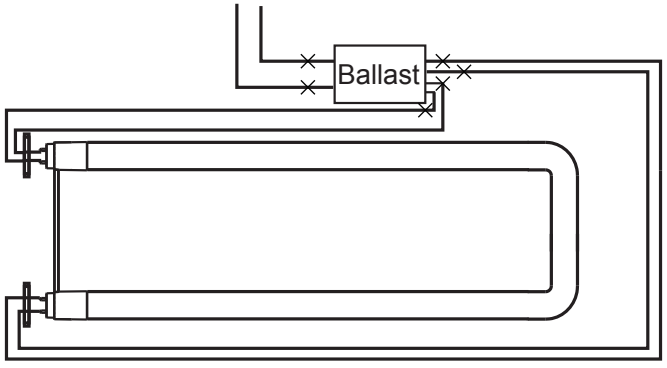
Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

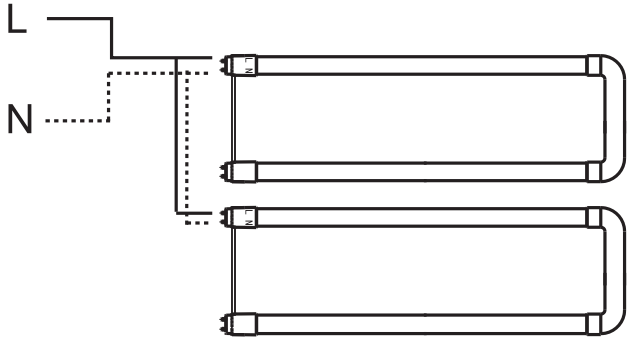
GREENCREATIVE

SINGLE ENDED BYPASS T8

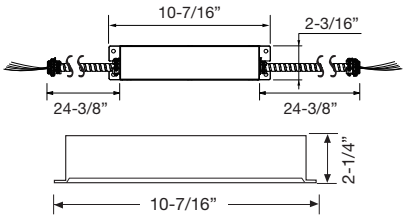
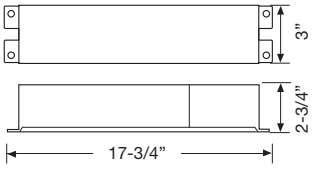
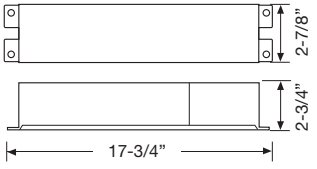
INSTALLATION

U-BENT





ACCESSORY ORDERING INFORMATION

Product	Model	Description	Pictures	Dimensions
98003	23EMDRIVER	California Title 20 Compliant 23W Emergency LED Driver (Field Installation)		
58012	35EMINVERTER***	35W Emergency Inverter (Field Installation)		
58013	35EMINVERTER/CEC	California Title 20 Compliant 35W Emergency Inverter (Field Installation)		

***Does not meet Title 20 appliance requirements, not for use in California

EXTENDED WARRANTIES****

Model	Description*****
8T8/2F/BYP/10YEARWARRANTY	10 Year warranty for 8T8/2F/8xx/BYP/yy
12T8/3F/BYP/10YEARWARRANTY	10 Year warranty for 12T8/3F/8xx/BYP/yy
10.5T8/4F/BYP/10YEARWARRANTY	10 Year warranty for 10.5T8/4F/8xx/BYP/yy
13T8/4F/BYP/10YEARWARRANTY	10 Year warranty for 13T8/4F/8xx/BYP/yy
14.5T8/4F/BYP/10YEARWARRANTY	10 Year warranty for 14.5T8/4F/8xx/BYP/yy
16T8/4F/BYP/10YEARWARRANTY	10 Year warranty for 16T8/4F/8xx/BYP/yy
20.5T8/4F/BYP/10YEARWARRANTY	10 Year warranty for 20.5T8/4F/8xx/BYP/yy
17T8/U6/BYP/10YEARWARRANTY	10 Year warranty for 17T8U6/8xx/BYP/yy

**** Warranty based on a maximum of 4,368 annual operating hours (per year for ten years) and exposure to a maximum fixture operating temperature of 80°F / 27°C.
***** xx – Refers to the CCT yy – Refers to model generations within the same nominal performance. Typically blank, 'R', or 'RC'

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

2024-023 EXH 'B'

GREENCREATIVE

SINGLE ENDED BYPASS T8

CERTIFICATION INFORMATION

Product	Model	DLC ID#
98379	10.5T8/4F/830/BYP	PLQIQC0PLP7P
98380	10.5T8/4F/835/BYP	PLM4U8W5M90Z
98381	10.5T8/4F/840/BYP	PL299HA1S71O
98382	10.5T8/4F/850/BYP	PLO0PTXQ2MZM
98476	14.5T8/4F/835/BYP	PLOM0T0BMPO6
98473	14.5T8/4F/840/BYP	PLHPIVUMTFJH
98474	14.5T8/4F/850/BYP	PLUKSTKW1NC6
98162	17T8U6/830/BYP/R	PL0K2H4PRESH
35460	17T8U6/835/BYP/R	PLD92RAO4HH7
98163	17T8U6/840/BYP/R	PLDUCDLE7QGO
98164	17T8U6/850/BYP/R	PL3ODG0X88EX
36965	12T8/3F/830/BYP/RC	S-FCWQ4V
36966	12T8/3F/835/BYP/RC	S-FGKDLN
36967	12T8/3F/840/BYP/RC	S-1TC8F6
36968	12T8/3F/850/BYP/R	S-YP2TBC
36969	13T8/4F/830/BYP/RC	S-FV6N7I
36970	13T8/4F/835/BYP/RC	S-AMCU60
36971	13T8/4F/840/BYP/RC	S-5KWXFI
36972	13T8/4F/850/BYP/RC	S-6OEJKX

ORDERING INFORMATION

Model	Master Carton			Shipping Carton		
	Case Qty	Case Dimensions (LxWxH)	Case Weight	Case Qty	Case Dimensions (LxWxH)	Case Weight
8T8/2F/xxx/BYP/RC	NA	NA	NA	25PCS	25-1/4" x 7-1/2" x 7-5/16"	7.4 lb
12T8/3F/xxx/BYP/RC	NA	NA	NA	25PCS	37-3/8" x 7-7/16" x 7-1/4"	10.25 lb
10.5T8/4F/xxx/BYP	NA	NA	NA	25PCS	48-13/16" x 5-15/16" x 5-15/16"	13.6 lb
13T8/4F/xxx/BYP/RC	NA	NA	NA	25PCS	49-1/8" x 7-7/16" x 7-1/8"	13.7 lb
14.5T8/4F/xxx/BYP	NA	NA	NA	25PCS	48-13/16" x 5-15/16" x 5-15/16"	13.6 lb
16T8/4F/xxx/BYP/RC	NA	NA	NA	25PCS	49-1/8" x 7-7/16" x 7-1/8"	13.7 lb
20.5T8/4F/xxx/BYP/R	NA	NA	NA	25PCS	49-1/8" x 7-7/16" x 7-1/8"	14.6 lb
17T8U6/xxx/BYP/R	NA	NA	NA	12PCS	24-7/16" x 17-1/8" x 10-5/8"	12.7 lb

Where xxx means 824-965 which indicates CRI and color temperature

Note: All rights reserved. All sizes and specifications are subject to change at any time without notice.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Project Name:	Part Number:	Type:

RB4

ROUND HIGH BAY





ILP
407-478-375
www.ilp-inc.cor

Product Overview

SCAN ME
or Click Here

FEATURES

- IP65 Rated & NSF Listed Round High Bay
- 14,000 – 34,000 Lumens with lumen selectable options
- 3500K, 4000K & 5000K CCT Selectable via Center Selector
- White or Black Powder coated die-cast aluminum housing
- Plug & Play Center Mounted Sensor Option
- IK10 impact rated primary polycarbonate lens
  - Clear (std.)
  - Frosted (optional)
- Optional Diffusers
  - 16" Shallow Frosted Acrylic
  - 16" or 22" Deep Frosted Acrylic
  - 16" Unfinished or Powdercoat Aluminum Reflector
- 6ft Cord (std.)
- Mounting Options
  - Cable
  - Hook (std.)
  - Pendant (¾" Hub with PEN or FMB Option)
  - Surface Mount
- Safety hook with 2' galvanized safety cable standard
- Damp & Wet Location 347/480V & Emergency Options
- 120-277V Universal Voltage (std.)
- 6kV Surge Protection
- 0-10V Dimmable with Sensor (100% - 10%)
- >80 Color Rendering Index (CRI)
- Calculated L70 >100,000 Hours @ 25°C per TM-21-11
- Ambient Temperature Range -40°F-122°F
- 5 Year Warranty (std); 10 Year Warranty Optional
- ETL Listed for Damp and Wet Locations

SUITABLE APPLICATIONS

- Food Processing
- Wet Locations
- Warehouses
- Gymnasiums
- Distribution Centers
- Manufacturing Plants

ORDERING GUIDE:

SERIES	LUMENS	DRIVER	CCT	FINISH	PRIMARY LENS	NSF	WARRANTY
☑ **RB4** Round High Bay	☑ **14L/21L/28L**	☑ **U** 120-277V	☑ **CCTS** 35/40/50 CCT Selectable	☑ **WHT** White	☐ **BLANK** Clear Lens (included)	☐ **BLANK** No NSF Listing	☑ **BLANK** 5 Year
	☐ **14L**	☐ **HV/D** 347-480V[1,3,9]		☐ **BLK** Black	☑ **FRL** Frosted Lens	☐ **NSF** NSF Listed	☐ **10YR**[2] 10 Year
	☐ **21L**	☐ **HV/W** 347-480V[1,4,9]					
	☐ **28L**						
	☐ **34L**						

FACTORY INSTALLED OPTIONS

☐ **EM/D**[3,5,9,15]	20W Battery Backup for Damp Locations
☐ **EM/W**[4,5,9, 16]	Battery Backup for Wet Locations
☐ **FMB**[3,17]	Fixture Mounting Box
☐ **DIMx** [14,18]	Separate Cord for 0-10V dimming wires with control from external signal; Separate Cord Matches Fixture Finish (x=Length; 6,10,15,20)
☐ **Cx/4W**[19]	4 Conductor Cord; Cord matches finish (x=Length;10,15,20)
☐ **Cx/3W/L715P**	3 Conductor cord w/ 277V Plug (x=Length; 6,10,15,20)
☐ **Cx/3W/515P**[3]	Cord w/ 120V; Cord matches finish (x=Length; 6,10,15,20)
☐ **Cx/3W**	3 Conductor Cord; Cord matches finish (x=Length;10,15,20)
☐ **Cx/5W** [19]	5 Conductor Cord; Cord Matches Finish (x=Length; 6,10,15,20)
☐ **Cx/6W** [19]	6 Conductor Cord; Cord Matches Finish (x=Length; 6,10,15,20)

SHIP WITH ACCESSORIES

☐ **+RB4-HB5**	5ft Aircraft Cable Suspension Kit
☐ **+RB4-HB10**	10ft Aircraft Cable Suspension Kit
☐ **+RB4-HB5-SS**	5ft Stainless Aircraft Cable Suspension Kit
☐ **+RB4-HB10-SS**	10ft Stainless Aircraft Cable Suspension Kit
☐ **+RB4-SMB/xxx**	Surface Mount Bracket (xxx=Finish;WHT or B
☐ **+RB4-RED1/2**[11]	1/2" Pendant Adapter
☑ **+RB4-PEN/xxx**	3/4" Pendant Mounting Kit (xxx=Finish;WHT c
☐ **+RB4/S/KIT**[6,13]	Field Installable Microwave Sensor
☐ **+RB4-S/RC**	Remote Control for Sensor (1 needed per site
☐ **+RB4-FMB**[3,17]	Fixture Mounting Box

SHIP WITH DIFFUSERS/SHIELDING

☐ **+RB4-AD-14L-21L**	16" Shallow Acrylic Diffuser (14L or 21L)
☐ **+RB4-AD-LGL**	16" Shallow Acrylic Diffuser (28L, 14L/21L/28L, or 34L)
☐ **+RB4-REFL-14L-21L**[8, 13]	16"Aluminum Reflector (14L or 21L)
☐ **+RB4-REFL-LGL**[8, 13]	16" Aluminum Reflector (28L, 14L/21L/28L, or 34L)
☐ **+RB4-REFL/xxx-14L-21L**[8, 13]	16" Aluminum Reflector (14L or 21L) (xxx = Finish; BLK or WHT)
☐ **+RB4-REFL/xxx-LGL**[8, 13]	16" Aluminum Reflector (28L, 14L/21L/28L, or 34L) (xxx = Finish; BLK or WHT)
☐ **+RB4-DAD-14L-21L**	16" Deep Acrylic Diffuser (14L or 21L)
☐ **+RB4-DAD-LGL**	16" Deep Acrylic Diffuser (28L, 14L/21L/28L, or 34L)
☐ **+RB4-DAD22-14L-21L**[8]	22" Deep Acrylic Diffuser (14L or 21L)
☐ **+RB4-DAD22-LGL**[8]	22" Deep Acrylic Diffuser (28L, 34L, & 14L/21L
☐ **+RB4-CL16**[10]	16" Frosted Conical Bottom Lens
☐ **+RB4-CL22**[8,10]	22" Frosted Conical Bottom Lens (Use with D
☐ **+RB4-WC/FULL-xxL**[8, 10,12,13]	16" or 22" Full Wire Cage (Diffuser and botton lenses) (xxL = fixture size; 14L, 21L, or LGL)
☐ **+RB4-WC**[7,10,12,13]	16" Wire Cage
☐ **+RB4-WC22**[7,8,12,13]	22" Wire Cage (Use with DAD22)

[1] Only available with Lumen Selectable and 34L models. See line drawing on page 5
[2] Contact Factory for more details
[3] Does not maintain IP rating or NSF listing
[4] Option maintains IP65 Rating and NSF Listing
[5] Not Available with HV Drivers
[6] Requires +RB4-S/RC for alternate programming of sensor (1 needed per site)
[7] Cannot be used with CL option
[8] Long lead time item, please consult factory
[9] Not available with HB5 or HB10; Requires PEN/xxx for pendant mounting
[10] Must be used with AD, REFL, or DAD accessories
[11] Must be used with +RB4-PEN/xxx Option
[12] WC and WC/FULL does not qualify for NSF
[13] Sensor cannot be used with REFL and WC options
[14] Not available with Lumen Selectable Model 14L/21L/28L
[15] Only available with 14L/21L/28L
[16] Only available with dedicated 14L, 21L, 28L, or 34L Lumen Packages. Will utilize 28L/34L Housing size; See page 5 for more details
[17] Can't be used with SMB, HB, EM, & HV options; Requires PEN/xxx for pendan
[18] Can't be used with Lumen Se
[19] Only available with EM, HV, or FMB options

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ROUND HIGH BAY

QUICK SHIP ITEMS:

SERIES	LUMENS	DRIVER	CCTS	FINISH	NSF	WARRANTY
☐ **RB4** Round High Bay	☐ **14L/21L/28L** ☐ **14L** ☐ **21L** ☐ **28L** ☐ **34L**	☐ **U** 120-277V	☐ **CCTS** 35/40/50 CCT Selectable	☐ **WHT** White ☐ **BLK** Black	☐ **BLANK** No NSF Listing ☐ **NSF** NSF Listed	☐ **BLANK** 5 Year ☐ **10 YR**[1] 10 Year

SHIP WITH ACCESSORIES

- ☐ **+RB4-AD-14L-21L** 16" Shallow Acrylic Diffuser (14L or 21L)
- ☐ **+RB4-AD-LGL** 16" Shallow Acrylic Diffuser (28L, 14L/21L/28L, or 34L)
- ☐ **+RB4-REFL-14L**[4, 5] 16" Aluminum Reflector (14L)
- ☐ **+RB4-REFL-LGL**[4, 5] 16" Aluminum Reflector (21L, 28L, 14L/21L/28L, or 34L)
- ☐ **+RB4-HB5** 5ft Aircraft Cable Suspension Kit
- ☐ **+RB4-HB10** 10ft Aircraft Cable Suspension Kit
- ☐ **+RB4-RED1/2**[3] 1/2" Pendant Adapter
- ☐ **+RB4-PEN/xxx** 3/4" Pendant Mounting Kit (xxx=Finish;WHT or BLK)
- ☐ **+RB4/S/KIT**[2] Field Installable Microwave Sensor
- ☐ **+RB4-S/RC** Remove Control For Sensor
- ☐ **+RB4-DAD-14L-21L** 16" Deep Acrylic Diffuser (14L or 21L)
- ☐ **+RB4-DAD-LGL** 16" Deep Acrylic Diffuser (28L, 14L/21L/28L, or 34L

[1] Contact Factory for more details
[2] Requires +RB4-S/RC for alternate programming of sensor (1 needed per site)
[3] Must be used with +RB4-PEN/xxx Option
[4] Long lead time item, please consult factory
[5] Sensor cannot be used with REFL and WC options

LED SYSTEMS INFO

LED SYSTEMS INFORMATION[1]		Diffuser/ Shielding	3500K		4000K		5000K		Wattage[2]	Replaces	DLC
Part Numbers	Lens		Lumens	Efficacy	Lumens	Efficacy	Lumens	Efficacy			
RB4-14L/21L/28L	Clear (BLANK)	(BLANK)	27762	139.3	30580	161	29179	147.2	198	400W HID	Premium
	FRL	(BLANK)	25925	130.1	28557	150.4	27248	137.5			Standard
	Clear (BLANK)	AD	27125	136.1	29878	157.3	28509	143.9			Premium
	FRL	AD	24490	124.9	26976	144.4	25740	132			Premium
RB4-14L	Clear (BLANK)	(BLANK)	13775	135.9	14740	152.1	14478	143.7	102	250W HID	Premium
	FRL	(BLANK)	12525	121.7	13796	140.7	13164	128.6			Standard
	Clear (BLANK)	AD	12963	127.9	14279	147.9	13625	135.2			Premium
	FRL	AD	11638	113.1	12819	130.7	12232	119.5			Standard
RB4-21L	Clear (BLANK)	(BLANK)	20150	138.8	21540	153.1	21179	146.6	147	400W HID	Premium
	FRL	(BLANK)	18030	122.8	19860	142	18950	129.8			Standard
	Clear (BLANK)	AD	19260	130.6	21215	150.9	20243	138			Premium
	FRL	AD	16490	112.3	18255	129.7	17419	118.6			Standard
RB4-28L	Clear (BLANK)	(BLANK)	27863	143	30691	165.3	29285	151.2	195	400W HID	Premium
	FRL	(BLANK)	23365	119.9	25737	138.6	24558	126.8			Standard
	Clear (BLANK)	AD	27216	139.8	29986	161.5	28612	147.7			Premium
	FRL	AD	22150	113.7	24398	131.4	23280	120.2			Standard
RB4-34L	Clear (BLANK)	(BLANK)	32730	140.5	36930	165.3	34770	150.3	232	400-600W HID	Premium
	FRL	(BLANK)	28459	122.6	32225	144.2	30340	131.1			Standard
	Clear (BLANK)	AD	31690	137.3	34580	156.9	33971	146.8			Premium
	FRL	AD	26900	116.2	29670	134.7	28273	122.9			Standard

[1]Values are nominal, see IES file for more detail
[2]Electrical data at 25C (77F). Actual wattage may differ by +/-10%.
[3]All SKUs may not be DLC Listed, check QPL

Electrical Data (Amps)*

Lumen Package	Wattage	120V	208V	240V	277V	347V	480V
14L	102.0	0.85 A	0.49 A	0.43 A	0.37 A	0.29 A	0.21 A
21L	147.0	1.23 A	0.701 A	0.61 A	0.53 A	0.42 A	0.31 A
28L	195.0	1.63 A	0.94 A	0.82 A	0.70 A	0.56 A	0.41 A
34L	232.0	1.93 A	1.12 A	0.97 A	0.84 A	0.67 A	0.48 A
14L/21L/28L	198.0	1.65 A	0.95 A	0.83 A	0.71 A	0.57 A	0.41 A

*Electrical Data at 25C(77F). Actual wattage may differ by +/- 10%.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

RB4

ROUND HIGH BAY

AMBIENT TEMPERATURE RANGE							
Part Numbers	**Lens/Diffuser Options**	**Standard**	**EM/W**	**EM/D**	**NSF-EM/W**	**HV**	**NSF-HV**
RB4-14L RB4-21L RB4-28L	Clear	-40°F - 122°F	N/A	N/A	N/A	N/A	N/A
	AD		N/A	N/A	N/A	N/A	N/A
	FRL		N/A	N/A	N/A	N/A	N/A
	FRL-AD		N/A	N/A	N/A	N/A	N/A
RB4-34L	Clear	-40°F - 113°F	32°F - 91°F	N/A	32°F - 90°F	-40°F - 122°F	-40°F - 122°F
	AD	-40°F - 113°F	32°F - 91°F	N/A	32°F - 90°F	-40°F - 122°F	-40°F - 122°F
	FRL	-40°F - 113°F	32°F - 91°F	N/A	32°F - 90°F	-40°F - 122°F	-40°F - 122°F
	FRL-AD	-40°F - 113°F	32°F - 91°F	N/A	32°F - 90°F	-40°F - 122°F	-40°F - 122°F
RB4-14L/21L/28L	Clear	-40°F - 122°F	32°F - 102°F	32°F - 105°F	32°F - 91°F	-40°F - 117°F	-40°F - 117°F
	AD	-40°F - 122°F	32°F - 102°F	32°F - 105°F	32°F - 91°F	-40°F - 117°F	-40°F - 117°F
	FRL	-40°F - 122°F	32°F - 102°F	32°F - 105°F	32°F - 91°F	-40°F - 117°F	-40°F - 117°F
	FRL-AD	-40°F - 122°F	32°F - 102°F	32°F - 105°F	32°F - 91°F	-40°F - 117°F	-40°F - 117°F

SPECIFICATIONS

CONSTRUCTION

The RB4 High Bay features a cold forged die-cast aluminum housing available in 3 different sizes for a fully scalable solution. The fully gasketed housing is IP65 rated for whole luminaire ingress protection against moisture and environmental contaminants. The RB4 is protected with a durable White or Black polyester powder coat finish to withstand extreme weather changes without cracking or peeling. Salt Spray tested for 500 hrs.

ELECTRICAL

Class 1 High-performance drivers features over-voltage, under-voltage, short circuit and over temperature protection. 0-10V dimming (10% - 100%) standard with sensor option. Standard Universal Voltage (120-277 Vac) Input 50/60 Hz or optional High Voltage (347-480 Vac). L70 >100,000 hrs. in accordance with IESNA TM-21-11 projected values at 25°C Ambient temperature. Total harmonic distortion: <20%. Power factor: >0.90. Input power stays constant over life. Minimum 6kV surge rating meets a minimum Category C Low operation (per ANSI/IEEE C62.41.2). Battery backup provides 90 minutes of constant power to the LED system, ensuring code compliance. 6ft 3-Wire Power Cord included with alternate lengths and plugs available. DIMx option allows for 0-10V Dimming from external signal. Cords match paint finish.

INSTALLATION

Options include hook (std), suspension aircraft cables (HB5/HB10), 1/2" single pendant (Requires PEN (3/4") or FMB (Recommend PEN as alternate for general pendant Mount; FMB for Flex conduit wiring) options option or power cables will run outside pendant conduit, MUST ORDER WITH CORD LONG ENOUGH FOR PENDANT LENGTH), and surface mount (SMB). Safety hook with 2' galvanized safety cable standard.

WARRANTY

5 Year Warranty Standard; 10 Year Warranty Optional (Terms and Conditions apply).

OPTICS

All models come standard in 5000K, 4000K, and 3500K field selectable c temperatures per ANSI C78.377. Minimum CRI of 80. Provided standard v IK10 impact rated primary clear polycarbonate lens. Optional IK10 impact primary frosted polycarbonate lens available for added LED glare reductic Optional 16"or 22" frosted acrylic diffusers & 16" or 22" aluminum reflecto available. 16" or 22" frosted conical lens options for added diffusion.

THERMAL

The RB4 features an array of High-efficacy LED's mounted on a metal cc circuit board. The LED boards are mounted directly to the cast aluminum housing with heat dissipating fins to provide excellent thermal performan extending the life of electronic components. See ambient temperature tab above.

CONTROLS

Optional center mounted field installable sensor provides a clean appearance and ensures a balanced fixture. Sensor Plug & Plays via 3.5 jack and is programmable (Remote ordered separately) . Sensor operatic include: On/Off, Bi-Level Dimming, High-End Trim and Daylight Harvestir

CERTIFICATIONS

ETL Listed for wet locations. Tested in accordance with IESNA LM-79 an LM-80 standards. RoHS Compliant. Title 24 Compliant; see local ordinance for qualification information. IP65 rated Luminaire per IEC 60598. ASTM B117 Salt Spray Tested 500 Hrs. NSF Rated. IK10 Impact Rating (Primary lens). DesignLights Consortium® (DLC) Premium & Standard qualified product. Not all versions of this product may be DLC qualified. Please check the DLC Qualified Products List at www.designlights.org/ QPL to confirm which versions are qualified.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ROUND HIGH BAY

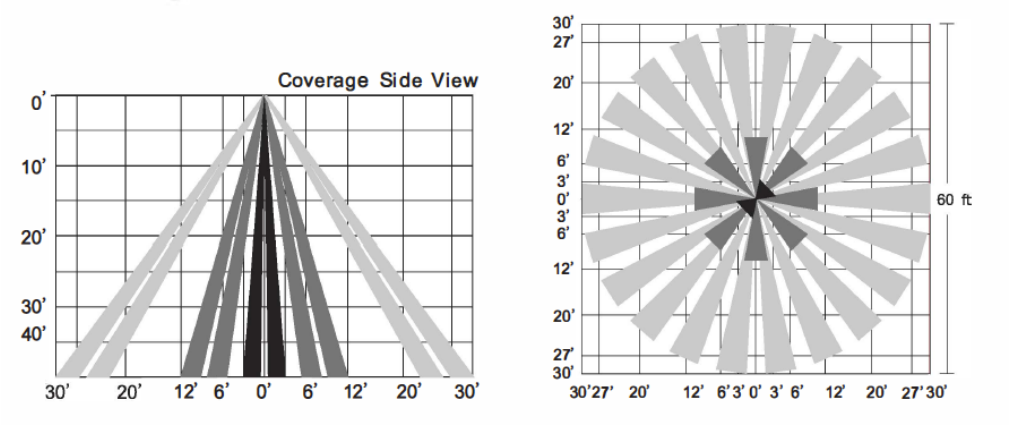
CONTROLS OPTIONS

BASIC

+RB4/S/KIT

Optional center mounted field installable sensor provides a clean appearance and ensures a balanced fixture. Sensor Plug & Plays via 3.5MM jack and is remote programmable. Sensor operations include: On/Off, Bi-Level Dimming, High-End Trim and Daylight Harvesting.





Factory Default Setting: 100% sensitivity. Hold on time: 5min, Daylight sensor is ON, Dimming level: 30% Dimming time: 60 minutes.

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2024-023 EXH 'B'

ROUND HIGH BAY

OPTIONS



+RB4-AD
16" Shallow Acrylic Diffuser.
Ship with accessory.



+RB4-DAD
+RB4-DAD22
16" or 22" Deep Acrylic Diffuser.
Ship with Accessory.



+RB4-CL16
+RB4-CL22
16" or 22" Frosted Conical Bottom Lens.
Must be used with AD, DAD, or REFL options.
Ship with accessory.
Shown with AD Lens.



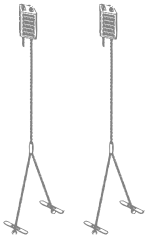
+RB4-REFL
+RB4-REFL/BLK
+RB4-REFL/WHT
Aluminum Reflector.
Ship with accessory.



Cx/3W
Cx/4W
3 or 4 Conductor Cords available in 10', 15', & 20'
(Inquire for additional options).
6ft cord included (Plug ordered Separately; Damp location only).
Cord matches fixture finish.



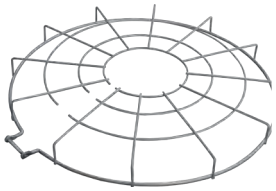
+RB4-RED1/2
1/2" Pendant to 3/4" Adapter.
Use with PEN/XXX when utilizing a 1/2" Pendant stem.



+RB4-HB5
+RB4-HB10
5ft or 10ft Aircraft Cable Suspension Kit. SS option available for Stainless Steel. Ship with accessory.



+RB4-SMB
Surface Mount Bracket.
Ship with accessory.



+RB4-WC
+RB4-WC22
16" or 22" Wire Cage. Can only be used with AD, DAD, or REFL options.
Ship with accessory.



+RB4-PEN
Single point mounting to accept a 3/4" conduit. Cord required for full length of pendant stem (6' standard, additional lengths sold separately).



HV-NSF, HV/W, HV/D
347-480V High Voltage Driver Option for wet locations.



EM/W
120-277V Universal Driver & 20W battery backup options for wet locations.



EM/D
120-277V Universal Driver & 20W battery backup options for damp locations. Only available with 14L/21L/28L Models



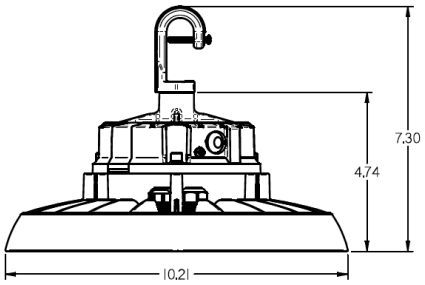
NSF-EM/W
120-277V Universal Driver & 30W battery backup options for wet locations.

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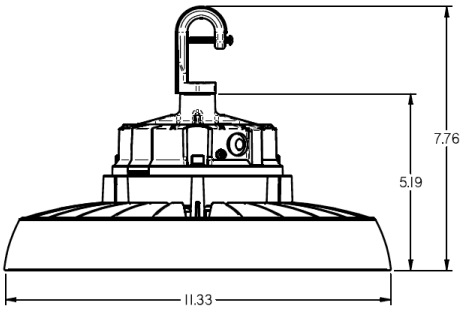
ROUND HIGH BAY

LINE DRAWINGS

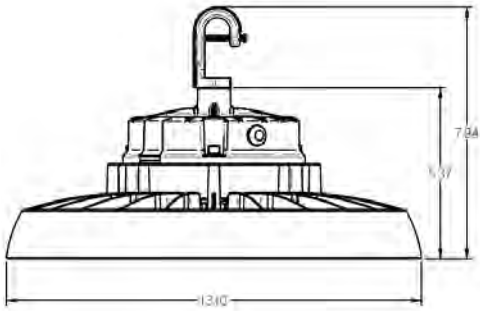
14L Side View



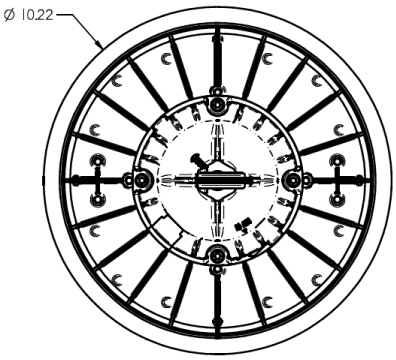
21L Side View



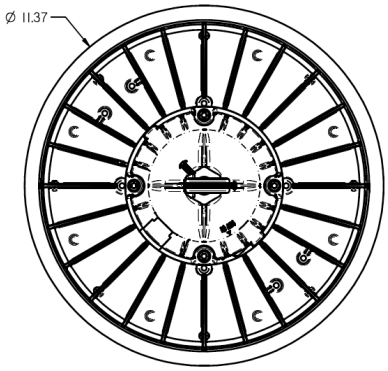
28L,34L, 14L/21L/28L Side View



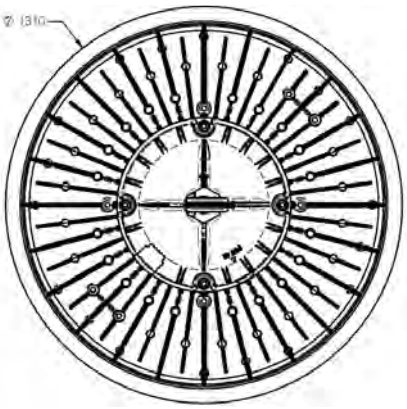
14L Top View



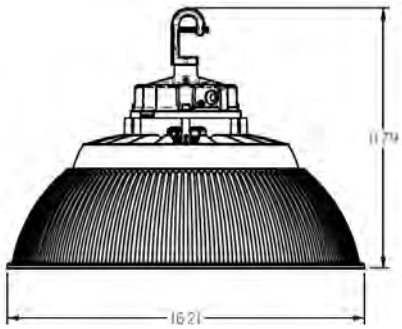
21L Top View



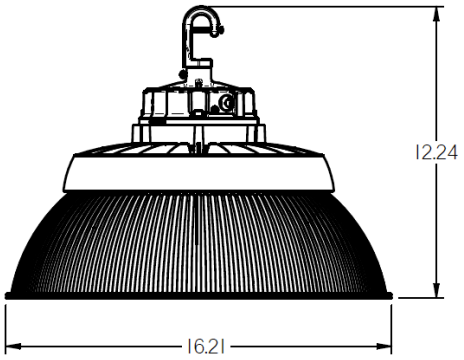
28L,34L, 14L/21L/28L Top View



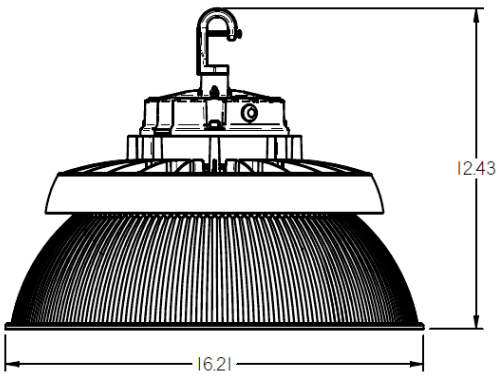
14L with AD



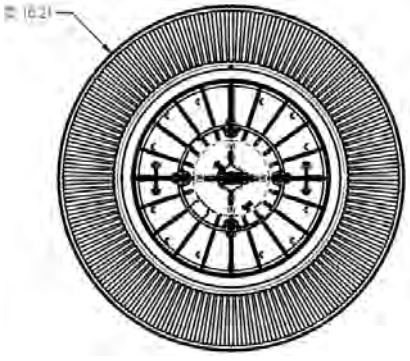
21L with AD



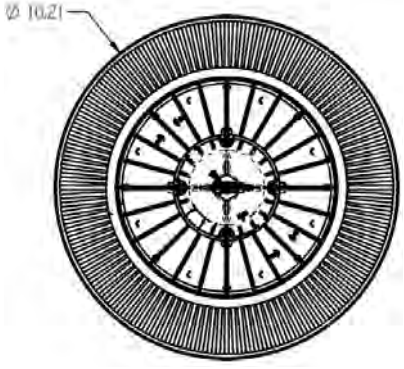
28L,34L, 14L/21L/28L with AD



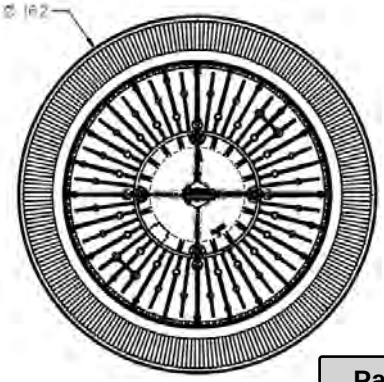
14L Top View with AD



21L Top View with AD



28L,34L, 14L/21L/28L Top View with AD

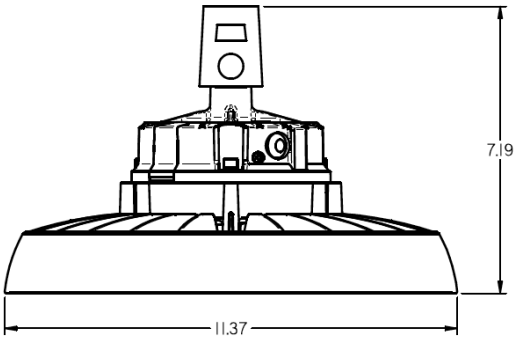


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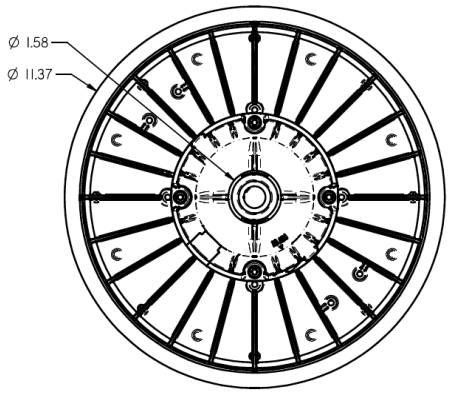
ROUND HIGH BAY

LINE DRAWINGS

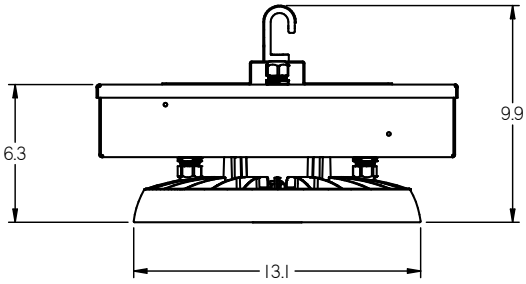
PEN Option shown with RB4-21L



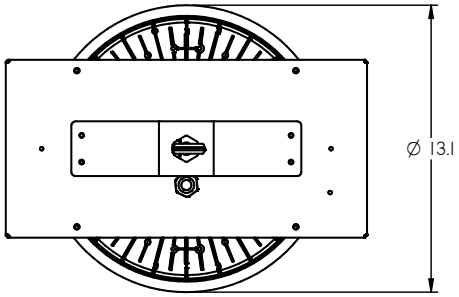
PEN Option Top View - Shown with RB4-21L



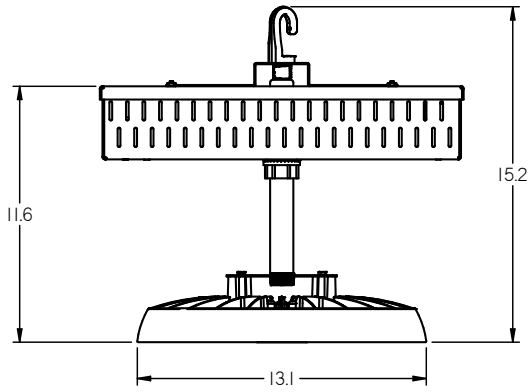
HV-NSF, HV/W, HV/D Housing



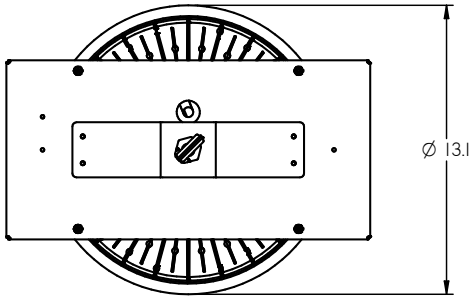
HV/NSF, HV/W, HV/D Housing Top View



EM/D Housing - Shown with RB4-14L/21L/28L



EM/D Housing Top View - Shown with RB4-14L/21L/28L

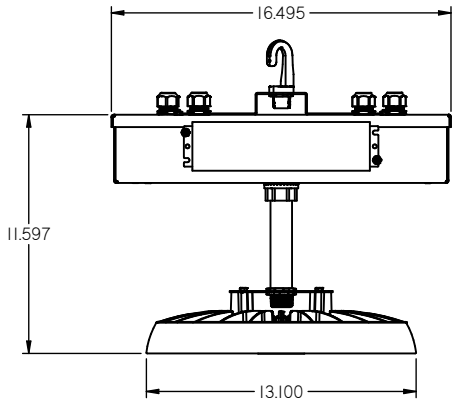


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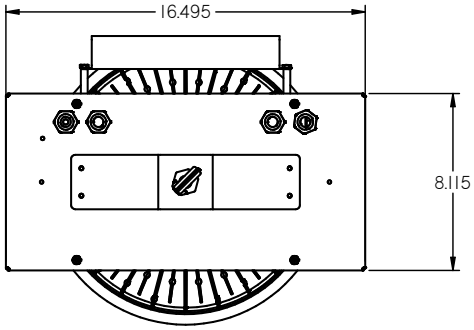
RB4

ROUND HIGH BAY

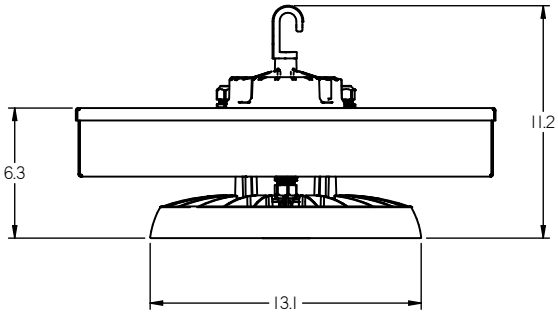
EM/W Housing



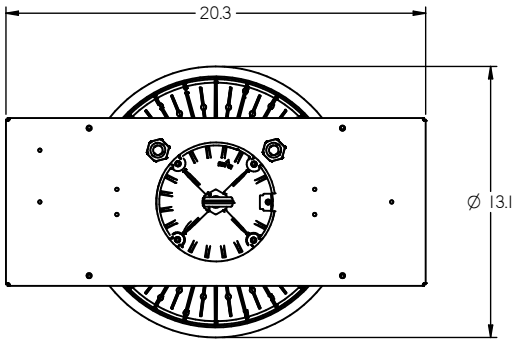
EM/W Housing Top View



NSF-EM/W Housing



NSF-EM/W Housing Top View



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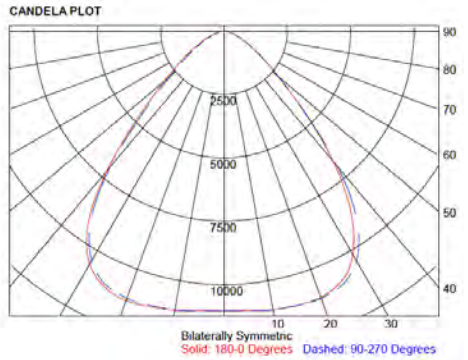
ROUND HIGH BAY

PHOTOMETRIC DATA

LUMINAIRE DATA	
Part Number	RB4-21L-U-40
Description	RB4, 21000lm, clear polycarbonate lens
Fixture Lumens (lm)	21540 Lumens
Wattage (W)	140.7 W
Efficacy (lm/W)	153.1 lm/W
Mounting	Pendant
Spacing Criteria	0° = 1.3, 90° = 1.3

ZONAL LUMEN SUMMARY		
Zone	Lumens (lm)	% Fixture
0° - 40°	14658.07	68%
0° - 60°	20335.32	94%
0° - 90°	21540	100%
90° - 180°	0	0%
0° - 180°	21540	100%

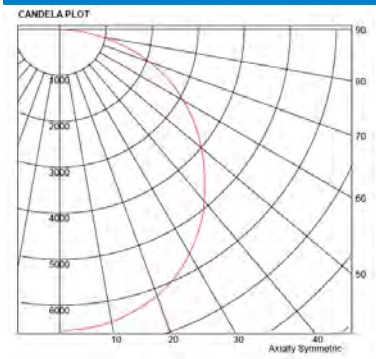
CANDELA PLOT



LUMINAIRE DATA	
Part Number	RB4-21L-U-40-FRL
Description	RB4, 21000lm, frosted acrylic lens
Fixture Lumens (lm)	19860 Lumens
Wattage (W)	139.9 W
Efficacy (lm/W)	142 lm/W
Mounting	Pendant
Spacing Criteria	0° = 1.28, 90° = 1.28

ZONAL LUMEN SUMMARY		
Zone	Lumens (lm)	% Fixture
0° - 40°	8534	43%
0° - 60°	15219	77%
0° - 90°	19860	100%
90° - 180°	0	0%
0° - 180°	19860	100%

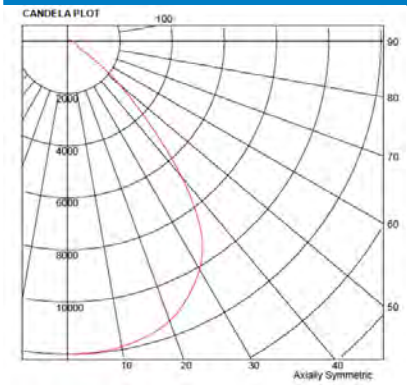
CANDELA PLOT



LUMINAIRE DATA	
Part Number	RB4-21L-U-40-AD
Description	RB4, 21000lm, clear polycarbonate lens, frosted acrylic diffuser
Fixture Lumens (lm)	21215 Lumens
Wattage (W)	140.6
Efficacy (lm/W)	150.9
Mounting	Pendant
Spacing Criteria	0° = 1.22, 90° = 1.22

ZONAL LUMEN SUMMARY		
Zone	Lumens (lm)	% Fixture
0° - 40°	14698	69%
0° - 60°	19315	91%
0° - 90°	20404	96%
90° - 180°	811	4%
0° - 180°	21215	100%

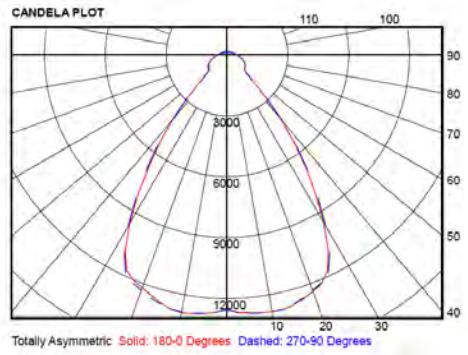
CANDELA PLOT



LUMINAIRE DATA	
Part Number	RB4-21L-U-40-DAD
Description	RB4, 21000lm, clear polycarbonate lens, frosted acrylic diffuser
Fixture Lumens (lm)	21005 Lumens
Wattage (W)	140.6
Efficacy (lm/W)	149
Mounting	Pendant
Spacing Criteria	0° = 1.16, 90° = 1.16

ZONAL LUMEN SUMMARY		
Zone	Lumens (lm)	% Fixture
0° - 40°	14333	68%
0° - 60°	16960	81%
0° - 90°	19331	92%
90° - 180°	1673	8%
0° - 180°	21005	100%

CANDELA PLOT



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ENERGYLITE

BroadLite BL3

LED FLOOD LUMINAIRE

PROJECT _____ TYPE _____

SPECIFICATION _____

QUICK FACTS

CONSTRUCTION
- Die-cast, low copper aluminum alloy housing for optimal thermal performance and exceptional corrosion resistance
- 100% recycled aluminum

FINISH
- TGIC polyester super durable powder coating with superior gloss, color retention, and weather resistance
- Standard finishes provided at 3 mil nominal thickness with salt-spray tested to 3,000 hours as per ASTM B117
- For marine grade finish, consult factory. Provided at 5 mil nominal thickness with salt-spray tested to 4,000 hours as per ASTM B117

ELECTRICAL
- 120-277 V Standard; 277-480 V option available
- PF>0.90, THD < 20%
- Parallel surge protection: enhanced 10kV standard, extreme 20kV optional (ANSI C136.2-2015)
- For series surge protection, consult factory
- Rated for operation -40°C to 40°C
- For 50°C option, consult factory

OPTICS + PERFORMANCE
- Up to 164 lumens per watt
- 12,000-41,000 lumen packages (82-342 W)
- 5 customized distributions available
  - Type III Roadway Medium
  - NEMA 6x6
- Multiple shielding options available

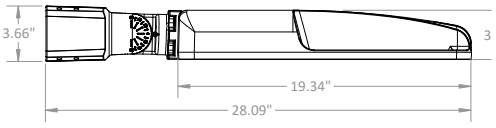
CONTROLS
- 0-10 V dimming standard
- DALI-2 dimming option available
- Receptacle options:
  - ANSI C136.41 3-pin
  - ANSI C136.41 7-pin (for DALI-2 or dimming)
  - Zhaga Book 18 (for next generation ambient light/motion sensing)

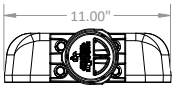
LISTINGS
- IP66 rated optical and electrical chambers
- 3G Vibration rated (ANSI C136.31) for knuckle mount; 1.5G Vibration rated for trunnion mount
- UL listed for wet locations (E487976)
- ANSI C136.15 labeling available
- BAA Compliance available; †*Consult factory to confirm specific fixture code is compliant if this is a requirement*
- **Designed and assembled in U.S.A.**

WARRANTY
- 10 year warranty

DIMENSIONS







EPA: 0.61 sq. ft.

WEIGHT: 20.42 lbs.

ORDERING INFORMATION

Example: BL3/22H/2RM/830/STD/10/1PS/30/SBZ/ES/HSS-PC

/ / / / / / / / / /

Fixture
BL3

Package
12L[1] - *12,000 lm; 84 W*
15L[1] - *15,000 lm; 111 W*
18L[1] - *18,000 lm; 138 W*
17H[1] - *17,000 lm; 107 W*
19H[1] - *19,000 lm; 121 W*
22H[1] - *22,000 lm; 145 W*
25H[1] - *25,000 lm; 166 W*
30H[1] - *30,000 lm; 209 W*
33H[1] - *33,000 lm; 239 W*
37H[1] - *37,000 lm; 273 W*
40H[1] - *40,000 lm; 320 W*
43H[1] - *43,000 lm; 353 W*

Distribution
3RM[1] - *Type III Roadway Medium*
N66[1] - *NEMA 6x6*

CRI + CCT
750 - *70+ CRI, 5000K*
740[1] - *70+ CRI, 4000K*
730[1] - *70+ CRI, 3000K*
727 - *70+ CRI, 2700K*

** 80 + 90 CRI, as well as additional color temperatures, are available upon request*

Voltage
STD[1] - *120-277 V*
HVL[3,4] - *277-480 V*

Controls
10[1] - *0-10 V*
DA[3,4] - *DALI-2*

Surge
1PS[1] - *10kV 5kA, 120-277 V*
2PS* - *20kV 10kA, 120-277 V*
2PH* - *20kV 10kA, 277-480 V*

Photocell Receptacle
00[1] - *none*
30 - *3-pin*
70 - *7 pin*
0Z[3] - *Zhaga*
3Z[3] - *3-pin + Zhaga*
7Z[3] - *7-pin + Zhaga*

Finish
SBZ[12] - *Bronze (RAL8019)*
SWH[2] - *White (RAL9003)*
SGY[2]* - *Grey (RAL7038)*
SBK[2]* - *Black (RAL9017)*

** Additional finish colors available upon request*

Mounting
KM - *Knuckle Mount*
KMS - *Knuckle Mount with 6' side entry pigtail*
TM - *Trunnion Mount*

Options + Accessories
HSS[5] - *House side Shield*
CSS[5] - *Cul-de-sac Shield*
FSS[5] - *Front side Shield*
ALB - *ANSI C136.15 Lab*
ZT1 - *0-10 V Zhaga Am Light Control (ALC*
ZT3 - *0-10 V Zhaga IR +*
ZT4 - *0-10 V Zhaga Occupany + IR + A*
SC - *Shorting Cap*
PCL01 - *120-277 V Phot 640J, IP65*
PCL02 - *120-277 V Phot 1280J, IP66*
PCL03 - *277-480 V Phot 1280J, IP66*

* Consult factory for lead time and availability.
[1] Standard offering. Consult factory for lead and availability for other options.
[2] Marine grade finish options available. Consult Factory.
[3] High voltage (HVL) option unavailable with Zhaga photocell receptacles.
[4] High voltage plus DALI-2 combination only available with 12L-18L and 17H-22H performance packages.
[5] Flat-black, injection molded plastic resin, tool-less, clip-on discrete shield.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ENERGYLITE

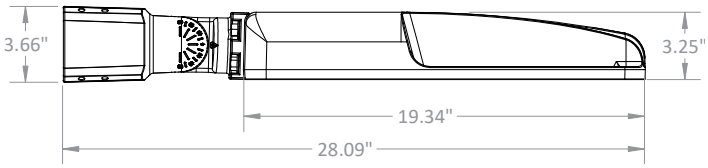
BroadLite BL3
LED FLOOD LUMINAIRE

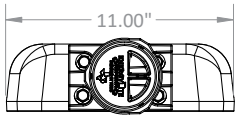
PROJECT _____ TYPE _____

SPECIFICATION _____

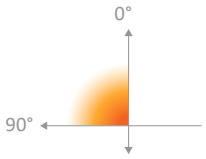
MOUNTING OPTIONS

KNUCKLE MOUNT (KM)
- Mounts to maximum 3" O.D. tenon
- Adjustable at 7.5° increments
- Not recommended to angle luminaire past 0° (vertical); maintain downward angle

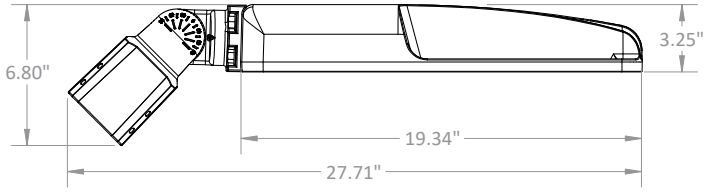


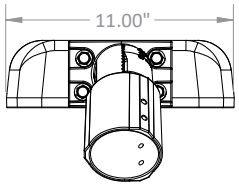




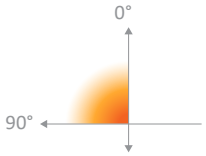


KNUCKLE MOUNT SIDE ENTRY (KMS)
- 6' side entry pigtail
- Pre-set to 45° tilt
- Adjustable at 7.5° increments
- Mounts to maximum 3" O.D. tenon

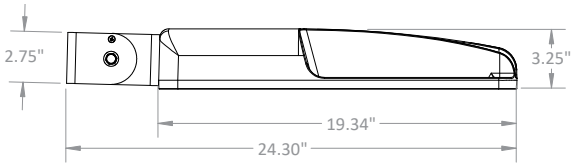


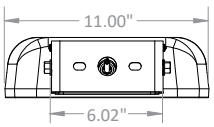


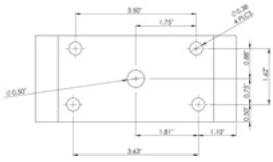




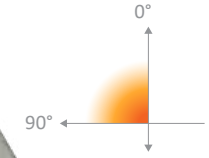
TRUNNION MOUNT (TM)
- Adjustable at 15° increments
- Not recommended to angle luminaire past 0° (vertical); maintain downward angle











WEIGHT + EPA

Mounting	EPA	Weight		
		12L to 22H	25H to 30H	33H to 43H
Knuckle Mount + Knuckle Mount Side Entry	0.51 sq. ft.	21.38	22.41	24.38
Trunnion Mount	0.61 sq. ft.	20.42	21.45	23.42

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ENERGYLITE

BroadLite BL3

LED FLOOD LUMINAIRE

PROJECT _____ TYPE _____

SPECIFICATION _____

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

POLE CONFIGURATION EPAs

- Data below includes luminaire and integrated mounting option. Additional tenons, arms and brackets are not included.

Mounting Type	Tilt	Single	2 at 90°	2 at 180°	3 at 90°	4 at 90°	2 Side-by-side
Knuckle Mount + Knuckle Mount (Side Entry)	90° (horizontal)	0.61 sq. ft.	0.95 sq. ft.	1.22 sq. ft.	1.56 sq. ft.	1.56 sq. ft.	0.68 sq. ft.
	60°	0.61 sq. ft.	1.46 sq. ft.	1.22 sq. ft.	2.07 sq. ft.	2.07 sq. ft.	1.70 sq. ft.
	45°	0.61 sq. ft.	1.72 sq. ft.	1.22 sq. ft.	2.33 sq. ft.	2.33 sq. ft.	2.22 sq. ft.
	30°	0.61 sq. ft.	1.91 sq. ft.	1.22 sq. ft.	2.52 sq. ft.	2.52 sq. ft.	2.60 sq. ft.
	0° (vertical)	0.61 sq. ft.	2.11 sq. ft.	1.22 sq. ft.	2.72 sq. ft.	2.72 sq. ft.	3.00 sq. ft.
Trunnion Mount	90° (horizontal)	0.51 sq. ft.	0.76 sq. ft.	1.02 sq. ft.	1.27 sq. ft.	1.27 sq. ft.	0.50 sq. ft.
	60°	0.51 sq. ft.	1.27 sq. ft.	1.02 sq. ft.	1.78 sq. ft.	1.78 sq. ft.	1.52 sq. ft.
	45°	0.51 sq. ft.	1.51 sq. ft.	1.02 sq. ft.	2.02 sq. ft.	2.02 sq. ft.	2.00 sq. ft.
	30°	0.51 sq. ft.	1.68 sq. ft.	1.02 sq. ft.	2.19 sq. ft.	2.19 sq. ft.	2.34 sq. ft.
	0° (vertical)	0.51 sq. ft.	1.82 sq. ft.	1.02 sq. ft.	2.33 sq. ft.	2.33 sq. ft.	2.62 sq. ft.

PHOTOMETRIC DISTRIBUTION

Type III Roadway Medium



NEMA 6x6

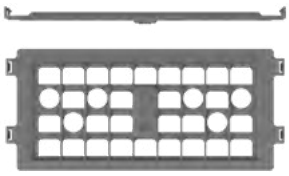


SHIELD ACCESSORY DETAILS

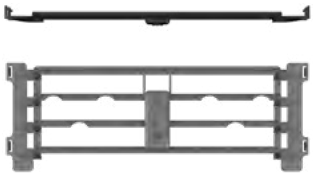
HOUSE SIDE SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



CUL-DE-SAC SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



FRONT SIDE SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



SCOOP SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield





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ENERGYLITE

BroadLite BL3

LED FLOOD LUMINAIRE

PROJECT _____ TYPE _____

SPECIFICATION _____

PERFORMANCE DATA

Performance Package	Drive | Current	Color Temperature (CCT)	Input Power (Watts)	TYPE III ROADWAY MED AT 70 CRI		TYPE NEMA 6x6 AT 70 CRI	
				Lumens	Efficacy (lm/W)	Lumens	Efficacy (lm/W)
12L	630mA	5000K	83.8	12,331	147	12,832	153
		4000K		12,089	144	12,580	150
		3000K		11,727	140	12,203	146
15L	826mA	5000K	110.6	15,501	140	16,130	146
		4000K		15,197	137	15,814	143
		3000K		14,741	133	15,340	139
18L	1022mA	5000K	138.1	18,376	133	19,122	138
		4000K		18,016	130	18,747	136
		3000K		17,475	127	18,185	132
17H	413mA	5000K	107.4	17,250	161	17,950	167
		4000K		16,912	157	17,598	164
		3000K		16,404	153	17,070	159
19H	462mA	5000K	120.5	19,038	158	19,810	164
		4000K		18,665	155	19,422	161
		3000K		18,105	150	18,839	156
22H	553mA	5000K	145.3	22,230	153	23,133	159
		4000K		21,795	150	22,679	156
		3000K		21,141	145	21,999	151
25H	637mA	5000K	166.0	25,268	152	26,294	158
		4000K		24,773	149	25,778	155
		3000K		24,029	145	25,005	151
30H	761mA	5000K	208.6	30,221	145	31,448	151
		4000K		29,629	142	30,831	148
		3000K		28,740	138	29,906	143
33H	904mA	5000K	238.5	32,441	136	33,758	142
		4000K		31,805	133	33,096	139
		3000K		30,851	129	32,103	135
37H	1024mA	5000K	272.9	36,841	135	38,336	140
		4000K		36,118	132	37,584	138
		3000K		35,035	128	36,456	134
40H	1192mA	5000K	320.2	40,125	125	41,754	130
		4000K		39,339	123	40,935	128
		3000K		38,158	119	39,707	124
43H	1305mA	5000K	352.7	42,035	119	43,741	124
		4000K		41,211	117	42,883	122
		3000K		39,974	113	41,597	118

TM-21 LUMEN MAINTENANCE PROJECTION

- Calculated by utilizing the LED manufacturer's LM80 test data in conjunction with third party verified in-situ LED drive current and LED temperature data. Use data below to determine light loss factors.

Performance Package	50,000 hrs	60,000 hrs	100,000 hrs
12L-37H	99.67%	99.49%	98.77%
40H	98.95%	98.62%	97.30%
43H	96.41%	95.66%	92.72%

LUMEN AMBIENT TEMPERATURE (LAT) MULTIPLIERS

Ambient Temperature		Lumen Multiplier
Celsius	Fahrenheit	
0°C	32°F	1.02
10°C	50°F	1.01
25°C	77°F	1.00
40°C	104°F	0.99
50°C	122°F	0.97

ELECTRICAL LOAD

Performance Package	Input Power	Current (Amps) per Input Voltage					
		120 Vac	208 Vac	240 Vac	277 Vac	347 Vac	480 Vac
12L	83.8 W	0.7	0.39	0.34	0.3	0.24	0.17
15L	110.6 W	0.92	0.52	0.45	0.39	0.31	0.23
18L	138.1 W	1.15	0.65	0.56	0.49	0.39	0.28
17H	107.4 W	0.9	0.51	0.44	0.38	0.3	0.22
19H	120.5 W	1	0.57	0.49	0.43	0.34	0.25
22H	145.3 W	1.21	0.68	0.59	0.51	0.41	0.3
25H	166.0 W	1.38	0.78	0.68	0.59	0.47	0.34
30H	208.6 W	1.74	0.98	0.85	0.74	0.59	0.43
33H	238.5 W	1.99	1.12	0.97	0.84	0.67	0.49
37H	272.9 W	2.27	1.29	1.11	0.97	0.77	0.56
40H	320.2 W	2.67	1.51	1.31	1.13	0.9	0.65
43H	352.7 W	2.94	1.66	1.44	1.25	1	0.72

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ENERGYLITE

BroadLite BL3

LED FLOOD LUMINAIRE

PROJECT _____ TYPE _____

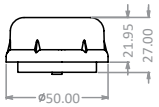
SPECIFICATION _____

CONTROLS

0-10 V ZHAGA OPTIONS

- ZT1: Ambient Light Control
- ZT3: IR + Ambient Light Control
- ZT4: Occupancy + IR + Ambient Light Control







PHOTOCELL OPTIONS

- PCL01: 120-277 V Photocell (640J, IP65); Blue
- PCL02: 120-277 V Photocell (1280J, IP66); Blue
- PCL03: 277-480 V Photocell (1280J, IP66); Yellow







POLE INFORMATION

- Solais Lighting group offers a full line of aluminum and steel poles, brackets and accessories for your installation. For more information, consult factory.

SQUARE STRAIGHT

- 8-39 ft. height options



ROUND STRAIGHT

- 8-35 ft. height options



ROUND TAPERED

- 8-39 ft. height options
- 45-70 ft. telescoping height options



SQUARE TAPERED

- 20-50 ft. height options



HINGED TAPERED

- 20-39 ft. height options



Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

ENERGYLITE

GridLite

LED SITE LIGHT FIXTURE

PROJECT _____ TYPE _____

SPECIFICATION _____

- 120 - 277 V Standard; 347 - 480 V option available
- 10 year warranty
- 0 - 10 V dimming standard; DALI dimming option available
- C136.41 compliant rotating photocell receptacle
- Corrosion resistant powder-coated finish to minimum 3.0 mil. thickness
- Die cast aluminum housing designed for optimal thermal performance
- Marine grade finish option available
- Motion sensor option available - bi-level setting standard with low point of 50% and a 15 minute delay.
- IDA Dark Sky listed ≤3000K , Site Arm and Horizontal Tenon only
- IP66 rated optical and electrical chambers
- 1.5G Bridge Vibration Rated (ANSI C136.31-2018)
- Surge Protection (ANSI C136.2-2015) 10kV 5kA Standard; 20kV 10kA optional
- Suitable for wet locations
- Rated for operation -40°C to 40°C; For 50°C, consult factory
- Adjustable for 1½" to 2½" O.D. tenon
- Universal mounting available with the extended site arm



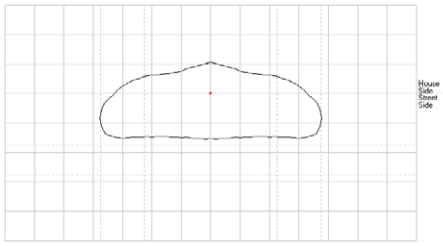
- Projections

TM-21 Lumen Maintenance Projection is calculated by utilizing the LED manufacturer's LM80 test data in conjunction with third party verified in-situ LED drive current and LED temperature data. All data is taken at a maximum drive current of 1050 mA and an ambient temperature of 25°C. Projected data is limited to 6 times the actual tested hours by the LED manufacturer.

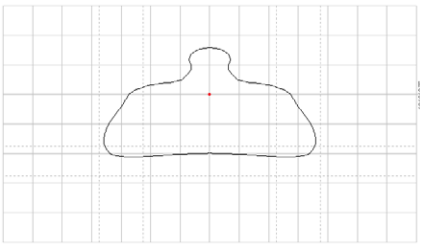
Calculated		Projected	
L_{70}	>150,000 hours	L_{70}	>60,000 hours
L_{80}	>100,000 hours	L_{80}	>60,000 hours
L_{90}	>40,000 hours	L_{90}	>40,000 hours

- Distribution Types

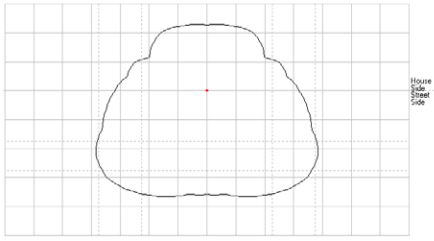
Type II Medium



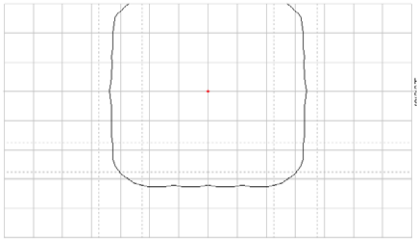
Type III Medium



Type IV Short



Type V Square



Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

2024-023 EXH 'B'

ENERGYLITE

GL4 GridLite

LED SITE LIGHT FIXTURE

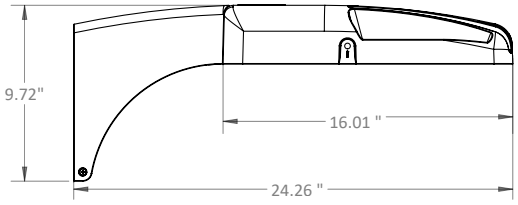
PROJECT _____ TYPE _____

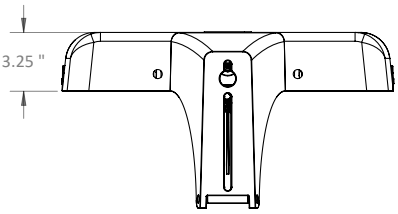
SPECIFICATION _____

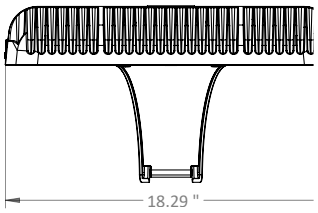
EPA
0.44 sq. ft.



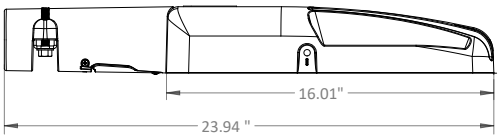
Extended Site Arm: 29.5 lbs.

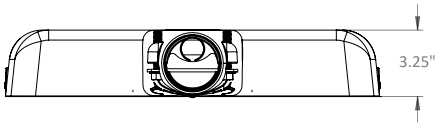


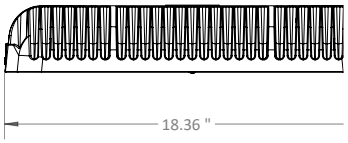




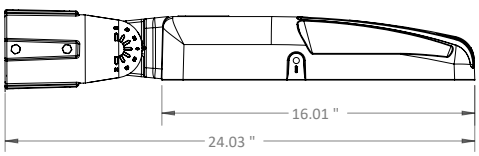
Horizontal Tenon: 28.1 lbs.

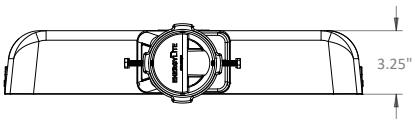


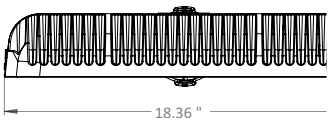




Knuckle: 28.7 lbs.







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2024-023 EXH 'B'

ENERGYLITE

GL4 GridLite

LED SITE LIGHT FIXTURE

PROJECT _____ TYPE _____

SPECIFICATION _____

Package	Drive Current (mA)	Color Temperature (CCT)	Input Power (Watts)	TYPE II MEDIUM AT 70 CRI			TYPE III MEDIUM AT 70 CRI			TYPE IV SHORT AT 70 CRI			TYPE V SQUARE AT 70 CRI		
				Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating
20	470mA	4000K / 5000K	166	21,250	128	B3-U0-G3	20,950	126	B2-U0-G3	19,850	119	B3-U0-G3	21,060	127	B5-U0
		3000K		21,240	127		20,940	126		19,840	120		21,050	127	
22	530mA	4000K / 5000K	188	23,600	125		23,260	124	B3-U0-G3	22,040	117		23,380	124	
		3000K		23,510	125		23,180	123		21,960	117		23,300	124	
24	600mA	4000K / 5000K	218	26,210	120		25,840	118		24,480	112	B3-U0-G4	25,970	119	
		3000K		25,850	120		25,490	118		24,150	112		25,620	119	
26	650mA	4000K / 5000K	236	27,970	119		27,580	117	B3-U0-G4	26,130	111		27,720	118	
		3000K		27,660	118		27,270	117		25,840	111		27,420	117	
28	700mA	4000K / 5000K	254	29,630	117		29,210	115		27,650	109		29,370	116	B5-U0
		3000K		29,340	117		28,930	115		27,410	109		29,080	116	
30	775mA	4000K / 5000K	281	31,930	114		31,480	112		29,830	106		31,650	113	
		3000K		31,960	115		31,500	113		29,850	107		31,670	114	
32	850mA	4000K / 5000K	308	34,150	111		33,670	109		31,900	104		33,850	110	
		3000K		34,270	112		33,780	111		32,010	105		33,960	111	
34	910mA	4000K / 5000K	330	36,150	110	B3-U0-G4	35,640	108		33,770	102	B3-U0-G5	35,830	109	
		3000K		35,990	110		35,480	108		33,620	103		35,670	109	
36	980mA	4000K / 5000K	357	37,960	106		37,430	105		35,460	99		37,620	105	
		3000K		38,070	108		37,530	106		35,560	100		37,730	107	
38	1050mA	4000K / 5000K	384	40,270	105		39,710	104		37,620	98		39,910	104	
		3000K		39,800	105		39,240	103		37,180	98		39,450	104	

Ordering Information — **Example: GL4/24/2M/830/STD/10/10/3/GY/ES/HS**

/ / / / / / / / / / /

Fixture
GL4

GL4-C

Package
20[1] - *20,000*
22[1] - *22,000*
24[1] - *24,000*
26[1] - *26,000*
28[1] - *28,000*
30[1] - *30,000*
32[1] - *32,000*
34[1] - *34,000*
36[1] - *36,000*
38[1] - *38,000*

56 -56,000

Distribution
2M[1] - *Type II Med*
3M[1] - *Type III Med*
4S[1] - *Type IV Short*
5Q[1] - *Type V Square*

CRI + CCT
730[1] - *70+ CRI, 3000K*
830 - *80+ CRI, 3000K*
930 - *90+ CRI, 3000K*
740[1] - *70+ CRI, 4000K*
840 - *80+ CRI, 4000K*
940 - *90+ CRI, 4000K*
750 - *70+ CRI, 5000K*
850 - *80+ CRI, 5000K*
950 - *90+ CRI, 5000K*
** Other CRI + CCT combinations available*

Voltage
STD[1] - *120-277 V*
HV[2] - *347-480 V*

Controls
0 - *None*
10[1] - *0-10 V*
D - *DALI*

Surge
10[1] - *10kV 5kA*
20* - *20kV 10kA*

Photocell Receptacle
7 - *7 pin*
0[1] - *none*

Finish
BZ[1] - *Bronze*
WH - *White*
GY* - *Grey*
BK* - *Black*
GN* - *Green*

Mounting
ES[1] - *Extended Site Arm*
HT - *Horizontal Tenon*
KM - *Knuckle Mount*
ES-WM - *Extended Site Arm with Wall-Mount*
ES-RP - *Extended Site Arm with Round Pole*

Options + Accessories
HS[3] - *House side Shield*
CS[3] - *Cul-de-sac Shield*
FS[3] - *Front side Shield*
GA*[4] - *Side Glare Shield*
GC*[4] - *Front/back Glare*
MG - *Marine Grade*
SC - *Shorting Cap*
MS - *Motion Sensor (up to 20' height)*
MH - *Motion Sensor (up to 40' height)*
PCL01 - *120-277 V Pho 640J, IP65*
PCL02 - *120-277 V Pho 1280J, IP66*
PCL03 - *347-480 V Pho 1280J, IP66*

* Consult factory for lead time and availability.
[1] Standard offering. CF for lead and availability for other options.
[2] 20kV 10kA surge protection is required for HV - 347-480 V.
[3] Flat-black, injection molded plastic resin, tool-less, clip-on descrete shield.
[4] Flat-black, powder-coated aluminum sheet metal glare shield.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

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ENERGYLITE

GL6 GridLite

LED SITE LIGHT FIXTURE

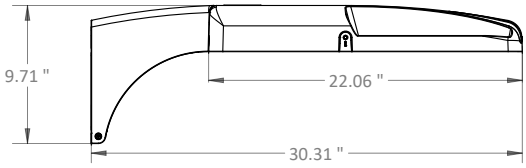
PROJECT _____ TYPE _____

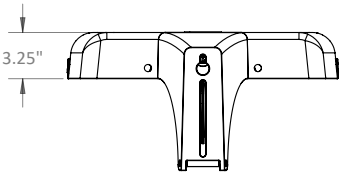
SPECIFICATION _____

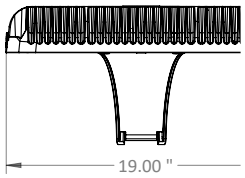
EPA
0.57 sq. ft.



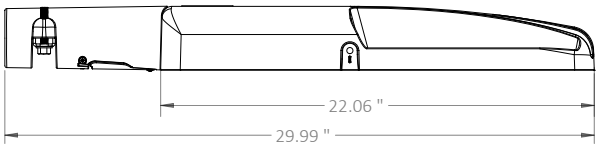
Extended Site Arm: 46.4 lbs.

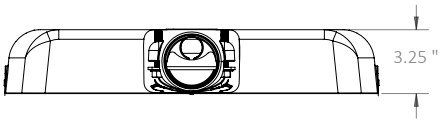


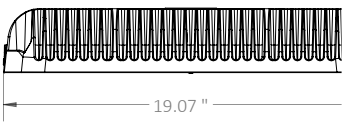




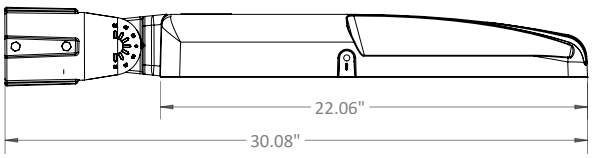
Horizontal Tenon: 45 lbs.

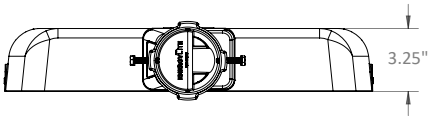


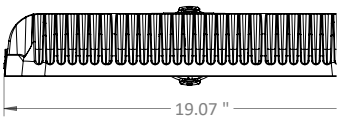




Knuckle: 45.6 lbs.







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2024-023 EXH 'B'

ENERGYLITE

GL6 GridLite

LED SITE LIGHT FIXTURE

PROJECT _____ TYPE _____

SPECIFICATION _____

Package	Drive Current (mA)	Color Temperature (CCT)	Input Power (Watts)	TYPE II MEDIUM AT 70 CRI			TYPE III MEDIUM AT 70 CRI			TYPE IV SHORT AT 70 CRI			TYPE V SQUARE AT 70 CRI		
				Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating	Luminous Flux Output (Nominal Lumens)	Efficacy (Lumens per Watt)	BUG Rating
40	700mA	4000K / 5000K	363	43,130	119	B3-U0-G4	43,040	119	B3-U0-G5	41,250	114	B3-U0-G5	43,240	119	B5-U0
		3000K		41,440	116		41,350	116		39,630	111		41,540	117	
42	740mA	4000K / 5000K	384	45,080	117		44,980	117		43,110	112		45,190	118	
		3000K		43,350	115		43,260	114		41,460	110		43,460	115	
44	790mA	4000K / 5000K	410	47,460	116		47,360	115		45,390	111	B4-U0-G5	47,580	116	
		3000K		45,840	113		45,740	113		43,840	108		45,950	113	
46	850mA	4000K / 5000K	442	50,180	114		50,070	113		47,990	109		50,300	114	
		3000K		48,020	110		47,910	110		45,920	106		48,130	111	
48	900mA	4000K / 5000K	468	52,290	112	B4-U0-G4	52,180	111		50,010	107		52,420	112	
		3000K		49,930	108		49,820	108		47,750	103		50,050	108	
50	940mA	4000K / 5000K	489	53,910	110		53,800	110		51,560	105		54,040	110	B5-U0
		3000K		52,040	107		51,930	107		49,770	103		52,170	108	
52	980mA	4000K / 5000K	510	55,310	108		55,190	108		52,890	104		55,440	109	
		3000K		53,490	106		53,370	106		51,150	101		53,620	106	
54	1030mA	4000K / 5000K	538	57,270	106	B4-U0-G5	57,150	106		54,770	102		57,410	107	
		3000K		55,490	104		55,370	104		53,070	100		55,630	105	
56	1050mA	4000K / 5000K	548	57,830	106		57,700	105	B4-U0-G5	55,300	101		57,970	106	
		3000K		55,660	103		55,540	103		53,230	99		55,800	103	

Ordering Information — **Example: GL6/44/2M/830/STD/10/10/3/GY/ES/HS**

/ / / / / / / / / /

Fixture
GL6

Package
40[1] - *40,000*
42[1] - *42,000*
44[1] - *44,000*
46[1] - *46,000*
48[1] - *48,000*
50[1] - *50,000*
52[1] - *52,000*
54[1] - *52,000*
56[1] - *56,000*

Distribution
2M[1] - *Type II Med*
3M[1] - *Type III Med*
4S[1] - *Type IV Short*
5Q[1] - *Type V Square*

CRI + CCT
730[1] - *70+ CRI, 3000K*
830 - *80+ CRI, 3000K*
930 - *90+ CRI, 3000K*
740[1] - *70+ CRI, 4000K*
840 - *80+ CRI, 4000K*
940 - *90+ CRI, 4000K*
750 - *70+ CRI, 5000K*
850 - *80+ CRI, 5000K*
950 - *90+ CRI, 5000K*
** Other CRI + CCT combinations available*

Voltage
STD[1] - *120-277 V*
HV[2] - *347-480 V*

Controls
0 - *None*
10[1] - *0-10 V*
D - *DALI*

Surge
10[1] - *10kV 5kA*
20* - *20kV 10kA*

Photocell Receptacle
7 - *7 pin*
0[1] - *none*

Finish
BZ[1] - *Bronze*
WH - *White*
GY* - *Grey*
BK* - *Black*
GN* - *Green*

Mounting
ES[1] - *Extended Site Arm*
HT - *Horizontal Tenon*
KM - *Knuckle Mount*
ES-WM - *Extended Site Arm with Wall-Mount*
ES-RP - *Extended Site Arm with Round Pole*

Options + Accessories
HS[3] - *House side Shield*
CS[3] - *Cul-de-sac Shield*
FS[3] - *Front side Shield*
GA*[4] - *Side Glare Shiel*
GC*[4] - *Front/back Glar Shield*
MG - *Marine Grade*
SC - *Shorting Cap*
MS - *Motion Sensor (up to 20' height)*
MH - *Motion Sensor (up to 40' height*
PCL01 - *120-277 V Photocell, 640J, IP65*
PCL02 - *120-277 V Photocell, 1280J, IP66*
PCL03 - *347-480 V Photocell, 1280J, IP66*

* Consult factory for lead time and availability.
[1] Standard offering. CF for lead and availability for other options.
[2] 20kV 10kA surge protection is required for HV - 347-480 V.
[3] Flat-black, injection molded plastic resin, tool-less, clip-on descrete shield.
[4] Flat-black, powder-coated aluminum sheet metal glare shield.

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ENERGYLITE

PROJECT

SPECIFIER

SPECIFICATION

TYPE

GridLite™ GL4

SITE + AREA LED LUMINAIRE

CONSTRUCTION
- Die-cast, low-copper aluminum alloy housing for optimal thermal performance and exceptional corrosion resistance

FINISH
- TGIC polyester super-durable powder coating with superior gloss, color retention and weather resistance
- Standard finishes provided at 3 mil nominal thickness, salt-spray-tested to 3,000 hours as per ASTM B117
- For marine-grade finish, consult factory. Provided at 5 mil nominal thickness, salt-spray-tested to 4,000 hours as per ASTM B117

ELECTRICAL
- 120-277 V Standard; 277-480V option available
- PF>0.9, THD<20%
- Parallel surge protection: enhanced 10kV standard, extreme 20kV optional (ANSI C136.2-2015)
- For series surge protection, consult factory
- Rated for operation -40°C to 40°C
- For 50°C option, consult factory

OPTICS + PERFORMANCE
- Up to 135 lumens per watt
- 42,000- to 52,000-lumen packages (301-442W)
- 5 customized distributions available
  - Type II Roadway Medium
  - Type III Roadway Medium
  - Type IV Wide Short
  - Type V Square Short
  - Type V Square Medium
- Multiple shielding options available

CONTROLS
- 0-10V dimming standard; DALI-2 option available
- Receptacle options:
  - ANSI C136.41 7-pin (for DALI-2 or 0-10V dimming)
  - Zhaga Book 18 (for next generation ambient light/motion sensing)
  - Casambi Bluetooth Low Energy technology

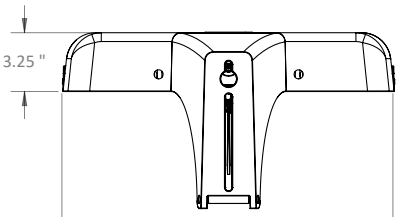
MOUNTING
- Extended site arm offers universal mounting, allowing for retrofit without drilling into existing poles
- All mounting options allow for multiple fixture installations at 90°
- Wall-mount and round pole adapters available for extended site arm

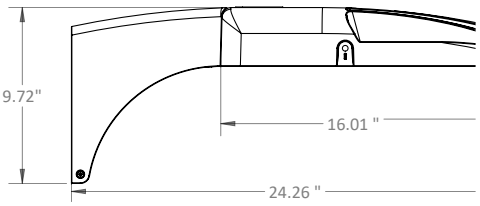
LISTINGS
- IDA Dark Sky Friendly ≤3000K, extended site arm or horizontal tenon
- IP66-rated optical and electrical chambers
- 3G Vibration-rated (ANSI C136.31)
- cULus Listed for wet locations (E487976)
- DLC + DLC Premium listings (Family code: JJJOYL)
- Zhaga D4i listed
- ANSI C136.15 labeling available

WARRANTY
- 10-year warranty



Extended Site Arm
EPA: 0.44 sq. ft.
WEIGHT: 29.5 lbs.





Ordering Information — Example: GL4c/40H/2RM/830/STD/10/1PS/30/SGY/ES/HS

Fixture
GL4c

Package
40H - *40,000; 301W*
42H - *42,000; 325W*
45H - *44,000; 340W*
47H - *46,000; 362W*
50H - *48,000; 391W*
52H - *50,000; 411W*
55H - *52,000; 442W*
56H 57,830; 548 watts

Distribution
2RM - *Type II Roadway Med*
3RM - *Type III Roadway Med*
4WS - *Type IV Wide Short*
5QS - *Type V Square Short*
5QM - *Type V Square Medium*

CRI + CCT
750* - *70+ CRI, 5000K*
740 - *70+ CRI, 4000K*
730 - *70+ CRI, 3000K*
727* - *70+ CRI, 2700K*
* *Consult factory for additional CRI + CCT combinations*

Voltage
STD - *120-277V*
HVL* - *277-480V*

Controls
10 - *0-10 V*
DA* - *DALI-2*

Surge
1PS - *10kV 5kA, 120-277 V*
2PS* - *20kV 10kA, 120-277 V*
2PH* - *20kV 10kA, 277-480 V*

Photocell Receptacle
00 - *none (capped)*
70* - *7 pin*
0Z* - *Zhaga*

Finish
SBZ[2] - *Bronze (RAL8019)*
SGY[2]* - *Grey (RAL7038)*
SBK[2]* - *Black (RAL9017)*

Mounting
ES - *Extended Site Arm*
HT - *Horizontal Tenon*
KM - *Knuckle Mount*
KMS - *Knuckle Mount with 6' side entry pigtail*
ES-WM - *Wall Mount Extended Site Arm*
ES-RP - *Round Pole Extended Site Arm*

Options + Accessories
HSS[3] - *House side Shield*
CSS[3] - *Cul-de-sac Shield*
FSS[3] - *Front side Shield*
SC - *Shorting Cap*
ZT1 - *0-10V Zhaga Ambie Light Control (ALC)*
ZT3 - *0-10V Zhaga IR + AL*
ZT4 - *0-10V Zhaga Occupancy + IR + AL*
ZT5 - *0-10V Zhaga Casam BLE + ALC*
PCL01 - *120-277 V Photoc 640J, IP65*
PCL02 - *120-277 V Photoc 1280J, IP66*
PCL03 - *277-480 V Photoc 1280J, IP66*

* Consult factory for lead time and availability.
[1] Standard offering. Consult factory for lead and availability for other options.
[2] Marine grade finish options available. Consult Factory.
[3] Flat-black, injection molded plastic resin, tool-less, clip-on discrete shield.

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

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ENERGYLITE

PROJECT | SPECIFIER

SPECIFICATION | TYPE

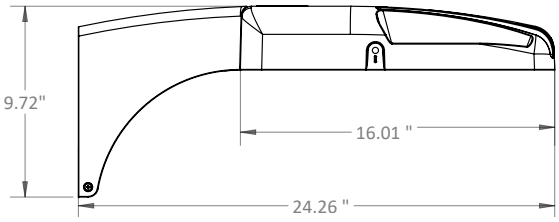
GridLite™ GL4

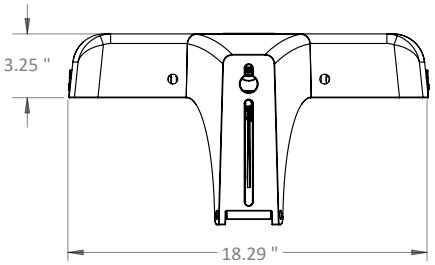
SITE + AREA LED LUMINAIRE



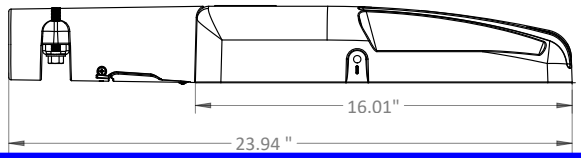


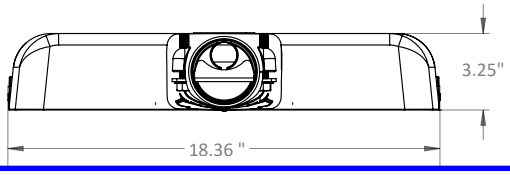
Extended Site Arm: 29.5 lbs.



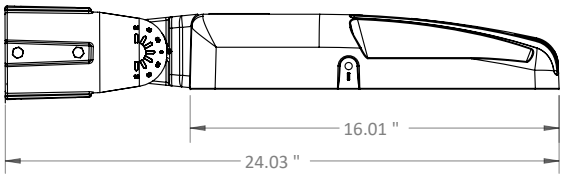


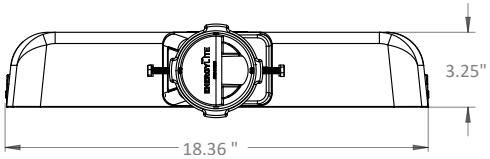
Horizontal Tenon: 28.1 lbs.



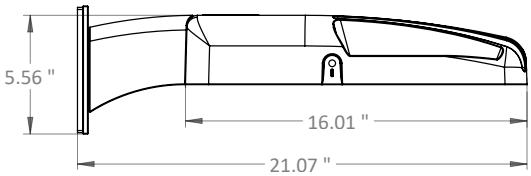


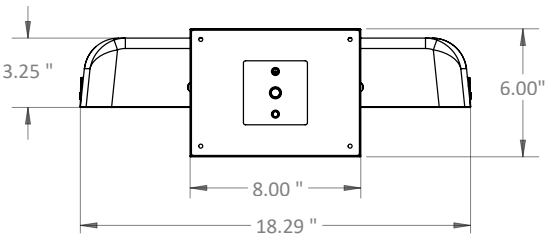
Knuckle: 28.7 lbs.





Wall Mount: 30.1 lbs.





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ENERGYLITE

GridLite™ GL4

SITE + AREA LED LUMINAIRE

PROJECT

SPECIFIER

SPECIFICATION

TYPE

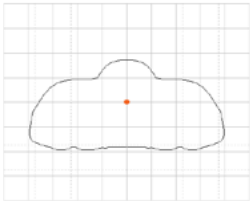
POLE CONFIGURATION EPAs

- Data below includes luminaire and integrated mounting option. Additional tenons, arms and brackets are not included.

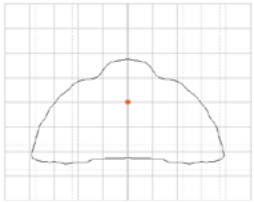
Mounting Type	Tilt	Single	2 at 90°	2 at 180°	2 at 120°	3 at 90°	3 at 120°	4 at 90°	2 Side-by-Side
Extended Site Arm	n/a	0.69 sq. ft.	1.10 sq. ft.	1.38 sq. ft.	1.46 sq. ft.	1.79 sq. ft.	1.87 sq. ft.	1.79 sq. ft.	0.82 sq. ft.
Extended Site Arm with Round Pole Adapter	n/a	0.73 sq. ft.	1.14 sq. ft.	1.46 sq. ft.	1.50 sq. ft.	1.87 sq. ft.	1.91 sq. ft.	1.87 sq. ft.	0.82 sq. ft.
Horizontal Tenon	n/a	0.54 sq. ft.	0.78 sq. ft.	1.08 sq. ft.	1.02 sq. ft.	1.32 sq. ft.	1.26 sq. ft.	1.32 sq. ft.	0.54 sq. ft.
Knuckle Mount	90° (horizontal)	0.61 sq. ft.	0.95 sq. ft.	1.22 sq. ft.	1.14 sq. ft.	1.56 sq. ft.	1.48 sq. ft.	1.56 sq. ft.	0.68 sq. ft.
	60°	0.61 sq. ft.	1.46 sq. ft.	1.22 sq. ft.	1.68 sq. ft.	2.07 sq. ft.	2.53 sq. ft.	2.07 sq. ft.	1.70 sq. ft.
	45°	0.61 sq. ft.	1.72 sq. ft.	1.22 sq. ft.	1.94 sq. ft.	2.33 sq. ft.	3.05 sq. ft.	2.33 sq. ft.	2.22 sq. ft.
	30°	0.61 sq. ft.	1.91 sq. ft.	1.22 sq. ft.	2.14 sq. ft.	2.52 sq. ft.	3.44 sq. ft.	2.52 sq. ft.	2.60 sq. ft.
	0° (vertical)	0.61 sq. ft.	2.11 sq. ft.	1.22 sq. ft.	2.66 sq. ft.	2.72 sq. ft.	4.16 sq. ft.	2.72 sq. ft.	3.00 sq. ft.

PHOTOMETRIC DISTRIBUTION

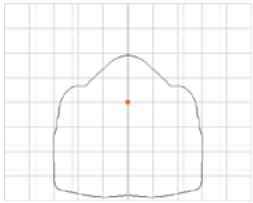
TYPE II ROADWAY MEDIUM



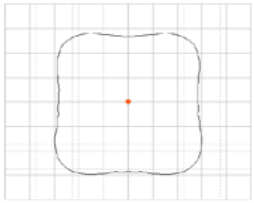
TYPE III ROADWAY MEDIUM



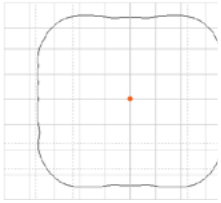
TYPE IV WIDE SHORT



TYPE V SQUARE SHORT

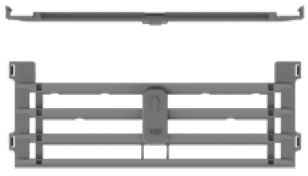


TYPE V SQUARE MEDIUM

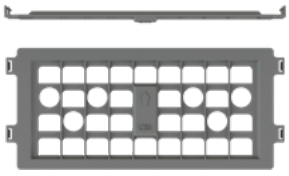


SHIELD ACCESSORY DETAILS

HOUSE SIDE SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



CUL-DE-SAC SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



FRONT SIDE SHIELD
- Flat-black, injection-molded plastic resin
- Tool-less, clip-on discrete shield



SCOOP SHIELD
- Flat-black, injection-molded plastic re
- Tool-less, clip-on discrete shield



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ENERGYLITE

GridLite™ GL4(

SITE + AREA LED LUMINAIRE

PROJECT

SPECIFIER

SPECIFICATION

TYPE

Performance Package	Drive Current	Color Temperature (CCT)	Input Power (Watts)	TYPE II ROADWAY MED AT 70 CRI			TYPE III ROADWAY MED AT 70 CRI			TYPE IV WIDE SHORT AT 70 CRI			TYPE V SQUARE SHORT AT 70 CRI			TYPE V SQUARE ME AT 70 CRI		
				Lumens	Efficacy (lm/W)	BUG Rating	Lumens	Efficacy (lm/W)	BUG Rating	Lumens	Efficacy (lm/W)	BUG Rating	Lumens	Efficacy (lm/W)	BUG Rating	Lumens	Efficacy (lm/W)	BU Rat
40H	427mA	5000K	301	38532	128		38489	128		37445	124		39459	131		37446	124	
		4000K		39723	132	3 0 4	39680	132	3 0 3	38603	128	3 0 4	40679	135	5 0 3	38604	128	5
		3000K		40915	136		40870	136		39761	132		41899	139		39762	132	
42H	461mA	5000K	325	40873	126		40829	126		39721	122		41857	129		39721	122	
		4000K		42138	130	3 0 4	42091	130	3 0 3	40949	126	3 0 5	43151	133	5 0 4	40950	126	5
		3000K		43402	134		43354	133		42177	130		44446	137		42178	130	
44H	477mA	5000K	340	42257	124		42210	124		41065	121		43273	127		41066	121	
		4000K		43564	128	3 0 4	43516	128	3 0 4	42335	125	3 0 5	44612	131	5 0 4	42336	125	5
		3000K		44871	132		44821	132		43605	128		45950	135		43606	128	
46H	511mA	5000K	362	44215	122		44167	122		42968	119		45279	125		42969	119	
		4000K		45583	126	4 0 4	45533	126	3 0 4	44297	122	3 0 5	46679	129	5 0 4	44298	122	5
		3000K		46950	130		46899	130		45626	126		48080	133		45627	126	
48H	544mA	5000K	391	46701	119		46649	119		45383	116		47824	122		45384	116	
		4000K		48145	123	4 0 4	48092	123	3 0 4	46787	120	4 0 5	49303	126	5 0 4	46788	120	5
		3000K		49589	127		49535	127		48191	123		50782	130		48191	123	
50H	570mA	5000K	411	48224	117		48171	117		46864	114		49384	120		46864	114	
		4000K		49715	121	4 0 4	49661	121	3 0 4	48313	118	4 0 5	50911	124	5 0 4	48314	118	5
		3000K		51207	125		51151	124		49762	121		52439	128		49763	121	
52H	611mA	5000K	442	51622	117		51565	117		50166	114		52864	120		50167	114	
		4000K		53219	120	4 0 4	53160	120	3 0 4	51718	117	4 0 5	54499	123	5 0 4	51718	117	5
		3000K		54815	124		54755	124		53269	121		56134	127		53270	121	

LUMEN AMBIENT TEMPERATURE (LAT) MULTIPLIERS

Ambient Temperature		Lumen Multiplier
Celsius	Fahrenheit	
0°C	32°F	1.02
10°C	50°F	1.01
25°C	77°F	1.00
40°C	104°F	0.99
50°C	122°F	0.97

TM-21 LUMEN MAINTENANCE PROJECTION

- Calculated by utilizing the LED manufacturer's LM80 test data in conjunction with third-party-verified in situ LED drive current and LED temperature data. Use data below to determine light-loss factors.

Performance Package	50,000 Hrs	60,000 Hrs	100,000 Hrs
≤ 44H	99.67%	99.49%	98.77%
46H	98.95%	98.62%	97.30%
40H	96.41%	95.66%	92.72%

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ENERGYLITE

GridLite™ GL4(

SITE + AREA LED LUMINAIRE

PROJECT

SPECIFIER

SPECIFICATION

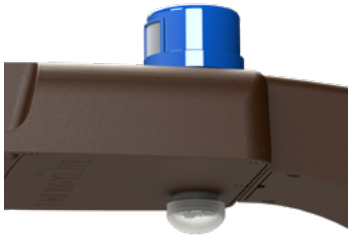
TYPE

CONTROL OPTIONS

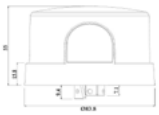
0-10 V ZHAGA OPTIONS
- ZT1: Ambient Light Control
- ZT3: IR + Ambient Light Control
- ZT4: Occupancy + IR + Ambient Light Control
- ZT5: Casambi Bluetooth Low Energy + Ambient Light Control







PHOTOCELL OPTIONS
- PCL01: 120-277 V Photocell (640J, IP65); Blue
- PCL02: 120-277 V Photocell (1280J, IP66); Blue
- PCL03: 347-480 V Photocell (1280J, IP66); Yellow
- PCL04: Midnight Dimming, 347-480 V Photocell (1280J, IP65); Brown











POLE INFORMATION

- Solais Lighting Group offers a full line of aluminum and steel poles, brackets and accessories for your installation. For more information, consult factory.

SQUARE STRAIGHT
- 8- to 39-ft. height options



ROUND STRAIGHT
- 8- to 35-ft. height options



SQUARE TAPERED
- 20- to 50-ft. height options



ROUND TAPERED
- 8- to 39-ft. height options
- 45- to 70-ft. telescoping height options



HINGED TAPERED
- 20- to 39-ft. height options



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TECHLIGHT
INNOVATION IN ILLUMINATION

RV SERIES

2024-023 EXH 'B'

Round Straight Bull Horns

Catalog Number	
Project	Type



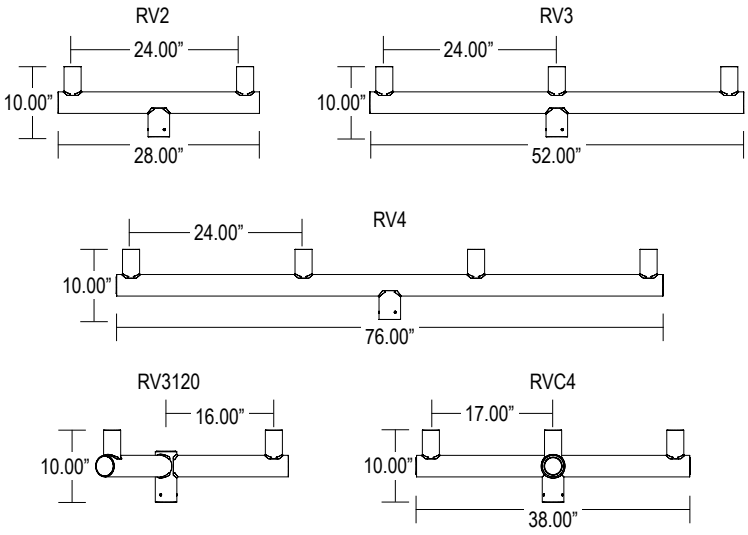
FEATURES & SPECIFICATIONS

APPLICATION — The RV Series of Round Straight Bull Horns were designed to mount directly onto a 2-3/8" OD tenon to allow the mounting of multiple fixtures. It may be utilized with the majority of the Techlight product families (contact your sales associate for additional information).

CONSTRUCTION — The heavy duty bull horn is constructed of aluminum or steel tubing. Each vertical tenon provided is 4" tall with a 2-3/8" outside diameter. Welding follows industry standards best practices. Stainless steel hardware provided.

FINISH — A Super Durable Polyester powder coat finish is electrostatically applied in our state of the art paint facility. Standard colors available: Black, Bronze, US Green, White. Custom colors available upon request.

FIXTURE DIMENSIONS



NOTES

1 = Custom RAL color matching is available. Contact your sales representative for additional information.
2 = **Only for Steel Finish.** Must specify paint color in addition to these coating options (Example: GLVPB

ORDERING INFORMATION

Choose the bold face options for the appropriate luminaire configuration for your application and enter on the line above each fixture attribute. Accessories may be factory installed, depending on the particular accessory chosen, but still be ordered as a separate line item.

EXAMPLE:
RV 3120 S GLVPBZ

RV			
SERIES	CONFIGURATION	MATERIAL	FINISH
	2 = 2 Tenons In-Line **3** = 3 Tenons In-Line **4** = 4 Tenons In-Line **3120** = 3 Tenons at 120° **C4** = 4 Tenons at 90°	**S** = Steel **A** = Aluminum	**BK** = Black **BZ** = Bronze **GR** = US Green **WH** = White **SP** = Special[1] **GLVP** = Galvanized and Painted[2]

Series	EPA (ft^2)
RV2	0.9
RV3	1.4
RV4	2.0
RV3120	2.2
RVC4	2.2

Buy American Act & the American Recovery and Reinvestment Act

All dimensions and specifications are subject to change without notice.

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ORDERING INFORMATION Example: VEX-U-BP-WB-WH-G2-NI

Series	Style	Housing Type	Power Source	Finish	Options (Factory Installed)
VEX = Red	U[1] = Universal	BP = Plastic	LB = AC Only	BL = Black	220V[3] = 220VAC, 50Hz Input
GVEX = Green	1[2] = Single-face		WB = With Battery	WH = White	G2[4] = Self-test/Self-diagnostics
			2CI1= 120V 2 Circuit Input		G2-NI[4,5,6,7,8,9] = Self-test/Self-diagnostics with Numeric Indicator
			2CI7 = 277V 2 Circuit Input		and Battery Access Door
					USA = Meets Buy America Requirements

Notes

[1] Universal includes second exit face (without battery door) and backplate
[2] Available for Specialty Signs only - not compatible with G2-NI option
[3] 220VAC not available with G2-NI, 2CI1 or 2CI7 option
[4] G2 and G2-NI not available with LB, 2CI1 or 2CI7 option
[5] Only option available with Battery Door on front exit faceplate
[6] G2-NI not available with CEC compliance
[7] G2-NI UL Listed for US only
[8] USA option not available
[9] Consult factory for lead times
[10] Order as separate line item
[1] Requires VEPA option

Accessories[10] (Field Installed)

ER1-KIT-**XX**[11] = 1' Pendant Mount Kit (WH or BL)
ER2-KIT-**XX**[11] = 2' Pendant Mount Kit (WH or BL)
VEPA = Pendant Adapter
WG-S = Wire Guard (Back Mount)
XG-1 = Poly Guard (Back Mount)
XG-3 = Poly Guard (Ceiling Mount)

See Specialty Signage specification for custom/alternate legends
See Social Distance Signage specification for social distancing legends

CONSTRUCTION
The VEX Series is constructed of a precision-molded housing utilizing 5VA flame-retardant, corrosion-proof thermoplastic. Units resist denting, peeling, scratching and corrosion. Black or White finish.

CONSTRUCTION (Option: G2-NI)
Hinged battery access door on front exit faceplate provides tool-less battery access. Low voltage battery compartment is isolated from line voltage for safe battery access. A Velcro battery strap is included as an additional safety feature. This operation does not require a qualified electrician to open the entire unit.

ILLUMINATION
Illumination of the VEX Series is achieved with high-output, long-lasting red or green LEDs. An exclusive color matched diffuser eliminates hot spots and striations, providing optimal light output. LEDs are a maintenance-free solution, providing up to 100,000 hours of use without failure.

ELECTRICAL
Input
Dual-voltage input 120 or 277VAC @ 60Hz.

Nickel Cadmium Battery – NiCad
Exitronix nickel cadmium batteries are maintenance-free and continue to perform in a vast temperature range from 0°C to 40°C (32°F to 104°F).

Emergency
The VEX Series exit will operate for a minimum of 90 minutes during a loss of power with a 24 hour maximum recharge time for the battery.

Two-Circuit Operation (2CI1 or 2CI7)
Two-circuit input allows for a primary and auxiliary power source to be connected to the emergency unit that does not contain a battery. These two power sources cannot be live at the same time. Applications include those with inverters or alternate backup power sources.

Solid-State Transfer
The circuit features solid-state switching for emergency backup, eliminating concerns of damaged contact or mechanical failures associated with relays. The switching circuit detects a loss of line voltage and automatically switches to emergency mode.

Test Button
The test button is easy to locate and provides manual verification of the transfer circuit and emergency backup.

Damp Location Rated
Damp Location Rated fixture that is normally or periodically subject to condensation of moisture in, on or adjacent to, and includes partially protected locations.

Brownout Circuit
Brownout circuit monitors the line voltage, as the line voltage sags and can no longer illuminate the exit sign to meet UL 924 visibility test, the emergency circuit will turn on to supply a portion or all the power to illuminate the sign for a minimum of 90 minutes until the line voltage is restored.

INSTALLATION
Simple snap together universal design allows for faceplate and backplate to be fully interchangeable. Note: Faceplate for G2-NI option includes battery door and is intended for front of exit sign. Mounting canopy is supplied with all signs and snaps into enclosure with two positive locking tabs.

OPTIONS
Assembled in the USA (Option: USA)
Can be produced or transformed to comply with the American Recovery and Reinvestment Act of 2009 (ARRA) requirements and Buy American provisions.

Specialty Signage
For custom/alternate legends, see our Specialty Signage specifications.

Social Distancing Signage
For social distancing legends, see our Social Distancing Signage specifications.

Guardian Self-Test/Self-Diagnostics with Numeric Indicator and Battery Access Door on Front Exit Faceplate (Option: G2-NI)
The Guardian circuit continuously monitors the operating condition of the AC power, battery supply voltage, emergency lamp continuity and charging circuit.

The purpose of this option is to provide visual signaling in response to a fault at the EXIT sign battery and/or battery charger. If a failure is detected, visual status will occur immediately via the Numeric Indicator. The code will display until the fault is corrected.

The Guardian circuit also monitors the transfer circuit as well as performing automatic code compliant testing. The Guardian circuit will perform a 90 minute Self-test every 180 days. A one minute manual test can be initiated by the user.

Code	Description
0	Normal Operation (Charged)
1	Battery Charging
2	Emergency Mode
3	Battery Recharge Failure
4	Battery Disconnected

Code	Description
5	LED Failure
6	Low Battery Voltage
7	Manual Testing (1 minute)
8	Self Testing (90 minutes)

Guardian Self-Test/Self-Diagnostics (Option: G2)
The Guardian bi-color circuit is factory preset; without any field adjustments needed. It continuously monitors the performance condition of the AC power, battery supply, and charging circuitry.

The intent of this option is to provide visual signaling to identify fault at the Exit. Fault indicators are as follow:

Battery Disconnection: (Steady RED)
Battery Recharge Failure: (Flashing RED)
Battery Failure: (RED Blinking '2' times)
LED Failure: (RED Blinking '3' times)

CONFORMANCE TO CODES & STANDARDS
The VEX Series is cULus 924 Listed for Damp Locations, CEC compliant and meets or exceeds the following: UL 924, NEC requirements and NFPA 101.

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2024-023 EXH 'B'

VLED-EL90 Series

Thermoplastic LED Exit Combo

Model: _____ Date: _____

Accessories: _____

Job Name: _____ Type: _____

Combining LED exit illumination with reliable LED lamp heads, this attractive low-profile design offers maintenance-free, long life dependable service. Easily mounts above doors and in restricted spaces to fit any application.



FEATURES AND BENEFITS

- LED exit combo where each of the heads contain 8 long lasting, efficient, ultra-bright white LEDs using 1.1W per head
- Remote capable option - operates up to one (1) MLED remote lamp head
- Universal style - includes 2 faceplates, a backplate and mounting canopy
- Suitable for Damp Locations
- California Energy Commission (CEC) compliant

SPECIFICATIONS

Illumination:	Constant, uniform illumination by long-life, high intensity, red or green LEDs
Housing:	Rugged, injection-molded UL 94 5VA flame retardant, high-temperature thermoplastic housing
Input:	120/277V Dual primary, 60Hz input
Battery:	Maintenance-free NiCad battery
Run Time:	UL listed 90 minute emergency run time, 24 hour recharge time
Electrical:	Low voltage disconnect eliminates deep discharge, brownout, short circuit and overload protection
Legend:	Fully-illuminated 6” characters with 3/4” stroke, field selectable directional chevrons included for all configurations
Mounting:	Ceilin or wall mount
Finishes:	Black or White
Options:	Remote Capability (R) Guardian Self-test/Self-diagnostics (G2)
Certfications:	UL Listed for Damp Locations, California Energy Commission (CEC) compliant
Warranty:	Any component that fails due to a manufacturing defect is guaranteed for five years with a separate five year prorated warranty on the battery. The warranty does not cover physical damage, abuse or instances of uncontrollable natural forces. See the full Exitronix warranty document for detailed information. (Terms and Conditions Apply)

5/5 WARRANTY

ON-CENTER SPACING

(Using multiple units mounted at a typical 7.5 foot height, 85/50/20 reflectance)

Model	# of LED Lamps	3’ Path, 6’ Corridor	6’ Path, 6’ Corridor
(G)VLED-EL90	2	18’	14’

ORDERING INFORMATION **Example:** VLED-U-WH-EL90-G2

Series	**Style**	**Finish**	**Type**	**Options** (Factory Installed)	**Accessories**[4] (Field Installed)
VLED = Red	U[1] = Universal	BL = Black	EL90 = LED Lamps	G2 = Self-test/Self-diagnostics	ER1-KIT[3] = 1’ Pendant Mount Kit
GVLED = Green		WH = White		R[2] = Remote Capability	ER2-KIT[3] = 2’ Pendant Mount Kit
					VEPA = Pendant Adapter
Notes					WG-L = Wire Guard (Back Mount)
[1] Universal includes 2nd exit face and backplate					XG-EL90 = Poly Guard (Back Mount)
[2] For use with one (1) MLED remote lamp only					MLED1[5] = Single Remote Lamp
[3] Requires VEPA option					
[4] Order as separate line item					
[5] See page 2 for ordering information					

Specifications are subject to change without notice.
Installation must be performed in accordance with Barron Lighting Group installation instructions.

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CONSTRUCTION
The VLED-EL90 series is constructed of a precision-molded housing utilizing 5VA flame-retardant, corrosion-proof, UV-stable thermoplastic. N.F.P.A. approved field-selectable chevrons. Units resist denting, peeling and scratching.

ILLUMINATION
Fully illuminated 6" letters with 3/4" stroke is achieved with high output, long lasting green or red LEDs. An exclusive color-matched diffuser eliminates hot spots and striations, providing optimal light output.

EMERGENCY LIGHTS
6V, 1.1W high-intensity LED lamp heads.

ELECTRICAL
Input
Dual-voltage input 120 or 277VAC @ 60Hz.

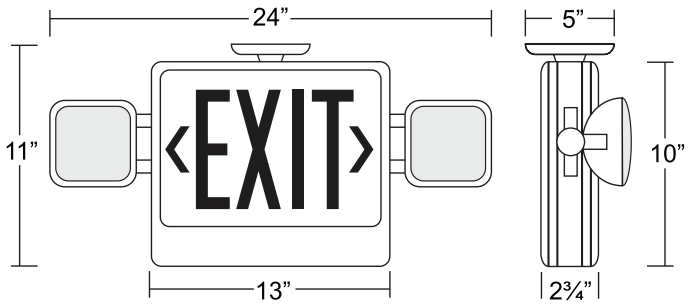
Nickel Cadmium Battery – NiCad
Exitronix nickel cadmium batteries are maintenance-free with a life expectancy of 15 years. Nickel cadmium batteries offer high discharge rates and continue to perform in a vast temperature range from 0°C to 40°C (32°F to 104°F).

Emergency
The VLED-EL90 series exit will operate for a minimum of 90 minutes during a loss of power with a 24 hour maximum recharge time for the battery.

Brownout Circuit (G2 only)
Brownout circuit monitors the line voltage, as the line voltage sags and can no longer illuminate the exit sign to meet UL 924 visibility test, the emergency circuit will turn on to supply a portion or all the power to illuminate the sign for a minimum of 90 min until the line voltage is restored.

Low Voltage Disconnect (G2 only)
Low Voltage Disconnect (LVD) measures the battery terminal voltage. The LVD continuously monitors the battery terminal voltage and if it should fall below a preset voltage threshold, the LVD will disconnect the load. When the battery is recharging and voltage is raised above another preset voltage threshold, the load is automatically reconnected.

Solid-State Transfer
The circuit features solid-state switching for emergency lamps, eliminating concerns of damaged contact or mechanical failures associated with relays. The switching circuit detects a loss of line voltage and automatically switches to emergency mode.



Test Button 2024-023 EXH 'B'
The test button is easy to locate and provides manual verification of the transfer circuit and emergency lamps.

INSTALLATION
Simple snap-together universal design allows for faceplate and back plate to be fully interchangeable. Mounting canopy is supplied with all signs and snaps into enclosure with two positive locking tabs.

Damp Location Rated
Damp Location Rated fixture that is normally or periodically subject to condensation of moisture in, on or adjacent to, and includes partially protected locations.

OPTIONS
Guardian Self-Test/Self-Diagnostics (Option: G2)
The Guardian bi-color circuit is factory preset; without any field adjustment needed. It continuously monitors the performance condition of the AC power, battery supply, and charging circuitry.

The intent of this option is to provide visual signaling to identify fault at the Exit. Fault indicators are as follow:

Battery Disconnection: (Steady RED)
Battery Recharge Failure: (Flashing RED)
Battery Failure: (RED Blinking '2' times)
LED Failure: (RED Blinking '3' times)

Remote Capable (Option: R)
The R option provides this unit with remote capacity for use with one (1) MLED remote lamp (sold separately).

CONFORMANCE TO CODES & STANDARDS
The VLED-EL90 Series is UL listed and meets or exceeds the following: U 924, CEC, NEC requirements and NFPA 101.

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LITHONIA LIGHTING®

Catalog Number 2024-023 EXH 'B'

Notes

Type

FEATURES & SPECIFICATIONS

INTENDED USE — Typical applications include corridors, lobbies, conference rooms and private offices.
CONSTRUCTION — Retrofit, remodel, and new construction mounting types. See table for compatible ceiling openings and thickness range.
Optional goof rings available for additional overlap trim coverage.
1/2"-1-1/2" ceiling thickness
25° ambient temperature
IC rated up to 1000lm
OPTICS — 55° cutoff
New construction frame accessories approved for 8 (4 in/4 out) No. 12 AWG conductors rated for 90°C through wiring.
1.0 S/MH standard (wallwash reflector available)
80CRI standard (90CRI optional)
ELECTRICAL — Adjustable lumen output with three module options. Fixed lumen options also available.
MVOLT 120/277V 50/60Hz driver (0-10V & 120V Phase Dimming to 10% min dimming level)
100LPW typical
FCC CFR Title 47 Part 15 Class A for 277V. FCC CFR Title 47 Part 15 Class B for 120V.
L80 at 60,000 hours
3 SDCM
LISTINGS — Certified to US and Canadian safety standards. Damp location standard (Wet location, covered ceiling optional). Some configurations are ENERGY STAR® certified, please visit www.energystar.gov for specific products. TAA compliant. UFC (3-530-01) specification compliant for power factor and THD. GSA P100 6.2.4 compliant for power quality at full output; compliant up to 2000lm at fully dimmed output. Title 24 compliant (90CRI, up to 1000lm).
WARRANTY — 5-year limited warranty. Complete warranty terms located at:
www.acuitybrands.com/support/warranty/terms-and-conditions
Note: Actual performance may differ as a result of end-user environment and application.
All values are design or typical values, measured under laboratory conditions at 25 °C.
Specifications subject to change without notice.

LBR6

6" OP



Retrofit | Remodel



New Construction

A+ Capable options indicated by this color background.

TITLE 24 PART 6 | TITLE 20 battery pack | ENERGY STAR | WET LOCATION™ | DIMMABLE LED

Module ordering

ORDERING INFORMATION Lead times will vary depending on options selected. Consult with your sales representative.

Example: LBR6 ALO2 SWW1 AR LSS MWD MVOLT UGZ 90

Series	Lumens‡	Color temperature‡	Reflector Color	Reflector Flange	Reflector Finish
LBR6 6" Retrofit	Adjustable Lumen Output	Switchable CCT	AR Clear	(blank) Self-flanged	LSS Semi-specular
LBR6WW 6" Retrofit Wallwash	ALO1 500/750/1000lm	SWW1 3000K-3500K-4000K-5000K	WR‡ White painted	TRW‡ White painted flange	
	ALO2 1000/1500/2000lm	Fixed CCT	BR‡ Black painted	TRBL‡ Black painted flange	
	ALO3 2000/2500/3000lm	30K 3000K			
	Fixed Lumen Output	35K 3500K			
	05LM 500lm	40K 4000K			
	07LM 750lm	50K 5000K			
	10LM 1000lm				
	15LM 1500lm				
	20LM 2000lm				
	25LM 2500lm				
	30LM 3000lm				

Distribution	Voltage	Driver	Options	
MWD Medium wide (1.0 s/mh)	MVOLT 120V - 277V	UGZ Universal dimming to 10% 0-10V; line voltage dimming (120V)	90CRI High CRI (90+)	EC1‡ Extended Conduit (18")
WW‡ Wallwash	347V	~~DALI‡ DALI dimming to 1%~~	AT‡ Airtight	EC6‡ Extended Conduit (6ft)
		D10 Minimum dimming 10% driver for use with JOT	E10WCPR‡ Batterypack (10W constant power) T20 Compliant remote test switch	WL‡ Wet Location (IP55)
		D1 Minimum dimming 1% driver for use with JOT	ELR‡ Batterypack (10W constant power) Non-T20 Compliant remote test switch	QDS‡ Quick disconnect plugs
				CP‡ Chicago Plenum
				JOT‡ Wireless room control with "Jus One Touch" pairing

nLight Options‡	
NPP16D	nLight® network power/relay pack with 0-10V dimming
NPP16DER	nLight® network power/relay pack with 0-10V dimming; ER controls fixtures on emergency circuit.
NLTAIR2	nLight® Air enabled
NLTAIRER2	nLight® AIR Dimming Pack Wireless Controls. Controls fixtures on emergency circuit
NLTAIREM2	nLight® AIR Dimming Pack Wireless Controls. UL924 Emergency Operation, via power interrupt detection.

New Construction Frames: *Order as separate catalog number. Shipped separately.*	
LBR6PFW	6" New construction frame with JBOX, 18" conduit
LBR6PFWQDS	6" New construction frame with JBOX, 18" conduit, quick disconnects
LBR6PFWCP	6" Chicago Plenum New construction frame with JBOX, 18" conduit

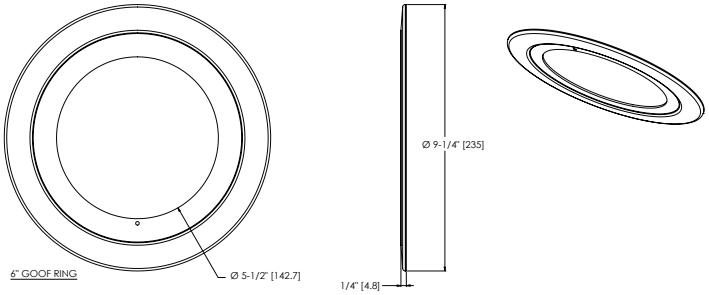
NOTE: ‡ indicates option value has ordering restrictions. Please reference the Option Value Ordering Restictions chart on the next page.

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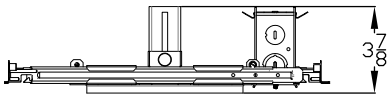
‡ Option Value Ordering Restrictions	
Options	**Restriction**
Lumens	Fixed CCT and lumens must be specified together (for example: 10LM 30K).
WR, BR	Not available with reflector finish.
TRW	For use with Clear (AR) reflector finish only. Not applicable with WR (white reflector).
TRBL	For use with Clear (AR) reflector finish only. Not applicable with BR (black reflector).
WW	Only available with WW Series (for example LBR4WW).
DALI	Not available with Fixed CCT and lumens.
D10, D1	Only available with JOT
AT	Standard for CP and IP55, not available with WW.
ELR, E10WCPR	Not available QDS, CP, 347V, NPP16D ER, NLTAIRER2, or NLTAIREM2.
EC1, EC6	Not Available with CP,QDS, ELR, or E10WCPR.
WL	IP55 rated; Not available with WW, All CP is wet locations, excluding WW (Damp listed)
QDS	Not available CP, ELR, E10WCPR, or 347V.
JOT	Not available with CP, NPP16D, NPP16D ER, NLTAIR2, NLTAIRER2, NLTAIREM2, UGZ, or DALI drivers. 4-1/2" minimum plenum depth required. Not recommended for use in metal ceilings.
NPP16D	Not available with CP, QDS, DALI, D1, OR D10 drivers. 120V OR 277V only. Not available with 347V. 5-1/2" minimum plenum depth required.
NPP16DER	Not available with CP, QDS, ELR, E10WCPR, DALI, D1, OR D10 drivers. 120V OR 277V only. Not available with 347V. Will require an emergency hot feed and normal hot feed. 5-1/2" minimum plenum depth required.
NLTAIR2	Not available with CP, QDS, DALI, D1, OR D10 drivers. Not recommended for metal ceiling installations. 5-1/2" minimum plenum depth required.
NLTAIRER2	Not available with CP, QDS, ELR, E10WCPR, DALI, D1, OR D10 drivers. Not available with 347V. Not recommended for metal ceiling installations. 5-1/2" minimum plenum depth required.
NLTAIREM2	Not available with CP, QDS, ELR, E10WCPR, DALI, D1, OR D10 drivers. Not recommended for metal ceiling installations. 5-1/2" minimum plenum depth required.
CP	Not available with, QDS, EC1, EC6, ELR, E10WCPR, 347V, JOT, NPP16D, NPP16D ER, NLTAIR2, NLTAIRER2, NLTAIREM2, D1, OR D10 drivers. Not available with square trim.
T24	IC rated, 90CRI,500-1000 lumens, & round trim only.
Goof Rings	Not Available with CP.

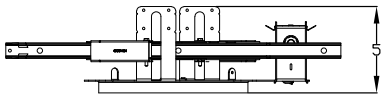
Accessories: *Order as separate catalog number. Shipped separately.*	
LBRGR78	Goof ring 7-3/4" to 8-3/4" for LBR6
LBR468 FPAN U	Mounting plate 4"-8" unit pack
LBR468 FPAN J10	Mounting plate 4"-8" 10-pack
NPP16 D EFP [12]	Field installed nLight Power Pack
SCA6	Sloped ceiling adapter. Degree of slope must be specified (5D, 10D, 15D, 20D, 25D, 30D). Ex: SCA6 10D.

Goof rings must specify finish
Examples: LBRGR56 WR, LBRGR78 BR, LBRGR910 AR
WR = white, BR = black, AR = Clear

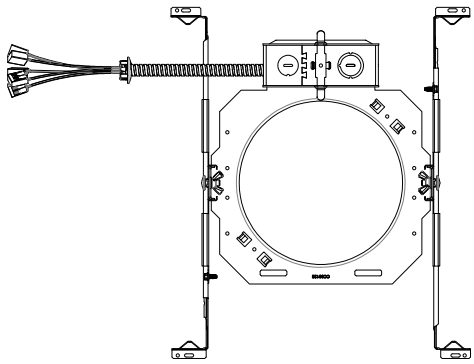


* All dimensions are inches (millimeters) unless otherwise noted.

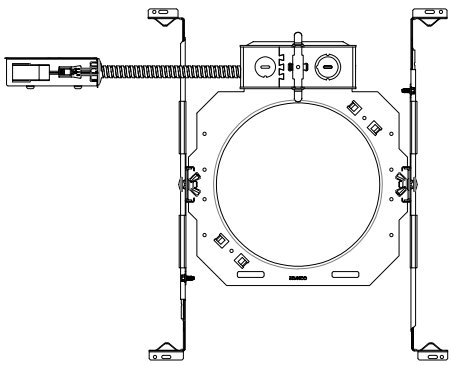




Aperture Size	Ceiling Cutout
6 In	7-1/8"



6" New Construction Frame, 18" conduit

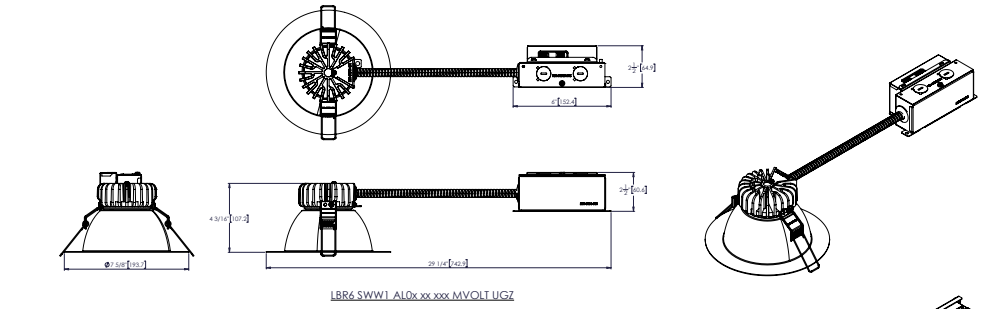


6" New Construction Frame, QDS

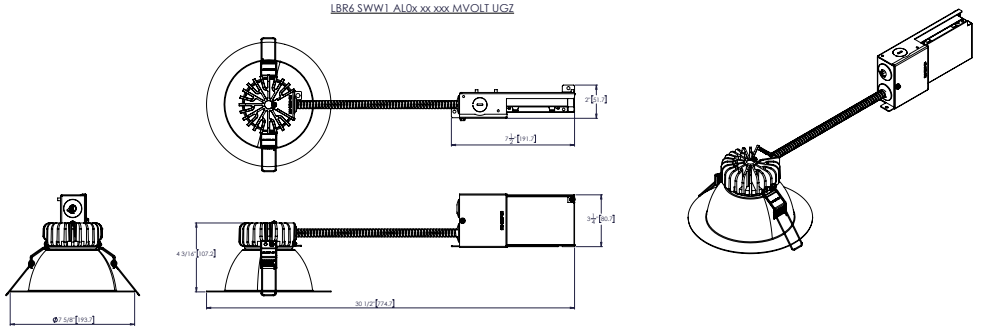
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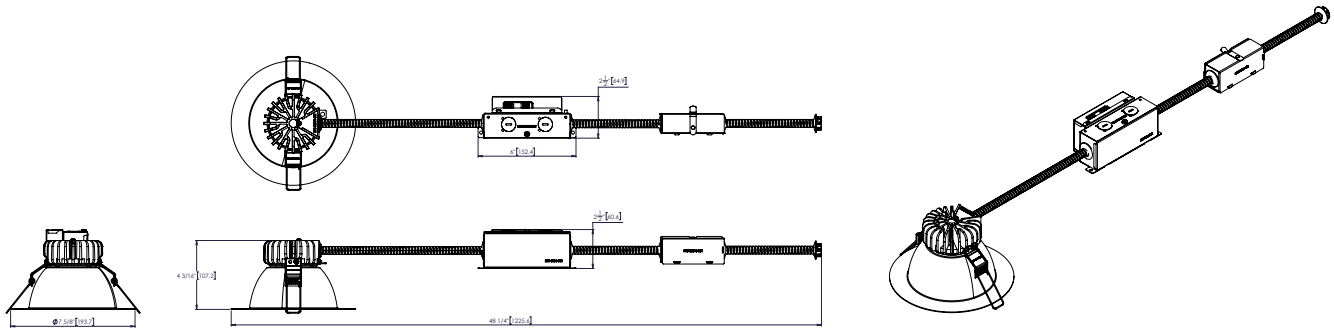
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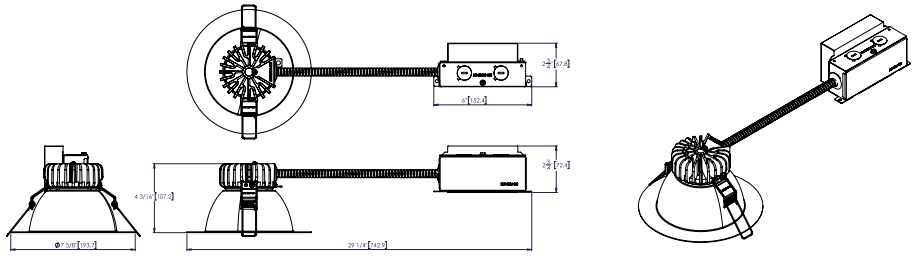
LBR6 SWW1 AL0x xx xxx MVOLT UGZ



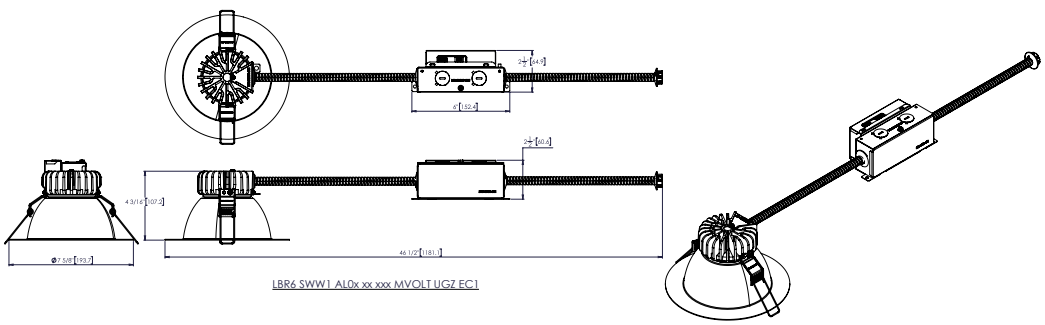
LBR6 SWW1 AL03 xx xxx MVOLT DALI



LBR6 SWW1 AL0x xx xxx MVOLT UGZ QDS



LBR6 SWW1 AL0x xx xxx MVOLT DALI



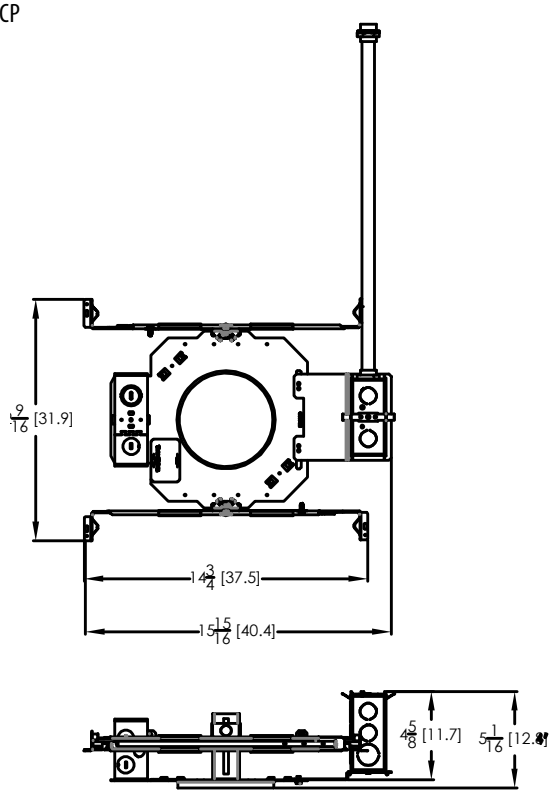
LBR6 SWW1 AL0x xx xxx MVOLT UGZ EC1

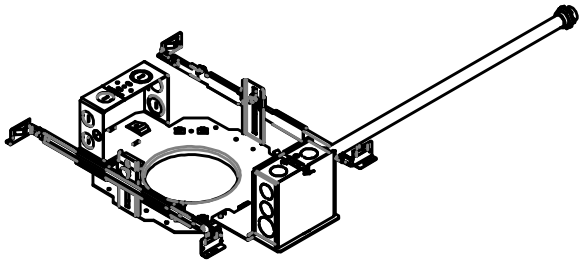
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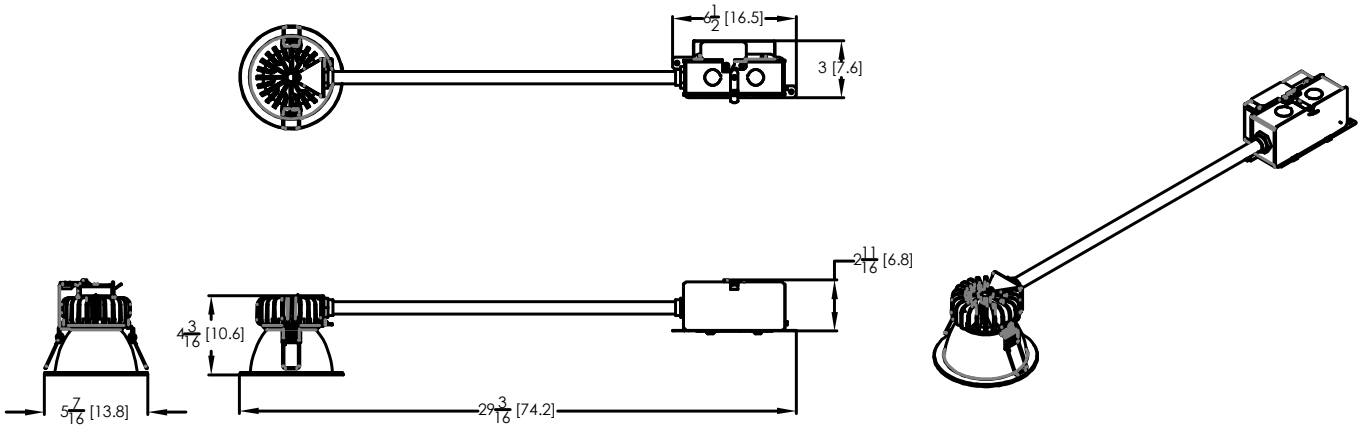
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LBR6PFWCP





LBR6 SWW1 ALOx MVOLT UGZ CP

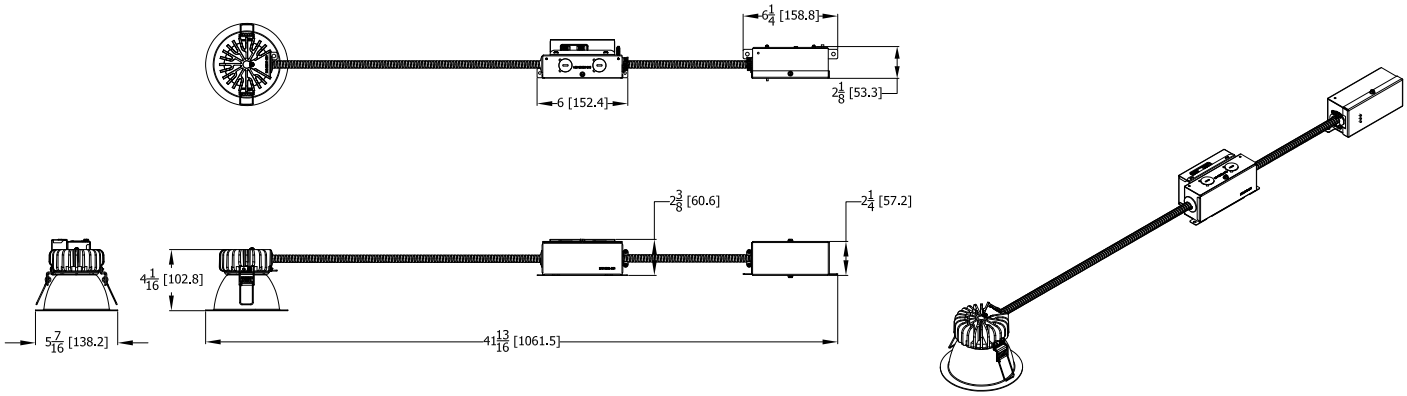


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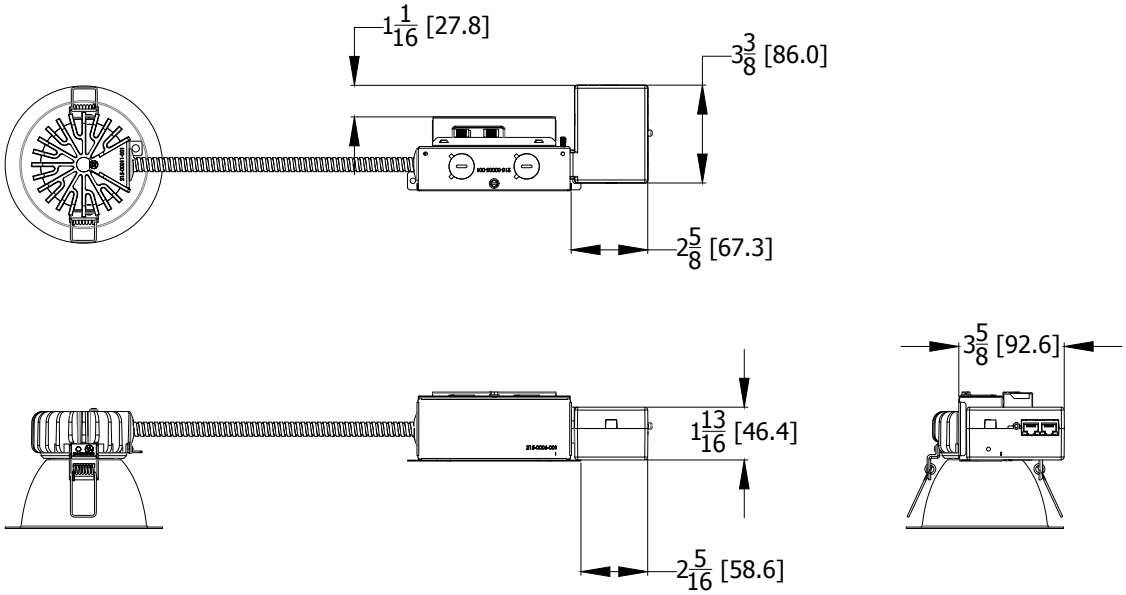
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* All dimensions are inches (millimeters) unless otherwise noted.

LBR6 ALOx SWW1 xx xxx 347 UGZ



LBRx nLIGHT



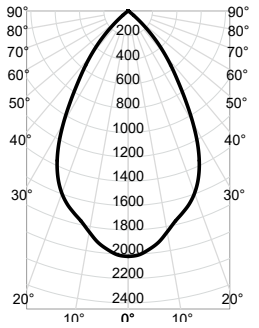
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PHOTOMETRY

Distribution Curve	Distribution Data	Output Data	Coefficient of Utilization	Illuminance Data at 30″ Above Floor for a Single Luminaire

LBR6 SWW1 ALO2 AR LSS MWD MVOLT UGZ, Input Watts: 18.1, Delivered Lumens: 1970, LPW: 108.8, S/MH: 0.94, Test No: 20-518-03



CP Summary

0°	90°
0°	2,018
5°	1,968
15°	1,721
25°	1,383
35°	724
45°	255
55°	9
65°	2
75°	1
85°	0
90°	0

Zonal Lumen Summary

Zone	Lumens	% Fixture
0° - 30°	1,292	66%
0° - 40°	1,751	89%
0° - 60°	1,967	100%
0° - 90°	1,970	100%
90° - 180°	0	0%
0° - 180°	1,970	100%

Coefficients of Utilization

ρf	ρc	80%			20%			50%		
ρw		50%	30%	10%	50%	30%	10%	50%	30%	10%
0		119	119	119	116	116	116	111	111	111
1		111	108	106	108	106	104	104	102	101
2		102	98	95	101	97	94	98	94	92
3		95	90	86	94	89	85	91	87	84
4		89	83	78	87	82	78	85	81	77
5		83	77	72	82	76	72	80	75	71
6		77	71	66	76	70	66	75	70	66
7		72	66	62	72	66	61	70	65	61
8		68	62	57	67	61	57	66	61	57
9		64	58	53	63	57	53	62	57	53
10		60	54	50	60	54	50	59	53	50

Cone of Light

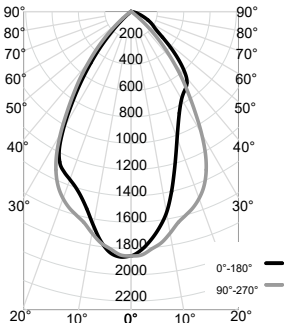
Mounting Height	Initial FC Center Beam	Beam Diameter
6.0	56.1	7.1
8.0	31.5	9.5
10.0	20.2	11.9
12.0	14.0	14.3
14.0	10.3	16.7

Beam Angle: 61.5°
Field Angle: 92.7°

Luminance (cd/sq.m)

	Average Luminance
0°	142,862
45°	25,559
55°	1,074
65°	402
75°	246
85°	162

LBR6WW SWW1 ALO2 AR LSS WW, Input Watts: 18.7, Delivered Lumens: 1981, LPW: 105.9, S/MH: 0.67, Test No: 20-518-A1



CP Summary

0°	90°
0°	1,857	1,857
5°	1,740	1,810
15°	1,265	1,602
25°	864	1,349
35°	719	760
45°	502	280
55°	223	22
65°	126	10
75°	45	4
85°	9	1
90°	0	2

Zonal Lumen Summary

Zone	Lumens	% Fixture
0° - 30°	1,126	57%
0° - 40°	1,581	80%
0° - 60°	1,915	97%
0° - 90°	1,981	100%
90° - 180°	0	0%
0° - 180°	1,981	100%

Coefficients of Utilization

ρf	ρc	80%			20%			50%		
ρw		50%	30%	10%	50%	30%	10%	50%	30%	10%
0		119	119	119	116	116	116	111	111	111
1		109	107	104	107	105	102	103	101	99
2		100	96	92	99	94	91	95	92	89
3		92	87	82	91	86	81	88	84	80
4		85	79	74	84	78	74	82	77	73
5		79	72	67	78	72	67	76	70	66
6		73	66	62	72	66	61	71	65	61
7		68	61	57	67	61	56	66	60	56
8		64	57	52	63	57	52	62	56	52
9		59	53	49	59	53	48	58	52	48
10		56	49	45	55	49	45	55	49	45

Luminance (cd/sq.m)

	Average Luminance
0°	131,472
45°	50,247
55°	27,523
65°	21,156
75°	12,281
85°	7,229

LBR ROUND LUMEN TABLES

LBR6		80CRI							
Lumen Output	Wattage	30K/80CRI		35K/80CRI		40K/80CRI		50K/80CRI	
		Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW
ALO1 (500LM)	6	571	99	585	101	599	103	617	105
ALO1 (750LM)	9	905	102	926	103	948	105	977	108
ALO1 (1000LM)	13	1270	98	1300	100	1330	102	1372	104
ALO2 (1000LM)	13	1346	108	1378	110	1410	112	1454	115
ALO2 (1500LM)	19	1965	105	2011	107	2059	109	2123	111
ALO2 (2000LM)	25	2476	100	2533	101	2593	103	2674	106
ALO3 (2000LM)	25	2547	103	2606	105	2668	107	2751	109
ALO3 (2500LM)	32	3075	98	3146	100	3221	101	3321	104
ALO3 (3000LM)	38	3492	93	3573	95	3658	96	3771	99

LBR6WW		80CRI							
Lumen Output	Wattage	30K/80CRI		35K/80CRI		40K/80CRI		50K/80CRI	
		Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW
ALO1 (500LM)	6	570	99	584	101	597	102	616	105
ALO1 (750LM)	9	903	102	924	103	946	105	975	108
ALO1 (1000LM)	13	1268	98	1297	100	1328	102	1369	104
ALO2 (1000LM)	13	1344	108	1375	110	1408	112	1451	115
ALO2 (1500LM)	19	1961	105	2007	106	2055	108	2118	111
ALO2 (2000LM)	25	2471	99	2528	101	2588	103	2668	105
ALO3 (2000LM)	25	2542	103	2601	104	2663	106	2745	109
ALO3 (2500LM)	32	3069	98	3140	99	3214	101	3314	103
ALO3 (3000LM)	38	3485	93	3566	94	3651	96	3764	98

		90CRI							
Lumen Output	Wattage	30K/90CRI		35K/90CRI		40K/90CRI		50K/90CRI	
		Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW
ALO1 (500LM)	6	499	87	513	88	527	90	540	92
ALO1 (750LM)	9	791	89	812	91	834	93	855	94
ALO1 (1000LM)	13	1110	86	1140	88	1170	90	1200	91
ALO2 (1000LM)	13	1177	95	1209	97	1241	99	1272	101
ALO2 (1500LM)	19	1718	92	1764	93	1811	95	1857	97
ALO2 (2000LM)	25	2164	87	2222	89	2281	91	2340	92
ALO3 (2000LM)	25	2226	90	2286	92	2347	94	2407	95
ALO3 (2500LM)	32	2687	86	2760	87	2833	89	2906	91
ALO3 (3000LM)	38	3052	81	3135	83	3217	85	3300	86

		90CRI							
Lumen Output	Wattage	30K/90CRI		35K/90CRI		40K/90CRI		50K/90CRI	
		Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW	Delivered Lumens	LPW
ALO1 (500LM)	6	498	87	512	88	526	90	539	92
ALO1 (750LM)	9	789	89	810	91	832	92	853	94
ALO1 (1000LM)	13	1108	86	1138	88	1168	89	1198	91
ALO2 (1000LM)	13	1174	95	1206	97	1238	99	1270	100
ALO2 (1500LM)	19	1714	91	1761	93	1807	95	1854	97
ALO2 (2000LM)	25	2159	87	2218	89	2276	91	2335	92
ALO3 (2000LM)	25	2222	90	2282	92	2342	94	2402	95
ALO3 (2500LM)	32	2682	85	2755	87	2827	89	2900	91
ALO3 (3000LM)	38	3046	81	3129	83	3211	85	3294	86

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LUMEN OUTPUT MULTIPLIERS - CCT			
3000K	3500K	4000K	5000K
0.98	1.0	1.01	1.03

LUMEN OUTPUT MULTIPLIERS - FINISH	
Specular (LS)	1.00
White (WR)	1.03
Black (BR)	0.60

HOW TO ESTIMATE DELIVERED LUMENS IN EMERGENCY MODE

Use the formula below to estimate the delivered lumens in emergency mode

Delivered Lumens = 1.25 x P x LPW

P = Ouput power of emergency driver. P = 10W for PS1055CP

LPW = Lumen per watt rating of the luminaire. This information is available on the ABL luminaire spec sheet.
The LPW rating is also available at Designlight Consortium.

PLENUM DEPTH TABLE

Aperture Size/Output	Fixture Height*	IC	NON-IC	NON-IC MARKED SPACINGS
LBR6 500-1000 LM	3.69	X		
LBR6 1000-2000 LM	3.69		X	
LBR6 2000-3000 LM	3.69			24 x 24 x 9

*Above unfinished 1/2" ceiling plane

CEILING COVERAGE TABLE

Series		Aperture	Trim Flange OD	Min ceiling opening	Ceiling Thickness	Max ceiling opening	Max Ceiling Opening with Goof Ring	Overall Goof Ring OD
LBR6	ROUND	5-5/16"	7-5/8"	5-3/4"	1/2"	7-1/8"	7-1/8"	9-1/4"
LBR6					1-1/2"	7-3/8"	7-1/2"	

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DIMMER COMPATIBILITY

Not compatible with DALI or DMX dimmers. For specific compatible dimmers see below.

LINE VOLTAGE DIMMING:					
Type	**Forward Phase**	S (500-1000lm)	M (1000-2000lm)	L (2000-3000lm)	Comment
MLV	Lutron Glyder GLV-600	YES	YES	YES	
INC	Leviton SureSlide 6633	YES	YES	YES	
MLV	Lutron Diva DVLV-600P	YES	YES	YES	
MLV	Lutron Skylark SLV-600P	YES	YES	YES	
INC	Lutron RadioRA 2 10ND	YES	YES	YES	
MLV	Leviton SureSlide 6613-PLW	YES	YES	YES	
INC	Lutron Diva DVCL-153P	YES	YES	YES	
MLV	Leviton IPM06	YES, 2x *	YES	YES	* min 2 fixtures
INC	Leviton IPI06	YES, 2x *	YES	YES	* min 2 fixtures
MLV	Synergy ISD 600LV	YES, 2x *	YES	YES	* min 2 fixtures
INC	Synergy ISD 600 I	YES, 2x *	YES	YES	* min 2 fixtures
INC	Control4 C4-FPD 120	YES	YES	YES	
Type	**Reverse Phase Dimmer Bank**	S (500-1000lm)	M (1000-2000lm)	L (2000-3000lm)	
ELV	Lutron Nova T NTELV-600	YES	YES	YES	
ELV	Lutron Diva DVELV 600P	YES	YES	YES	
ELV	Lutron Maestro MAELV 600	YES	YES	YES	
ELV	Leviton Vizia VPE06-1LX	YES	YES	YES	
ELV	Leviton Illumatech IPE04	YES	YES	YES	
ELV	Control4 C4-APD 120 REVERSE PHASE	YES	YES	YES	
Type	**Miscellaneous Dimmers**	S (500-1000lm)	M (1000-2000lm)	L (2000-3000lm)	
PHA	Lutron RadioRA2 RRD-6NA	YES	YES	YES	
PHA	Lutron Maestro PRO LED+ RRD-PRO	YES	YES	YES	
Type	**Control Systems**	S (500-1000lm)	M (1000-2000lm)	L (2000-3000lm)	
MLV	Lutron LP-RPM-4U	YES	YES	YES	
PHA	Lutron LP-RPM-4A	YES	YES	YES	
MLV	Lutron GRAPHIC EYE QSGRJ-3P	YES	YES	YES	
PHA	Lutron PA Power Module PHPM-PA-120	YES	YES	YES	
ELV	Lutron nLight nSP5PCD ELV	YES	YES	YES	

DIMMER COMPATIBILITY

Not compatible with DALI or DMX dimmers. For specific compatible dimmers see below.

0-10V DIMMING:						
Manufacturer	System Type	Description	P/N	S (500-1000lm)	M (1000-2000lm)	L (2000-3000lm)
Lutron	Other	0-10V (sink or source) PowPak wireless dimming module	RMJ-5T-DV-B	YES	YES	YES
Wattstopper	Control System	Digital single relay room controller (0-10V)	LMRC-211	YES	YES	YES
Crestron	Control System	DIN Rail 0-10V fluorescent dimmer, 4 feeds, 4 channels (Green Light System)	DIN-4DIMFLV4	YES	YES	YES
Lutron	Other	Grafik Eye 0-10V adapter	GRX-TVI	YES	YES	YES
Leviton	Wall Box	Illumatech 0-10V	IP710-DLX	YES	YES	YES
Lutron	Control System	Mounted in the Homeworks QS panel - 0-10V dimmer (sink or source)	GRX-TVM2	YES	YES	YES
Lutron	Wall Box	Nova 0-10V wallbox dimmer (use with PP-120-H line voltage relay)	NTFTV	YES	YES	YES
Lutron	Wall Box	Nova 0-10V wallbox dimmer (use with PP-120-H line voltage relay)	NTSTV-DV	YES	YES	YES
Lutron	Wall Box	Nova T	NFTV	YES	YES	YES
Leviton	Wall Box	Renior II 0-10V	AWSMG-7DW	YES	YES	YES
ACUITY	Wall Box	sensorswitch, wall switch sensor, occupancy controlled dimming	WSX D WH	YES	YES	YES
ACUITY	Control System	nLight	nPP16D	YES	YES	YES
ACUITY	Control System	nLight	nPS 80 EZ	YES	YES	YES
ACUITY	Control System	nLight Air	rPP20 D	YES	YES	YES

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Maestro® Sensor switch

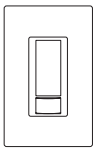
Lutron® Maestro® sensor switches with occupancy and vacancy sensors are lighting controls with passive infrared sensors that automatically control the lights in an area. These sensors detect the heat from occupants moving within an area to determine when the space is occupied.

The sensor switch combines a Maestro® switch with an occupancy or vacancy sensor.

Family Features

- Passive infrared motion detection with exclusive Lutron® XCT™ Technology for fine motion detection
- 180˚ sensor field-of-view
- Up to 30 ft x 30 ft (9 m x 9 m) [900 ft² (81 m²)] major motion coverage and 20 ft x 20 ft (6 m x 6 m) [400 ft² (36 m²)] minor motion coverage
- Occupancy version can be set to auto-on/auto-off or manual-on/auto-off
- Vacancy version available to meet CA title 24 requirements

Sensor switch:



Model Number*	Description	Sensor Operation	Maximum Capacity
MS-OPS2-XX	Occupancy/vacancy single-pole 120 V~	Auto-on/auto-off or manual-on/auto-off	250 W - Incandescent, Halogen, ELV 200 W - MLV 150 W - CFL, LED 2 A - Fluorescent Ballasts
MS-VPS2-XX	Vacancy single-pole 120 V~	Manual-on/auto-off	250 W - Incandescent, Halogen, ELV 200 W - MLV 150 W - CFL, LED 2 A - Fluorescent Ballasts
MS-OPS5M-XX	Occupancy/vacancy single-pole/multi-location 120 V~	Auto-on/auto-off or manual-on/auto-off	600 W - Incandescent, Halogen, ELV 450 W - MLV 360 W - CFL, LED 5 A - Fluorescent Ballasts 3 A - Fan
MS-VPS5M-XX	Vacancy single-pole/multi-location 120 V~	Manual-on/auto-off	600 W - Incandescent, Halogen, ELV 450 W - MLV 360 W - CFL, LED 5 A - Fluorescent Ballasts 3 A - Fan

- Adjustable timeout - 1, 5, 15, or 30 minutes
- High-low sensitivity adjustment
- Sensor switch lighting loads: incandescent, halogen, MLV, ELV, CFL, LED, magnetic fluorescent, and electronic fluorescent
- Works with up to 9 companion switches (MA-AS-XX*, or MSC-AS-XX*)

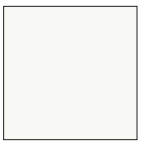
* *XX in model number represents color/finish code*

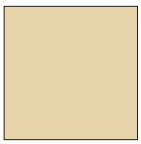
Job Name:
Job Number:
Model Numbers:

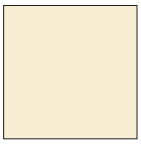
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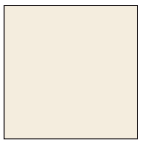
Colors and Finishes

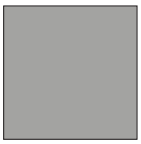
Gloss Finishes

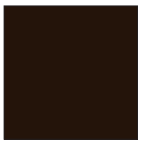

White
WH


Ivory
IV


Almond
AL


Light
Almond
LA


Gray
GR


Brown
BR


Black
BL

Satin Finishes (Coming Soon)


Hot
HT


Merlot
MR


Plum
PL


Turquoise
TQ


Taupe
TP


Eggshell
ES


Biscuit
BI


Snow
SW


Palladium
PD


Midnight
MN


Sienna
SI


Terracotta
TC


Greenbriar
GB


Bluestone
BG


Mocha
Stone
MS


Goldstone
GS


Desert Stone
DS


Stone
ST


Limestone
LS


Sea Glass
SG

Due to printing limitations, colors and finishes shown cannot be guaranteed to perfectly match actual product colors.

Job Name:	Model Numbers:	
Job Number:		

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Load Type and Capacity

Control	Voltage	Load Type	Minimum Load	Maximum Load			Neutral Connection Required
				Not Ganged	End of Gang	Middle of Gang	
MS-OPS2 MS-VPS2	120 V~	Lighting[1, 2]	0 A	2 A	2 A	2 A	NO
MS-OPS5M MS-VPS5M	120 V~	Lighting[1, 2, 3]	0 A	5 A	5 A	5 A	NO
		Fan[3]	0 A (0 HP)	3 A (1/10 HP)	3 A (1/10 HP)	3 A (1/10 HP)	NO

1 Sensor switch Load Type: designed for use with permanently installed incandescent, halogen, MLV, ELV, CFL, LED, magnetic fluorescent, and electronic fluorescent lighting loads.
2 See page 1 for load rating in W.
3 When controlling light and fan loads simultaneously, maximum load capacity is 3 A.

Job Name:
Job Number:
Model Numbers:

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Specifications

Regulatory Approvals

- UL Listed to U.S.A. and Canadian Safety standards.

Power

Operating voltage:
120 V~ 50/60 Hz

Key Design Features

Sensor switch

- On a single-tap, lights turn ON or OFF.
- Two-wire sensor switches available.

Environment

- Ambient operating temperature: 32 °F to 104 °F (0 °C to 40 °C), 0%-90% humidity, non-condensing. Indoor use only.

Warranty

- 1 Year Limited Warranty.
  For additional Warranty information, please visit
  http://www.lutron.com/TechnicalDocumentLibrary/369-119_Wallbox_Warranty.pdf

Timeout Options

- 1 Minute
- 5 Minutes
- 15 Minutes
- 30 Minutes

Sensitivity Options

- High sensitivity
- Low sensitivity

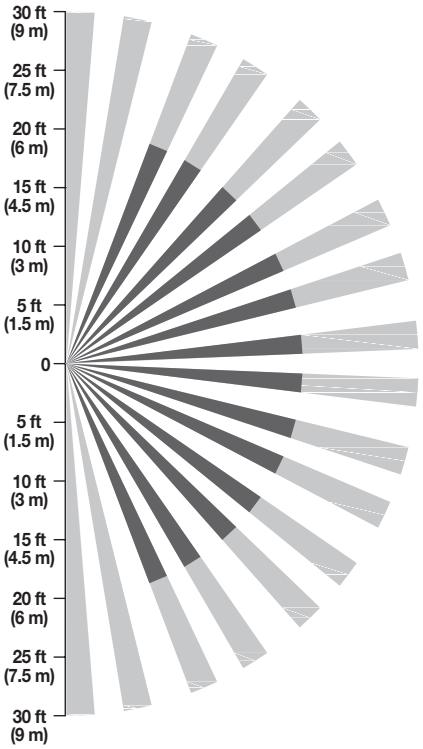
Auto-On Options (occupancy/vacancy version)

- “Enabled” - Auto-On/Auto-Off
- “Disabled” - Manual-On/Auto-Off
- “Low Light” - Lights turn on only if needed (if ambient light is below threshold)

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Range Diagrams

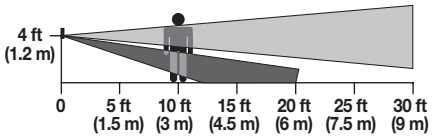
Horizontal Coverage



Major Motion: 900 ft² (81 m²) coverage

Minor Motion: 400 ft² (36 m²) coverage

Vertical Coverage



Sensor switch Placement and Operation

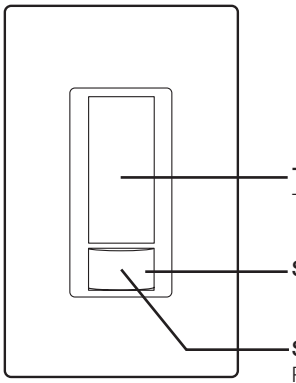
- The ability of the sensor switch to detect motion requires line-of-sight of room occupants. The sensor switch must have an unobstructed view of the room.
- Hot objects and moving air currents can affect the performance of the sensor switch.
- The performance of the sensor switch depends on a temperature differential between the ambient room temperature and that of room occupants. Warmer rooms may reduce the ability of the sensor switch to detect occupants.

Job Name:	Model Numbers:	
Job Number:		

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Operation

Sensor switch

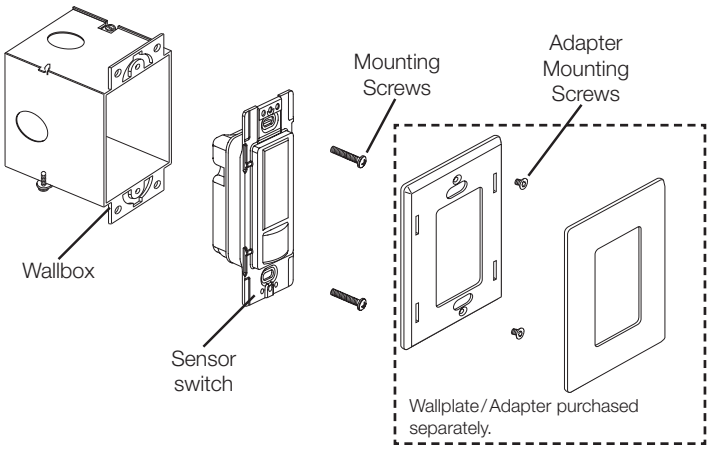


Tapswitch
Tap on/off

Sensor Lens

Sensor LED (behind lens)
Pulses to acknowledge motion when the load is ON.

Mounting



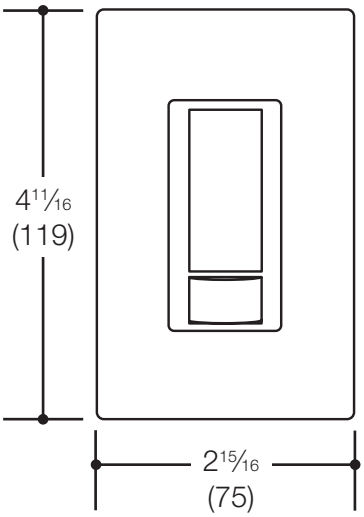
Job Name:
Job Number:
Model Numbers:

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

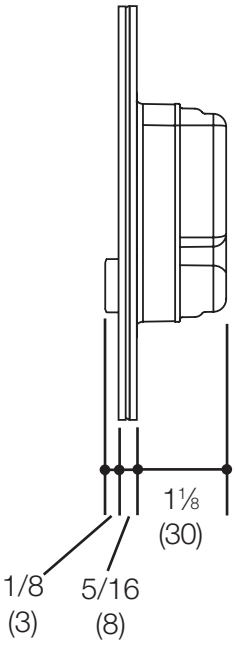
Dimensions

Measurements shown as: in (mm)

Front View



Side View



Ganging and Derating

Sensor switches can be ganged without derating.

Job Name:	Model Numbers:	
Job Number:		

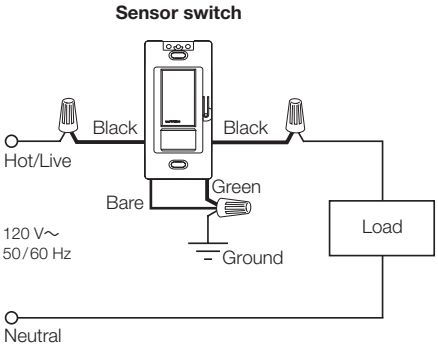
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Wiring Diagrams:

Wiring Diagram 1

Single Location Installation (120 V~)

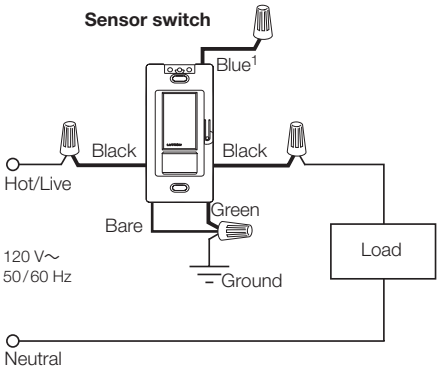
-OPS2 and -VPS2



Wiring Diagram 2

Single Location Installation (120 V~)[1]

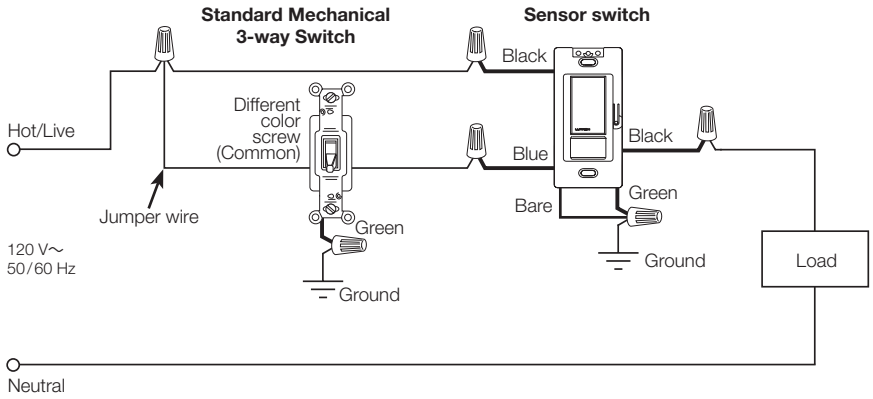
-OPS5M and -VPS5M



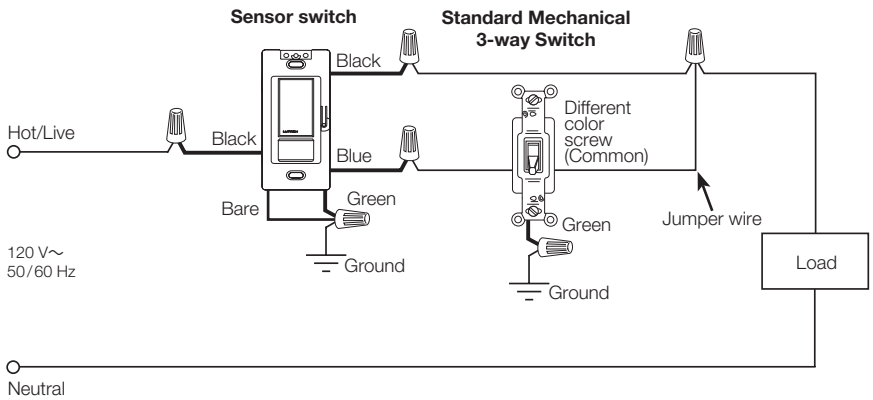
Wiring Diagram 3

3-way Installation with Standard Mechanical 3-way Switch (120 V~)[3]

-OPS5M and -VPS5M



OR



Continued on next page...

Job Name:

Job Number:

Model Numbers:

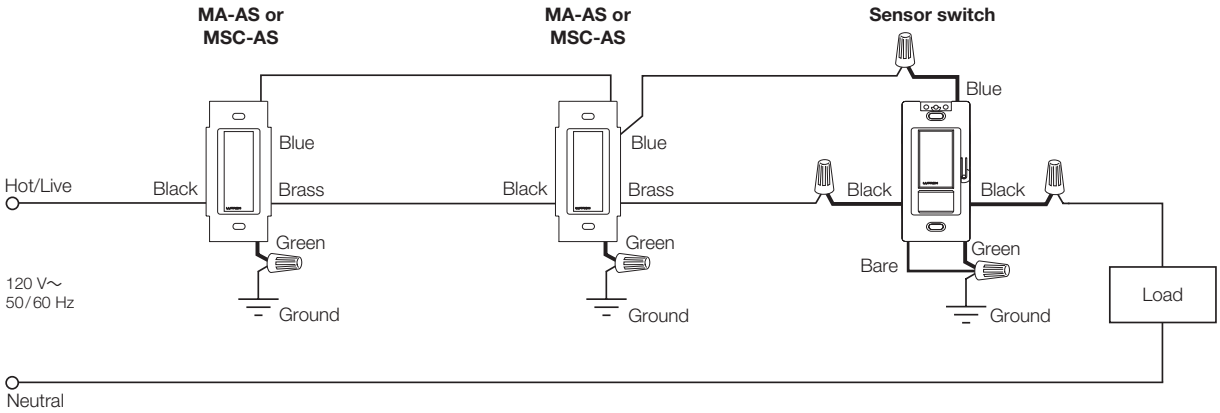
Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

Wiring Diagrams: (continued)

Wiring Diagram 4

Multi-Location Installation (120 V~)[2, 3]

-OPS5M and -VPS5M with MA-AS or MSC-AS



1 When using controls in single location installations, tighten the blue terminal or cap blue wire. **Do not** connect the blue terminal/wire to any other wire or to ground.

2 Up to 9 companion switches may be connected to a sensor switch. Total blue terminal wire length may be up to 250 ft (76 m).

3 Only one sensor switch can be used per multi-location circuit.

Job Name:	Model Numbers:	
Job Number:		

Attachment: 2024-023 EXH 'B' Holistic Utility Solutions_REC Lighting Proposal Revised (4183 : 2024-023 ORD Auth CM to accept SECO grant &

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☑ Promote an Environmentally Sensitive & Livable Community ☑ Provide a Safe Community ☑ Deliver Quality Services ☑ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☑ Maximize Partnership Opportunities ☑ Provide Courteous & Responsive Customer Service ☑ Model a Positive City Image ☑ Deliver Efficient Services ☑ Cultivate Community Involvement & Access
Manage the Resources	☑ Maintain Fiscal Strength ☑ Maximize Utilization & Resources ☑ Invest in Infrastructure & Transportation
Develop Personnel	☑ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved:	No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☑	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☑	Press Release
☐	E-News Distribution	☑	Website Notice
☑	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☑	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	

Other:

Attachment: 2024-023 Goals & Perspectives (4183 : 2024-023 ORD Auth CM to accept SECO grant & enter contract with Holistic Utility for SWC

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 2/23/2024 11:08 AM

Lead Department: Parks, Recreation & Health **Action Officer:** Keith Beason,

Subject: Resolution No. 2024-024 authorizing the City Manager to execute a contract with Symmetry Sports (TIPS 230104-02) in the amount of $3,049,622, for construction at the soccer complex located at Grady T. Wallace Park and allocating additional funds in the amount of $150,000, for contingency items, for a total project cost not to exceed $3,199,622 with funds budgeted in the 2023 Bond Fund (Fund 426) and the General Fund (Fund 101).

Briefing: 2/26/2024 **Public Hearing:** 3/11/2024 **Council Vote:** 3/11/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The Parks and Recreation Staff requests approval to enter into a contract with Symmetry Sports Construction for renovations at the Soccer Complex located at Grady T. Wallace Park in the amount of $3,049,622. Staff also recommends allocating an additional amount of $150,000 for contingency items with the total cost of the project not to exceed $3,199,622 to be paid with funds budgeted in the 2023 Bond Fund (Fund 426) and the General Fund (Fund 101).

Potential Options:

- Approve
- Deny

Fiscal Implications:

Funds are budgeted in the 2023 Bond (Fund 426) and the General Fund (Fund 101).

Staff Recommendation:

Staff recommend approval of this request.

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-024 RES Symmetry Sports (TIPS 230104-02) Wallace Soccer Complex (DOCX)
b. 2024-024 EXH 'A' Wallace_ContractPack_021624 (PDF)
c. 2024-024 EXH 'B' Grady T Wallace 2-16 (PDF)
d. 2024-024 Goals & Perspectives (DOCX)

Staff Coordination

Parks, Recreation & Health	Completed	Robby Robertson 02/21/2024 4:03 PM	Department Head Review	
Finance Department 12:21 PM	Kristin Peeples	Finance Review	Completed	02/22/2024
City Manager		City Manager Review	Pending	
City Council 6:00 PM	Vicky Coopwood	Meeting	Pending	02/26/2024

Meeting History

Attachment: 2024-024 RES Symmetry Sports (TIPS 230104-02) Wallace Soccer Complex (4184 : 2024-024 RES Auth CM to enter contract with

RESOLUTION NO. 2024-024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SYMMETRY SPORTS CONSTRUCTION FOR CONSTRUCTION AT THE SOCCER COMPLEX LOCATED AT GRADY T. WALLACE PARK IN THE AMOUNT OF THREE MILLION FORTY-NINE THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS ($3,049,622) AND ALLOCATING AN ADDITIONAL AMOUNT OF ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000) FOR CONTINGENCY ITEMS WITH THE TOTAL COST OF THE PROJECT NOT TO EXCEED THREE MILLION ONE HUNDRED NINETY-NINE THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS ($3,199,622) TO BE PAID WITH FUNDS BUDGETED IN THE 2023 BOND FUND (FUND 426) AND THE GENERAL FUND (FUND 101); AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, renovations and upgrades are needed at the soccer complex at Grady T. Wallace Park to include field conversion, regrading of natural grass soccer fields, renovation of existing concession and restroom facilities, removal of asphalt drive, construction of new fire lane, natural grass renovation, shockwave and topdressing, and installation of sidewalks and gate/entry way; and

WHEREAS, Symmetry Sports Construction has submitted a proposal attached as **Exhibit "A**" with a total cost of **THREE MILLION FORTY-NINE THOUSAND SIX-HUNDRED TWENTY-TWO DOLLARS ($3,049,622)** through the TIPS Buy Board Purchasing Cooperative (TIPS Vendor 230104-02); and

WHEREAS, staff recommends allocating an additional amount of **One Hundred Fifty Thousand Dollars ($150,000)** for contingency items with the total cost of the project not to exceed **THREE MILLION ONE HUNDRED NINETY-NINE THOUSAND SIX HUNDRED TWENTY-TWO THOUSAND DOLLARS ($3,199,622)** to be paid with funds budgeted in the 2023 Bond Fund (Fund 426) and the General Fund (Fund 101).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: The City Manager be and is hereby authorized to execute a contract with Symmetry Sports Construction through the TIPS Buy Board Purchasing Cooperative for **THREE MILLION FORTY-NINE THOUSAND SIX-HUNDRED TWENTY-TWO DOLLARS ($3,049,622).**

SECTION 2: The City Manager be and is hereby authorized to allocate an additional amount of **One Hundred Fifty Thousand Dollars ($150,000)** for contingency items with the total cost of the project not to exceed **THREE MILLION ONE HUNDRED NINETY-NINE THOUSAND SIX HUNDRED TWENTY-TWO DOLLARS ($3,199,622).**

SECTION 3: This Resolution shall be in full force and in effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **11th day of March, 2024**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

February 16, 2024

David Orr, City Manager
City of Texarkana Texas
220 Texas Blvd
Texarkana, Texas 75501
david.orr@texarkanatexas.gov

RE: Grady T. Wallace Soccer Complex Improvements – City of Texarkana, TX

Symmetry is pleased to provide the following budget for the above-referenced project:

General Conditions:

- Symmetry to provide general liability, automotive and worker's compensation insurance coverage as required
- Symmetry will provide project closeout documentation and final clean-up of work area relating to scope
- Symmetry will provide payment bonds & performance bonds as required for this project
- Budget pricing derived in accordance with existing site conditions
- Field design, layout and conformance in accordance with governing bodies including UIL, NFHS and USA little league
- State agency permitting submission, to be reimbursed by owner
- One year Warranty on all materials, labor and equipment
- Regular progress meetings with owner & their designated agent

Scope of Work – Soccer Field Synthetic Turf Conversion ~ 88,500 sq ft:

- Remove existing sod from field and dispose offsite
- Balance proposed field subgrade utilizing onsite soils or soils spoiled from Spring Lake Park project
- Compact subgrade soils to 95% per Mid-Tex testing geotechnical report to achieve 1.5" pvr
- Fine grading & compaction of pad grades per turf manufacturer's specifications
- Supply & install new concrete curb around perimeter of field for turf attachment system
- Supply & install impermeable HDPE liner over subgrade area
- Heat weld all seams to create a completely non-permeable surface over subgrade
- Supply & install HDPE pipe in perimeter trenches lined with HDPE liner and backfilled with drainage stone
- Connect HDPE pipe to existing storm outlet for connection to nearby drainage system
- Supply & install turf attachment system around perimeter of turf area
- Backfill all trenches with drainage stone
- Supply & install drainage stone over lined subgrade
- Verify planarity, slope & elevations of turf base system prior to turf installation
- Supply & install **AstroTurf Ligaturf 3D3 blend 2" pile Synthetic Turf**
  - Include all materials (thread, glue and seaming tape, etc.) required for turf installation
  - Turf seams to be sewn to the extent possible, all others to be glued using two-part epoxy compound
  - All lines (inlays) to be cut & inlaid into field using two part epoxy compound
  - Install soccer markings per shop drawing to be provided by Symmetry and approved by Owner
  - Supply & install soccer line packages for 14U, 12U & 10u. Include tick marks for 7-8U & 5-6U line layouts
  - Install rubber/sand infill mix in multiple lifts in accordance with project specifications
  - GMAX testing of field upon completion
  - Includes **AstroTurf's Standard 8-Year Warranty**
- Provide new groomer/sweeper equipment and training/instruction on care & maintenance of field

Scope of Work – Natural Grass Soccer Field ~43,200 ft²:

- Demolition of existing natural grass soccer field
- Raise finish grade in accordance with complex grading plan with onsite soils or spoils from Spring Lake

Park project
- Fine grading and compaction of pad grades
- Supply & install 4" depth of sandy loam topsoil
- Finish grade with laser guided equipment
- Verify base for planarity, slope & elevations prior to sod installation
- Supply and install Bermudagrass Tif 419 big roll sod per plans & specs

Scope of Work – New Complex Irrigation System:
- Abandon existing underground irrigation system
- Supply & install new underground irrigation system at all natural grass soccer fields (fields 1, 4-8)

Scope of Work – Renovation of Existing concession / restroom facilities:
- Construct additional restroom space on west side of building (+/- 690 sq ft)
- Renovate existing concession space to accommodate increased concession space and referee / first aid area

Scope of Work – Fire Lane:
- Demolition of existing asphaltic paving
- Construction of new concrete fire lane / heavy duty pavement to meet applicable fire / safety codes

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Proposed Project Budget:

Soccer Field Conversion *as outlined above (field #2)*		**$1,168,200**
Re-grade & new natural grass soccer field – *43,200 sq ft (field #3)*		**$345,600**
New complex irrigation system		**$210,000**
Renovation of existing concession / restroom facility		**$550,000**
Demo of existing asphalt drive & construction of new fire lane		**$234,850**
Natural grass renovations – fraise mowing – *82,050 sq ft*		**$64,000**
- *Includes improvements to natural grass crown*		
Natural grass renovations – Shockwave & topdress – *340,687 sq ft*		**$129,460**
- *Shockwave aeration process & medium – coarse sand topdressing*		
Site/Civil – Earthwork & Grading		**$200,000**
Complex Sidewalks		**$97,512**
Project Total		**$2,999,622**
Alternates:		
Gate / Entryway	**ADD**	**$50,000**

Qualifications:
- Proposal assumes clear, unencumbered, stable access to work through duration of project
- Single mobilization
- NCTCOG - General Provisions as attached, Exhibit A
- Added Provisions to Contract, Exhibit B
- TIPS Purchasing Cooperative Contract #230104-02
- Includes Project Development & budgeting
  - Project scope & budget to be reviewed by city & Symmetry at three (3) milestone review processes
  - SD, 50% & 90% designs leading up to notice to proceed and a project commencement of +/- **DATE TBD**
- Project completion dates as follows;
  - Soccer field improvements – **DATE TBD**
  - Concession / Restroom renovations – **DATE TBD**

Exclusions:
- Soil stabilization/subgrade remediation is excluded from this quote; pricing subject to change based on recommendations of a third-party geotechnical survey to be obtained/provided by owner

Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

- Costs/Contingencies for rock or other abnormal or inferior surface or subsurface conditions that may exist including underground utilities that have not been properly identified by Owner
- Shock pad/underlayment is excluded unless specified in above Scope of Work
- Landscaping, sodding, or natural grass seeding, except as noted above
- Staging area to be furnished by owner
- Symmetry is not responsible for damages to inferior surfaces or pavement resulting from moving equipment & materials across insufficient owner-designated access routes
- Temporary facilities (water) will be furnished at location by owner
- Utilities except as noted in scope of work
- Sales taxes – owner's exemption certificates are required at time of contract
- Allowances/Contingencies of any kind unless specified above
- *Any other items or work not specifically detailed in above Scope of Work are excluded from this proposal*

Price may be adjusted if final specifications and/or shop drawings differ from Scope of Work provided at time of this proposal and as outlined above.

We appreciate the opportunity to work with the **City of Texarkana** on this project. If you have any questions, please contact me at **(903) 475-2848.**

Kindest Regards,

Nick Robertson, Director of Design / Build Services
Symmetry Sports Construction

*I, _____ , with the **City of Texarkana,** have read the General Conditions, Scope,*
(Print Name)
Qualifications and Exclusions and accept the terms and conditions setforth therein.

SIGNED: _____ ***DATE:*** _____

TITLE: _____ ***P.O.#:*** _____

Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

symmetry
Sports Construction

Exhibit A
NCTCOG - General Provisions

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2024-024 EXH 'A'

Division 100

General Provisions



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DIVISION 100 GENERAL PROVISIONS

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ITEM 101. DEFINITIONS AND ABBREVIATIONS

101.1. DEFINITIONS

The following words and expressions, or pronouns used in their place, shall wherever they appear in this Contract be construed as follows, unless a different meaning is clear from the context:

Addendum, Bulletin or Letter of Clarification: Any additional contract provisions, or change, revisions or clarification of the contract documents issued in writing by the OWNER, to prospective bidders prior to the receipt of bids.

Advertisement: All of the legal publications pertaining to the work contemplated or under contract.

Approved, Directed, Required, and Words of Like Import: Whenever they apply to the work or its performance, the words "directed," "required," "permitted," "ordered," "designated," "established," "prescribed" and words of like import used in the contract, specifications or upon the drawings shall imply the direction, requirement, permission, order, designation or prescription of the OWNER; and "approved," "acceptable," "satisfactory" and words of like import shall mean approved by, acceptable to or satisfactory to the OWNER.

Backfill: embedment and final backfill

Base: a layer of specified material of plan thickness placed immediately below the pavement course surfacing.

Bedding: material upon which a pipe rests.

Bid: The written statement or statements duly filed with the OWNER specified in the advertisement for bids of these specifications by the person, persona, partnership, company, firm, association, or corporation proposing to do the work contemplated, including the approved form on which the formal bids for the work are to be prepared.

Bidder: Any person, persons, partnership, company, firm, association, or corporation acting directly or through a duly authorized representative submitting a bid for the work contemplated.

Bulletin: see Addendum.

Calendar Days: Any successive days of the week or month, no days being excepted. It shall be taken to mean the same as a normal calendar day.

Change Order: A properly authorized written order to the CONTRACTOR, signed by the OWNER directing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or the contract time.

Completion Time: The time set forth in the contract for the performance and completion of the work contracted for. The time may be expressed as calendar days, working days or a specific date.

Conflict of Interest: A conflict of interest is when any person employed by bidder or bidder's company has any known business relationships, other than previous contracts awarded through a competitive bidding process, or has an existing relationship with any employee of the OWNER.

Construction Equipment: All machinery of 25 horsepower or more which is powered by an internal combustion engine, but which is not used solely for competition or as a motor vehicle subject to the requirements of Texas Transportation Code 502.002. This includes, but is not limited to, excavators, graders, generators, and similar equipment.

Contract or Contract Documents: Contract documents are all of the written, printed, typed and drawn instruments that comprise and govern the performance of the contract as defined herein. The contract and contract documents include the advertisement, instructions to bidders, proposal, addendum, specifications, including the general, special and technical conditions, provisions, plans or working drawings — and any change orders, or supplemental agreements pertaining to the work or materials thereof; and bonds and any additional documents incorporated by reference in the above.

Contract Price: The total monies payable to the CONTRACTOR under the terms and conditions of the contract documents. When used in such context, it may also mean the unit price of an item of work under the contract terms.

Contract Time: See "Completion Time"

Contract Work: Everything expressly or impliedly required to be furnished and done by the CONTRACTOR by any one or more parts of the contract documents, except "extra work" as hereinafter defined; it being understood that, in case of any inconsistency between any part or parts of this Contract, the OWNER shall determine which shall prevail in accordance with Item 105.1. Contract Documents hereof.

Consulting Engineer: The person, firm, or entity hired as an independent consultant by the OWNER to design the Project and represent the OWNER in the administration of the CONTRACT in whatever capacity the OWNER designates; the OWNER may, at its sole option, designate the Consulting Engineer to be the Engineer for

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purposes of administration of the CONTRACT. The Consulting Engineer shall be understood to be the Consulting Engineer of the OWNER, and nothing contained in the CONTRACT Documents shall be construed to make the Consulting Engineer an employee of the OWNER, nor shall they be construed to create any contractual or agency relationship between the Consulting Engineer and the CONTRACTOR. The term includes the officers, employees, associates, agents, and subconsultants of Consulting Engineer, if any.
CONTRACTOR: The person, persons, partnership, firm, corporation, association or organization, or any combination thereof, as an independent CONTRACTOR entering into the contract for the execution of the work, acting directly or through a duly authorized representative.
Other CONTRACTORS: Any CONTRACTOR, other than the CONTRACTOR or its SUBCONTRACTORS, who has a direct contract with the OWNER for work on or adjacent to the site of the work.
Days: See "Completion Time"
Deleterious: Substances, elements, or components are those that are damaging, harmful, undesirable, or adulterating to the integrity or purity of the specified base material.
Drawings or Contract Drawings: Only those drawings specifically entitled as such and as specified in the contract, or in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.
Embedment: bedding and initial backfill.
Engineer: The Engineer or its duly authorized representative means the Engineer of the OWNER.
Equal: Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in Item 106.1. Substitution of Materials, as determined by the OWNER.
Extra Work: Work other than that which is expressly or impliedly required by the Contract documents at the time of the execution of the Contract.
Final backfill: material required to fill the trench from the top of the initial backfill to ground elevation or subgrade of a street.
Hazardous Substance:
(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite, or actinolite, whether friable or non-friable;
(2) any polychlorinated biphenyls (PCBs), or PCB-containing materials, or fluids;
(3) radon; any other hazardous, radioactive, toxic, or noxious substance, material, pollutant, or solid, liquid or gaseous waste;
(4) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
(5) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
(6) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance;
(7) and any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.
Initial backfill: material that covers the wastewater collection system and water lines.
Inspector: Any representative of the OWNER designated to inspect the work.
Letter of Clarification: see Addendum.
Low-Use Equipment: Any piece of equipment which is used for less than ten hours per week on a single public works contract.
Maintenance Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Vernon's Texas Insurance Code, in the amount of the contract guaranteeing the prompt, full and faithful performance of the general guaranty and warranty contained in the Contract Documents.
Major Item: A major item is any line item of the work to be performed which amounts to 5 percent or more of the total contract amount.

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Material Man or Supplier: Any SUBCONTRACTOR contracting with the CONTRACTOR, or any of its SUBCONTRACTORS, to fabricate or deliver or who actually fabricates or delivers, materials, supplies or equipment to be consumed or incorporated into the work.
Notice: Written notice effective the date of the postmark thereon, or if hand delivered, effective the date of hand delivery, or if electronically delivered, effective as described in Item 105.8. Service of Notices.
OWNER: The public governmental agency identified throughout the contract documents or the entity as specifically identified in the contract. The term OWNER means the OWNER or its authorized representative(s).
OWNER'S Representative: The Engineer or other duly authorized assistant, agent, inspector or superintendent acting within the scope of the particular duties instructed to him or her by the OWNER.
Payment Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the general CONTRACTOR or a SUBCONTRACTOR to supply public work labor or material.
Performance Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the protection of the OWNER, conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.
Plan or Plans: The plans are the drawings or reproductions therefrom made by or approved by the OWNER showing in detail the location, dimension and position of the various elements of the project, including such profiles, typical cross-sections, layout diagrams, working drawings, preliminary drawings and such supplemental drawings as the OWNER may issue to clarify other drawings or for the purpose of showing changes in the work hereinafter authorized by the OWNER. The plans are usually bound separately from the other parts of the Contract Documents, but they are part of the Contract Documents just as though they were bound therein.
Proposal: The written and signed offer of the bidder, when submitted on approved proposal forms, to perform the contemplated work and furnish the necessary material and labor in accordance with the provisions of the plans and specifications, special and general provisions, and all contract documents.
Site: The area upon or in which the CONTRACTOR'S operations are carried on, and such other areas adjacent thereto as may be designated as such by the OWNER.
Special Provisions or Conditions: The special clauses of the contract, setting forth conditions or requirements peculiar to the specific project involved, supplementing the standard or general specifications and taking precedence over any conditions or requirements of the standard or general specifications with which they are in conflict.
Specifications or Contract Specifications: All of the general, special and technical conditions or provisions, and all addendum or supplements thereto.
Subbase: a layer of specified material of plan thickness between a base and a subgrade.
SUBCONTRACTORS: Any persons, firm or corporation, other than employees of the CONTRACTOR, who or which contracts with the CONTRACTOR to furnish, or who actually furnishes, labor and/or materials and equipment at or about the site.
Subgrade: that portion of the roadbed upon which the subbase, base or the pavement is to be placed. It includes the OWNER'S required distance beyond the back of the curb for streets, which are to be paved with concrete.
Superintendent: A person who has permission to act as an agent of the CONTRACTOR and has authority to issue both verbal and written agreements.
Sureties: The corporate bodies which are bound by such bonds as are required with and for the CONTRACTOR. The sureties engaged to be responsible for the entire and satisfactory fulfillment of the Contract, and for any and all requirements as set out in the specifications, Contract or plans. In order for a surety to be acceptable, the surety shall conform to the requirements of Section 3503.002, Texas Insurance Code.
Texas Low Emission Diesel (TxLED): Diesel fuel which is compliant with the TxLED program requirements as set forth by the TCEQ.
Work: All work including the furnishing of all labor, materials, tools, equipment, required submittals and incidentals to be performed by the CONTRACTOR under the terms of the contract.
Working Time: See "Completion Time"
Working Day: A working day is defined as a calendar day not including Saturdays, Sundays or those legal holidays as specified in the list prepared by the OWNER for contract purposes, in which weather or other

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conditions not under the control of the CONTRACTOR shall permit the performance of the principal units of work underway for a continuous period of not less than seven hours between 7:00 am and 6:00 pm. A principal unit of work shall be that unit which controls the completion time of the contract.

101.2. ABBREVIATIONS AND ACRONYMS

References to specifications, standards, and guidelines throughout this text shall refer to the most current adopted versions. Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal, or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as follows:

%	Percent
‘	Foot or Feet
“	Inch or Inches
#	Pound or pounds, or number if it precedes a numeral
AASHTO	American Association of State Highway and Transportation Officials
ABA	American Bankers Association
ACI	American Concrete Institute
am, a.m.	Before noon
ADA	Americans with Disabilities Act
ANSI	American National Standards Institute
Asph.	Asphalt
Assn.	Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
APWA	American Public Works Association
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
B_c	Outside diameter of Pipe
B_d	Trench width
BMP	Best Management Practice
C	Centigrade
cc	Cubic Centimeter
CFR	Code of Federal Regulations
cfs	Cubic feet per second
CI	Cast Iron
CL	Center Line
cm	Centimeter
CO	Cleanout
C.O.C.	Cleveland Open Cup
Conc.	Concrete
Cond.	Conduit
Corr.	Corrugated
cSt	Centistokes (Viscosity)
Cu.	Cubic
Culv.	Culvert
CY, C.Y.	Cubic Yard
D	Inside Diameter
DI	Ductile Iron
Dia.	Diameter
Dr.	Driveway
Elev.	Elevation
F	Fahrenheit

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FM	Factory Mutual
fps	Feet per second
Ft.	Foot or Feet
Gal.	Gallon
g, gm	Gram
HDPE	High Density Polyethylene
HP	Horsepower
Hr.	Hour
ID	Inside Diameter
in.	Inch or Inches
ISSA	International Slurry Surfacing Association
iSWM	Integrated Stormwater Management
Kg or kg	Kilogram
kPa	Kilopascals
L	Liter
Lb.	Pound or Pounds
LDPE	Low Density Polyethylene
LF.	Linear foot or feet
Lin.	Linear
LL	Liquid Limit
LLDPE	Linear Low Density Polyethylene
LMDPE	Linear Medium Density Polyethylene
LOI	Loss on Ignition
M	Meter
Max.	Maximum
MH	Manhole
Min.	Minimum or Minute
M.J.	Mechanical Joint
mm	Millimeter
Mod.	Modified
Mono.	Monolithic
mph	Miles per hour
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry
MS4	Municipal Separate Storm Sewer System
MPa	Megapascal
MUTCD	(Texas) Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
Nat'l	National
NEMA	National Electrical Manufacturers Association
No.	Number
N.P.T.	National Pipe Thread
NRMCA	National Ready-mixed Concrete
NSF	National Sanitation Foundation
o.d., OD	Outside Diameter
OSHA	Occupational Safety and Health Administration
oz.	Ounce
Pa	Pascal
PI, P.I.	Plasticity Index
pm, p.m.	After noon
psi	Pounds per Square Inch
PVC	Polyvinyl Chloride
PVCO	Molecularly Oriented PVC

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R	Radius
RAP	Recycled/Reclaimed Asphalt Pavement
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
Reinf.	Reinforced or reinforcing
Rem.	Remove
Rep.	Replace
R/W, ROW, R of W	Right-of-Way
Sani., San.	Sanitary
Sec.	Second
S.F.	Square Foot or Saybolt Furol (Viscosity)
Sq.	Square
SSPC	The Society for Protective Coatings [formerly Steel Structures Painting Council]
St.	Street or Storm
Std.	Standard
Str.	Strength
SWPPP	Storm Water Pollution Prevention Plan
SY	Square Yard
TAC	Texas Administrative Code
TAS	Texas Accessibility Standards
Tex-###-X	Refer to TxDOT *Manual of Testing Procedures*
TCEQ	Texas Commission on Environmental Quality [formerly Texas Natural Resource Conservation Commission (TNRCC)]
TDLR	Texas Department of Licensing and Regulations
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
TxDOT Item #	Refer to TxDOT *Standard Specifications for Construction of Highways, Streets and Bridges*
UL	Underwriter's Laboratory
um, µm	Micrometers
US, U.S.	United States
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
Vert.	Vertical
Vol.	Volume
Wt.	Weight
Yd.	Yard

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ITEM 102. PROPOSAL PROCEDURES

102.1. PROPOSAL FORM

The OWNER shall furnish bidders with proposal forms which shall state the general location and description of the contemplated work and which shall contain an itemized list of the items of work to be done or materials to be furnished, and upon which bid prices are asked. The proposal form shall specify the form and amount of the proposal guaranty.

102.2. QUANTITIES IN PROPOSAL FORM

The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished, and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the CONTRACTOR only for the actual quantities of work performed or materials furnished as measured in the field or otherwise determined by the OWNER in accordance with the Contract; and it is understood that the quantities may be increased or decreased as hereinafter provided, without in any way invalidating the bid prices.

102.3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF THE WORK

Bidders are advised that the plans, specifications and other documents on file as stated in the advertisement shall constitute all the information, which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, Contract and bond forms carefully; to obtain and read the most current versions of all referenced State, Federal, and National standards; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make a proposal.

No information given by the OWNER or any official thereof, other than that shown on the plans and contained in the specifications, proposals and other Contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data, which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting a bid, represents and warrants: that it has prepared the bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that it has done any inspection or test it deems appropriate; that it has reviewed, studied and examined its bid prior to the signing and submission of same; and that it was cognizant of the terms of its proposal, verified its calculations and found them to be correct and agrees to be bound thereby.

102.4. PREPARATION OF PROPOSAL

The bidder shall submit its proposal on the forms furnished or approved by the OWNER. All blank spaces in the form shall be correctly filled in and the bidder shall state the prices, both in words and numerals, for which it proposes to do the work contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly or submitted electronically if allowed by OWNER. In cases of discrepancy, the OWNER shall select the one most favorable to the OWNER, provided that it does not create a material mistake in the bid or otherwise change the result of bidding. If an individual submits the proposal, that individual or duly authorized agent must sign the proposal. If an association or partnership submits the proposal, the name and address must be given and the proposal signed by a duly authorized member of the association or partnership. If a corporation submits the proposal, the corporate name and business address must be given and the proposal signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the proposal must be properly certified and must be in writing and submitted with the proposal. The proposal shall be executed in ink. When allowed by the bid documents, bids by internet, electronic mail or facsimile are acceptable as long as all legal and bid requirements are met. The CONTRACTOR accepts all risks associated with bidding in this manner. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

102.4.1. Safety Record. If the safety record is part of the bid requirements in accordance with Section 252.0435, Local Government Code, each CONTRACTOR bidding on projects must submit a notarized

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affidavit with its bid attesting to its safety record. This information may be considered in determining the responsibility of the bidder for purposes of award.

102.5. PROPOSAL GUARANTY

No proposal shall be considered unless it is accompanied by a cashier's check on any state or national bank or acceptable bidder's surety bond, as specified in Item 103. Award and Execution of Contract, payable unconditionally to the OWNER. The cashier's check or bidder's surety bond shall be in the amount of not less than five percent of the total amount of the bid. The proposal guaranty is required by the OWNER as evidence of good faith and as a guarantee that if awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract or pay the damages as set forth below. The bidder's surety bond shall be conditioned that, if the proposal is withdrawn after the bids have been opened or the CONTRACTOR refuses to execute the Contract in accordance with its proposal and provide the required surety bonds, the CONTRACTOR and the surety shall become liable to the OWNER for the amount of the bidder's surety bond.

In the event a cashier's check is submitted along with the proposal of the bidder, and the CONTRACTOR does not execute the Contract and provide the required surety bonds and evidence of insurance within 10 days after receipt of the awarded Contract, or withdraws its bid after bids have been opened, the OWNER shall be entitled to the proceeds of such check.

102.6. FILING OF PROPOSALS

No proposal shall be considered unless it is filed at the place and within the time limit for receiving proposals as stated in the advertisement and/or Notice to Bidders or any addendum. Each proposal shall be in a sealed envelope, plainly marked with the word "Proposal" and the name or description of the project as designated in the advertisement.

102.7. WITHDRAWING PROPOSALS

Proposals filed with the OWNER can be withdrawn or modified and redeposited prior to the time set for opening proposals. Request for non-consideration of proposals must be made in writing addressed to the OWNER prior to the time set for opening proposals. After other proposals are opened and publicly read, the proposal for which non-consideration is properly requested will be returned unopened. The proposal may not be withdrawn after the bid opening has commenced. The bidder, in submitting the same, warrants and represents that its bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid shall not and cannot be withdrawn after opening because of any mistake committed by the bidder; provided, however, that any bidder may withdraw its bid 90 days after the actual date of opening thereof, should no award have been made to such bidder.

102.8. OPENING PROPOSALS

The proposals filed with the OWNER shall be opened at the time stated in the advertisement and/or in the Notice to Bidders or any subsequently issued addendum, and publicly read aloud, and shall thereafter remain on file with the OWNER. No Contract shall be awarded based on such proposals until after at least two days have elapsed.

102.9. CONSIDERATION OF PROPOSAL

After proposals are opened, the proposals shall be tabulated for comparison on the basis of the bid prices and quantities shown in the proposal. Until final award of the Contract, the OWNER reserves the right to reject any or all proposals, to waive technicalities or irregularities at its option, to re-advertise for new proposals or proceed to do the work otherwise in the best interests of the OWNER. Each bidder shall be furnished a copy of the bid tabulation upon request.

102.10. IRREGULAR PROPOSALS

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, unbalanced values or conditions not called for, unauthorized alternate bids or other irregularities of any kind. The OWNER may reject any proposal containing any such irregularity. The OWNER, however, reserves the right to waive any irregularities and to make the award in the best interest of the OWNER.

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The BIDDER or CONTRACTOR shall not take advantage of any error in the bidding or contract documents. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown in or mentioned in both. In the case of any apparent difference between the drawings and specifications, or any other apparent error which the BIDDER or the CONTRACTOR may discover, the BIDDER or CONTRACTOR shall refer the matter to the OWNER, to which the decision of the OWNER shall govern. The OWNER shall have the right to correct any error discovered.

102.11. REJECTION OF PROPOSALS

The OWNER reserves the right to reject any or all proposals; and all proposals submitted are subject to this reservation. Proposals may be rejected for any of the following reasons, but not necessarily limited thereto:

(1) proposal received after the time limit for receiving proposals as stated in the advertisement or any subsequently issued addendum;
(2) proposal unaccompanied by the required bid security;
(3) proposal constituting a nonresponsive bid;
(4) proposal containing unsolicited conditions or qualifications;
(5) failure to use the OWNER'S form of bid bond in submitting proposal, if included in the bid documents; or
(6) a proposal submitted with a bid bond issued by a surplus line company or by a surety not licensed to transact insurance business in the State of Texas.
(7) In the judgment of the OWNER, the proposal is incomplete.
(8) All rejections shall be final.
(9) The OWNER has the right to reject any and all bids and to accept or reject any and all schedules.

102.12. DISQUALIFICATION OF BIDDERS

Bidders may be disqualified and their proposal not considered for any of the following reasons, but not necessarily limited thereto:

(1) reasonable belief that collusion exists among the bidders;
(2) reasonable belief that any bidder is interested in more than one proposal for the work contemplated;
(3) the bidder having a history of filing frequent, excessive, meritless, or fraudulent claims against the OWNER, or against other CONTRACTORS on a project of the OWNER, or against other OWNERs or CONTRACTORS;
(4) the bidder or its surety having defaulted on a previous contract, or the bidder performing poorly on a previous or current contract;
(5) lack of competency, skill, judgment, financial capability, resources, integrity, reputation, reliability or responsibility to perform the work as revealed by the bid proposal, bid questionnaires, financial statement, performance history or other relevant information obtained by the OWNER.
(6) uncompleted work which in the judgment of the OWNER shall prevent or hinder the prompt completion of additional work if awarded;
(7) failure of bidder to use OWNER'S form of bid bond in submitting its bid, or submission of a cashier's check drawn on a state or national bank not located in the OWNER'S jurisdictional area;
(8) unbalanced value of any bid items;
(9) the bidder is currently a party to any litigation against the OWNER.
(10) bidder's unexcused failure to properly and/or timely complete a project with the OWNER.
(11) the OWNER'S decision that the bidder is disqualified shall be final.

102.13. RETURN OF PROPOSAL GUARANTY

Upon request, the OWNER shall return the proposal guaranties accompanying all proposals (except for the three apparent low proposals, or per policy of the OWNER. The three apparent low proposal guaranties shall be retained by the OWNER until the required Contract and surety bonds have been executed, after which they shall be returned.

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ITEM 103. AWARD AND EXECUTION OF CONTRACT

103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this Contract to it, the CONTRACTOR represents and warrants:

(1) that it is financially solvent, and sufficiently experienced and competent to perform the work;
(2) that the facts stated in the proposal and the information given by it pursuant to the bidding documents are true and correct in all respects;
(3) that it has read, understood and complied with all the requirements set forth in the bidding documents;
(4) that it is familiar with and understands all laws and regulations applicable to the work; and
(5) unless otherwise specifically provided for in the Contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, supplies, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this Contract, in the manner and within the time herein prescribed.

By executing the Contract, the CONTRACTOR represents that it has visited the site of work, has fully familiarized itself with the local and on-site conditions under which the work is to be performed and has correlated its observation with the requirements of the Contract documents. In addition, the CONTRACTOR represents that it has satisfied itself as to subsurface conditions at the site of the work. Information, data and representations contained in the Contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that it shall make no claims for damages; additional compensation or extension of time against the OWNER because of encountering actual conditions in the course of the work, which vary or differ from conditions or information, contained in the Contract documents. Except as provided in Item 107.24. Existing Structures, Facilities and Appurtenances, all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

CONTRACTOR assumes all risks for differing site conditions, and all risks and costs.

Unless otherwise stated in the Contract, the CONTRACTOR agrees that all or a portion of the work required by this Contract is a governmental function of the OWNER.

103.2. AWARD OF CONTRACT

The OWNER will attempt to award the Contract within 90 days after the opening of proposals. The award, if made, shall be to the lowest responsible bidder; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the Contract. If awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract.

103.3. SURETY BONDS

103.3.1. CONTRACTOR Surety Bonds. 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 Texas Government Code, Chapter 2253, as amended, and Section 3503.002 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement 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. If performance and payment bond forms are included in the bid documents, these forms shall be used with this Contract.

103.3.1.1. Performance Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or, conditioned on the faithful performance of the work in accordance with the plans, specifications and Contract documents, including performance of any guarantees or warranties required by OWNER, and including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one

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year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the Contract documents.

103.3.1.2. Payment Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime CONTRACTOR or a SUBCONTRACTOR to supply public work labor or material.

103.3.1.3. Additional or Substitue Bonds. If at any time the OWNER is or becomes dissatisfied with any surety on a performance or payment bond, the CONTRACTOR shall, within five 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 premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds have been furnished to and accepted by the OWNER.

103.3.1.4. Bond Amounts Based on Contract Amount. If the amount of the Contract, including OWNER -accepted alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds in 100% of the Contract amount are mandatory and shall be provided by the bidder receiving the award. If the Contract amount is greater than $50,000 but less than or equal to $100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the bidder receiving the award may elect to furnish a Performance Bond in the same amount if the bidder so chooses. If the Contract amount is less than or equal to $50,000, the bidder receiving the award may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the CONTRACTOR until final completion and acceptance of all work by OWNER. If the bidder receiving the award elects to provide Performance and Payment Bonds in 100% of the Contract amount, progress payments will be disbursed in accordance with the applicable Contract provisions.

103.3.2. Developer Surety Bonds. In order to insure that it might not incur liabilities, an OWNER may require, before it gives approval of the plans for development, that the OWNER of said development shall provide sufficient surety bond(s) to guarantee that claims against such development, in the event of default, shall be satisfied. Model Forms A.10, through A.13, for private development are in Appendix A. Claimants may also seek recovery by other means.

103.3.3. Sureties. No sureties shall be accepted by the OWNER who are now in default or delinquent on any bonds or who are interested in any litigation against the OWNER. All bonds shall meet the applicable requirements of Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the OWNER. The Texas Insurance Board can be contacted at 800-578-4677. Each bond shall be executed by the CONTRACTOR and surety. Each surety shall designate on the bond the name, address and phone number of a representative for the surety located in a county of the State of Texas 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 suretyship. The OWNER reserves the right to reject any and all sureties.

103.4. INSURANCE

Any insurance policies required under this Item 103.4. Insurance may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

103.4.1. CONTRACTOR'S Insurance. Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract the CONTRACTOR and each SUBCONTRACTOR at its own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. In no case shall the insurance be less than that specified in the contract by the OWNER. Certificates of each policy and a copy of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, renewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of

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premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. A model Certificate of Insurance is illustrated in Model Form A.6. in Appendix A. Coverage shall be of the following types and not less than the specified amounts:

103.4.1.1. Worker's Compensation. Workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than $100,000 for each accident, $100,000 disease - each employee, $500,000 disease - policy limit.

103.4.1.2. Commercial General Liability. Commercial general liability insurance, including independent CONTRACTOR'S liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring CONTRACTOR'S (or SUBCONTRACTOR'S) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth in Table 103.4.1.2.(a) General Liability Insurance Minimum Coverage.

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with OWNER.

Table 103.4.1.2.(a) General Liability Insurance Minimum Coverage

General Aggregate	$1,000,000
Products - Components/Operations Aggregate	$1,000,000
Personal and Advertising Injury	$ 600,000
Each Occurrence	$ 600,000
Fire Damage (any one fire)	$ 50,000
Medical Expense (any one person)	$ 5,000

103.4.1.3. Automobiles. Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of $600,000 per occurrence; or separate limits of $250,000 for bodily injury (per person), $500,000 for bodily injury (per accident) and $100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

103.4.2. OWNER'S Protective Liability Insurance. CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this Contract an OWNER'S protective liability insurance policy naming the OWNER and the Engineer as insureds for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this Contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR'S liability insurance with a combined bodily injury and property damage minimum limit of $600,000 per occurrence and $1,000,000 aggregate.

103.4.3. "Umbrella" Liability Insurance. If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring CONTRACTOR for an amount of not less than $1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insureds.

103.4.4. Railroad Protective Insurance. When required in the Special Provisions, CONTRACTOR shall obtain, maintain and present evidence of railroad protective insurance (RPI). The policy shall be in the name of the railroad company having jurisdiction over the right-of-way involved. The minimum limit of coverage shall meet the specifications provided by the railroad company. The OWNER shall specify the amount of RPI necessary.

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103.4.5. Policy Endorsements and Special Conditions

103.4.5.1. Endorsements. Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:

(1) each policy shall name the OWNER as an additional insured as to all applicable coverage;
(2) each policy shall require that 30 days prior to the cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to OWNER by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to OWNER is required;
(3) the term "OWNER" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the OWNER and individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the OWNER;
(4) the policy phrase "other insurance" shall not apply to the OWNER where the OWNER is an additional insured on the policy; and
(5) all provisions of the Contract concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

103.4.5.2. Insurance Requirements. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:

(1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final;
(2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
(3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.

103.4.5.3. CONTRACTOR Agreements. CONTRACTOR agrees to the following:

(1) CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the OWNER, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;
(2) companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
(3) approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any SUBCONTRACTORS) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability; and
(4) no special payments shall be made for any insurance that the CONTRACTOR and SUBCONTRACTORS are required to carry; all are included in the Contract price and the Contract unit prices.
(5) approval, disapproval or failure to act by OWNER regarding any insurance supplied by CONTRACTOR or its SUBCONTRACTORS shall not relieve CONTRACTOR of full responsibility or liability for damages, errors, omissions or accidents during the term of the Contract.

103.5. EXECUTION OF CONTRACT

103.5.1. OWNER AND CONTRACTOR Responsibilities. The CONTRACTOR shall within 10 business days after receipt of the Contract sign the necessary agreements entering into the required Contract with the OWNER. No Contract shall be binding on the OWNER until all authorized signatures required by law have been affixed and the executed Contract delivered to the CONTRACTOR.

103.5.2. Failure to Execute. The failure of the CONTRACTOR to execute the Contract or provide the required statutory surety bonds within 10 business days after the Contract is received shall constitute a breach of its proposal and the OWNER may annul the award and retain the proceeds of the bid security. In the event the OWNER should re-advertise for bids, the defaulting CONTRACTOR may not be eligible to bid.

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103.6. NOTICE TO PROCEED AND COMMENCEMENT OF WORK

Upon OWNER receipt of the executed Contract and the required insurance and surety bonds, a notice to proceed shall be issued by the OWNER indicating the date upon which the Contract time shall start and the projected date of completion. The OWNER will attempt to provide the notice to proceed within the time specified in the plans. The CONTRACTOR shall commence work within 10 days from the date specified in the written notice to proceed. No work shall commence before the notice to proceed has been issued. Unless otherwise specified in the contract, there shall be a preconstruction meeting between the OWNER and CONTRACTOR prior to the commencement of work.

103.7. DELAY OF CONTRACT

The CONTRACTOR shall not be entitled to any claim for damages due to delay in the award or notice to proceed. If the CONTRACTOR encounters any delay occasioned by the OWNER'S failure or inability to obtain right-of-way or is delayed by the relocation or removal of any of the utilities or other installations of similar kind, the CONTRACTOR shall not be entitled to any claim for damages by virtue of any delay. Should the OWNER unreasonably delay the issuance of the notice to proceed through no fault of the CONTRACTOR, the CONTRACTOR shall be entitled only to an extension of Contract time, the Contract amount to remain unchanged. The OWNER has the right to reject any and all bids and to accept or reject any and all schedules. At such time as actual construction has been started, the work will not be stopped or delayed without written permission of the OWNER, excluding delays caused by adverse weather conditions. The CONTRACTOR shall maintain at all times sufficient equipment and personnel on the project to produce satisfactory progress during the construction period.

103.8. ORDER OF WORK TO BE PERFORMED

After a contract has been awarded and before the "Notice to Proceed" is issued, the OWNER reserves the right to prioritize the order of the Work to be performed.

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ITEM 104. SCOPE OF WORK

104.1. INTENT OF CONTRACT DOCUMENTS

The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the Contract documents. It is not intended to mention every item of work in the specifications that can be adequately shown on the drawings nor to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions or obligations contained in the Contract documents.

The CONTRACTOR shall do all work as provided in the plans, specifications, special provisions, bid and contract, and shall do such additional extra work as may be considered necessary to complete the work in a satisfactory manner acceptable to the OWNER. The CONTRACTOR shall furnish all labor, tools, materials, machinery, equipment, and incidentals necessary to the satisfactory prosecution and completion of the work.

104.1.1. Arrangement of Specifications and Headings. The inclusion of any particular specification in the various sections and divisions of these specifications does not indicate that it is applicable only to work specified within that section. For any particular item of work on any type of project, the specification describing that item shall govern regardless of the section of these specifications within which it is included. The specifications included herein are grouped together for convenience only and not for the purpose of restricting the application of any specification.

The titles and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this contract.

104.2. CHANGE OR MODIFICATION OF CONTRACT

104.2.1. Increased or Decreased Quantities of Work. The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable, and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

The OWNER reserves the right to decrease the work under this Contract. Payment to the CONTRACTOR for the Contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the Contract, except as provided below.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is more than 125 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the Contract.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is less than 75 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the work performed.

Any revised consideration shall be paid for as is hereinafter provided under Item 109.3. Payment for Extra Work. The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a bid and execution of the Contract, is deemed to consent to the OWNER'S right to reduce the total original Contract amount by more than 25 percent.

The Contract amount or the Contract time can only be increased or decreased by a properly written change order.

104.2.2. Alteration of Plans and Specifications. The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be

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considered as waiving or invalidating any condition or provision of the Contract and bonds. Such changes shall be issued by the OWNER.

104.2.3. Extra Work. When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and Contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the OWNER. Extra Work is further explained in Item 109.3. Payment for Extra Work and Item 104.3. Disputed Work and Claims for Additional Compensation. Payment for Extra Work shall be made as hereinafter provided in Item 109.3. Payment for Extra Work. No work shall be undertaken which requires extra payment without having an executed change order approved by the CONTRACTOR and the OWNER, except when so ordered in writing.

104.2.4. Finality of Change Orders. In addition to the OWNER, the CONTRACTOR shall sign the Change Order Documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the CONTRACTOR to sign a Change Order shall not relieve the CONTRACTOR of its obligation to execute the proposed changes in accordance with this Item and the other terms and provisions of this Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.

104.2.5. General Claim Procedures. Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

104.3. DISPUTED WORK AND CLAIMS FOR ADDITIONAL COMPENSATION

If the CONTRACTOR is of the opinion that:

(1) certain work necessary or required to accomplish the result intended by this Contract or certain work ordered to be done as contract work by the OWNER is actually Extra Work and not CONTRACTOR work, or

(2) any determination or order of the OWNER violates the terms and provisions of this Contract, then the CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of its contentions with respect thereto and request a final determination by the OWNER. Such determination of the OWNER shall be given in writing to the CONTRACTOR. If the OWNER determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by the CONTRACTOR beyond that required by the Contract or violates the terms and provisions of the Contract, thereupon the OWNER shall cause either (a) the issuance of a change order covering the Extra Work as provided for in Item 104.2. Change or Modification of Contract hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the Contract.

If the OWNER determines that the work in question is Contract Work and not Extra Work, or that the determination or order complained of does not require performance by the CONTRACTOR beyond that required by the Contract or violate the terms and provisions of the Contract, the OWNER shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve its right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within fourteen (14) days after receiving the OWNER'S determination and direction, notify the OWNER in writing that the work is being performed, or that the determination and direction is being complied with, under protest. If the OWNER is properly notified of a protest by the CONTRACTOR, then the cost of such disputed work shall be accounted for in accordance with the force account method described in Item 109.3.3. Force Account Work. Payment, if any is due, shall be made when the OWNER makes a final determination regarding the merit of the CONTRACTOR'S protest. The final determination of the cost

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of disputed work under this method, or of any issue regarding the merits of a protest, is not waived by the OWNER'S issuance of any Change Order providing for the funding of the disputed work.

If the CONTRACTOR fails to so appeal to the OWNER for a determination or, having so appealed, should the CONTRACTOR thus fail to notify the OWNER in writing of its protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefore. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the CONTRACTOR due to a court order against the OWNER, or due to the OWNER'S failure to secure right-of-way at the time required or because of a conflict of a utility with the work, shall not be cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of Contract working time only.

In addition to the foregoing requirements, the CONTRACTOR shall, upon notice from the OWNER, produce for examination and audit at the CONTRACTOR'S office, by the representatives of the OWNER, all its books and records showing all of its acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the CONTRACTOR may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the CONTRACTOR, the OWNER shall be released from all claims arising under, relating to or by reason of this Contract, except for the sums to be due under the payment provisions of this Contract. It is further stipulated and agreed that no conduct on the part of the OWNER or any agent or employee of the OWNER shall ever be construed as a waiver of the requirements of this section, when such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the Contract documents; and in any action against the OWNER to recover any sum in excess of the Contract amount, the CONTRACTOR must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the OWNER, upon demand therefore, shall also produce for inspection by the CONTRACTOR such records as the OWNER may have with respect to such disputed work or work performed under protest pursuant to order of the OWNER, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the CONTRACTOR'S claim.

104.4. PERFORMANCE OF EXTRA OR DISPUTED WORK

While the CONTRACTOR or any SUBCONTRACTOR is performing Extra Work in accordance with Item 109.3.3. Force Account Work or is performing disputed work or complying with a determination or order under protest in accordance with Item 104.3. Disputed Work and Claims for Additional Compensation (the cost of which shall also be determined by the method set out in Item 109.3.3. Force Account Work), the CONTRACTOR shall daily furnish the OWNER or other representative of the OWNER at the project site with three copies of verified statements showing:

(1) the name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on such work or engaged in complying with such determination or order, the character of such work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution for insurance and federal social security; and

(2) the nature, cost and quantity of any materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of such work or in complying with such determination or order, and from whom purchased or rented.

The above required statements and submittals are in addition to and not in lieu of statements or submittals required under Item 104.3. Disputed Work and Claims for Additional Compensation and Item 109.3. Payment for Extra Work. A copy of such statements shall be signed by the OWNER'S representative, noting thereon any items in question, and shall be returned to the CONTRACTOR within two working days after submission. This signature shall not be construed as the OWNER'S agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by OWNER representatives.

The CONTRACTOR and its SUBCONTRACTORS, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of their books, vouchers, records, daily job diaries and reports, canceled checks, etc. showing the nature and quantity of labor, materials and equipment actually used in the performance of the such Work or Disputed Work; the amounts expended therefore; and the costs

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incurred for insurance premiums and other items of expense directly chargeable to such Extra Work or Disputed Work. The CONTRACTOR must permit the OWNER'S representatives to make extracts there from or copies thereof as may be desired.

Failure of the CONTRACTOR to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work or Disputed Work.

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ITEM 105. CONTROL OF WORK

105.1. CONTRACT DOCUMENTS

105.1.1. Priority of Contract Documents. In case of conflict between Contract documents, priority of interpretation shall be in the following order:

(1) signed agreement (or Contract);
(2) performance and payment bonds;
(3) proposal;
(4) special provisions (or conditions);
(5) advertisement for bids (or invitation to bidders, or request for proposals);
(6) project (or Contract) drawings;
(7) Standard Specifications from Public Works Construction Standards - North Central Texas, and any addendum;
(8) Standard Drawings from Public Works Construction Standards - North Central Texas, and any addendum;
(9) referenced specifications.

105.1.2. Correlation of Documents. The Contract documents are complementary and what is called for by any one shall be as binding as if called for by all.

105.1.3. Contract Drawings and Specifications. The OWNER shall furnish the CONTRACTOR such copies of the Contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and specifications shall be accessible at all times to the OWNER at the job site.

The plans, the specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the Contract. All requirements occurring in any of them are binding. In cases of discrepancies, figured dimensions shall govern over scaled dimensions; plans shall govern over Standard Specifications, special provisions shall govern over both plans and Standard Specifications.

All other provisions of these Standard Specifications shall remain in force.

105.1.4. Supplemental Drawings and Specifications. In order to carry out the intent of the Contract documents and to assist the CONTRACTOR in performing its work, the OWNER, after the execution of the Contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the Contract documents and reasonably inferable therefrom. Therefore, no extra costs shall be allowed by the OWNER on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the Contract documents, incurring extra costs, unless the CONTRACTOR has first brought the matter, in writing, to the OWNER'S attention for adjustment before proceeding with the work covered by such.

If the OWNER shall decide that there is no departure from the requirements of the Contract documents, the CONTRACTOR shall then proceed with the work as shown, specified or directed. If the OWNER shall decide that extra work is involved, OWNER shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued in accordance with Item 104.2. Change or Modification of Contract herein.

105.1.5. Referenced Standards. All referenced State, Federal, and National standards are the most current version in effect, unless specifically noted otherwise. Referenced standards may include, but are not limited to, the latest version of publications such as TxDOT *Standard Specifications for Construction of Highways, Streets and Bridges*, TxDOT *Manual of Testing Procedures*, Federal Specifications, ASTM designations, AWWA standards, TMUTCD, ADA, TAS, and standards of other professional societies and associations.

105.1.6. Errors and Corrections in Drawings and Specifications. The OWNER shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract documents. The CONTRACTOR shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or

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specifications, the CONTRACTOR shall promptly submit the matter to the OWNER who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the CONTRACTOR without this determination and instructions shall be at the CONTRACTOR'S own risk and expense. The work is to be made complete as intended by the Contract documents.

105.2. WORKMANSHIP, WARRANTIES, AND GUARANTEES

105.2.1. Workmanship. Unless otherwise expressly provided in the Contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR'S compliance with these requirements.

105.2.2. Special Warranty. If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract documents, any of the work is found to be defective or not in accordance with the Contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

105.2.3. SUBCONTRACTORS' and Manufacturers' Warranties. All SUBCONTRACTORS', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the OWNER, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

105.2.4. Corrected Work Warranty. Any work repaired or replaced shall be subject to the provisions of this section to the same extent as work originally performed.

105.2.5. Rights and Remedies. The rights and remedies of the OWNER provided in this section are in addition to, and do not limit, any rights or remedies afforded to the OWNER by law or any other provision of the Contract documents, or in any way limit the OWNER'S right to recovery of damage due to default under the Contract.

105.3. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Shop drawings are drawings, diagrams, schedules and other data specially prepared for the work by the CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor to illustrate some portion of the work. Product data or manufacturer's data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the work. Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the work shall be judged.

With reasonable promptness and in such sequence as to cause no delay in the work or in the work of the OWNER or any separate CONTRACTOR, CONTRACTOR shall submit an acceptable number of copies of shop drawings, layouts, manufacturer's data and material schedules as may be required by the OWNER for review. Submittals may be checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER may require. Such review by the OWNER shall include checking for general conformance with the design concept of the project and general compliance with information given in the General Contract Documents. Indicated actions by the OWNER, which may result from OWNER'S review, shall not constitute concurrence with any deviation from the plans and specifications unless such deviations are specifically identified by the method described below, and further shall not relieve the CONTRACTOR of responsibility for errors or omissions in the submitted data. The OWNER may require that certain submittals be sealed by a licensed Texas Engineer. Processed shop drawing submittals are not change orders.

If deviations, discrepancies or conflicts between submittals and the design drawings and/or specifications are discovered, either prior to or after submittals are processed, the design drawings and specifications shall govern. Any deviation from the specified criteria shall be expressly stated in writing in the submittal. The CONTRACTOR shall not be relieved of responsibility for any deviation from the requirements of the Contract documents by the OWNER'S approval of shop drawings, product data or samples unless the CONTRACTOR has specifically informed

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the OWNER in writing of such deviation at the time of submission and the OWNER has given written approval to the specific deviation.

The purpose of submittals by the CONTRACTOR is to demonstrate that the CONTRACTOR understands the design concept, and that it demonstrates its understanding by indicating which equipment and materials it intends to furnish and install, and by detailing the fabrication and installation methods it intends to use. The CONTRACTOR shall be responsible for dimensions that are to be confirmed and correlated at the job site, fabrication processes and techniques of construction, coordination of its work with that of other trades and satisfactory performance of its work. The CONTRACTOR shall check and verify all measurements and review submittals prior to being submitted, and sign or initial a statement included with the submittal, which signifies compliance with plans and specifications and dimensions suitable for the application. No portion of the work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the OWNER. All such portions of the work shall be in accordance with approved submittals.

The CONTRACTOR shall be responsible for delays caused by rejection of the submittal of inadequate or incorrect shop drawings, product data or samples. The CONTRACTOR shall be responsible for providing all copies of approved shop drawings necessary for the construction operations. Three (3) copies of the approved submittals shall be retained by the CONTRACTOR until completion of the project and presented to the OWNER in bound form.

105.4. CONSTRUCTION STAKES

Unless otherwise expressly provided in the Contract drawings or specifications, the CONTRACTOR is responsible for locating or reestablishing project survey control, construction staking, including benchmarks, centerlines, and other measurements necessary for the proper execution of the project. The OWNER shall furnish the CONTRACTOR with all necessary information relating to the lines and grades.

All surveying under this section performed by the CONTRACTOR shall be done by a Texas Registered Professional Land Surveyor (RPLS). After completion of staking, the CONTRACTOR shall furnish survey field notes and cut sheets to the OWNER for review. Review of survey field notes and cut sheets shall in no way relieve the CONTRACTOR of liability for incorrectly setting stakes. When not listed as a separate pay item in the Contract, construction staking shall be considered as incidental work, and the cost thereof shall be included in such pay items as are provided in the Contract.

105.5. MEANS AND METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the Contract drawings, specifications or bulletins, the means and methods of construction shall be such as the CONTRACTOR may choose; subject, however, to the OWNER'S right to prohibit means and methods proposed by the CONTRACTOR which in the OWNER'S judgment:

(1) shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
(2) shall cause unnecessary or unreasonable inconvenience to the public; or
(3) shall not produce finished work in accordance with the requirements of the Contract documents; or
(4) shall not assure the work to be completed within the time allowed by the Contract.

The OWNER'S approval of the CONTRACTOR'S means or methods of construction, or the OWNER'S failure to exercise OWNER'S right to prohibit such means or methods, shall not relieve the CONTRACTOR of its responsibility for the work or of its obligation to accomplish the result intended by the Contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the CONTRACTOR against the OWNER.

Where the Contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, sequencing of construction or a specific traffic control plan, the CONTRACTOR shall submit its proposed plan of procedure, sequencing or traffic control plan to the OWNER sufficiently in advance of the work affected to permit a reasonable time for review and comments. The sequence of construction and traffic control plan must be approved in advance by the OWNER before construction begins. Failure to submit the proposed plan within a reasonable time shall not create a claim for damages for resulting delay in the work or for damages, nor shall it be a cause for extension of working time to complete the work.

CONTRACTOR further agrees to defend and indemnify OWNER for any claim or cause of action brought by any third party against the OWNER provided for in Item 107.3. Indemnification hereof.

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105.5.1. Conformity with the Plans. All work shall conform to the lines, grades, cross-sections, and dimensions shown on the plans. Any deviation from the plans which may be required by the emergency needs of construction will be determined and authorized in writing by the OWNER.

105.5.2. Public Utilities and Other Property to be Changed. In case it is necessary to change or move the property of any OWNER or of a public utility, such property shall not be moved or interfered with until ordered to do so by the OWNER. The right is reserved to the OWNER of public utilities to enter upon the limits of the contract for the purpose of making such changes or repairs to their property that may be made necessary by performance of the contract. The OWNER reserves the right of entering upon the limits of a contract for the purpose of repairing or relaying sewer and water lines and appurtenances, repairing structures, etc. and for making other repairs, changes, or extensions to any property on the project site.

105.6. SUPERVISION BY CONTRACTOR

The status of the CONTRACTOR is that of an independent CONTRACTOR under Texas law and the work under this Contract shall be under the direct charge and superintendence of the CONTRACTOR. Except where the CONTRACTOR is an individual and gives its personal superintendence to the work, the CONTRACTOR shall provide a competent superintendent or general foreman on the work site at all times during progress with full authority to act for CONTRACTOR. The CONTRACTOR shall also provide an adequate staff for the coordination and expediting of its work.

The superintendent and staff shall be satisfactory to the OWNER. The superintendent or general foreman shall not be changed during this Contract except with the written consent of the OWNER or unless the superintendent or general foreman proves unsatisfactory to the CONTRACTOR and ceases to be in its employ.

If the superintendent or any staff should be or become unsatisfactory to the OWNER, he/she shall be removed by the CONTRACTOR upon written direction of the OWNER, and in such event, the CONTRACTOR shall not be entitled to file a claim for any additional working time or money from the OWNER.

The CONTRACTOR shall provide the OWNER a list of a minimum of three working contacts who are available 24 hours per day, seven days per week.

105.7. OWNER'S REPRESENTATIVES

Where the Contract documents indicate that determinations, directions or approvals shall be made by the OWNER or "OWNER'S representatives," this shall mean the OWNER acting directly, or through duly authorized persons acting within the limit of authority delegated to them.

105.7.1. Authority of the Engineer. All work shall be performed in a good and workmanlike manner and to the satisfaction of the Engineer. The Engineer shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the Contract, compensation, mutual rights between CONTRACTORS under these specifications and suspension of the work. Engineer shall determine the amount and quality of work performed and materials furnished, and Engineer's decisions and estimates shall be final. Engineer estimate in such event shall be a condition precedent to the right of the CONTRACTOR to receive money due under the Contract.

105.7.2. OWNER'S Representative's Final Determination. The OWNER'S representative's determinations shall be final relative to the proper performance of the work and the materials used, and the CONTRACTOR is bound thereby.

It is hereby covenanted and agreed between the two parties of this Contract that the OWNER'S representative shall review and determine all disputes, controversies or claims of either party in relation to this Contract or its performance. Such determination shall be made in writing by the OWNER'S representative within a reasonable time and shall be final and conclusive upon both the CONTRACTOR and the OWNER. It is further covenanted and agreed between the two parties to the Contract that the determination by the OWNER'S representative shall be a condition precedent to the right of any legal action at law or in equity that either party may have against the other.

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105.8. SERVICE OF NOTICES

The OWNER and the CONTRACTOR shall designate an address and, if available, a facsimile number, an email address, and other mutually agreeable contact methods where all notices, directions or other communications may be delivered.

Notices to the surety or sureties on Contract bonds shall be directed or delivered to the surety's home office or to the surety's designated agent for delivery of notices.

Service by mail shall be presumed complete upon deposit of the paper, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile or email after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day.

A party may change its designated address, facsimile number, email address, or other mutually agreeable method of communication by delivering written notice of the change, properly signed, to all interested parties.

Nothing herein contained shall be deemed to preclude hand delivery of any notice, direction or communication to a party mentioned above.

105.9. INSPECTION

It is the intent of the OWNER to inspect all work on this project. The CONTRACTOR shall obtain written verification from the OWNER if an inspector is not needed before proceeding with that particular item of work. The CONTRACTOR must pay for all testing needed to determine acceptability for any work done without inspection, as directed by the OWNER.

The CONTRACTOR shall furnish the OWNER with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the OWNER may be ordered removed and replaced at the CONTRACTOR'S expense.

105.9.1. Removal of Defective and Unauthorized Work. All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be 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 plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR'S risk and shall 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 or condemned work or materials immediately after receiving notice from the OWNER, the OWNER shall, 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. Alternatively, the OWNER may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the Contract.

105.9.2. Final Inspection. Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the improvement is ready for final inspection. If the work is not acceptable to the OWNER at the time of such inspection, OWNER shall inform CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made. CONTRACTOR shall promptly remedy the identified defects. The OWNER will notify the CONTRACTOR of the time allowed for correction of the unacceptable items found during the final inspection. The OWNER shall make final inspection of all work included in the Contract as soon as practicable after remedies have been made and the work is ready for acceptance.

105.9.3. Inspection Overtime. Project inspectors must be paid via the contract. The CONTRACTOR is required to reimburse the OWNER or its designated representative for the cost of all inspection overtime which may be necessary for the successful and expeditious prosecution of the work included in this Contract. Requests for overtime inspection must be submitted to the OWNER two working days in advance and on the proper form. Payment to the OWNER or its designated representative for overtime inspection costs will be made within 10 days of receipt of invoice. Failure to submit payment for overtime inspection may result in the

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OWNER withholding the next monthly partial payment. No additional compensation or time shall be granted the CONTRACTOR for withheld monthly partial payments due to nonpayment of inspector overtime.

The maximum overtime rate for construction inspectors shall be determined by the OWNER. In case of disputes, the OWNER'S decision shall be final. Model Form A.8. Inspection Overtime is included in Appendix A.

105.10. ACCEPTANCE

Once the work is satisfactory to the OWNER and in accordance with the specifications and Contract documents, the CONTRACTOR shall be issued a certificate of acceptance. The Certificate of Acceptance will not be issued until all work required by the Contract, including all water and wastewater appurtenances have been adjusted to their final position.

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ITEM 106. CONTROL OF MATERIAL

106.1. SUBSTITUTION OF MATERIALS

The specifications for materials set out the minimum standard of quality that the OWNER believes necessary to procure a satisfactory project. No substitutions will be permitted until the CONTRACTOR has received written permission of the OWNER to make a substitution for the material that has been specified. Requests for substitution shall be made prior to the date of the preconstruction conference.

Where the term "or equal," or "or approved equal" is used, it is understood that if a material, product, or piece of equipment bearing the name so used is furnished it will be approvable, as the particular trade name was used for the purpose of establishing a standard of quality acceptable to the OWNER. If a product of any other name is proposed for use, the OWNER'S approval thereof must be obtained before the CONTRACTOR procures the proposed substitute.

Where the term "or equal," or "or approved equal" is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, as the representative of the OWNER, shall be the sole judge of the acceptability of substitutions. The provisions of this sub-section as related to "Substitutions" shall be applicable to all sections of these specifications.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the OWNER shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the OWNER.

106.2. MATERIALS AND EQUIPMENT

The CONTRACTOR shall be free to obtain the approved materials, equipment and articles from sources of its own selection. However, if the OWNER finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work, the OWNER shall have the right to require the original source of supply changed by the CONTRACTOR. The CONTRACTOR shall have no claim for extra cost or damage because of this requirement.

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the Contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR'S sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

106.3. SALVAGEABLE MATERIAL

All salvageable material shall be designated by and remain the property of the OWNER. Any designated salvageable material that is destroyed or damaged due to negligence of the CONTRACTOR shall be replaced with new material by the CONTRACTOR at no expense to the OWNER. Salvage material, unless designated for reuse, shall be returned to a location designated by the OWNER.

106.4. OFF-SITE STORAGE

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by the OWNER, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground, and shall be placed under cover when directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

Payment for costs incurred in storage of materials or equipment away from the project site will not be made by the OWNER unless:

(1) the OWNER has approved off-site storage in writing; and
(2) the materials will not be incorporated into the project within the next 60 days;

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(3) the materials or equipment are stored in a bonded warehouse located in the County approved by the OWNER and identified with the project for which they are stored as evidenced by warehouse receipts and appropriate documents of title;
(4) an official PAID receipt from the material supplier is provided; and
(5) CONTRACTOR may invoice only for the amount actually paid for the storage of the material.
(6) Storage in facilities of the manufacturer or CONTRACTOR will not be permitted or paid for, unless such storage is expressly approved in writing by the OWNER.

106.4.1. Early Delivery to Project Site. All materials or equipment delivered to the project site earlier than thirty (30) days prior to an approved schedule for delivery to the project site shall be classified as an "early delivery". All early delivery materials or equipment must have written permission of the OWNER to be stored on the project site. Should any unauthorized early delivery occur, CONTRACTOR shall, at the CONTRACTOR'S expense, cause such early delivery to be removed from the project site and stored off-site until required at the project site. All costs of labor, transportation and storage will be included as part of the expense. If the CONTRACTOR fails or refuses to remove unauthorized early delivery materials, the OWNER may cause such materials to be removed at the CONTRACTOR'S sole expense, and amounts may be withheld from the CONTRACTOR'S Application for Payment to reimburse the OWNER for any costs incurred in removing unauthorized early delivery materials. The OWNER will not be responsible for the protection of or risk of loss on any early delivery materials or equipment, nor will the OWNER be liable for any payment thereon.

106.5. SAMPLES AND TESTS OF MATERIALS

Unless otherwise stipulated in the Contract documents, initial testing of all materials, construction items or products incorporated in the work shall be performed at the direction and expense of the OWNER, including initial compaction and density tests deemed necessary.

In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove out test shall be made as directed by the OWNER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER to make any tests of materials shall in no way relieve the CONTRACTOR of its responsibility of furnishing materials conforming to the Contract documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials. The CONTRACTOR shall provide such facilities as the OWNER may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made. The CONTRACTOR shall furnish adequate samples without charge. Test materials and samples shall be stored so as to ensure the preservation of their quality and fitness for the Work. If directed by the OWNER, they shall be placed on wooden platforms or other hard, clean surfaces and shall be placed under cover when directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

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 determine what extra inspection is and shall determine the additional cost incurred thereby and payable by the CONTRACTOR, and such determination shall be final.

106.6. SURPLUS MATERIALS

Surplus materials shall be disposed of by the CONTRACTOR at his expense. Surplus materials including excavation shall be removed from the site unless specified otherwise under the performance specifications.

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ITEM 107. LEGAL RELATIONS AND CONTRACTOR RESPONSIBILITIES

107.1. CONTRACTOR INDEPENDENCE

While engaged in carrying out and complying with the terms and conditions of this Contract the CONTRACTOR is, and shall be, an independent CONTRACTOR and shall not, with respect to its acts or omissions, be deemed an officer, employee or agent of the OWNER. The CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the OWNER.

CONTRACTOR is, and shall remain, an independent CONTRACTOR, with full, complete and exclusive power and authority to direct, supervise, and control its own employees and SUBCONTRACTORS and to determine the method of the performance of the work covered under this Contract. The fact that the OWNER or the Engineer shall have the right to inspect or observe CONTRACTOR'S work during performance and to exercise the other rights and prerogatives expressly reserved to the OWNER or the Engineer under this Contract is not intended to, and shall not any time, change or affect the status of the CONTRACTOR as an independent CONTRACTOR with respect to the OWNER, the CONTRACTOR'S own employees or any other person, firm or corporation.

Nothing contained in the Contract documents shall create any contractual or agency relationship between the Engineer and the CONTRACTOR.

107.2. NO THIRD PARTY CONTRACTUAL RIGHTS

This Contract is solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

107.3. INDEMNIFICATION

CONTRACTOR covenants and agrees to and does hereby indemnify, hold harmless and defend, at its own expense, OWNER, its officers, officials, agents and employees, from and against any and all claims or suits, judgments and costs and expenses for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of the work and services to be performed hereunder by CONTRACTOR, its officers, officials, agents, employees, SUBCONTRACTORS, licensees or invitees, whether or not caused, in whole or in part, by the alleged negligence of the officers, agents, and employees, of the OWNER. CONTRACTOR likewise covenants and agrees to, and does hereby, indemnify and hold harmless OWNER from and against any and all injuries, damage, loss or destruction to property of OWNER during the performance of any of the terms and conditions of this contract, whether arising out of in whole or in part, any and all alleged acts or omissions of officers, agents, or employees of OWNER.

The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

107.4. OWNER'S OFFICERS, EMPLOYEES OR AGENTS

107.4.1. Claim Against Officers, Employees or Agent of the OWNER. No claim whatsoever shall be made by the CONTRACTOR against any officer, employee, or agent of the OWNER for or on account of, anything done or omitted to be done in connection with this Contract.

107.4.2. Financial Interest in Any Contract by OWNER'S Officers, Employees or Agents. CONTRACTOR is hereby advised to comply with the OWNER'S financial interest or comparable policy. If OWNER does not implement a financial interest or comparable policy of its own, provisions of this Item shall govern matters of financial interest.

No officer, employee, or agent of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER or be financially interested, directly or indirectly, in the sale to the OWNER of any land, materials, supplies or services, except on behalf of the OWNER as an officer or employee. Any violation of this article with the knowledge, expressed or implied, of the persons, partnership, company, firm, association or corporation contracting with the OWNER shall render the Contract involved voidable by the OWNER.

107.4.3. Conflict of Interest. CONTRACTOR shall complete and submit the State of Texas Conflict of Interest Questionnaire, form CIQ as required by Texas Local Government Code, Chapter 176.

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107.5. VENUE AND GOVERNING LAW

The parties herein agree that this Contract shall be performed in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the Contract documents shall be construed in accordance with the laws and court decisions of the State of Texas.

107.6. NO WAIVER OF LEGAL RIGHTS

Inspection by the OWNER; any order, measurement, quantity or certificate by the OWNER; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the Contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of Contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the Contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or its agents that is discovered in the work by the OWNER after the final payment has been made.

Neither final acceptance of the work nor final payment shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship, and the CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the Contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

The OWNER, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefrom:

(1) showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the CONTRACTOR or any other person under this Contract, or
(2) from showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect or improperly made in any particular, or
(3) that the work or the materials or any parts thereof do not in fact conform to the Contract requirements; and
(4) demanding the recovery from the CONTRACTOR of any overpayments made to it, or such damages as the OWNER may sustain by reason of the CONTRACTOR'S failure to perform each and every part of this Contract in strict accordance with its terms; or both.

107.7. SEVERABILITY

In the event a term, condition, or provision in this Contract is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition or provision, shall be deleted and the remainder of the Contract shall remain in full force and effect.

107.8. HEADINGS

The title and headings contained in the Contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope of intent of any of the provisions of this Contract.

107.9. OBLIGATIONS TO PERFORM FUNCTIONS

Any failure or neglect on the part of OWNER, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the Contract documents nor render OWNER liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

107.10. PERFORMANCE OF THE WORK

In addition to those matters elsewhere expressly made the responsibility of the CONTRACTOR, the CONTRACTOR shall have the full and direct responsibility for the performance and completion of the work under this Contract and for any act or neglect of the CONTRACTOR, its agents, employees or SUBCONTRACTORS. CONTRACTOR shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under

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which the work must be done are different from what CONTRACTOR estimated or anticipated, or because of weather, floods, elements or other causes, regardless of the expected completion date set forth in the Contract Documents.

107.11. SUCCESSORS AND ASSIGNS

Subject to the limitations upon assignment and transfer herein contained, this Contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

107.12. SUPERVISION AND CONSTRUCTION PROCEDURES

The CONTRACTOR shall supervise and direct all the work, using its best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

The CONTRACTOR shall carefully study and compare the Contract documents and shall at once report to the OWNER any error, inconsistency or omission it may discover. The CONTRACTOR shall perform no portion of the work at any time without Contract documents or, where required, approved shop drawings, product data or samples for such portion of the work.

The CONTRACTOR shall be responsible to the OWNER for the acts and omissions of the OWNER'S employees, SUBCONTRACTORS, and agents, as well as the CONTRACTOR'S employees and SUBCONTRACTORS performing any of the work under a contract with the CONTRACTOR. The CONTRACTOR shall at all times enforce strict discipline and good order among its employees and shall not employ on the work site any unfit person or anyone not skilled in the task assigned to him or her.

The CONTRACTOR shall not be relieved from its obligations to perform the work in accordance with the Contract documents either by the activities or duties of the OWNER in its administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the CONTRACTOR.

The CONTRACTOR shall give to the work the consistent attention necessary to facilitate the progress thereof, and the CONTRACTOR shall cooperate with the OWNER, and with other CONTRACTORS in every way possible.

The OWNER and the OWNER'S representatives shall at all times have free access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide safe, convenient and proper facilities for such access and inspection.

107.13. LABOR AND MATERIALS

Unless otherwise provided in the Contract documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

107.14. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract the CONTRACTOR agrees as follows:

107.14.1. Nondiscrimination Toward Employees. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, military or veteran status, disability unrelated to job performance, or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

107.14.2. Nondiscrimination Employment Practices. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin or age.

107.14.3. Labor Unions. The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this

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section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

107.14.4. Provisions in Subcontracts. The CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work.

107.14.5. Reports. During the course of the work, the CONTRACTOR shall submit to the OWNER, on a monthly basis, a breakdown by minority group of all employees at the site of the work.

107.15. STATE AND LOCAL SALES AND USE TAXES

The OWNER qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act. Therefore, the CONTRACTOR shall not pay such taxes which would otherwise be payable in connection with the performance of this Contract.

The CONTRACTOR shall issue an exemption certificate in lieu of the tax on the purchase of:

(1) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and

(2) all materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for the performance of the Contract with the OWNER which is to be completely consumed at the job site.

Tangible personal property necessary and essential for the performance of the Contract includes only such materials, tools and supplies specifically needed and directly used to incorporate tangible personal property into the real estate being improved under the Contract. Overhead supplies and supplies used indirectly or only incidental to the performance of the Contract with the OWNER are not included in the exemption. Tangible personal property is "completely consumed" if after being used once for its intended purpose it is used up or destroyed. Any exemption certificate issued by the CONTRACTOR is subject to the existing rules and interpretation governing the exemption issued by the Comptroller of Public Accounts of the State of Texas. The OWNER will not make interpretations of the extent or applicability of the exemption in a particular case; if the CONTRACTOR, or any SUBCONTRACTOR or supplier of the CONTRACTOR, has any questions about the extent or applicability of the exemption in specific circumstances, guidance should be sought from the State Comptroller's Office.

Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the CONTRACTOR must name the OWNER and the project for which the equipment, material and supplies are being purchased, leased or rented.

107.16. PATENTS

The CONTRACTOR shall pay all royalties and license fees and shall provide, by suitable legal agreement with the patentee or OWNER, for the use of any design, device, material or process covered by letters, patent or any copyright. The CONTRACTOR shall indemnify, defend, hold and save the OWNER and its officers, employees and agents harmless from all liability and claims for infringement of any patent, copyright, mark or license.

In the event that any claims, suit or action at law or in equity of any kind whatsoever is brought against the OWNER, or its officers, employees or agents involving any such patents, copyrights or license rights, then the OWNER shall have the right to and may retain from any money due or to become due to the CONTRACTOR such sum deemed necessary by the OWNER for its protection until such claim or suit shall have been settled and satisfactory evidence to that effect shall have been furnished the OWNER.

107.17. COMPLIANCE WITH LAWS

The CONTRACTOR shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment. CONTRACTOR shall correct any work not in compliance with local, state or federal laws.

The CONTRACTOR shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions.

All work required under this Contract shall comply with all requirements of law, regulation, permit or license. If the CONTRACTOR finds that there is a variance, it shall immediately report this to the OWNER for resolution.

107.17.1. Pleas of Misunderstanding. No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR and the CONTRACTOR'S Sureties shall indemnify and save harmless the OWNER

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against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or order whether by the CONTRACTOR, its employees, or SUBCONTRACTORS.

All work required under this contract shall comply with all required documents of law, regulation, permit or license, if the CONTRACTOR finds that there is a variance, the CONTRACTOR shall immediately report such to the OWNER for resolution.

OWNER shall not be liable for interest on any progress or final payment to be made under this Contract, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended.

107.18. SANITARY PROVISIONS

The CONTRACTOR shall establish and enforce among its employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The 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 a manner and at such points as shall be approved by the OWNER, and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER'S jurisdiction shall be strictly complied with.

107.19. PUBLIC CONVENIENCE AND SAFETY

Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, per the Contract, provide all material and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the OWNER. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from the monies due or to become due the CONTRACTOR. The CONTRACTOR shall notify the OWNER when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The CONTRACTOR shall, when directed by the OWNER, keep any street or streets in condition for unobstructed use by emergency services. Where the CONTRACTOR is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

Where the work passes over or through private property, the OWNER shall provide such right-of-way. The CONTRACTOR shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of property along or adjacent to the work. The CONTRACTOR shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the Contract documents or caused by agents or employees of the OWNER) by reason of any negligent act or omission on the part of the CONTRACTOR, its employees, agents or SUBCONTRACTORS, or at any time due to defective work or materials, or due to its failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

When and where any such damage or injury is done to public or private property on the part of the CONTRACTOR, restoration shall be completed according to Item 107.27. Restoration of Property.

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107.20. PROTECTION OF WORK AND PERSONS AND PROPERTY

107.20.1. Protection of Work. During performance and up to date of final acceptance, the CONTRACTOR shall be under the absolute obligation to protect all work against any damage, loss or injury. In the event of damage, loss or injury, the CONTRACTOR shall promptly replace or repair the work, whichever the OWNER shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the OWNER'S approval of or failure to prohibit means and methods of construction used by the CONTRACTOR. All risk of loss or damage to the work shall be borne solely by the CONTRACTOR until final completion and acceptance of all work by the OWNER, as evidenced by the OWNER'S issuance of a certificate of acceptance.

107.20.2. Protection of Persons and Property. The CONTRACTOR shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise 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. Compensation shall 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 or otherwise for the protection of persons or property according to Item 801.1. Barriers and Warning and Detour Signs.

The CONTRACTOR shall assume all duties owed 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 its own cost and expense provide such flagmen and watchmen in addition to its responsibility to furnish, erect and maintain such warning devices, barricades, lights, signs, and other precautionary measures for the protection of persons or property as are required by law. During periods when schools are in session, the CONTRACTOR will be required during the construction of the Work to:

(1) Maintain a suitable all-weather footpath across the Work at all designated school crosswalks.
(2) Move and reinstall pedestrian crossing warning signs as construction and routing of traffic lanes require.

The CONTRACTOR'S responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs, and lights, and other precautionary measures shall not cease until directed in writing by the OWNER or until final payment, whichever occurs first. If the OWNER 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 OWNER may order such additional precautionary measures as required by law to be taken to protect persons and property. The CONTRACTOR shall reimburse the OWNER for any expense incurred by the OWNER in taking any additional precautionary measures as a result of the CONTRACTOR'S failure to do so.

In addition, the CONTRACTOR will be held responsible for all damage 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.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the current *Texas Manual of Uniform Traffic Control Devices*, as amended, Texas Department of Transportation. Signage, barricades and other traffic control devices for detouring and maintenance of traffic on this Contract shall be as provided in above said manual and as directed by the OWNER. Costs associated with the acquisition and removal of required traffic control devices shall be considered incidental to the Work.

107.20.3. Trench Safety.

107.20.3.1. Regulations. The CONTRACTOR shall be responsible for complying with state laws and federal regulations relating to trench safety, including those which may be enacted during the performance under this Contract. The CONTRACTOR is advised that Federal Regulations 29 C.F.R. 1926.650-1926.652 have been, in their most recent version as amended, in effect since January 2, 1990.

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The CONTRACTOR shall fully comply with the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) regulations pertaining to excavations, trenching, and shoring and shall provide and familiarize its employees involved in excavation and trenching with the provisions in OSHA pamphlet number 2226, excavation and trenching operations.

107.20.3.2. Indemnification. **In addition to any other indemnification, CONTRACTOR agrees to defend, indemnify and hold OWNER, its officers, agents and employees, completely harmless from any claims, lawsuits, judgments, costs and expenses (including attorney's fees, if any) for any personal injury (including death), property damage or other harm for which recovery of damages is sought (including any injury, death or damage suffered by the CONTRACTOR'S own employees) arising out of or occasioned by the use of any trench excavation plans, regardless of their origin, or by any negligent, grossly negligent, strictly liable or intentional act of the CONTRACTOR, a SUBCONTRACTOR or any individual employee or laborer (whether or not an employee of the CONTRACTOR or a SUBCONTRACTOR) in the performance or supervision of actual trench excavation under the contract.** ***This indemnity applies regardless of whether OWNER'S or consulting engineer's negligence or fault in the administration of this contract or in the preparation, review or approval of the OWNER'S or*** **CONTRACTOR'S** ***trench excavation plan contributed to the injury, death or damage.*** **OWNER** ***accepts no liability whatsoever as a result of its preparation, review or approval of any trench excavation plan under this contract;*** **OWNER** ***makes no warranty, express or implied, concerning the adequacy or correctness of any trench excavation plan.***

(The provisions of this paragraph are solely for the benefit of the parties to the contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. This paragraph shall not be construed to waive any governmental immunity of the OWNER. This paragraph controls in the event of a conflict with any other indemnity or OWNER- warranty provision in the specifications).

107.20.3.3. Trench Safety Plan. The CONTRACTOR shall be responsible for providing to the OWNER an acceptable trench safety plan signed and sealed by a Professional Engineer qualified to do such work and licensed/registered in the State of Texas. The CONTRACTOR shall be responsible for selecting an appropriate method of providing trench safety after due consideration of the job conditions, location of utilities, pavement conditions and other relevant factors. Slope-back methods which may result in unnecessary displacement of utilities and/or destruction of pavement shall not be used without permission from the OWNER. Plans for devices used to provide trench safety such as trench shields and shoring systems will be likewise certified by Professional Engineers licensed/registered in the State of Texas or by a Professional Engineer licensed/registered in the state of manufacture of the shield or shoring system.

107.20.3.4. Shoring and Sheeting. The sides of all excavation shall be supported in accordance with the trench safety plan. Where bracing or sheeting and bracing are used, the trench width shall be increased accordingly, shall be considered as incidental work, and shall not be paid for as a separate item. In wet, saturated or flowing materials where it is necessary to install tight sheeting or cofferdams, wood or steel sheet piling of a design and type approved by the OWNER shall be used. All sheeting, shoring and bracing shall have sufficient strength and rigidity to withstand the pressure exerted, to maintain the sides of the excavation properly in place, and to protect all persons or property from injury or damage. When excavations are made adjacent to existing buildings or other structures or in paved streets, particular care shall be taken to adequately sheet, shore and brace the sides of the excavation to prevent undermining of or settlement beneath the structures or pavement. Underpinning of adjacent structures or pavement shall be done at the CONTRACTOR'S own cost and expense and in a manner satisfactory to the OWNER, or, when required by the OWNER, the pavement shall be removed, the void satisfactorily filled, compacted and the pavement replaced by the CONTRACTOR. The entire expense of such removal and subsequent replacement thereof shall be borne by the CONTRACTOR. Wooden sheeting, shoring and bracing shall be left in place where it is adjacent to the pipe embedment for the initial lift of backfill.

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The removal of all sheeting, shoring and bracing shall be done in such manner as not to endanger or damage either new or existing structures, or private or public properties; and so as to avoid cave-ins or sliding of the banks. All holes or voids left by the removal of the sheeting, shoring or bracing shall be immediately and completely filled and compacted with suitable materials. If, for any reason, the CONTRACTOR, with the approval of the OWNER, elects to leave in place the sheeting, shoring or bracing, no payment shall be allowed for such material left in place unless ordered by the OWNER to be left in place.

107.20.3.5. Inspection. The CONTRACTOR shall cause all shoring or bracing to be inspected by an OSHA competent person. According to OSHA regulations, a competent person is defined as one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

107.20.3.6. Payment for Trench Safety and Shoring. Payment for trench safety shall be by the lineal feet of trench exceeding a depth of 4-ft. unless otherwise specified in the Contract. Excavation for slope-back methods shall be subsidiary to the trench safety pay item including replacement and re-compaction. Excess excavation for other trench safety methods is also subsidiary to the trench safety pay item. Costs relating to the preparation of the trench safety plan including geotechnical investigation, testing and report preparation fees are all subsidiary to the pay item for trench safety. Should trench safety measures be required during Contract performance where no pay item has been provided, then the CONTRACTOR shall immediately notify the OWNER and, if directed to do so, provide trench safety under the provisions of Item 104.2.3. Extra Work and/or Item 109.3. Payment for Extra Work. Should the OWNER fail to authorize the work as provided for in Item 104.2.3. Extra Work and Item 109.3. Payment for Extra Work, then the CONTRACTOR shall proceed under the provisions of Item 104.3. Disputed Work and Claims for Additional Compensation and Item 104.4. Performance of Extra or Disputed Work. Trench safety requirements are mandatory and shall not be waived.

107.21. PROJECT SIGNS

Project signs shall be furnished, constructed, and erected by the CONTRACTOR as directed by the OWNER. Signs shall be placed in a location selected by the OWNER and maintained in good condition until the completion of the project. Project signs shall be removed by the CONTRACTOR upon the completion and acceptance of the project by the OWNER.

107.22. WORKING AREA

The CONTRACTOR shall confine its equipment, storage of materials and construction operations to the area shown on the Contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the OWNER, and shall not unreasonably encumber the site or public right-of-way with its construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the CONTRACTOR. Other CONTRACTORS of the OWNER may enter upon and use such portions of the area and for such items as determined by the OWNER are necessary for all purposes required by its contracts. The CONTRACTOR shall give to such other CONTRACTORS all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the CONTRACTOR for its use shall be provided at its own effort, cost and expense.

All rights-of-way and easements shown on the plans for construction will be provided by the OWNER. If private property is leased or occupied by the CONTRACTOR for use in conjunction with the Work, the CONTRACTOR shall provide to the OWNER, in writing prior to final acceptance of the Work, a release of the CONTRACTOR and OWNER from any and all claims the private property OWNER has or may have as a result of the CONTRACTOR'S use of the private property during the course of the Work. The release shall be signed by the private property OWNER or the private property OWNER'S agent.

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107.23. RAILWAY CROSSINGS

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal.

Prior to crossing or working on Railroad Right-of-Way, the CONTRACTOR will be required to contact the railroad company, or companies, and to execute CONTRACTOR'S Agreements as may be required by each railroad company involved. No work shall be permitted where railroads are involved until the OWNER is furnished sufficient correspondence from the railroad company involved to ascertain that either the agreement has been executed or a certified copy of the insurance policy furnished, or that no such action is required.

107.24. EXISTING STRUCTURES, FACILITIES AND APPURTENANCES

107.24.1. General. This Item 107.24. Existing Structures, Facilities and Appurtenances addresses only matters arising from certain existing, man-made surface and subsurface structures, facilities and appurtenances, not naturally occurring conditions. **AS PROVIDED IN ITEM 103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING, THE OWNER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM A DIFFERING, NATURALLY OCCURRING SURFACE OR SUBSURFACE CONDITION, OR FROM ANY MAN-MADE CONDITION THAT IS NOT A SURFACE OR SUBSURFACE STRUCTURE, FACILITY OR APPURTENANCE.** The OWNER'S responsibility for any claim arising from existing, man-made surface and subsurface structures, facilities and appurtenances is governed solely by this Item 107.24. Existing Structures, Facilities and Appurtenances, and any situation involving a differing subsurface condition not included herein shall be governed solely by Item 103.1. CONTRACTOR'S Warranties and Understanding.

107.24.2. Showing Locations. The plans show the general locations of all known, existing man-made surface and subsurface structures, facilities and appurtenances. The locations of many gas mains, water and wastewater mains, storm sewers, drains, culverts, conduits and other man-made utility structures, facilities and appurtenances, however, are unknown. **THE OWNER DOES NOT WARRANT THE PLANS TO SHOW THE EXACT LOCATIONS OF ANY AND ALL KNOWN, EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES, AND DOES NOT WARRANT THAT IT KNOWS OF THE EXISTENCE OF ALL POSSIBLE EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES.** The OWNER assumes no responsibility, except as provided below, for any failure to show any or all of these structures on the plans or to show them in their exact locations.

Wherever the OWNER has caused certain test borings to be made on the site, or when any information pertaining to the character or depth of materials is found from observations, records or otherwise, such information revealed thereby may be indicated on the plans. The action of the OWNER in revealing such information shall not in any manner be construed as conclusive or as a warranty on the part of the OWNER of the exact nature of the subsurface conditions that shall be encountered during construction of the work. Although the information is shown as accurately as possible, the OWNER does not guarantee that any materials to be encountered at any point or points are even approximately the same, either in character or elevations, as those shown on the plans. The information thus furnished by the OWNER is intended only as a guide to the CONTRACTOR'S own investigations preliminary to submitting a bid for the work.

107.24.2.1. Soil Borings. Soil Borings are to be used for information only and are not warranted accurate or conclusive in any way. The OWNER accepts no responsibility for any deviation from or variance in soil types and/or depths shown on the borings.

107.24.3. Conditions for Increases to Work or Payment. The CONTRACTOR and OWNER mutually, expressly agree that the failure of the OWNER to show any existing, man-made surface or subsurface structure, facility or appurtenance on the plans, or the failure to show them on the plans in their exact locations, shall not be considered as a basis of a claim for Extra Work, damages or other compensation of

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any kind, nor shall it be considered as a basis for increasing the quantities of work or unit prices on any bid item, unless:

(1) The CONTRACTOR could not have discovered the existing, man-made surface or subsurface structure, facility or appurtenance by a reasonable review of the plans and specifications and a reasonable, careful inspection of the work site prior to bid opening or award of the Contract; and

(2) The existing, man-made surface or subsurface structure, facility or appurtenance is in a location that necessitates a substantial change in the alignment, depth or hydraulic gradient of the work to be constructed under the Contract because the CONTRACTOR cannot, by the use of reasonable skill or care, place the work in accordance with the original alignment, depth or hydraulic gradient; or

(3) The existing surface or subsurface structure, facility or appurtenance requires the construction of a special structure, facility, appurtenance or other special work, provisions for which are not already made in the plans and specifications, to protect either the existing, man-made surface or subsurface structure, facility or appurtenance or the work to be constructed under the Contract from damage.

If the elements of (1) and either (2) or (3) occur, the provisions of the specifications regarding claims for Extra Work apply. Otherwise, the condition is considered part of the Contract work and OWNER shall not be liable for extra compensation. Provided, however, that the OWNER will not be liable for payment of Extra Work claims under this subsection that are not timely filed in accordance with other provisions of the specifications, nor shall the OWNER be liable to pay for any additional work or additional costs arising solely from a decision of the CONTRACTOR to change the original means or methods of construction chosen because an existing, man-made surface or subsurface structure, facility or appurtenance is encountered.

107.24.4. Utility Coordination and Protection. It is the intention of the OWNER that all known conflicts between utility-owned facilities and the proposed construction will be cleared prior to the issuance of the work order. Utility information shown on the plans must be confirmed by actual field check in advance of construction. Table 107.24.4.(a) Utility Coordination lists the most frequently needed contacts.

Table 107.24.4.(a) Utility Coordination

Entity	Contact Information
Texas One Call system	811
Municipal, Governmental, or Quasi-Governmental Utility OWNER	CONTRACTOR shall contact the respective entity

It will be the CONTRACTOR'S responsibility to locate and report all utility conflicts to the OWNER promptly in order to avoid unnecessary delays, and the CONTRACTOR will cooperate with utility OWNER s in making the adjustment(s). Conflicts that are found during construction will be resolved as expeditiously as possible.

The CONTRACTOR will be required to protect adequately all utility-owned facilities from damage or displacement by its operations.

The adjustment or location of any utility-owned facility which the CONTRACTOR may desire for its own convenience or ease of construction will be its responsibility to coordinate and will be at its own expense.

CONTRACTOR shall further abide by the provisions of Item 201.2. Determining Location and Protection of Existing Structures and Utilities.

107.25. PROJECT CLEAN-UP

The CONTRACTOR shall keep the project site in a neat and orderly condition as an integral part of the contracted work and as such shall be considered subsidiary to the appropriate bid items. Clean up work shall be done as needed or as directed by the OWNER as the work progresses. Clean-up shall be done on a daily basis. Clean up work shall include, but not be limited to:

(1) Removing the trash, paper, rubbish and debris resulting from operations
(2) Sweeping streets clean of dirt or debris
(3) Alleviating any dust nuisance in the work area
(4) Storing excess material in appropriate and organized manner
(5) Keeping trash of any kind off of residents' property

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The CONTRACTOR, prior to utilizing any private property, shall provide a written agreement between the CONTRACTOR and the Property OWNER to the Project Manager or Construction Superintendent. The agreement shall state what uses are allowed for the property, the length of time the CONTRACTOR is allowed to use it and the final condition the property shall be returned to once all work is completed. CONTRACTOR shall provide a written release from the Property OWNER once the area has been restored.

The work shall be so conducted as to create a minimum amount of inconveniences to the public. At any time when in the judgment of the OWNER the CONTRACTOR has obstructed or closed or is carrying on operations in a greater portion of a park, street or public way than is necessary for the proper execution of the work, the OWNER may require the CONTRACTOR to finish the sections on which work is in progress before operations are started on any additional section.

The CONTRACTOR will be required to remove spoil from the job site in a timely manner. If, in the opinion of the OWNER, the spoil is not being removed as required, the CONTRACTOR will be directed to remove the spoil. The CONTRACTOR must comply with this directive within 24 hours. There will be no additional compensation to the CONTRACTOR for removing this spoil at a time other than as planned.
CONTRACTOR shall comply with all requirements and regulations for any spoil removed from the project.

The CONTRACTOR shall perform such cleanup work as deemed necessary by the OWNER. Failure of the CONTRACTOR to maintain the site in a neat and orderly condition will be cause for withholding an additional ten percent (10%) of the total payments until said condition is corrected. Storage areas, either fenced or open, shall be kept free of weeds, tall grass, and other debris. In instances of large scale irrigation and planting installation, the entire site shall be kept neat and orderly with no tall grass or weed growth allowed. It shall be the CONTRACTOR'S responsibility to see that the turf areas are kept mowed during entire progress of the work. If the CONTRACTOR fails to alleviate poorly maintained conditions upon written notice by the OWNER, the OWNER will take necessary steps to correct the poor conditions with cost of such corrections to be deducted from the Contract.

Upon completion of the work and before final acceptance and final payment shall be made, the CONTRACTOR shall completely clean and remove from the site of the work all equipment, construction materials, surplus and discarded materials, temporary structures and debris of every kind. CONTRACTOR shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the Contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the OWNER, and at the CONTRACTOR'S sole cost.

107.26. DISPOSAL OF MATERIALS

Surplus excavation and other materials removed as a part of the construction may be deposited at a legal disposal site in accordance with all applicable federal, state and local laws and regulations. In addition, if the materials are disposed of within private property, a release from the property OWNER must be obtained before final acceptance of the Work as described in Item 107.22. Working Area.

Surplus excavation and other materials must not be deposited in areas designated as flood plain or along natural drainage ways. Material so deposited will be required to be removed at the CONTRACTOR'S expense and the area restored to its natural condition.

Failure to comply promptly with the requirements of this special provision will result in withholding of payments due.

107.27. RESTORATION OF PROPERTY

When and where any damage or injury is done to public or private property on the part of the CONTRACTOR, it shall restore or have restored at its own cost and expense such property to a condition equal (or improved) to that existing before such damage was done by repairing, rebuilding or otherwise restoring as may be directed, or it shall make good such damage or injury in a manner acceptable to the property OWNER or the OWNER. Replacement of previously constructed items, such as curb, gutter, sidewalks, driveways, paving, etc., shall conform to the specifications for new construction, unless directed otherwise by the OWNER.

In case of failure on the part of the CONTRACTOR to restore such property or make good such damage or injury, the OWNER may, upon 48 hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the

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CONTRACTOR under its Contract; or where sufficient Contract funds are unavailable for this purpose the CONTRACTOR or its surety shall reimburse the OWNER for all such costs.

107.28. ENVIRONMENTAL COMPLIANCE

The CONTRACTOR and its SUBCONTRACTORS are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and the latest judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

In the event the CONTRACTOR encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of work required under the contract documents, the CONTRACTOR shall immediately stop work in the affected area and report in writing the facts of such encounter to the OWNER. Work in the affected area shall not thereafter be resumed except by written order of the OWNER unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The OWNER may choose to remediate the Hazardous Substance with a separate CONTRACTOR or through a Change Order with the CONTRACTOR. If the OWNER determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the CONTRACTOR or any of its SUBCONTRACTORS, the CONTRACTOR shall be responsible for remediating the condition at the sole expense of the CONTRACTOR in accordance with the CONTRACTOR'S Spill Prevention and Response Plan. An extension of working time for any delay in the progress schedule caused as a result of the discovery and remediation of a hazardous substance may be granted by the OWNER only if all remaining work on the project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any claim or request for an extension of working time by the CONTRACTOR in connection with the discovery and remediation of a hazardous substance is subject to the provisions of NCTCOG.

The CONTRACTOR shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the CONTRACTOR or any SUBCONTRACTOR or supplier. The CONTRACTOR shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the OWNER so that they may observe the activities; provided, however, that it shall be the CONTRACTOR'S sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

The CONTRACTOR shall deposit surplus or waste excavation or other materials removed as part of the work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The CONTRACTOR shall submit to the OWNER for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the CONTRACTOR'S records for reference purposes, to be provided upon request to the OWNER or any governmental regulatory agency with jurisdiction over the matter.

107.28.1. Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the work at the Project site, the CONTRACTOR shall submit to the OWNER for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the CONTRACTOR'S planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include

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methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the OWNER. The CONTRACTOR shall not commence any fieldwork prior to approval of such plan by the OWNER. The following additional rules shall apply with respect to spills caused by the CONTRACTOR or a SUBCONTRACTOR:

(1) The CONTRACTOR shall immediately report any spill or release at the Project site, whether or not it is associated with this contract, to the OWNER or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the CONTRACTOR shall submit a written report describing such event in a degree of detail reasonably acceptable to the OWNER.
(2) The CONTRACTOR shall immediately respond in accordance with the SPRP in the event of a spill.
(3) The CONTRACTOR shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the CONTRACTOR shall use only those transporters and disposal facilities that are approved in advance in writing by the OWNER. A copy of all transport manifests for the spilled materials shall be obtained and retained in the CONTRACTOR'S records for reference purposes, to be provided upon request of the OWNER or any governmental regulatory agency with jurisdiction over the matter. All costs of collection, containment, and disposal of spilled materials shall be the sole responsibility of the CONTRACTOR.
(4) The term spill includes any kind of environmental discharge or release.

107.28.2. Texas Pollutant Discharge Elimination System. The CONTRACTOR is responsible for obtaining coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. and Chapter 26 of the Texas Administrative Code. These regulations require the filing of a Notice of Intent (NOI) to obtain and abide by the general stormwater permit for construction activities promulgated by EPA as administered by the TCEQ, including but not limited to demolition, clearing, grading, embankment, and excavation that disturb the applicable amount of total land area. In addition, the CONTRACTOR shall comply with all regulations of the OWNER relating to stormwater and stormwater runoff management at the Project site.

107.28.3. Stormwater Permit. The CONTRACTOR shall provide a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the requirements of the TPDES Construction General Permit, and Storm Water Pollution Prevention Plan, of these Specifications. The CONTRACTOR is responsible for obtaining an Storm Water Discharge Permit that may be required for construction of this project under regulations contained in 40 CFR Part 122, as amended, under the authority of the Clean Water Act, 33 U.S.C. 1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities, including cleaning, grading, and excavation, that disturb the applicable amount of total land area. For permitting information and requirements, contact USEPA Region VI, Fountain Place 12th Floor, Suite 1200, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202-2733, (214) 665-2200 and Texas Commission on Environmental Quality.

If a permit is required, the CONTRACTOR shall provide measures to control soil erosion sediment and water pollution created by construction operations for the duration of the Contract as directed by the OWNER. These measures shall be in addition to those required of the CONTRACTOR under Item 202. Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control of these specifications.

107.28.4. Asbestos-Related Materials. The CONTRACTOR shall not install any materials in the performance of the work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, trifoliate, anthophylite or actinolite, whether friable or non-friable.

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107.28.5. Failure to Comply. The OWNER reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the OWNER and without an extension of time, in the event the CONTRACTOR fails or refuses after seven (7) days advance written notice from the OWNER to comply with these provisions, the terms of the SPRP, any environmental permit or submittal issued in connection with the work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the CONTRACTOR and approved by the OWNER;
(2) if the CONTRACTOR fails to properly address the noncompliance within the time stipulated by the OWNER, perform the necessary remediation or correction work and back charge the CONTRACTOR for the cost of the remediation or correction; or
(3) terminate the contract for default as provided in the General Conditions and the Addendum.

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ITEM 108. PROSECUTION AND PROGRESS

108.1. PROGRESS SCHEDULE

The CONTRACTOR must submit to the OWNER a detailed Construction Schedule outlining the major items of work on the project. This schedule must be approved as to form by the OWNER prior to CONTRACTOR starting work on the project. The schedule must be updated on a monthly basis unless otherwise specified by the Contract. The OWNER has the authority to stop work on the project if the CONTRACTOR fails to provide an updated schedule as requested.

108.2. PROSECUTION OF THE WORK

The CONTRACTOR shall begin the work to be performed under this Contract not later than 10 days from the date specified in the work order and shall conduct the work in such a manner and with sufficient equipment, material and labor as is necessary to insure its completion within the working time. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, and it shall be the CONTRACTOR'S responsibility to execute the work in the most expeditious manner.

Work shall be done only during the hours between 7:00 am and 6:00 pm unless the OWNER approves other hours.

CONTRACTOR may work on Saturdays if it so desires and permission of the OWNER has been granted. Work on Sundays shall be permitted only with the written permission of the OWNER. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the Contract. Work requiring inspection will not be permitted on a legal City holiday except by special written permission of the OWNER. Any work done without proper inspection is subject to removal and replacement at the direction of the OWNER.

The rate of progress shall be such that the whole work shall be performed, including completion of all punch list items, and the premises cleaned up in accordance with the Contract within the working time established in the Contract, unless an extension of time is made in the manner as specified in Item 108.8. Delays; Extension of Time; Liquidated Damages.

108.2.1. Prosecution of the Work Discontinued By CONTRACTOR. Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations.

108.3. OTHER CONTRACTORS; OBLIGATION TO COOPERATE

The OWNER may award other contracts for additional work on this project, or in or near the project area, and the CONTRACTOR shall fully cooperate with such other CONTRACTOR(s) and shall coordinate and fit its work to be done hereunder to such additional work as may be contracted by the OWNER. At the time of bidding, prospective bidders shall be advised of other planned contract work, which is expected to affect the work area. The CONTRACTOR shall not commit or permit any act, which shall interfere with the performance of work by any other CONTRACTOR.

Upon receiving written notice from the CONTRACTOR that another CONTRACTOR is failing to coordinate its work with the work under this Contract as directed by the OWNER, the OWNER shall promptly investigate the charge and take such necessary action as the situation may require. However, the OWNER shall not be liable to the CONTRACTOR for damages suffered by the CONTRACTOR due to the fault or negligence of another CONTRACTOR or through failure of another CONTRACTOR to carry out the directions of the OWNER. Should any interference occur between CONTRACTORS, the OWNER may furnish the CONTRACTOR with written instructions designating priority of effort or change in methods, whereupon the CONTRACTOR shall immediately comply with such direction. In such event, the CONTRACTOR shall be entitled to an extension of working time only for unavoidable delays verified by the OWNER; however, no increase in the Contract price shall be due the CONTRACTOR.

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108.4. EMPLOYEES

The CONTRACTOR shall employ only competent, efficient workpeople and shall not use on the work any unfit person or one not skilled in the work assigned to him or her and shall at all times maintain good order among its employees.

Whenever the OWNER shall inform the CONTRACTOR in writing that, in its opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the OWNER may orally require immediate removal of an employee for cause, to be followed by written confirmation.

108.5. SUBCONTRACTS

The CONTRACTOR shall not make any subcontract for performing any portion of the work included in the Contract without written notice to the OWNER. This Contract having been made pursuant to the bid submitted by the CONTRACTOR and in reliance with the CONTRACTOR'S personal qualifications and responsibility, the OWNER reserves the right to withhold approval of any SUBCONTRACTOR which the OWNER may deem would not be in the OWNER'S best interest.

The CONTRACTOR shall, as soon as practicable after signing the Contract, submit a separate written notice to the OWNER identifying each proposed SUBCONTRACTOR. Upon request of the OWNER, the CONTRACTOR shall promptly furnish additional information tending to establish that any proposed SUBCONTRACTOR has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract.

If the OWNER determines that any proposed SUBCONTRACTOR is unacceptable, it shall so notify the CONTRACTOR, who may thereupon submit another proposed SUBCONTRACTOR unless the CONTRACTOR decides to do the work itself. Disapproval by the OWNER of any proposed SUBCONTRACTOR shall not provide a basis for any claim time extension or additional compensation of any nature, including but not limited to anticipated profit, overhead or delay, by the CONTRACTOR.

If an approved SUBCONTRACTOR fails to properly perform the work undertaken, it shall be removed from the job upon request of the OWNER, following notification to the CONTRACTOR in writing of the request for removal and the reasons therefore.

Each subcontract entered into shall provide that the provisions of this Contract shall apply to all SUBCONTRACTORS and their officers and employees in all respects as if they were employees of the CONTRACTOR. The OWNER'S decision not to disapprove of any subcontract shall not relieve the CONTRACTOR of any of its responsibilities, duties and liabilities hereunder. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence or defaults of its SUBCONTRACTORS and of such SUBCONTRACTOR'S officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the CONTRACTOR to the extent of its subcontract.

The CONTRACTOR agrees to bind each SUBCONTRACTOR and each SUBCONTRACTOR agrees to be bound by the terms of the Contract documents insofar as applicable to its respective work. The CONTRACTOR and each SUBCONTRACTOR jointly and severally agree that nothing in the Contract documents or otherwise shall create or be deemed to create any rights in favor of a SUBCONTRACTOR against the OWNER; nor shall be deemed or construed to impose upon the OWNER any obligation, liability or duty to a SUBCONTRACTOR; or to create any contractual relation whatsoever between a SUBCONTRACTOR and the OWNER.

The provisions contained herein shall likewise apply to any sub-subcontracts.

108.6. CONTRACTOR WORK BY ITS OWN FORCES

Except as otherwise provided, CONTRACTOR shall perform no less than 25% of the Work with its own workforce. If the CONTRACTOR proposes to perform less than 50% of the work by its own forces, then the OWNER may require additional documentation with the bid submittal regarding qualifications of SUBCONTRACTORS actually performing work.

108.6.1. Assignments. The CONTRACTOR shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the OWNER.

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The CONTRACTOR shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this Contract or its claim thereto without the prior written consent of the surety company and the written approval of the OWNER. Nothing in this paragraph is intended to conflict with Texas Business and Commerce Code.

The approval of the OWNER of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments.

The approval by the OWNER of any assignment, transfer or conveyance shall not operate to release the CONTRACTOR or surety hereunder from any of the Contract and bond obligations, and the CONTRACTOR shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of its assignees, its agents and employees, as if they were its own.

108.7. OWNER'S RIGHT TO TEMPORARILY SUSPEND WORK

108.7.1. Reasons for Suspension. The OWNER shall have the right by written order to temporarily suspend the work, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required:

(1) in the interest of the OWNER generally,
(2) due to government or judicial controls or orders which make performance of this Contract temporarily impossible or illegal,
(3) to coordinate the work of separate CONTRACTORS at the job site,
(4) to expedite the completion of a separate contract even though the completion of this particular Contract may be thereby delayed,
(5) because of weather conditions unsuitable for performance of the work, including of designated ozone alerts as determined by the National Weather Bureau or other authorized agency; or
(6) because the CONTRACTOR is proceeding contrary to Contract provisions or has failed to correct conditions considered unsafe for workers.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the providing of suitable drainage about the work and erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written order from the OWNER and shall proceed with the work promptly when notified by the OWNER to resume operations.

108.7.2. No Additional Compensation. No additional compensation shall be paid to the CONTRACTOR for any suspension under Item 108.7.1. (6) above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, it shall be entitled to:

(1) an extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and
(2) the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the Contract requirements, such costs, if any, to be determined on the basis set forth in Item 109.3. Payment for Extra Work herein; and
(3) where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item 109.3. Payment for Extra Work; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.
(4) where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided in (1) above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

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108.7.3. Emergency Contract Termination Clause. Whenever, because of a national emergency, so declared by the President of the United States, or other lawful authority, it shall be impossible for the CONTRACTOR to obtain all labor, materials, and equipment necessary for the prosecution of the work with reasonable continuity, the CONTRACTOR shall notify the OWNER. If the OWNER cannot, after a reasonable time, help obtain priorities for the materials and equipment within a reasonable effort, then the Contract shall be considered as terminated, and the CONTRACTOR shall be entitled to payment for work performed that is acceptable to OWNER based upon unit prices contained in the bid or, if the Contract is lump sum, then based upon the schedule of values submitted by the CONTRACTOR. CONTRACTOR shall not be entitled to any compensation for anticipated profit, overhead, delay damages or any other compensation for work that has not been performed.

108.8. DELAYS; EXTENSION OF TIME; LIQUIDATED DAMAGES

The CONTRACTOR shall be entitled to an extension of working time under this Contract only when claim for such extension is submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension. In adjusting the contract time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely made and materials are not available from other sources, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, ozone alerts as determined by the National Weather Bureau or other authorized agency, or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the Contract should require work and materials in greater amounts or quantities than those set forth in the Contract, requiring more time for completion than the anticipated time, then the Contract time shall be increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

No adjustment of the Contract time shall be made if, concurrently with the cause for delay, hindrance, disruption, force majeure, impact or interference, there existed a cause for delay due to the fault or negligence of the CONTRACTOR or CONTRACTOR'S agents, employees or SUBCONTRACTORS. Notwithstanding any other provisions of the Contract Documents, including the General and Special Provisions, no adjustment shall be made to the Contract price and the CONTRACTOR shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment of the Contract time to complete the project, ***including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, officials, agents, Engineer, Consulting Engineer or employees***. This provision is intended to cover all delays except as prohibited by law. If a recoverable delay is caused by the sole fault of the OWNER, compensation will be limited to an amount to be determined pursuant to Section 109.3.3. Force Account Work notwithstanding any other provision of the Contract documents, all claims for extension of working time must be submitted in accordance with Item 108.8. Delays; Extension of Time; Liquidated Damages, and no act of the OWNER shall be deemed a waiver or entitlement of such extension.

108.8.1. Liquidated Damages for Failure to Complete on Time. The time of completion is the essence of this Contract. For each day that any work shall remain uncompleted after the time specified in the proposal and the Contract, or the increased time granted by the OWNER, or as equitably increased by additional work or materials ordered after the Contract is signed, the sum per day given in the Schedule 108.8.1. (a) Liquidated Damages, unless otherwise specified, shall be deducted from the monies due the CONTRACTOR.

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Schedule 108.8.1. (a) Liquidated Damages

Amount of Contract ($)	Amount of Liquidated Damages ($)
Less than 25,000.00	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More than 1,000,000.00	500.00 Per Day

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this Contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or its surety shall pay any additional amounts due.

In the event that the actual damages incurred by the OWNER exceed the amount of liquidated damages, OWNER shall be entitled to recover its actual damages.

108.9. CONTRACTOR DEFAULT: OWNER'S RIGHT TO SUSPEND WORK AND ANNUL CONTRACT

The work or any portion of the work under this Contract shall be suspended immediately on written order of the OWNER declaring the CONTRACTOR to be in default. A copy of such notice shall be served on the CONTRACTOR'S surety. The Contract may be terminated by the OWNER for any good cause or causes, among others of which special reference is made to the following:

(1) failure of the CONTRACTOR to start the work within 10 days from date specified in the written work order issued by the OWNER to begin the work;
(2) substantial evidence that the progress of the work being made by the CONTRACTOR is insufficient to complete the work within the specified working time;
(3) failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the work;
(4) substantial evidence that the CONTRACTOR has abandoned the work or discontinued the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so;
(5) substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the work;
(6) deliberate failure on the part of the CONTRACTOR to observe any requirements of the Contract Documents or to comply with any orders given by the OWNER or Engineer as provided for in the Contract Documents;
(7) failure of the CONTRACTOR to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the OWNER;
(8) substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of work under Contract;
(9) repeated and flagrant violations of safe working procedures;
(10) the filing by the CONTRACTOR of litigation against the OWNER prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the CONTRACTOR shall discontinue the work or such part thereof as the OWNER shall designate, whereupon the surety may either at its option assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue and perform the same or, with the written consent of the OWNER, sublet the same, provided, however, that the surety shall exercise its option within two weeks after the written notice to discontinue the work has been served upon the CONTRACTOR and upon the surety or its authorized agents. The surety in such event shall assume the CONTRACTOR'S place in all respects and shall be paid by the OWNER for all work performed by it in accordance with the terms of the Contract, but in no event shall such payments exceed the Contract amount, regardless of the cost to the surety to complete the work.

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All monies remaining due the CONTRACTOR at the time of its default shall thereupon become due and payable to the surety as the work progresses, subject to all terms of the Contract. In case the surety does not, within the hereinabove specified time, exercise its obligation to assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue, then the OWNER shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the CONTRACTOR hereto agrees that the OWNER shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the CONTRACTOR for the purpose of its work and to procure other tools, equipment and materials for the completion of the same and to charge to the account of the CONTRACTOR the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the OWNER out of such monies as may be due or may at any time thereafter become due the CONTRACTOR under and by virtue of the Contract or any part thereof.

The OWNER shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the Contract if the same had been completed by the CONTRACTOR, then in such case the OWNER may pay the CONTRACTOR the difference in the cost, provided that the CONTRACTOR shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the Contract if the same had been completed by the CONTRACTOR, the CONTRACTOR and its surety shall pay the amount of the excess to the OWNER on notice from the OWNER for excess due including any costs incurred by the OWNER, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the OWNER by contract or otherwise under the provisions of this section, the CONTRACTOR shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed as above provided by the OWNER or surety.

108.10. SUSPENSION BY COURT ORDER AGAINST THE OWNER

The CONTRACTOR shall suspend such part or parts of the work pursuant to a court order issued against the OWNER and shall not be entitled to additional compensation for anticipated profits, overhead, delay damage or any other form of compensation by virtue of such court order; neither shall the CONTRACTOR be liable to the OWNER in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the CONTRACTOR.

108.11. TERMINATION FOR CONVENIENCE OF THE OWNER

108.11.1. Notice of Termination. The performance of the work under this Contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by serving in accordance with Item 105.8. Service of Notices a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.

108.11.2. CONTRACTOR Action. After receipt of a notice of termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:

(1) stop work under the Contract on the date and to the extent specified in the notice of termination;
(2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion the work under the Contract as is not terminated;
(3) (terminate all subcontracts, purchase orders or options to the extent that they relate to the performance of work terminated by the notice of termination or at the OWNER'S written request, deliver and assign to the OWNER, or any person or entity acting on the OWNER'S behalf, any or all subcontracts, purchase orders and options made by CONTRACTOR in the performance of the work, and deliver to the OWNER true and correct originals and copies of such Contract Documents;

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(4) transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
   a. the fabricated or un-fabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
   b. the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the OWNER.
(5) complete performance of such part of the work as shall not have been terminated by the notice of termination; and
(6) take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to its Contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.

At a time not later than 30 days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the OWNER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the OWNER. Not later than 15 calendar days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the OWNER upon removal of the items, or, if the items are stored, within 45 calendar days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

108.11.3. Termination Claim. Within 60 days after notice of termination, the CONTRACTOR shall submit its termination claim to the OWNER in the form and with the certification prescribed by the OWNER. Unless one or more extensions in writing are granted by the OWNER upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

108.11.4. Amounts. Subject to the provisions of Item 108.11.3. Termination Claim, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto, provided that such agreed amount or amounts shall never exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item 108.11.5. Failure to Agree hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

108.11.5. Failure to Agree. In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Item 108.11.4. Amounts, upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits. The OWNER'S determination shall be final.

108.11.6. Deductions. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Contract; (b) any claim which the OWNER may have against the CONTRACTOR in connection with this Contract; and (c) the agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

108.11.7. Adjustment. If the termination hereunder be partial prior to the settlement of the terminated portion of this Contract, the CONTRACTOR may file with the OWNER a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract

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(the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

108.11.8. No Limitation of Rights. Nothing contained in this section shall limit or alter the rights, which the OWNER may have for termination of this Contract under Item 108.9. CONTRACTOR Default: OWNER'S Right to Suspend Work and Annual Contract or any other right which OWNER may have for default or breach of Contract by CONTRACTOR.

108.12. CLAIMS AGAINST OWNER AND ACTION THEREON

No claim against the OWNER under the Contract or for breach of the Contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the Contract or in any court action except pursuant to the provisions of Item 109.3. Payment for Extra Work, Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections. The requirements cannot be waived by the OWNER'S representative, and are not waived by a claimed breach of contract by the OWNER.

108.13. USE OF COMPLETED PORTIONS OF WORK

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the Contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice.

Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER.

The provisions in the last two paragraphs above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the Contract work.

Neither such usage, as performed under this section, nor the written statement of work still to be done shall be held in any way as an acceptance of said work or structure or any part thereof, nor as a waiver of any of the provisions of these specifications or other Contract Documents pending final completion and acceptance of the work; all necessary repairs and removals of any section of the work so put into use, due to the defective materials or workmanship or to operations of the CONTRACTOR, shall be performed by the CONTRACTOR at its own expense.

In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Item 108.8. Delays; Extension of Time; Liquidated Damages; no additional compensation or delay damages will be paid.

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ITEM 109. MEASUREMENT AND PAYMENT

109.1. PAYMENT FOR LABOR AND MATERIAL; NO LIENS

The CONTRACTOR shall furnish payrolls and personnel records, which pertain to this current Contract with the OWNER for the purpose of ascertaining compliance with minimum wage rates published by the OWNER. Monthly and final estimates for payment will not be processed unless the CONTRACTOR complies with this requirement in a timely manner.

The CONTRACTOR for itself or any of its SUBCONTRACTORS shall pay all indebtedness, which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this Contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this Contract, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any SUBCONTRACTOR shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. If the CONTRACTOR or SUBCONTRACTOR or supplier places a lien against the work or a portion thereof then the CONTRACTOR shall cause the removal of the lien. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

The OWNER may conduct random sampling of wage rates on each CONTRACT. The OWNER may interview the CONTRACTOR'S and CONTRACTOR'S SUBCONTRACTOR'S employees in the field to verify the employee is working in and being paid for the classification shown on the payroll. In instances of noncompliance, the OWNER MAY initiate action as outlined in the CONTRACT Documents.

109.2. PAYMENT FOR MATERIALS

109.2.1. Materials On-Hand. Materials purchased and stored more than 30 days before use may be considered materials on-hand. Payment for such materials shall be made according to Item 109.5. Monthly Estimate, Partial Payments, Retainage, Final Inspection, Acceptance and Final Payment.

109.2.2. Materials Stored Off-Site. Off-site storage of such materials and payment for off-site storage may be accomplished according to Item 106.4. Off-Site Storage.

109.2.3. Measurement of Quantities. The determination of quantities of work acceptably completed under the terms of the contract, or as directed by the OWNER in writing, shall be made by the OWNER, based on measurements made by the OWNER. These measurements shall be taken according to the U.S. Standard measurements used in common practice and shall be the actual length, area, solid contents, numbers and weight.

109.3. PAYMENT FOR EXTRA WORK

109.3.1. General. Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item 109.3. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: (1) all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and (2) a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other SUBCONTRACTORS and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work as described in this Item 109.3.1. General. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be

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included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final as described in Item 104.2.4 Finality of Change Orders.

109.3.2. Method of Determination. The method of determination and payment of cost, or credit to the OWNER, for any Extra Work shall be one of the following:

(1) Unit prices agreed on in writing, approved by the OWNER and executed by the OWNER and CONTRACTOR before the Extra Work is commenced, or unit prices already included in the Contract documents, subject to all other conditions of the Contract. Mutual acceptance of a not-to-exceed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation before the Extra Work is commenced, subject to all other conditions of the Contract.

(2) A not-to-exceed cost to be determined in a manner agreed upon by the parties plus a mutually acceptable fixed or percentage fee, agreed upon before the Extra Work is commenced and subject to all other conditions of the Contract.

(3) The force account method provided in Item 109.3.3. Force Account Work.

109.3.3. Force Account Work. If the CONTRACTOR and the OWNER cannot agree to one of the methods of calculating cost provided in Item 109.3.2. Method of Determination above, or if the parties agree to a method but cannot agree to a final dollar figure, or if the CONTRACTOR for whatever reason fails or refuses to sign the Change Order in question, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the work involved. Nothing in this paragraph shall be construed to relieve the CONTRACTOR of any obligations it has under the disputed work provisions of Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and where applicable the CONTRACTOR is still obligated to abide with those Items as well as this Item 109.3.3. Force Account Work. The cost of the work involved shall then be calculated on a force account basis, on the basis of the actual, reasonable field cost of the work attributable to the changes, plus a reasonable allowance for overhead, profit, markups of other SUBCONTRACTORS and suppliers, general supervision, field office expense and other elements of cost not embraced within the actual field cost as specified herein, such allowance in any case never to exceed 15%. In such case, the CONTRACTOR shall keep a detailed itemized account of the work involved and the actual field cost incurred, in a format acceptable to the OWNER and with such appropriate supporting data as the OWNER may prescribe. Sworn copies of the itemized accounting shall be directed to the OWNER each day during the performance of the force account work. Failure of the CONTRACTOR to submit the sworn-to itemized accounting daily as required herein shall constitute a waiver by the CONTRACTOR of any right to dispute the OWNER'S determination of the amount due the CONTRACTOR for force account work.

Actual, reasonable field cost of the work to be charged under this Item 109.3.3. Force Account Work for force account work is limited to the following:

(1) The reasonable wages of all workers, foremen, timekeepers, mechanics and laborers, plus costs of social security, old age and unemployment insurance, fringe benefits required by agreement or custom (excluding employee or executive bonuses), and worker's compensation insurance, for the time such labor is actually employed or used on force account work.

(2) Reasonable costs of materials, tools, supplies and equipment (but not to include off-site storage unless so approved and directed in writing by the OWNER), whether incorporated or consumed into the force account work.

(3) Reasonable rental costs of machinery and equipment, exclusive of hand tools, only for the time actually employed or used on force account work, whether rented from the CONTRACTOR or others.

(4) A pro rata portion of premium expenses for all bonds and insurance to the extent force account work would cause an increase in such bond or insurance premiums.

Pending final determination of the cost to the OWNER, payment of undisputed amounts on force account shall be included on the monthly estimate as work is completed unless otherwise expressly provided in the written order signed by the OWNER to perform the work. Nothing in this Item 109.3.3. Force Account Work shall be construed as directing the CONTRACTOR'S means and methods of performing the work in question.

109.3.4. Distinguishing Extra Work. For purposes of this Item or any other provision of the Contract documents that allows a claim for Extra Work, the term "Extra Work" means work that is not reasonably within the scope of the Contract Documents or not otherwise incidental or necessary to performance of the

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Contract. The term does not include any change by the CONTRACTOR in the means and methods of performing the Work from that anticipated or bid (even if such change in means or methods is requested or directed by the OWNER), whether or not the change is due to foreseeable or unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. The OWNER shall not be liable for any claim due to a change in the means or methods of construction by the CONTRACTOR, resulting in additional costs, if the OWNER has not changed the plans or specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract Documents remains the same. The OWNER shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be completed, notwithstanding that the CONTRACTOR did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost the CONTRACTOR more to complete the Contract work than the original Contract price.

109.4. PAYMENT WITHHELD

In addition to express provisions elsewhere contained in the Contract, the OWNER may withhold from any payment otherwise due the CONTRACTOR such amount as determined necessary to protect the OWNER'S interest, or, if it so elects, may withhold or retain all or a portion of any payment or refund payment on account of:

(1) unsatisfactory progress of the work not caused by conditions beyond the CONTRACTOR'S control,
(2) defective work not corrected,
(3) CONTRACTOR'S failure to carry out instructions or orders of the OWNER or its representative,
(4) a reasonable doubt that the Contract can be completed for the balance then unpaid,
(5) work or execution thereof not in accordance with the Contract documents,
(6) claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims,
(7) failure of the CONTRACTOR to make payments to any SUBCONTRACTOR or suppliers for material or labor used in the performance of the Work,
(8) damage to another CONTRACTOR or OWNER,
(9) unsafe working conditions allowed to persist by the CONTRACTOR,
(10) failure of the CONTRACTOR to provide work schedules as required by the OWNER,
(11) use of SUBCONTRACTORS without the OWNER'S approval or,
(12) failure of the CONTRACTOR to keep current as-built record drawings at the job site or to turn same over in completed form to the OWNER.

When the grounds for withholding payment are removed, payment shall be made for amounts withheld because of them, and OWNER shall never be liable for interest on any delayed or late payment.

109.5. MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT

109.5.1. Monthly Estimate. Except as otherwise provided by the Contract, between the 25th day and the last day of each month, the OWNER shall make an approximate estimate of the value of the work done during the month under the specifications. The monthly estimate may include acceptable nonperishable materials as referenced in Item 109.2. Payment for Materials; such payment shall be allowed on the same percentage basis of the net invoice value as provided hereinafter. The percent retained by OWNER shall normally be up to 10 percent at completion, unless otherwise stated. At the midpoint, or at any subsequent time, if OWNER determines that the progress on the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The OWNER shall make the sole determination in this matter.

Except as otherwise provided by the Contract, between the 25th day and the last day of each month the CONTRACTOR shall make an estimate of the value of the work done during the month under the specifications. The CONTRACTOR shall prepare the estimate on a form approved by the OWNER. The CONTRACTOR shall forward the estimate required above to the OWNER by not later than the last day of the month. The monthly estimate may include acceptable nonperishable materials delivered to and stored at the work site or a storage facility accessible to the OWNER; payment for such stored materials shall be allowed on the same percentage basis of the value as provided hereinafter. The monthly estimate shall also provide such supporting documentation as the OWNER or the other applicable provisions of the specifications may require.

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The OWNER shall verify that the CONTRACTOR'S estimate matches the total value of work done and acceptable non-perishable materials delivered to the work site or storage facility, based upon the bid proposal prices and quantities measured or verified by OWNER. In the event of a discrepancy between quantities of work as shown in the CONTRACTOR'S estimate and measured quantities as shown in the OWNER'S verification, the OWNER'S determination or measurement shall be final, and the CONTRACTOR'S estimate shall be adjusted to reflect the quantities of work as shown by the OWNER'S verification. Payment shall be made by OWNER about thirty (30) days after receipt of the estimate from CONTRACTOR. OWNER shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any discrepancy in quantities as described above, any failure to provide supporting documentation or other information required with the estimate or as a precondition to payment under the Contract, or due to any payment the OWNER has a right to withhold under the Contract.

The CONTRACTOR shall furnish to the OWNER such detailed information as OWNER may request to assist in the preparation of monthly estimates. It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of work done or of its quality or sufficiency nor as an acceptance of the work or the release of the CONTRACTOR of any of its responsibility under the Contract.

109.5.2. Retainage. As security for the faithful completion of the work by the CONTRACTOR, the OWNER shall retain 15-percent of the total dollar amount of work done on all contracts $25,000.00 and less; 10-percent of the total dollar amount of work done on all contracts in excess of $25,000.00 and less than $400,000.00; five-percent of the total dollar amount of work done on all contracts of $400,000.00 or more. On all contracts in excess of $400,000, the following shall apply:

(1) on all contracts in excess when work progress is 80-percent complete, retainage may, at the OWNER'S option, be reduced to two percent of the dollar value of all work satisfactorily completed to date (not to include material on hand), provided that the CONTRACTOR is making satisfactory progress and there is no cause of greater retainage as determined by the OWNER;
(2) when work progress is substantially complete, the retainage may be further reduced to only that amount necessary to assure completion as determined by the OWNER;
(3) if the OWNER determines that the CONTRACTOR is not making satisfactory progress or if there is other specific cause, the OWNER may, at its discretion, reinstate up to the five percent retainage.

109.5.3. Final Inspection and Acceptance. Final inspections and acceptance shall proceed according to Item 105.9. Inspection and Item 105.10. Acceptance.

109.5.4. Final Payment. Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, as evidenced in the certificate of acceptance obtained according to Item 105.10. Acceptance, and all required submissions provided to the OWNER, a final estimate showing the value of the work shall be prepared by the OWNER as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this Contract, shall be paid to the CONTRACTOR within a reasonable period of time (not to exceed 90 days) after final acceptance and the CONTRACTOR has provided to the OWNER:

(1) a consent of surety to final payment;
(2) the final CONTRACTOR'S Report of SUBCONTRACTOR/Supplier Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment; and
(3) such other affidavits, lien waivers and other documentation as the OWNER may reasonably require to protect its interests.

In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment.

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The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims, damages or liabilities under the Contract, including all SUBCONTRACTOR claims, or claims for additional compensation, for anything done or furnished or relating to the work under the Contract or for any act or neglect of said OWNER relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

109.5.5. Compensation and Acknowledgement of Work. The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all work contemplated and embraced under the Contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

109.6. WIRE TRANSFERS

Payments to the CONTRACTOR may, at the discretion of the OWNER, be made by wire transfer to a bank of the CONTRACTOR'S choice. The CONTRACTOR must furnish the following information:

(1) The ABA number of the bank.
(2) The CONTRACTOR'S account number.
(3) Or other such information as may be required by sending and receiving financial institutions.

The request must be on the CONTRACTOR'S letterhead and signed by an authorized representative of the CONTRACTOR (cannot be a copy).

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ITEM 110. AIR QUALITY REQUIREMENT FOR EQUIPMENT

As of 2016, ten (10) counties in North Central Texas have been designated by the EPA as being nonattainment for the pollutant ozone, and additional counties are expected to be designated in the near future. As a result, development of an air quality plan, known as the State Implementation Plan (SIP), is required for all nonattainment areas in order to demonstrate how ozone will be reduced to levels compliant with EPA standards. The SIP for the Dallas-Fort Worth nonattainment area includes programs to implement control strategies to all emission sources, including non-road construction equipment sources. To support these efforts, air quality requirements for equipment are applicable to the Contract.

110.1. EQUIPMENT REQUIREMENTS

All construction equipment being used to perform work on the Contract shall meet EPA emissions standards of Tier 3 or equivalent, or cleaner. Model Form A.14. Schedule for Phase-In of Tier 1-Tier 4 Non-Road Engines is included in Appendix A. Compliance may be achieved through the use of equipment powered by an EPA-certified engine, through engine repowers, or through the use of retrofits which have been verified by the EPA and/or California Air Resources Board. A list of available retrofits is available online at EPA's website "Verified Technologies List for Clean Diesel."

Equipment that meets one or more of the following conditions may be exempt from these requirements:

(1) Equipment powered by an engine that is less than or equal to ten (10) years old.
(2) Equipment that must be used to fulfill use or reporting requirements for a grant program or other clean air initiative. Documentation of such obligations must be submitted to OWNER for verification.
(3) Equipment that is designated as low-use equipment, which is defined as any piece of construction equipment which is used for less than ten (10) hours per week on a single public works contract. A Low-Use Exemption Weekly Reporting Form will be required for all equipment for which this exemption is claimed. Model Form A.15. Low-Use Exemption Weekly Reporting Form is included in Appendix A.
(4) Equipment that is being used to address a critical or emergency public works need, including, but not limited to, broken water mains or sanitary sewer lines. This exemption is limited to work performed in a situation in which the procurement of construction services is performed on an emergency basis, as provided for by State law.

110.2. OPERATIONAL REQUIREMENTS

All diesel fuel used to perform work on the public works contract shall be Ultra-Low Sulfur Diesel (ULSD) fuel which also complies with Texas Low Emission Diesel (TxLED) program requirements. This may include TxLED-compliant Biodiesel blends.

The CONTRACTOR shall limit idling of equipment to no more than five (5) minutes, unless the idling is applicable to one or more of the following exceptions:

(1) is being used for emergency response purposes;
(2) is idling as a necessary component of mechanical operation, maintenance, or diagnostic purposes; or
(3) is idling for the health or safety of the equipment operator.

To the greatest extent possible, CONTRACTOR shall stage equipment away from, and minimize operation near, sensitive receptors including, but not limited to, fresh air intakes, hospitals, schools, licensed day care facilities, and residences.

110.3. REPORTING TO OWNER

On or before the day construction activity commences, the CONTRACTOR shall submit to the OWNER an inventory report containing identifying data for each piece of equipment to be used on the worksite. A form for submitting such information will be provided by the OWNER. Model Form A.16. Contract Equipment Inventory is included in Appendix A. This inventory may be used by the OWNER or INSPECTOR to conduct site inspections and/or verify compliance with specification elements.

If additional equipment is brought on-site after construction begins, the CONTRACTOR shall provide this same inventory information to the OWNER for the new equipment on or before the day it begins work on-site.

Reports shall be provided for all equipment used on-site.

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110.4. ENFORCEMENT

All construction equipment used on the job site is subject to inspection by the OWNER at random. CONTRACTOR is responsible for ensuring that all SUBCONTRACTORS meet the requirements of this specification.

The provisions of this specification shall be enforced as established in the Terms and Conditions of the Contract. If the provisions of this specification are not met, the OWNER may declare the CONTRACTOR to be in default of the contract.

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Exhibit B
Added Provisions

312 West Alabama Street | Mount Pleasant, Texas 75455 | (903) 560-8070 Office
www.symmetrysports.com

EXHIBIT B
ADDED PROVISIONS TO CONTRACT

ACCESS:

Once the installation starts, Contractor is to have full access and right of way to the project area. The Owner will specifically designate access routes for the Contractor to the jobsite, of which will be appropriate and stable enough to withstand the weight of the truckloads that will be needed for this project.

LIGHTING, ELECTRICITY & FACILITIES:

Sufficient temporary lighting, power and facilities are to be supplied and maintained by Owner, for Contractor use during project construction. All utilities will be supplied at no charge to Contractor. Temporary Facilities (water) will be furnished at the location by the Owner. Staging areas for materials, tools, and equipment will be provided by the Owner.

UNDERGROUND SERVICES OR OBSTRUCTIONS:

Contractor shall be bound by all the provisions of Section 102.3 of the Contract documents. Contractor, its subcontractors, agents and representatives have the full and complete duty to inspect and examine all plans, specifications and the site of any work to be performed. Owner has not made any representations regarding any of these matters, and Contractor acknowledges they are solely responsible for properly performing any inspection or examinations and shall not rely on Owner or hold Owner responsible for any conditions or details of the work to be performed. Owner will be solely responsible for all costs associated with removal/relocation of any underground obstructions such as rock, hazardous materials, contaminated fill or any unidentified substances, utilities, or services that are not able to be determined from the geotechnical boring and the 6" diameter sample it provides. If Owner fails to notify Contractor of anyunderground PRIVATE utilities and said utilities are damaged, Owner shall be fully responsible for any costs incurred as a result of any damage to those utilities and for any expense incurred by Contractor due to the delay of the project. In addition, the constructionschedule and substantial completion date shall be adjusted to reflect the number of days the project is delayed due to any damage and repair of the utilities.

MOBILIZATION:

Contractor has bid this job allowing for (1) one mobilization to the site. If any additional mobilizations, at no fault of Contractor, are required to complete this project, a mobilization fee of up to $25,000.00 / mobilization will be incurred and paid to Contractor by the Owner. If Contractor has to demobilize and remobilize under Contractor's own accord, no remobilization fee will be required.

FORCE MAJEURE

Extensions in the Substantial Completion date shall be granted by Owner to the extent that such delay: (i) has not been caused by Contractor or any of its subcontractors or agents, (ii) are the result of "force majeure" delays, delays caused by "acts of God" (tornadoes, earthquakes, hail, floods, fires, or other natural catastrophes), weather delays, strikes, lockouts, riots, act of terrorism, acts of war, chemical spills or reactions, nuclear explosions, vandalism, government agency actions, significant and unforeseen price fluctuations or shortages in supplies beyond the control of Contractor, or delays caused by the Owner and (iii) other such items beyond the reasonable control of Contractor. Contractor is not responsible for delays caused by any of the above circumstances and shall be granted extensions of time for each such occurrence.

DISPUTE RESOLUTION:

Before any suits shall be filed in a court of competent jurisdiction, notice must be given to the other party with 30 days to cure the defect. If the issue is not resolved, the parties must first attempt to mediate the case with an agreed mediator and split the mediation fees 50/50. If the parties are not able

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to resolve the case in mediation, then either party may then file suit.

FINAL PAYMENT:

Final payment, constituting the unpaid balance of this Contract amount, shall be made within fifteen (15) days after the last of the following to occur (1) full completion of the work by Subcontractor, including punch list work, (2) final acceptance of the Work by the Architect (3) the delivery of all guarantees and warranties with respect to the Work by Subcontractor. In no event shall Contractor be required to fulfill any warranty for this project without full payment being made of the work performed.

LIQUIDATED DAMAGES:

In no event shall Contractor incur liquidated damages in excess of $500.00 per day for failing to achieve substantial completion or final completion.

ADVERTISNG AND PROMOTION:

The Owner agrees to grant Contractor the right to Owners trademarks and logo use and the right to take, print and reproduce images, both photos and video, of the work performed by Contractor for the use of advertising and promotion. This shall only apply to the work performed by Contractor.

BILLING

If Owner or Architect requires the Contractor to use any Electronic Billing System, Owner shall pay for any such related costs. Contractor has not budgeted for this as a condition of this contract and is under no duty to use such system unless paid for by Owner.

Owner- City Of Texarkana

_____
Dr. David Orr, City Manager

_____
Date

Symmetry Sports , LLC

_____
Jason Bell- President

_____
Date

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Exhibit C
Addendum to General Provisions

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EXHIBIT C

ADDENDUM TO SYMMETRY SPORTS CONSTRUCTION GENERAL PROVISIONS

105.7.1. shall be amended to read as follows:

> 105.7.1. Authority of Engineer. All work shall be performed in a good and workmanlike manner and to the satisfaction of Engineer and Owner. The Engineer, in consultation with Owner, shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the Contract compensation, mutual rights between CONTRACTORS under these specifications and suspension of the work. Engineer shall determine the amount and quality of work performed and materials furnished. Engineer estimate and Owner approval in such event shall be a condition precedent to the right of the CONTRACTOR to receive money due under the Contract.

The third paragraph of 106.1 SUBSTITUTIONS OF MATERIALS shall be amended to read as follows:

> Where the term “or equal,” or “or approved equal” is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, in consultation with the Owner, shall determine the acceptability of substitutions. The provisions of this sub-section as related to “Substitutions” shall be applicable to all sections of these specifications.

Paragraph 108.7.3 shall be deleted in its entirety.

Section 100. AIR QUALITY REQUIREMENT FOR EQUIPMENT is not applicable to this Contract, and shall be deleted in its entirety.

Owner	**Symmetry Sports, LLC**
_____	_____
Dr. David Orr, City Manager	Jason Bell, President
_____	_____
Date	Date

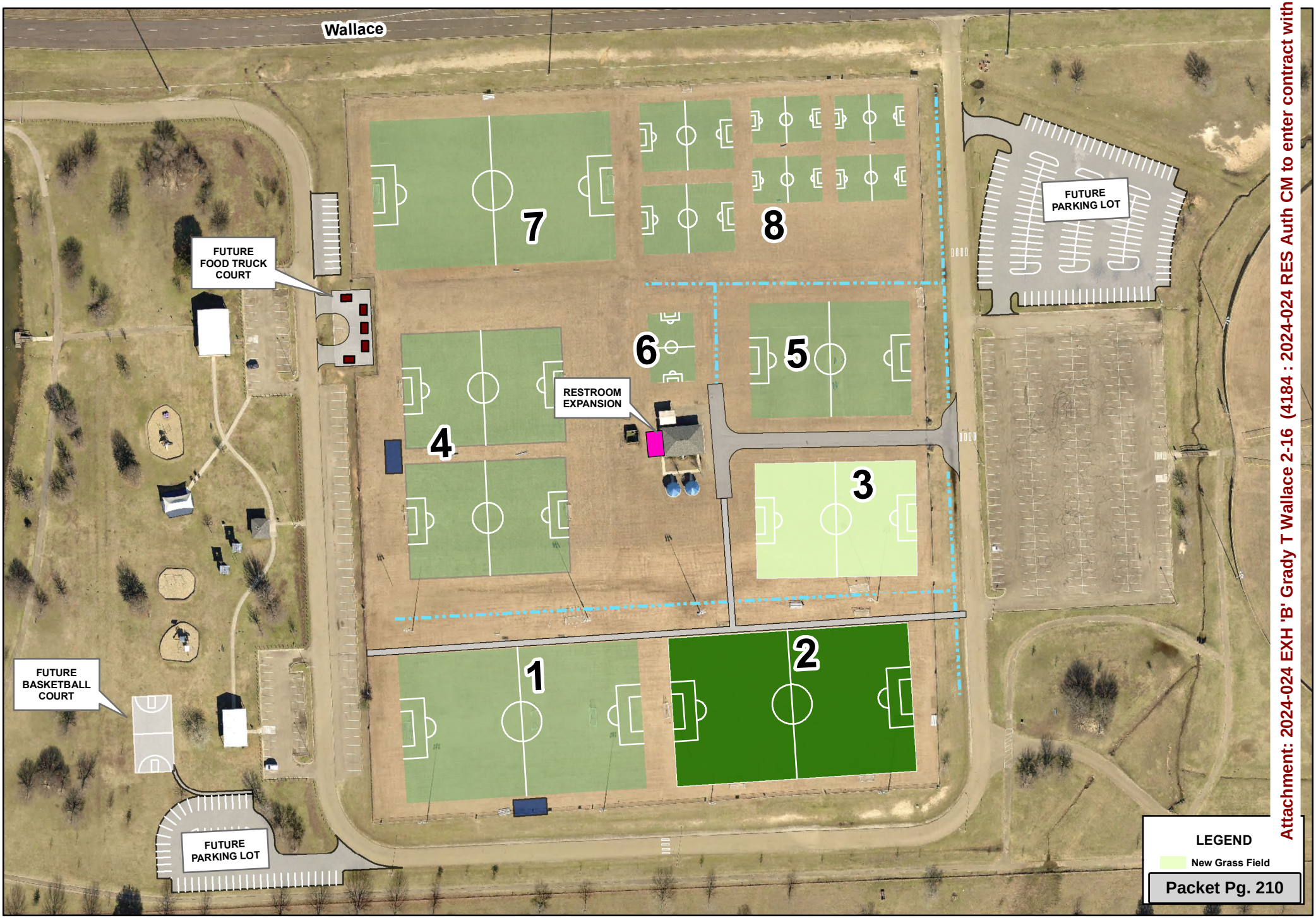
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MTG | ENGINEERS & SURVEYORS

GRADY T WALLACE - SOCCER
TEXARKANA, TEXAS

2024-024 EXH 'B'

0 125 250 500 et



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City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☑ Provide a Safe Community ☑ Deliver Quality Services ☑ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☑ Maximize Partnership Opportunities ☑ Provide Courteous & Responsive Customer Service ☑ Model a Positive City Image ☐ Deliver Efficient Services ☑ Cultivate Community Involvement & Access
Manage the Resources	☑ Maintain Fiscal Strength ☑ Maximize Utilization & Resources ☑ Invest in Infrastructure & Transportation
Develop Personnel	☑ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved:	No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☑	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☑	Press Release
☐	E-News Distribution	☑	Website Notice
☑	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☑	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	

Other:

Attachment: 2024-024 Goals & Perspectives (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS 230104-02) Wallace

City of Texarkana, Texas

Version:

Briefing Sheet

Update Date: 2/23/2024 11:40 AM

Lead Department: Parks, Recreation & Health **Action Officer:** Keith Beason,

Subject: Resolution No. 2024-025 authorizing the City Manager to execute a contract with Symmetry Sports (TIPS 230104-02) in the amount of $7,884,710, for construction at Swanger Complex located at Spring Lake Park and allocating additional funds in the amount of $395,000, for contingency items, for a total project cost not to exceed $8,279,710 with funds budgeted in the 2023 Bond Fund (Fund 426).

Briefing: 2/26/2024 **Public Hearing:** 3/11/2024 **Council Vote:** 3/11/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The Parks and Recreation Staff requests approval to enter into a contract with Symmetry Sports Construction in the amount of $7,884,710 for construction at the Swanger Complex located at Spring Lake Park. Staff also recommends allocating an additional amount of $395,000 for contingency items with the total cost of the project not to exceed $8,279,710 to be paid with funds budgeted in the 2023 Bond Fund (Fund 426). This project will include renovations of baseball fields and bull pens, remodeling concession/restroom building, removal of existing and construction of new concrete fire lane, upgrades to parking lot and sidewalks, upgrades to gate/entry way and lighting upgrades for field 5. At this time, staff recommends forgoing the additional parking item in the amount of $451,500 included in attachment “A.”

Potential Options:

- Approve
- Deny

Fiscal Implications:

Funds are budgeted in the 2023 Bond Fund (Fund 426).

Staff Recommendation:

Staff recommend approval of this request.

Advisory Board/Committee Review:

None

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-025 RES Authorize City Manager to approve purchase of a fence for George Dobson Baseball Field (DOCX)
b. 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (PDF)
c. 2024-025 EXH 'B' Spring Lake Birdseye Image (PDF)
d. 2024-025 EXH 'C' Spring Lake Plan Image (PDF)
e. 2024-025 Goals & Perspectives (DOCX)

Staff Coordination

Parks, Recreation & Health	Completed	Robby Robertson 02/21/2024 4:03 PM	Department Head Review	
Finance Department 12:50 PM	Kristin Peeples	Finance Review	Completed	02/22/2024
City Manager		City Manager Review	Pending	
City Council 6:00 PM	Vicky Coopwood	Meeting	Pending	02/26/2024

Meeting History

Attachment: 2024-025 RES Authorize City Manager to approve purchase of a fence for George Dobson Baseball Field (4185 : 2024-025 RES

RESOLUTION NO. 2024-025

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH SYMMETRY SPORTS CONSTRUCTION IN THE AMOUNT OF SEVEN MILLION EIGHT HUNDRED EIGHTY-FOUR THOUSAND SEVEN HUNDRED TEN DOLLARS ($7,884,710) FOR CONSTRUCTION AT THE SWANGER COMPLEX LOCATED AT SPRING LAKE PARK AND ALLOCATING AN ADDITIONAL AMOUNT OF THREE HUNDRED NINETY-FIVE THOUSAND DOLLARS ($395,000) FOR CONTINGENCY ITEMS WITH THE TOTAL COST OF THE PROJECT NOT TO EXCEED EIGHT MILLION TWO HUNDRED SEVENTY-NINE THOUSAND SEVEN HUNDRED TEN DOLLARS ($8,279,710) TO BE PAID WITH FUNDS BUDGETED IN THE 2023 BOND FUND (FUND 426).

WHEREAS, the Swanger Complex at Spring Lake Park is in need of renovations and upgrades including renovations of baseball fields and bull pens, remodeling concession/restroom building, removal of existing and construction of new concrete fire lane, upgrades to parking lot and sidewalks, upgrades to gate/entry way and lighting upgrades for field 5; and

WHEREAS, Symmetry Sports Construction submitted a proposal attached as **Exhibit "A"** with a total cost of **seven million eight hundred eighty-four thousand seven hundred ten dollars ($7,884,710)** through the TIPS Buy Board Purchasing Cooperative (TIPS Vendor 230104-02); and

WHEREAS, staff recommends allocating an additional amount of **three hundred ninety-five thousand dollars ($395,000)** for contingency items with the total cost of the project not to exceed **eight million two hundred seventy-nine thousand seven hundred ten dollars ($8,279,710)** to be paid with funds budgeted in the 2023 Bond Fund (Fund 426).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: The City Manager be and is hereby authorized to execute a contract with Symmetry Sports Construction through the TIPS Buy Board Purchasing Cooperative for **seven million eight hundred eighty-four thousand seven hundred ten dollars ($7,884,710).**

SECTION 2: The City Manager be and is hereby authorized to allocate an additional amount of **three hundred ninety-five thousand dollars ($395,000)** for contingency items with the total cost of the project not to exceed **eight million two hundred seventy-nine thousand seven hundred ten dollars ($8,279,710).**

SECTION 3: This Resolution shall be in full force and in effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **11th day of March, 2024**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

February 20, 2024

David Orr, City Manager
City of Texarkana Texas
220 Texas Boulevard
Texarkana, TX 75501
david.orr@texarkanatexas.gov

RE: Spring Lake Park Renovations – City of Texarkana, TX

Symmetry is pleased to provide the following budget for the above-referenced project:

General Conditions:

- Symmetry to provide general liability, automotive and worker's compensation insurance coverage as required
- Symmetry will provide project closeout documentation and final clean-up of work area relating to scope
- Symmetry will provide payment bonds & performance bonds as required for this project
- Budget pricing derived in accordance with existing site conditions
- Field design, layout and conformance in accordance with governing bodies including UIL, NFHS and USA little league
- State agency permitting submission, to be reimbursed by owner
- One year Warranty on all materials, labor and equipment
- Regular progress meetings with owner & their designated agent

Scope of Work – Six (6) Synthetic Baseball Field Conversions ~ 325,719 sq ft:

- Strip existing sod & topsoil from entire field; dispose onsite
- Subgrade Stabilization
- Fine grading & compaction of pad grades per turf manufacturer's specifications
- Supply & install new concrete curb from dugout to dugout around outfield for turf attachement system
- Supply & install 20 mil HDPE liner over subgrade area
- Heat weld all seams to create a completely non-permeable surface over subgrade
- Supply & install HDPE pipe in perimeter trenches lined with HDPE liner
- Synthetic field piping to be constructed in a manor to accommodate no less than a 10 year storm reoccurrence interval
- Connect HDPE pipe to existing storm outlet for connection to nearby drainage system
- Supply & install turf nailer boards made of recycled plastic materials around perimeter of turf area
- Backfill all trenches with drainage stone
- Supply & install drainage stone over lined subgrade
- Verify planarity, slope & elevations of turf base system prior to turf installation
- Supply & install **AstroTurf Rhino Blend 46 oz Synthetic Turf** in all fields & bullpens
  - Include all materials (thread, glue and seaming tape, etc.) required for turf installation
  - Turf seams to be sewn to the extent possible, all others to be glued using two-part epoxy compound
  - All lines (inlays) to be cut & inlaid into field using two part epoxy compound
  - Install rubber/sand infill mix in multiple lifts in accordance with project specifications
  - GMAX testing of field upon completion per owner provided scope document
  - Includes **AstroTurf's Standard 8-Year Warranty**
- Provide one (1) Turf Groomer & one (1) Turf Sweeper
- Provide training/instruction on care & maintenance of field
- Supply & install new foul poles, bases, pitchers rubber and home plates to all fields & bullpens
- Supply & install new cast in place concrete, 2' tall x 8" thick backstop walls at each field with safety padding

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Sports Construction

- Supply & install two (2) turfed and fenced bullpens at each field
- Supply & install new backstop nets at fields with black painted steel poles
- Supply & install new 6' black vinyl coated fencing at foul territories and outfield
- Hydro-seed disturbed areas after project completion
- Includes $30,000 allowance for landscaping / lawn establishment adjacent to restroom expansion / proposed sidewalks

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Proposed Budget:

Baseball Fields & Bullpens Renovations *as outlined above*	**$5,895,000**
Concession / Restroom Building	**$750,000**
- *Remodeling of existing & addition of new restrooms*	
Concrete Fire Lane	**$325,500**
- *Per Geotech, incl. demolition of existing*	
Parking lot	**$387,000**
- *30,000 sq ft @ $12.90 per sq ft*	
Sidewalks	**$140,000**
- *10,980 sq ft @ $12.75 per sq ft*	
Project Total	**$7,497,500**

Alternates:

Gate / Entryway	**ADD**	**$50,000**
Additional Parking	**ADD**	**$451,500**
- *Additional 35,000 sq ft @ $12.90 per sq ft*		
Field #5 lighting	**ADD**	**$337,210**
- *Includes new 60' poles & LED fixtures*		
- *25/50 ft candle design per SLG / Symmetry design*		

Qualifications:

- Proposal assumes clear, unencumbered, stable access to work through duration of project
- Single mobilization
- NCTCOG - General Provisions as attached, Exhibit A
- Added Provisions to Contract, Exhibit B
- TIPS Purchasing Cooperative Contract #230104-02
- Includes Project Development & budgeting
  - Project scope & budget to be reviewed by city & Symmetry at three (3) milestone review processes
  - SD, 50% & 90% designs leading up to notice to proceed and a project commencement of +/- **DATE TBD**
- Project completion dates as follows;
  - Conversion of six (6) baseball fields – **DATE TBD**

Exclusions:

- Costs/Contingencies for rock or other abnormal or inferior surface or subsurface conditions that may exist including underground utilities that have not been properly identified by Owner
- Shock pad/underlayment is excluded unless specified in above Scope of Work
- Landscaping unless specified in above Scope of Work
- Sports lighting, bleachers, press boxes, scoreboards
- Sidewalks or concrete flatwork other than detailed above
- Staging area to be furnished by owner
- Symmetry is not responsible for damages to inferior surfaces or pavement resulting from moving equipment & materials across insufficient owner-designated access routes

Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

- Temporary facilities (water) will be furnished at location by owner
- Utilities except as noted in scope of work
- Sales taxes – owner's exemption certificates are required at time of contract
- Allowances/Contingencies of any kind unless specified above
- *Any other items or work not specifically detailed in above Scope of Work are excluded from this proposal*

Price may be adjusted if final specifications and/or shop drawings differ from Scope of Work provided at time of this proposal and as outlined above.

We appreciate the opportunity to work with the **City of Texarkana** on this project. If you have any questions, please contact **me** at **(903) 475-2848**.

Kindest Regards,

Nick Robertson, Director of Design / Build Services
Symmetry Sports Construction

*I, _____ , with the **City of Texarkana,** have read the General Conditions, Scope,*
(Print Name)
Qualifications and Exclusions and accept the terms and conditions setforth therein.

SIGNED: _____ ***DATE:*** _____

TITLE: _____ ***P.O.#:*** _____

Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

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Exhibit A
NCTCOG - General Provisions

Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

2024-025 EXH 'A'

Division 100

General Provisions



Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

DIVISION 100 GENERAL PROVISIONS

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ITEM 101. DEFINITIONS AND ABBREVIATIONS

101.1. DEFINITIONS

The following words and expressions, or pronouns used in their place, shall wherever they appear in this Contract be construed as follows, unless a different meaning is clear from the context:

Addendum, Bulletin or Letter of Clarification: Any additional contract provisions, or change, revisions or clarification of the contract documents issued in writing by the OWNER, to prospective bidders prior to the receipt of bids.

Advertisement: All of the legal publications pertaining to the work contemplated or under contract.

Approved, Directed, Required, and Words of Like Import: Whenever they apply to the work or its performance, the words "directed," "required," "permitted," "ordered," "designated," "established," "prescribed" and words of like import used in the contract, specifications or upon the drawings shall imply the direction, requirement, permission, order, designation or prescription of the OWNER; and "approved," "acceptable," "satisfactory" and words of like import shall mean approved by, acceptable to or satisfactory to the OWNER.

Backfill: embedment and final backfill

Base: a layer of specified material of plan thickness placed immediately below the pavement course surfacing.

Bedding: material upon which a pipe rests.

Bid: The written statement or statements duly filed with the OWNER specified in the advertisement for bids of these specifications by the person, persona, partnership, company, firm, association, or corporation proposing to do the work contemplated, including the approved form on which the formal bids for the work are to be prepared.

Bidder: Any person, persons, partnership, company, firm, association, or corporation acting directly or through a duly authorized representative submitting a bid for the work contemplated.

Bulletin: see Addendum.

Calendar Days: Any successive days of the week or month, no days being excepted. It shall be taken to mean the same as a normal calendar day.

Change Order: A properly authorized written order to the CONTRACTOR, signed by the OWNER directing an addition, deletion or revision in the work within the general scope of the contract documents, or authorizing an adjustment in the contract price or the contract time.

Completion Time: The time set forth in the contract for the performance and completion of the work contracted for. The time may be expressed as calendar days, working days or a specific date.

Conflict of Interest: A conflict of interest is when any person employed by bidder or bidder's company has any known business relationships, other than previous contracts awarded through a competitive bidding process, or has an existing relationship with any employee of the OWNER.

Construction Equipment: All machinery of 25 horsepower or more which is powered by an internal combustion engine, but which is not used solely for competition or as a motor vehicle subject to the requirements of Texas Transportation Code 502.002. This includes, but is not limited to, excavators, graders, generators, and similar equipment.

Contract or Contract Documents: Contract documents are all of the written, printed, typed and drawn instruments that comprise and govern the performance of the contract as defined herein. The contract and contract documents include the advertisement, instructions to bidders, proposal, addendum, specifications, including the general, special and technical conditions, provisions, plans or working drawings — and any change orders, or supplemental agreements pertaining to the work or materials thereof; and bonds and any additional documents incorporated by reference in the above.

Contract Price: The total monies payable to the CONTRACTOR under the terms and conditions of the contract documents. When used in such context, it may also mean the unit price of an item of work under the contract terms.

Contract Time: See "Completion Time"

Contract Work: Everything expressly or impliedly required to be furnished and done by the CONTRACTOR by any one or more parts of the contract documents, except "extra work" as hereinafter defined; it being understood that, in case of any inconsistency between any part or parts of this Contract, the OWNER shall determine which shall prevail in accordance with Item 105.1. Contract Documents hereof.

Consulting Engineer: The person, firm, or entity hired as an independent consultant by the OWNER to design the Project and represent the OWNER in the administration of the CONTRACT in whatever capacity the OWNER designates; the OWNER may, at its sole option, designate the Consulting Engineer to be the Engineer for

Attachment: 2024-025 EXH 'A' SpringLake_ContractPack_022024_2 (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports

purposes of administration of the CONTRACT. The Consulting Engineer shall be understood to be the Consulting Engineer of the OWNER, and nothing contained in the CONTRACT Documents shall be construed to make the Consulting Engineer an employee of the OWNER, nor shall they be construed to create any contractual or agency relationship between the Consulting Engineer and the CONTRACTOR. The term includes the officers, employees, associates, agents, and subconsultants of Consulting Engineer, if any.
CONTRACTOR: The person, persons, partnership, firm, corporation, association or organization, or any combination thereof, as an independent CONTRACTOR entering into the contract for the execution of the work, acting directly or through a duly authorized representative.
Other CONTRACTORS: Any CONTRACTOR, other than the CONTRACTOR or its SUBCONTRACTORS, who has a direct contract with the OWNER for work on or adjacent to the site of the work.
Days: See "Completion Time"
Deleterious: Substances, elements, or components are those that are damaging, harmful, undesirable, or adulterating to the integrity or purity of the specified base material.
Drawings or Contract Drawings: Only those drawings specifically entitled as such and as specified in the contract, or in any bulletin, or any detailed drawing furnished by the OWNER, pertaining or supplemental thereto.
Embedment: bedding and initial backfill.
Engineer: The Engineer or its duly authorized representative means the Engineer of the OWNER.
Equal: Materials, articles or methods which are of equal or higher quality than those specified or shown on the drawings and as further defined in Item 106.1. Substitution of Materials, as determined by the OWNER.
Extra Work: Work other than that which is expressly or impliedly required by the Contract documents at the time of the execution of the Contract.
Final backfill: material required to fill the trench from the top of the initial backfill to ground elevation or subgrade of a street.
Hazardous Substance:
(1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophylite, or actinolite, whether friable or non-friable;
(2) any polychlorinated biphenyls (PCBs), or PCB-containing materials, or fluids;
(3) radon; any other hazardous, radioactive, toxic, or noxious substance, material, pollutant, or solid, liquid or gaseous waste;
(4) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
(5) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
(6) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance;
(7) and any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.
Initial backfill: material that covers the wastewater collection system and water lines.
Inspector: Any representative of the OWNER designated to inspect the work.
Letter of Clarification: see Addendum.
Low-Use Equipment: Any piece of equipment which is used for less than ten hours per week on a single public works contract.
Maintenance Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Vernon's Texas Insurance Code, in the amount of the contract guaranteeing the prompt, full and faithful performance of the general guaranty and warranty contained in the Contract Documents.
Major Item: A major item is any line item of the work to be performed which amounts to 5 percent or more of the total contract amount.

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Material Man or Supplier: Any SUBCONTRACTOR contracting with the CONTRACTOR, or any of its SUBCONTRACTORS, to fabricate or deliver or who actually fabricates or delivers, materials, supplies or equipment to be consumed or incorporated into the work.
Notice: Written notice effective the date of the postmark thereon, or if hand delivered, effective the date of hand delivery, or if electronically delivered, effective as described in Item 105.8. Service of Notices.
OWNER: The public governmental agency identified throughout the contract documents or the entity as specifically identified in the contract. The term OWNER means the OWNER or its authorized representative(s).
OWNER'S Representative: The Engineer or other duly authorized assistant, agent, inspector or superintendent acting within the scope of the particular duties instructed to him or her by the OWNER.
Payment Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the general CONTRACTOR or a SUBCONTRACTOR to supply public work labor or material.
Performance Bond: A bond executed by a corporate surety in accordance with Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, in the amount of the contract, solely for the protection of the OWNER, conditioned on the faithful performance of the work in accordance with the plans, specifications, and contract documents.
Plan or Plans: The plans are the drawings or reproductions therefrom made by or approved by the OWNER showing in detail the location, dimension and position of the various elements of the project, including such profiles, typical cross-sections, layout diagrams, working drawings, preliminary drawings and such supplemental drawings as the OWNER may issue to clarify other drawings or for the purpose of showing changes in the work hereinafter authorized by the OWNER. The plans are usually bound separately from the other parts of the Contract Documents, but they are part of the Contract Documents just as though they were bound therein.
Proposal: The written and signed offer of the bidder, when submitted on approved proposal forms, to perform the contemplated work and furnish the necessary material and labor in accordance with the provisions of the plans and specifications, special and general provisions, and all contract documents.
Site: The area upon or in which the CONTRACTOR'S operations are carried on, and such other areas adjacent thereto as may be designated as such by the OWNER.
Special Provisions or Conditions: The special clauses of the contract, setting forth conditions or requirements peculiar to the specific project involved, supplementing the standard or general specifications and taking precedence over any conditions or requirements of the standard or general specifications with which they are in conflict.
Specifications or Contract Specifications: All of the general, special and technical conditions or provisions, and all addendum or supplements thereto.
Subbase: a layer of specified material of plan thickness between a base and a subgrade.
SUBCONTRACTORS: Any persons, firm or corporation, other than employees of the CONTRACTOR, who or which contracts with the CONTRACTOR to furnish, or who actually furnishes, labor and/or materials and equipment at or about the site.
Subgrade: that portion of the roadbed upon which the subbase, base or the pavement is to be placed. It includes the OWNER'S required distance beyond the back of the curb for streets, which are to be paved with concrete.
Superintendent: A person who has permission to act as an agent of the CONTRACTOR and has authority to issue both verbal and written agreements.
Sureties: The corporate bodies which are bound by such bonds as are required with and for the CONTRACTOR. The sureties engaged to be responsible for the entire and satisfactory fulfillment of the Contract, and for any and all requirements as set out in the specifications, Contract or plans. In order for a surety to be acceptable, the surety shall conform to the requirements of Section 3503.002, Texas Insurance Code.
Texas Low Emission Diesel (TxLED): Diesel fuel which is compliant with the TxLED program requirements as set forth by the TCEQ.
Work: All work including the furnishing of all labor, materials, tools, equipment, required submittals and incidentals to be performed by the CONTRACTOR under the terms of the contract.
Working Time: See "Completion Time"
Working Day: A working day is defined as a calendar day not including Saturdays, Sundays or those legal holidays as specified in the list prepared by the OWNER for contract purposes, in which weather or other

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conditions not under the control of the CONTRACTOR shall permit the performance of the principal units of work underway for a continuous period of not less than seven hours between 7:00 am and 6:00 pm. A principal unit of work shall be that unit which controls the completion time of the contract.

101.2. ABBREVIATIONS AND ACRONYMS

References to specifications, standards, and guidelines throughout this text shall refer to the most current adopted versions. Wherever the abbreviations defined herein occur on the plans, in the specifications, contract, bonds, advertisement, proposal, or in any other document or instrument herein contemplated or to which the specifications apply or may apply, the intent and meaning shall be as follows:

%	Percent
‘	Foot or Feet
“	Inch or Inches
#	Pound or pounds, or number if it precedes a numeral
AASHTO	American Association of State Highway and Transportation Officials
ABA	American Bankers Association
ACI	American Concrete Institute
am, a.m.	Before noon
ADA	Americans with Disabilities Act
ANSI	American National Standards Institute
Asph.	Asphalt
Assn.	Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
APWA	American Public Works Association
AWPA	American Wood-Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
B_c	Outside diameter of Pipe
B_d	Trench width
BMP	Best Management Practice
C	Centigrade
cc	Cubic Centimeter
CFR	Code of Federal Regulations
cfs	Cubic feet per second
CI	Cast Iron
CL	Center Line
cm	Centimeter
CO	Cleanout
C.O.C.	Cleveland Open Cup
Conc.	Concrete
Cond.	Conduit
Corr.	Corrugated
cSt	Centistokes (Viscosity)
Cu.	Cubic
Culv.	Culvert
CY, C.Y.	Cubic Yard
D	Inside Diameter
DI	Ductile Iron
Dia.	Diameter
Dr.	Driveway
Elev.	Elevation
F	Fahrenheit

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FM	Factory Mutual
fps	Feet per second
Ft.	Foot or Feet
Gal.	Gallon
g, gm	Gram
HDPE	High Density Polyethylene
HP	Horsepower
Hr.	Hour
ID	Inside Diameter
in.	Inch or Inches
ISSA	International Slurry Surfacing Association
iSWM	Integrated Stormwater Management
Kg or kg	Kilogram
kPa	Kilopascals
L	Liter
Lb.	Pound or Pounds
LDPE	Low Density Polyethylene
LF.	Linear foot or feet
Lin.	Linear
LL	Liquid Limit
LLDPE	Linear Low Density Polyethylene
LMDPE	Linear Medium Density Polyethylene
LOI	Loss on Ignition
M	Meter
Max.	Maximum
MH	Manhole
Min.	Minimum or Minute
M.J.	Mechanical Joint
mm	Millimeter
Mod.	Modified
Mono.	Monolithic
mph	Miles per hour
MSS	Manufacturers Standardization Society of the Valve and Fittings Industry
MS4	Municipal Separate Storm Sewer System
MPa	Megapascal
MUTCD	(Texas) Manual on Uniform Traffic Control Devices
NACE	National Association of Corrosion Engineers
Nat'l	National
NEMA	National Electrical Manufacturers Association
No.	Number
N.P.T.	National Pipe Thread
NRMCA	National Ready-mixed Concrete
NSF	National Sanitation Foundation
o.d., OD	Outside Diameter
OSHA	Occupational Safety and Health Administration
oz.	Ounce
Pa	Pascal
PI, P.I.	Plasticity Index
pm, p.m.	After noon
psi	Pounds per Square Inch
PVC	Polyvinyl Chloride
PVCO	Molecularly Oriented PVC

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R	Radius
RAP	Recycled/Reclaimed Asphalt Pavement
RCP	Reinforced Concrete Pipe
RCRA	Resource Conservation and Recovery Act
Reinf.	Reinforced or reinforcing
Rem.	Remove
Rep.	Replace
R/W, ROW, R of W	Right-of-Way
Sani., San.	Sanitary
Sec.	Second
S.F.	Square Foot or Saybolt Furol (Viscosity)
Sq.	Square
SSPC	The Society for Protective Coatings [formerly Steel Structures Painting Council]
St.	Street or Storm
Std.	Standard
Str.	Strength
SWPPP	Storm Water Pollution Prevention Plan
SY	Square Yard
TAC	Texas Administrative Code
TAS	Texas Accessibility Standards
Tex-###-X	Refer to TxDOT *Manual of Testing Procedures*
TCEQ	Texas Commission on Environmental Quality [formerly Texas Natural Resource Conservation Commission (TNRCC)]
TDLR	Texas Department of Licensing and Regulations
TMUTCD	Texas Manual on Uniform Traffic Control Devices
TxDOT	Texas Department of Transportation
TxDOT Item #	Refer to TxDOT *Standard Specifications for Construction of Highways, Streets and Bridges*
UL	Underwriter's Laboratory
um, µm	Micrometers
US, U.S.	United States
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency
Vert.	Vertical
Vol.	Volume
Wt.	Weight
Yd.	Yard

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ITEM 102. PROPOSAL PROCEDURES

102.1. PROPOSAL FORM

The OWNER shall furnish bidders with proposal forms which shall state the general location and description of the contemplated work and which shall contain an itemized list of the items of work to be done or materials to be furnished, and upon which bid prices are asked. The proposal form shall specify the form and amount of the proposal guaranty.

102.2. QUANTITIES IN PROPOSAL FORM

The quantities of the work and materials set forth in the proposal form or on the plans approximately represent the work to be performed and materials to be furnished, and are for the purpose of comparing the bids on a uniform basis. Payment shall be made to the CONTRACTOR only for the actual quantities of work performed or materials furnished as measured in the field or otherwise determined by the OWNER in accordance with the Contract; and it is understood that the quantities may be increased or decreased as hereinafter provided, without in any way invalidating the bid prices.

102.3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF THE WORK

Bidders are advised that the plans, specifications and other documents on file as stated in the advertisement shall constitute all the information, which the OWNER shall furnish. Bidders are required, prior to submitting any proposal, to review the plans and read the specifications, proposal, Contract and bond forms carefully; to obtain and read the most current versions of all referenced State, Federal, and National standards; to visit the site of the work; to examine carefully local conditions; to inform themselves by their independent research, tests and investigations of the difficulties to be encountered and judge for themselves the accessibility of the work and all attending circumstances affecting the cost of doing the work or time required for its completion; and to obtain all information required to make a proposal.

No information given by the OWNER or any official thereof, other than that shown on the plans and contained in the specifications, proposals and other Contract documents, shall be binding upon the OWNER. Bidders shall rely exclusively upon their own estimates, investigations, tests and other data, which are necessary for full and complete information upon which the proposal may be based. Any bidder, by submitting a bid, represents and warrants: that it has prepared the bid in accordance with the specifications, with full knowledge and understanding of the terms and provisions thereof; that it has done any inspection or test it deems appropriate; that it has reviewed, studied and examined its bid prior to the signing and submission of same; and that it was cognizant of the terms of its proposal, verified its calculations and found them to be correct and agrees to be bound thereby.

102.4. PREPARATION OF PROPOSAL

The bidder shall submit its proposal on the forms furnished or approved by the OWNER. All blank spaces in the form shall be correctly filled in and the bidder shall state the prices, both in words and numerals, for which it proposes to do the work contemplated or furnish the material required. Such prices shall be written in ink distinctly and legibly or submitted electronically if allowed by OWNER. In cases of discrepancy, the OWNER shall select the one most favorable to the OWNER, provided that it does not create a material mistake in the bid or otherwise change the result of bidding. If an individual submits the proposal, that individual or duly authorized agent must sign the proposal. If an association or partnership submits the proposal, the name and address must be given and the proposal signed by a duly authorized member of the association or partnership. If a corporation submits the proposal, the corporate name and business address must be given and the proposal signed by a duly authorized corporate officer or agent. Powers of attorney authorizing agents to sign the proposal must be properly certified and must be in writing and submitted with the proposal. The proposal shall be executed in ink. When allowed by the bid documents, bids by internet, electronic mail or facsimile are acceptable as long as all legal and bid requirements are met. The CONTRACTOR accepts all risks associated with bidding in this manner. It is understood and agreed that the proposal may not be withdrawn once the bid-opening process has begun.

102.4.1. Safety Record. If the safety record is part of the bid requirements in accordance with Section 252.0435, Local Government Code, each CONTRACTOR bidding on projects must submit a notarized

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affidavit with its bid attesting to its safety record. This information may be considered in determining the responsibility of the bidder for purposes of award.

102.5. PROPOSAL GUARANTY

No proposal shall be considered unless it is accompanied by a cashier's check on any state or national bank or acceptable bidder's surety bond, as specified in Item 103. Award and Execution of Contract, payable unconditionally to the OWNER. The cashier's check or bidder's surety bond shall be in the amount of not less than five percent of the total amount of the bid. The proposal guaranty is required by the OWNER as evidence of good faith and as a guarantee that if awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract or pay the damages as set forth below. The bidder's surety bond shall be conditioned that, if the proposal is withdrawn after the bids have been opened or the CONTRACTOR refuses to execute the Contract in accordance with its proposal and provide the required surety bonds, the CONTRACTOR and the surety shall become liable to the OWNER for the amount of the bidder's surety bond.

In the event a cashier's check is submitted along with the proposal of the bidder, and the CONTRACTOR does not execute the Contract and provide the required surety bonds and evidence of insurance within 10 days after receipt of the awarded Contract, or withdraws its bid after bids have been opened, the OWNER shall be entitled to the proceeds of such check.

102.6. FILING OF PROPOSALS

No proposal shall be considered unless it is filed at the place and within the time limit for receiving proposals as stated in the advertisement and/or Notice to Bidders or any addendum. Each proposal shall be in a sealed envelope, plainly marked with the word "Proposal" and the name or description of the project as designated in the advertisement.

102.7. WITHDRAWING PROPOSALS

Proposals filed with the OWNER can be withdrawn or modified and redeposited prior to the time set for opening proposals. Request for non-consideration of proposals must be made in writing addressed to the OWNER prior to the time set for opening proposals. After other proposals are opened and publicly read, the proposal for which non-consideration is properly requested will be returned unopened. The proposal may not be withdrawn after the bid opening has commenced. The bidder, in submitting the same, warrants and represents that its bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes and that such bid shall not and cannot be withdrawn after opening because of any mistake committed by the bidder; provided, however, that any bidder may withdraw its bid 90 days after the actual date of opening thereof, should no award have been made to such bidder.

102.8. OPENING PROPOSALS

The proposals filed with the OWNER shall be opened at the time stated in the advertisement and/or in the Notice to Bidders or any subsequently issued addendum, and publicly read aloud, and shall thereafter remain on file with the OWNER. No Contract shall be awarded based on such proposals until after at least two days have elapsed.

102.9. CONSIDERATION OF PROPOSAL

After proposals are opened, the proposals shall be tabulated for comparison on the basis of the bid prices and quantities shown in the proposal. Until final award of the Contract, the OWNER reserves the right to reject any or all proposals, to waive technicalities or irregularities at its option, to re-advertise for new proposals or proceed to do the work otherwise in the best interests of the OWNER. Each bidder shall be furnished a copy of the bid tabulation upon request.

102.10. IRREGULAR PROPOSALS

Proposals shall be considered irregular if they show any omissions, alterations of form, additions, unbalanced values or conditions not called for, unauthorized alternate bids or other irregularities of any kind. The OWNER may reject any proposal containing any such irregularity. The OWNER, however, reserves the right to waive any irregularities and to make the award in the best interest of the OWNER.

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The BIDDER or CONTRACTOR shall not take advantage of any error in the bidding or contract documents. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown in or mentioned in both. In the case of any apparent difference between the drawings and specifications, or any other apparent error which the BIDDER or the CONTRACTOR may discover, the BIDDER or CONTRACTOR shall refer the matter to the OWNER, to which the decision of the OWNER shall govern. The OWNER shall have the right to correct any error discovered.

102.11. REJECTION OF PROPOSALS

The OWNER reserves the right to reject any or all proposals; and all proposals submitted are subject to this reservation. Proposals may be rejected for any of the following reasons, but not necessarily limited thereto:

(1) proposal received after the time limit for receiving proposals as stated in the advertisement or any subsequently issued addendum;
(2) proposal unaccompanied by the required bid security;
(3) proposal constituting a nonresponsive bid;
(4) proposal containing unsolicited conditions or qualifications;
(5) failure to use the OWNER'S form of bid bond in submitting proposal, if included in the bid documents; or
(6) a proposal submitted with a bid bond issued by a surplus line company or by a surety not licensed to transact insurance business in the State of Texas.
(7) In the judgment of the OWNER, the proposal is incomplete.
(8) All rejections shall be final.
(9) The OWNER has the right to reject any and all bids and to accept or reject any and all schedules.

102.12. DISQUALIFICATION OF BIDDERS

Bidders may be disqualified and their proposal not considered for any of the following reasons, but not necessarily limited thereto:

(1) reasonable belief that collusion exists among the bidders;
(2) reasonable belief that any bidder is interested in more than one proposal for the work contemplated;
(3) the bidder having a history of filing frequent, excessive, meritless, or fraudulent claims against the OWNER, or against other CONTRACTORS on a project of the OWNER, or against other OWNERs or CONTRACTORS;
(4) the bidder or its surety having defaulted on a previous contract, or the bidder performing poorly on a previous or current contract;
(5) lack of competency, skill, judgment, financial capability, resources, integrity, reputation, reliability or responsibility to perform the work as revealed by the bid proposal, bid questionnaires, financial statement, performance history or other relevant information obtained by the OWNER.
(6) uncompleted work which in the judgment of the OWNER shall prevent or hinder the prompt completion of additional work if awarded;
(7) failure of bidder to use OWNER'S form of bid bond in submitting its bid, or submission of a cashier's check drawn on a state or national bank not located in the OWNER'S jurisdictional area;
(8) unbalanced value of any bid items;
(9) the bidder is currently a party to any litigation against the OWNER.
(10) bidder's unexcused failure to properly and/or timely complete a project with the OWNER.
(11) the OWNER'S decision that the bidder is disqualified shall be final.

102.13. RETURN OF PROPOSAL GUARANTY

Upon request, the OWNER shall return the proposal guaranties accompanying all proposals (except for the three apparent low proposals, or per policy of the OWNER. The three apparent low proposal guaranties shall be retained by the OWNER until the required Contract and surety bonds have been executed, after which they shall be returned.

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ITEM 103. AWARD AND EXECUTION OF CONTRACT

103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING

In consideration of, and to induce the award of this Contract to it, the CONTRACTOR represents and warrants:

(1) that it is financially solvent, and sufficiently experienced and competent to perform the work;
(2) that the facts stated in the proposal and the information given by it pursuant to the bidding documents are true and correct in all respects;
(3) that it has read, understood and complied with all the requirements set forth in the bidding documents;
(4) that it is familiar with and understands all laws and regulations applicable to the work; and
(5) unless otherwise specifically provided for in the Contract documents, the CONTRACTOR shall do all the work and shall furnish all the tools, equipment, machinery, materials, supplies, labor and appliances, except as herein otherwise specified, necessary or proper for performing and completing the work required by this Contract, in the manner and within the time herein prescribed.

By executing the Contract, the CONTRACTOR represents that it has visited the site of work, has fully familiarized itself with the local and on-site conditions under which the work is to be performed and has correlated its observation with the requirements of the Contract documents. In addition, the CONTRACTOR represents that it has satisfied itself as to subsurface conditions at the site of the work. Information, data and representations contained in the Contract documents pertaining to the conditions at the site, including subsurface conditions, are for information only and are not warranted or represented in any manner to accurately show the conditions at the site of the work. The CONTRACTOR agrees that it shall make no claims for damages; additional compensation or extension of time against the OWNER because of encountering actual conditions in the course of the work, which vary or differ from conditions or information, contained in the Contract documents. Except as provided in Item 107.24. Existing Structures, Facilities and Appurtenances, all risks of differing subsurface conditions shall be borne solely by the CONTRACTOR.

CONTRACTOR assumes all risks for differing site conditions, and all risks and costs.

Unless otherwise stated in the Contract, the CONTRACTOR agrees that all or a portion of the work required by this Contract is a governmental function of the OWNER.

103.2. AWARD OF CONTRACT

The OWNER will attempt to award the Contract within 90 days after the opening of proposals. The award, if made, shall be to the lowest responsible bidder; but in no case shall the award be made until after investigations are made as to the responsibility of the bidder to whom it is proposed to award the Contract. If awarded the Contract, the bidder shall execute the Contract and furnish the required bonds and evidence of insurance within 10 days after receipt of the awarded Contract.

103.3. SURETY BONDS

103.3.1. CONTRACTOR Surety Bonds. 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 Texas Government Code, Chapter 2253, as amended, and Section 3503.002 of the Insurance Code, as amended. These bonds shall automatically be increased by the amount of any change order or supplemental agreement 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. If performance and payment bond forms are included in the bid documents, these forms shall be used with this Contract.

103.3.1.1. Performance Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or, conditioned on the faithful performance of the work in accordance with the plans, specifications and Contract documents, including performance of any guarantees or warranties required by OWNER, and including any extensions thereof, for the protection of the OWNER. This bond shall provide for the repair and/or replacement of all defects due to faulty materials and workmanship that appear within a period of one

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year from the date of completion and acceptance of the improvement by the OWNER or such lesser or greater period as may be designated in the Contract documents.

103.3.1.2. Payment Bond. A good and sufficient bond in an amount not less than 100-percent of the approximate total amount of the Contract, as evidenced by the proposal tabulation, or otherwise solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime CONTRACTOR or a SUBCONTRACTOR to supply public work labor or material.

103.3.1.3. Additional or Substitue Bonds. If at any time the OWNER is or becomes dissatisfied with any surety on a performance or payment bond, the CONTRACTOR shall, within five 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 premiums on such bonds shall be paid by the CONTRACTOR without recourse to the OWNER. No further payments under the Contract shall be deemed due or payable until the substitute or additional bonds have been furnished to and accepted by the OWNER.

103.3.1.4. Bond Amounts Based on Contract Amount. If the amount of the Contract, including OWNER -accepted alternates and allowances, if any, is greater than $100,000, Performance and Payment Bonds in 100% of the Contract amount are mandatory and shall be provided by the bidder receiving the award. If the Contract amount is greater than $50,000 but less than or equal to $100,000, only a Payment Bond in 100% of the Contract amount is mandatory; provided, however, that the bidder receiving the award may elect to furnish a Performance Bond in the same amount if the bidder so chooses. If the Contract amount is less than or equal to $50,000, the bidder receiving the award may elect not to provide Performance and Payment Bonds; provided that in such event, no money will be paid to the CONTRACTOR until final completion and acceptance of all work by OWNER. If the bidder receiving the award elects to provide Performance and Payment Bonds in 100% of the Contract amount, progress payments will be disbursed in accordance with the applicable Contract provisions.

103.3.2. Developer Surety Bonds. In order to insure that it might not incur liabilities, an OWNER may require, before it gives approval of the plans for development, that the OWNER of said development shall provide sufficient surety bond(s) to guarantee that claims against such development, in the event of default, shall be satisfied. Model Forms A.10, through A.13, for private development are in Appendix A. Claimants may also seek recovery by other means.

103.3.3. Sureties. No sureties shall be accepted by the OWNER who are now in default or delinquent on any bonds or who are interested in any litigation against the OWNER. All bonds shall meet the applicable requirements of Section 3503.002, Texas Insurance Code and Chapter 2253, Texas Government Code, shall be made on forms furnished by the OWNER, and shall be executed by not less than one corporate surety authorized to do business in the State of Texas and acceptable to the OWNER. The Texas Insurance Board can be contacted at 800-578-4677. Each bond shall be executed by the CONTRACTOR and surety. Each surety shall designate on the bond the name, address and phone number of a representative for the surety located in a county of the State of Texas 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 suretyship. The OWNER reserves the right to reject any and all sureties.

103.4. INSURANCE

Any insurance policies required under this Item 103.4. Insurance may be written in combination with any of the others, where legally permitted, but none of the specified limits may be lowered thereby.

103.4.1. CONTRACTOR'S Insurance. Without limiting any of the other obligations or liabilities of the CONTRACTOR, during the term of the Contract the CONTRACTOR and each SUBCONTRACTOR at its own expense shall purchase and maintain the herein stipulated minimum insurance with companies duly approved to do business in the State of Texas and satisfactory to the OWNER. In no case shall the insurance be less than that specified in the contract by the OWNER. Certificates of each policy and a copy of each policy shall be delivered to the OWNER before any work is started, along with a written statement from the issuing company stating that said policy shall not be canceled, renewed or materially changed without 30 days advance written notice being given to the OWNER, except when the policy is being canceled for nonpayment of

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premium, in which case 10 days advance written notice is required. Prior to the effective date of cancellation, the CONTRACTOR must deliver to the OWNER a replacement certificate of insurance or proof of reinstatement. A model Certificate of Insurance is illustrated in Model Form A.6. in Appendix A. Coverage shall be of the following types and not less than the specified amounts:

103.4.1.1. Worker's Compensation. Workers' compensation as required by Texas law, with the policy endorsed to provide a waiver of subrogation as to the OWNER; employer's liability insurance of not less than $100,000 for each accident, $100,000 disease - each employee, $500,000 disease - policy limit.

103.4.1.2. Commercial General Liability. Commercial general liability insurance, including independent CONTRACTOR'S liability, completed operations and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Contract, fully insuring CONTRACTOR'S (or SUBCONTRACTOR'S) liability for injury to or death of OWNER'S employees and third parties, extended to include personal injury liability coverage with damage to property of third parties, with minimum limits as set forth in Table 103.4.1.2.(a) General Liability Insurance Minimum Coverage.

The policy shall include coverage extended to apply to completed operations, asbestos hazards (if this project involves work with asbestos) and XCU (explosion, collapse and underground) hazards. The completed operations coverage must be maintained for a minimum of one year after final completion and acceptance of the work, with evidence of same filed with OWNER.

Table 103.4.1.2.(a) General Liability Insurance Minimum Coverage

General Aggregate	$1,000,000
Products - Components/Operations Aggregate	$1,000,000
Personal and Advertising Injury	$ 600,000
Each Occurrence	$ 600,000
Fire Damage (any one fire)	$ 50,000
Medical Expense (any one person)	$ 5,000

103.4.1.3. Automobiles. Comprehensive automobile and truck liability insurance, covering owned, hired and non-owned vehicles, with a combined bodily injury and property damage minimum limit of $600,000 per occurrence; or separate limits of $250,000 for bodily injury (per person), $500,000 for bodily injury (per accident) and $100,000 for property damage. Such insurance shall include coverage for loading and unloading hazards.

103.4.2. OWNER'S Protective Liability Insurance. CONTRACTOR shall obtain, pay for and maintain at all times during the prosecution of the work under this Contract an OWNER'S protective liability insurance policy naming the OWNER and the Engineer as insureds for property damage and bodily injury, which may arise in the prosecution of the work or CONTRACTOR'S operations under this Contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the CONTRACTOR'S liability insurance with a combined bodily injury and property damage minimum limit of $600,000 per occurrence and $1,000,000 aggregate.

103.4.3. "Umbrella" Liability Insurance. If required by OWNER, CONTRACTOR shall obtain, pay for and maintain umbrella liability insurance during the Contract term, insuring CONTRACTOR for an amount of not less than $1,000,000 per occurrence combined limit for bodily injury and property damage that follows form and applies in excess of the primary liability coverages required hereinabove. The policy shall provide "drop down" coverage where underlying primary insurance coverage limits are insufficient or exhausted. OWNER and Engineer shall be named as additional insureds.

103.4.4. Railroad Protective Insurance. When required in the Special Provisions, CONTRACTOR shall obtain, maintain and present evidence of railroad protective insurance (RPI). The policy shall be in the name of the railroad company having jurisdiction over the right-of-way involved. The minimum limit of coverage shall meet the specifications provided by the railroad company. The OWNER shall specify the amount of RPI necessary.

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103.4.5. Policy Endorsements and Special Conditions

103.4.5.1. Endorsements. Each insurance policy to be furnished by CONTRACTOR shall include the following conditions by endorsement to the policy:

(1) each policy shall name the OWNER as an additional insured as to all applicable coverage;
(2) each policy shall require that 30 days prior to the cancellation, nonrenewal or any material change in coverage, a notice thereof shall be given to OWNER by certified mail. If the policy is canceled for nonpayment of premium, only 10 days written notice to OWNER is required;
(3) the term "OWNER" shall include all authorities, boards, bureaus, commissions, divisions, departments and offices of the OWNER and individual members, employees and agents thereof in their official capacities and/or while acting on behalf of the OWNER;
(4) the policy phrase "other insurance" shall not apply to the OWNER where the OWNER is an additional insured on the policy; and
(5) all provisions of the Contract concerning liability, duty and standard of care together with the indemnification provision, shall be underwritten by contractual liability coverage sufficient to include such obligations within applicable policies.

103.4.5.2. Insurance Requirements. Insurance furnished by the CONTRACTOR shall be in accordance with the following requirements:

(1) any policy submitted shall not be subject to limitations, conditions or restrictions deemed inconsistent with the intent of the insurance requirements to be fulfilled by the CONTRACTOR. The OWNER'S decision thereon shall be final;
(2) all policies are to be written through companies duly licensed to transact that class of insurance in the State of Texas; and
(3) all liability policies required herein shall be written with an "occurrence" basis coverage trigger.

103.4.5.3. CONTRACTOR Agreements. CONTRACTOR agrees to the following:

(1) CONTRACTOR hereby waives subrogation rights for loss or damage to the extent same are covered by insurance. Insurers shall have no right of recovery or subrogation against the OWNER, it being the intention that the insurance policies shall protect all parties to the Contract and be primary coverage for all losses covered by the policies;
(2) companies issuing the insurance policies and CONTRACTOR shall have no recourse against the OWNER for payment of any premiums or assessments for any deductibles, as all such premiums and deductibles are the sole responsibility and risk of the CONTRACTOR;
(3) approval, disapproval or failure to act by the OWNER regarding any insurance supplied by the CONTRACTOR (or any SUBCONTRACTORS) shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the Contract documents. Neither shall the bankruptcy, insolvency or denial of liability by the insurance company exonerate the CONTRACTOR from liability; and
(4) no special payments shall be made for any insurance that the CONTRACTOR and SUBCONTRACTORS are required to carry; all are included in the Contract price and the Contract unit prices.
(5) approval, disapproval or failure to act by OWNER regarding any insurance supplied by CONTRACTOR or its SUBCONTRACTORS shall not relieve CONTRACTOR of full responsibility or liability for damages, errors, omissions or accidents during the term of the Contract.

103.5. EXECUTION OF CONTRACT

103.5.1. OWNER AND CONTRACTOR Responsibilities. The CONTRACTOR shall within 10 business days after receipt of the Contract sign the necessary agreements entering into the required Contract with the OWNER. No Contract shall be binding on the OWNER until all authorized signatures required by law have been affixed and the executed Contract delivered to the CONTRACTOR.

103.5.2. Failure to Execute. The failure of the CONTRACTOR to execute the Contract or provide the required statutory surety bonds within 10 business days after the Contract is received shall constitute a breach of its proposal and the OWNER may annul the award and retain the proceeds of the bid security. In the event the OWNER should re-advertise for bids, the defaulting CONTRACTOR may not be eligible to bid.

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103.6. NOTICE TO PROCEED AND COMMENCEMENT OF WORK

Upon OWNER receipt of the executed Contract and the required insurance and surety bonds, a notice to proceed shall be issued by the OWNER indicating the date upon which the Contract time shall start and the projected date of completion. The OWNER will attempt to provide the notice to proceed within the time specified in the plans. The CONTRACTOR shall commence work within 10 days from the date specified in the written notice to proceed. No work shall commence before the notice to proceed has been issued. Unless otherwise specified in the contract, there shall be a preconstruction meeting between the OWNER and CONTRACTOR prior to the commencement of work.

103.7. DELAY OF CONTRACT

The CONTRACTOR shall not be entitled to any claim for damages due to delay in the award or notice to proceed. If the CONTRACTOR encounters any delay occasioned by the OWNER'S failure or inability to obtain right-of-way or is delayed by the relocation or removal of any of the utilities or other installations of similar kind, the CONTRACTOR shall not be entitled to any claim for damages by virtue of any delay. Should the OWNER unreasonably delay the issuance of the notice to proceed through no fault of the CONTRACTOR, the CONTRACTOR shall be entitled only to an extension of Contract time, the Contract amount to remain unchanged. The OWNER has the right to reject any and all bids and to accept or reject any and all schedules. At such time as actual construction has been started, the work will not be stopped or delayed without written permission of the OWNER, excluding delays caused by adverse weather conditions. The CONTRACTOR shall maintain at all times sufficient equipment and personnel on the project to produce satisfactory progress during the construction period.

103.8. ORDER OF WORK TO BE PERFORMED

After a contract has been awarded and before the "Notice to Proceed" is issued, the OWNER reserves the right to prioritize the order of the Work to be performed.

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ITEM 104. SCOPE OF WORK

104.1. INTENT OF CONTRACT DOCUMENTS

The intent of the documents, unless otherwise specifically provided, is to produce complete and finished work, which the CONTRACTOR undertakes to do in full compliance with the Contract documents. It is not intended to mention every item of work in the specifications that can be adequately shown on the drawings nor to show on the drawings all items of work described or required by the specifications. All materials or labor for work shown on the drawings or reasonably inferable therefrom as being necessary to produce a finished job shall be provided by the CONTRACTOR whether or not same is expressly covered in the specifications. No verbal conversation, understanding or agreement with any officer or employee or agent of the OWNER, either before or after the execution of the Contract, shall affect or modify any of the terms, conditions or obligations contained in the Contract documents.

The CONTRACTOR shall do all work as provided in the plans, specifications, special provisions, bid and contract, and shall do such additional extra work as may be considered necessary to complete the work in a satisfactory manner acceptable to the OWNER. The CONTRACTOR shall furnish all labor, tools, materials, machinery, equipment, and incidentals necessary to the satisfactory prosecution and completion of the work.

104.1.1. Arrangement of Specifications and Headings. The inclusion of any particular specification in the various sections and divisions of these specifications does not indicate that it is applicable only to work specified within that section. For any particular item of work on any type of project, the specification describing that item shall govern regardless of the section of these specifications within which it is included. The specifications included herein are grouped together for convenience only and not for the purpose of restricting the application of any specification.

The titles and headings contained in the contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope or intent of any of the provisions of this contract.

104.2. CHANGE OR MODIFICATION OF CONTRACT

104.2.1. Increased or Decreased Quantities of Work. The OWNER reserves the right to make changes in the quantities of the work, as may be considered necessary or desirable, and such changes shall not be considered as waiving or invalidating any conditions or provisions of the Contract or bonds. The CONTRACTOR shall perform the work as altered, whether increased or decreased, and no allowances shall be made for anticipated profits.

The OWNER reserves the right to decrease the work under this Contract. Payment to the CONTRACTOR for the Contract items shall be made for the actual quantities of work performed and material furnished at the unit prices set forth in the Contract, except as provided below.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is more than 125 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the portion of work above 125 percent of the quantity stated in the Contract.

When the quantity of work to be done or of materials to be furnished under any major item of the Contract is less than 75 percent of the quantity stated in the Contract, then either party to the Contract, upon demand, shall be entitled to negotiate for revised consideration on the work performed.

Any revised consideration shall be paid for as is hereinafter provided under Item 109.3. Payment for Extra Work. The foregoing notwithstanding, the total original Contract amount shall not be increased more than 25 percent; the CONTRACTOR, by submission of a bid and execution of the Contract, is deemed to consent to the OWNER'S right to reduce the total original Contract amount by more than 25 percent.

The Contract amount or the Contract time can only be increased or decreased by a properly written change order.

104.2.2. Alteration of Plans and Specifications. The OWNER reserves the right to make such changes in the plans and specifications and in the character of the work as may be necessary or desirable to insure completion in the most satisfactory manner, provided such changes do not materially alter the original plans and specifications or change the general nature of the work as a whole. Such changes shall not be

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considered as waiving or invalidating any condition or provision of the Contract and bonds. Such changes shall be issued by the OWNER.

104.2.3. Extra Work. When any work is necessary to the proper completion of the project and for which no prices are provided for in the proposal and Contract, the CONTRACTOR shall do such work, but only when and as ordered in writing by the OWNER. Extra Work is further explained in Item 109.3. Payment for Extra Work and Item 104.3. Disputed Work and Claims for Additional Compensation. Payment for Extra Work shall be made as hereinafter provided in Item 109.3. Payment for Extra Work. No work shall be undertaken which requires extra payment without having an executed change order approved by the CONTRACTOR and the OWNER, except when so ordered in writing.

104.2.4. Finality of Change Orders. In addition to the OWNER, the CONTRACTOR shall sign the Change Order Documents to verify the terms and conditions established by the Change Order; however, failure or refusal of the CONTRACTOR to sign a Change Order shall not relieve the CONTRACTOR of its obligation to execute the proposed changes in accordance with this Item and the other terms and provisions of this Contract. Each Change Order shall be specific and final as to prices and the extension of time, if any, and no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.

104.2.5. General Claim Procedures. Except where otherwise provided in the Contract Documents, claims by the CONTRACTOR, whether for damages, additional compensation, additional time or other reasons must be made by written notice to the OWNER within fourteen days after occurrence of the event or events giving rise to the particular claim. Every claim, whether for damages, additional compensation, additional time or other reasons shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the CONTRACTOR by his or her signature) of the CONTRACTOR, verifying the truth and accuracy of the claim. Such verification shall be a condition precedent to the acceptability of any claim asserted by the CONTRACTOR. The CONTRACTOR shall be deemed to have waived any claim not made strictly in accordance with the procedure and time limits set out in this paragraph.

104.3. DISPUTED WORK AND CLAIMS FOR ADDITIONAL COMPENSATION

If the CONTRACTOR is of the opinion that:

(1) certain work necessary or required to accomplish the result intended by this Contract or certain work ordered to be done as contract work by the OWNER is actually Extra Work and not CONTRACTOR work, or

(2) any determination or order of the OWNER violates the terms and provisions of this Contract, then the CONTRACTOR shall promptly, either before proceeding with such work or complying with such order or determination, notify the OWNER in writing of its contentions with respect thereto and request a final determination by the OWNER. Such determination of the OWNER shall be given in writing to the CONTRACTOR. If the OWNER determines that the work in question is Extra Work and not Contract work, or that the order complained of requires performance by the CONTRACTOR beyond that required by the Contract or violates the terms and provisions of the Contract, thereupon the OWNER shall cause either (a) the issuance of a change order covering the Extra Work as provided for in Item 104.2. Change or Modification of Contract hereof, or (b) the determination or order complained of to be rescinded or so modified so as to not require performance beyond that required by the terms and provisions of the Contract.

If the OWNER determines that the work in question is Contract Work and not Extra Work, or that the determination or order complained of does not require performance by the CONTRACTOR beyond that required by the Contract or violate the terms and provisions of the Contract, the OWNER shall direct the CONTRACTOR to proceed, and the CONTRACTOR must promptly comply. In order to reserve its right to claim compensation for such work resulting from such compliance, however, the CONTRACTOR must, within fourteen (14) days after receiving the OWNER'S determination and direction, notify the OWNER in writing that the work is being performed, or that the determination and direction is being complied with, under protest. If the OWNER is properly notified of a protest by the CONTRACTOR, then the cost of such disputed work shall be accounted for in accordance with the force account method described in Item 109.3.3. Force Account Work. Payment, if any is due, shall be made when the OWNER makes a final determination regarding the merit of the CONTRACTOR'S protest. The final determination of the cost

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of disputed work under this method, or of any issue regarding the merits of a protest, is not waived by the OWNER'S issuance of any Change Order providing for the funding of the disputed work.

If the CONTRACTOR fails to so appeal to the OWNER for a determination or, having so appealed, should the CONTRACTOR thus fail to notify the OWNER in writing of its protest, the CONTRACTOR shall be deemed to have waived any claim for extra compensation of damages therefore. No oral appeals or oral protests, no matter to whom made, shall be deemed even substantial compliance with the provisions of this item.

A delay of the CONTRACTOR due to a court order against the OWNER, or due to the OWNER'S failure to secure right-of-way at the time required or because of a conflict of a utility with the work, shall not be cause for additional compensation for damages sustained by the CONTRACTOR, but may be a cause for extension of Contract working time only.

In addition to the foregoing requirements, the CONTRACTOR shall, upon notice from the OWNER, produce for examination and audit at the CONTRACTOR'S office, by the representatives of the OWNER, all its books and records showing all of its acts and transactions in connection with contractual performance as well as relating to or arising by reason of the matter in dispute. At such examination a duly authorized representative of the CONTRACTOR may be present.

Unless the aforesaid requirements and conditions shall have been complied with by the CONTRACTOR, the OWNER shall be released from all claims arising under, relating to or by reason of this Contract, except for the sums to be due under the payment provisions of this Contract. It is further stipulated and agreed that no conduct on the part of the OWNER or any agent or employee of the OWNER shall ever be construed as a waiver of the requirements of this section, when such requirements constitute an absolute condition precedent to any approval of any claim for extra compensation, notwithstanding any other provisions of the Contract documents; and in any action against the OWNER to recover any sum in excess of the Contract amount, the CONTRACTOR must allege and prove strict compliance with the provisions of this section.

In connection with the examination provided for herein, the OWNER, upon demand therefore, shall also produce for inspection by the CONTRACTOR such records as the OWNER may have with respect to such disputed work or work performed under protest pursuant to order of the OWNER, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the CONTRACTOR'S claim.

104.4. PERFORMANCE OF EXTRA OR DISPUTED WORK

While the CONTRACTOR or any SUBCONTRACTOR is performing Extra Work in accordance with Item 109.3.3. Force Account Work or is performing disputed work or complying with a determination or order under protest in accordance with Item 104.3. Disputed Work and Claims for Additional Compensation (the cost of which shall also be determined by the method set out in Item 109.3.3. Force Account Work), the CONTRACTOR shall daily furnish the OWNER or other representative of the OWNER at the project site with three copies of verified statements showing:

(1) the name and number of each worker, foreman, timekeeper, mechanic, or laborer employed on such work or engaged in complying with such determination or order, the character of such work each is doing and the wages paid to him or her, including the rate and amount of payroll taxes, contribution for insurance and federal social security; and

(2) the nature, cost and quantity of any materials, supplies, tools, plant or construction equipment furnished or used in connection with the performance of such work or in complying with such determination or order, and from whom purchased or rented.

The above required statements and submittals are in addition to and not in lieu of statements or submittals required under Item 104.3. Disputed Work and Claims for Additional Compensation and Item 109.3. Payment for Extra Work. A copy of such statements shall be signed by the OWNER'S representative, noting thereon any items in question, and shall be returned to the CONTRACTOR within two working days after submission. This signature shall not be construed as the OWNER'S agreement and acceptance of items not questioned since all items are subject to subsequent review and audit by OWNER representatives.

The CONTRACTOR and its SUBCONTRACTORS, when required by the OWNER, must also produce for inspection and audit by designated OWNER representatives, any and all of their books, vouchers, records, daily job diaries and reports, canceled checks, etc. showing the nature and quantity of labor, materials and equipment actually used in the performance of the such Work or Disputed Work; the amounts expended therefore; and the costs

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incurred for insurance premiums and other items of expense directly chargeable to such Extra Work or Disputed Work. The CONTRACTOR must permit the OWNER'S representatives to make extracts there from or copies thereof as may be desired.

Failure of the CONTRACTOR to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation on account of the performance of such Extra Work or Disputed Work.

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ITEM 105. CONTROL OF WORK

105.1. CONTRACT DOCUMENTS

105.1.1. Priority of Contract Documents. In case of conflict between Contract documents, priority of interpretation shall be in the following order:

(1) signed agreement (or Contract);
(2) performance and payment bonds;
(3) proposal;
(4) special provisions (or conditions);
(5) advertisement for bids (or invitation to bidders, or request for proposals);
(6) project (or Contract) drawings;
(7) Standard Specifications from Public Works Construction Standards - North Central Texas, and any addendum;
(8) Standard Drawings from Public Works Construction Standards - North Central Texas, and any addendum;
(9) referenced specifications.

105.1.2. Correlation of Documents. The Contract documents are complementary and what is called for by any one shall be as binding as if called for by all.

105.1.3. Contract Drawings and Specifications. The OWNER shall furnish the CONTRACTOR such copies of the Contract and any supplemental drawings and specifications reasonably necessary for the proper execution of the work. At least one copy of all drawings and specifications shall be accessible at all times to the OWNER at the job site.

The plans, the specifications, the proposal, special provisions and all supplementary documents are intended to describe a complete work and are essential parts of the Contract. All requirements occurring in any of them are binding. In cases of discrepancies, figured dimensions shall govern over scaled dimensions; plans shall govern over Standard Specifications, special provisions shall govern over both plans and Standard Specifications.

All other provisions of these Standard Specifications shall remain in force.

105.1.4. Supplemental Drawings and Specifications. In order to carry out the intent of the Contract documents and to assist the CONTRACTOR in performing its work, the OWNER, after the execution of the Contract, may, by supplemental drawings, specifications or otherwise, furnish additional information or instructions as may be necessary for construction purposes.

All such supplemental drawings, specifications or instructions are intended to be consistent with the Contract documents and reasonably inferable therefrom. Therefore, no extra costs shall be allowed by the OWNER on a claim that particular supplemental drawings, specifications or instructions differ from the requirements of the Contract documents, incurring extra costs, unless the CONTRACTOR has first brought the matter, in writing, to the OWNER'S attention for adjustment before proceeding with the work covered by such.

If the OWNER shall decide that there is no departure from the requirements of the Contract documents, the CONTRACTOR shall then proceed with the work as shown, specified or directed. If the OWNER shall decide that extra work is involved, OWNER shall so modify the supplemental drawings, specifications or instructions to eliminate the extra work, or cause a written change order to be issued in accordance with Item 104.2. Change or Modification of Contract herein.

105.1.5. Referenced Standards. All referenced State, Federal, and National standards are the most current version in effect, unless specifically noted otherwise. Referenced standards may include, but are not limited to, the latest version of publications such as TxDOT *Standard Specifications for Construction of Highways, Streets and Bridges*, TxDOT *Manual of Testing Procedures*, Federal Specifications, ASTM designations, AWWA standards, TMUTCD, ADA, TAS, and standards of other professional societies and associations.

105.1.6. Errors and Corrections in Drawings and Specifications. The OWNER shall be permitted to make such corrections or interpretations as may be necessary for the fulfillment of the intent of the Contract documents. The CONTRACTOR shall not take advantage of any apparent errors, omissions or discrepancies in the drawings or specifications. In case of any errors, omissions or discrepancies in the drawings or

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specifications, the CONTRACTOR shall promptly submit the matter to the OWNER who, in turn, shall promptly make a determination and issue the necessary instructions in writing. Any adjustment by the CONTRACTOR without this determination and instructions shall be at the CONTRACTOR'S own risk and expense. The work is to be made complete as intended by the Contract documents.

105.2. WORKMANSHIP, WARRANTIES, AND GUARANTEES

105.2.1. Workmanship. Unless otherwise expressly provided in the Contract drawings or specifications, the work shall be performed in accordance with the best modern practice with materials and workmanship of the highest quality and suitable for their purpose. The OWNER shall judge and determine the CONTRACTOR'S compliance with these requirements.

105.2.2. Special Warranty. If within one year after final acceptance of the work by the OWNER, as evidenced by the final certificate of acceptance or within such longer or shorter period of time as may be prescribed by law or by the terms of any other applicable special warranty on designated equipment or portions of work as required by the Contract documents, any of the work is found to be defective or not in accordance with the Contract documents, the CONTRACTOR shall correct it promptly after receipt of a written notice from the OWNER to do so. This obligation shall survive termination of the Contract. The OWNER shall give such notice promptly after discovery of the condition.

105.2.3. SUBCONTRACTORS' and Manufacturers' Warranties. All SUBCONTRACTORS', manufacturers' and suppliers' warranties and guarantees, express or implied, respecting any part of the work and any materials used therein, shall be obtained and enforced by the CONTRACTOR for the benefit of the OWNER without the necessity of separate transfer or assignment thereof, provided that if directed by the OWNER, the CONTRACTOR shall assign such warranties and guarantees in writing to the OWNER.

105.2.4. Corrected Work Warranty. Any work repaired or replaced shall be subject to the provisions of this section to the same extent as work originally performed.

105.2.5. Rights and Remedies. The rights and remedies of the OWNER provided in this section are in addition to, and do not limit, any rights or remedies afforded to the OWNER by law or any other provision of the Contract documents, or in any way limit the OWNER'S right to recovery of damage due to default under the Contract.

105.3. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Shop drawings are drawings, diagrams, schedules and other data specially prepared for the work by the CONTRACTOR or any SUBCONTRACTOR, manufacturer, supplier or distributor to illustrate some portion of the work. Product data or manufacturer's data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CONTRACTOR to illustrate a material, product or system for some portion of the work. Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the work shall be judged.

With reasonable promptness and in such sequence as to cause no delay in the work or in the work of the OWNER or any separate CONTRACTOR, CONTRACTOR shall submit an acceptable number of copies of shop drawings, layouts, manufacturer's data and material schedules as may be required by the OWNER for review. Submittals may be checked by and stamped with the approval of the CONTRACTOR and identified as the OWNER may require. Such review by the OWNER shall include checking for general conformance with the design concept of the project and general compliance with information given in the General Contract Documents. Indicated actions by the OWNER, which may result from OWNER'S review, shall not constitute concurrence with any deviation from the plans and specifications unless such deviations are specifically identified by the method described below, and further shall not relieve the CONTRACTOR of responsibility for errors or omissions in the submitted data. The OWNER may require that certain submittals be sealed by a licensed Texas Engineer. Processed shop drawing submittals are not change orders.

If deviations, discrepancies or conflicts between submittals and the design drawings and/or specifications are discovered, either prior to or after submittals are processed, the design drawings and specifications shall govern. Any deviation from the specified criteria shall be expressly stated in writing in the submittal. The CONTRACTOR shall not be relieved of responsibility for any deviation from the requirements of the Contract documents by the OWNER'S approval of shop drawings, product data or samples unless the CONTRACTOR has specifically informed

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the OWNER in writing of such deviation at the time of submission and the OWNER has given written approval to the specific deviation.

The purpose of submittals by the CONTRACTOR is to demonstrate that the CONTRACTOR understands the design concept, and that it demonstrates its understanding by indicating which equipment and materials it intends to furnish and install, and by detailing the fabrication and installation methods it intends to use. The CONTRACTOR shall be responsible for dimensions that are to be confirmed and correlated at the job site, fabrication processes and techniques of construction, coordination of its work with that of other trades and satisfactory performance of its work. The CONTRACTOR shall check and verify all measurements and review submittals prior to being submitted, and sign or initial a statement included with the submittal, which signifies compliance with plans and specifications and dimensions suitable for the application. No portion of the work requiring submission of a shop drawing, product data or sample shall be commenced until the submittal has been approved by the OWNER. All such portions of the work shall be in accordance with approved submittals.

The CONTRACTOR shall be responsible for delays caused by rejection of the submittal of inadequate or incorrect shop drawings, product data or samples. The CONTRACTOR shall be responsible for providing all copies of approved shop drawings necessary for the construction operations. Three (3) copies of the approved submittals shall be retained by the CONTRACTOR until completion of the project and presented to the OWNER in bound form.

105.4. CONSTRUCTION STAKES

Unless otherwise expressly provided in the Contract drawings or specifications, the CONTRACTOR is responsible for locating or reestablishing project survey control, construction staking, including benchmarks, centerlines, and other measurements necessary for the proper execution of the project. The OWNER shall furnish the CONTRACTOR with all necessary information relating to the lines and grades.

All surveying under this section performed by the CONTRACTOR shall be done by a Texas Registered Professional Land Surveyor (RPLS). After completion of staking, the CONTRACTOR shall furnish survey field notes and cut sheets to the OWNER for review. Review of survey field notes and cut sheets shall in no way relieve the CONTRACTOR of liability for incorrectly setting stakes. When not listed as a separate pay item in the Contract, construction staking shall be considered as incidental work, and the cost thereof shall be included in such pay items as are provided in the Contract.

105.5. MEANS AND METHODS OF CONSTRUCTION

Unless otherwise expressly provided in the Contract drawings, specifications or bulletins, the means and methods of construction shall be such as the CONTRACTOR may choose; subject, however, to the OWNER'S right to prohibit means and methods proposed by the CONTRACTOR which in the OWNER'S judgment:

(1) shall constitute a hazard to the work, or to persons or property, or shall violate express requirements of applicable laws or ordinances; or
(2) shall cause unnecessary or unreasonable inconvenience to the public; or
(3) shall not produce finished work in accordance with the requirements of the Contract documents; or
(4) shall not assure the work to be completed within the time allowed by the Contract.

The OWNER'S approval of the CONTRACTOR'S means or methods of construction, or the OWNER'S failure to exercise OWNER'S right to prohibit such means or methods, shall not relieve the CONTRACTOR of its responsibility for the work or of its obligation to accomplish the result intended by the Contract documents; nor shall the exercise or non-exercise of such rights to prohibit create a cause of action for damages or provide a basis for any claim by the CONTRACTOR against the OWNER.

Where the Contract drawings, specifications or bulletins do not require the use of specific means or methods of construction, sequencing of construction or a specific traffic control plan, the CONTRACTOR shall submit its proposed plan of procedure, sequencing or traffic control plan to the OWNER sufficiently in advance of the work affected to permit a reasonable time for review and comments. The sequence of construction and traffic control plan must be approved in advance by the OWNER before construction begins. Failure to submit the proposed plan within a reasonable time shall not create a claim for damages for resulting delay in the work or for damages, nor shall it be a cause for extension of working time to complete the work.

CONTRACTOR further agrees to defend and indemnify OWNER for any claim or cause of action brought by any third party against the OWNER provided for in Item 107.3. Indemnification hereof.

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105.5.1. Conformity with the Plans. All work shall conform to the lines, grades, cross-sections, and dimensions shown on the plans. Any deviation from the plans which may be required by the emergency needs of construction will be determined and authorized in writing by the OWNER.

105.5.2. Public Utilities and Other Property to be Changed. In case it is necessary to change or move the property of any OWNER or of a public utility, such property shall not be moved or interfered with until ordered to do so by the OWNER. The right is reserved to the OWNER of public utilities to enter upon the limits of the contract for the purpose of making such changes or repairs to their property that may be made necessary by performance of the contract. The OWNER reserves the right of entering upon the limits of a contract for the purpose of repairing or relaying sewer and water lines and appurtenances, repairing structures, etc. and for making other repairs, changes, or extensions to any property on the project site.

105.6. SUPERVISION BY CONTRACTOR

The status of the CONTRACTOR is that of an independent CONTRACTOR under Texas law and the work under this Contract shall be under the direct charge and superintendence of the CONTRACTOR. Except where the CONTRACTOR is an individual and gives its personal superintendence to the work, the CONTRACTOR shall provide a competent superintendent or general foreman on the work site at all times during progress with full authority to act for CONTRACTOR. The CONTRACTOR shall also provide an adequate staff for the coordination and expediting of its work.

The superintendent and staff shall be satisfactory to the OWNER. The superintendent or general foreman shall not be changed during this Contract except with the written consent of the OWNER or unless the superintendent or general foreman proves unsatisfactory to the CONTRACTOR and ceases to be in its employ.

If the superintendent or any staff should be or become unsatisfactory to the OWNER, he/she shall be removed by the CONTRACTOR upon written direction of the OWNER, and in such event, the CONTRACTOR shall not be entitled to file a claim for any additional working time or money from the OWNER.

The CONTRACTOR shall provide the OWNER a list of a minimum of three working contacts who are available 24 hours per day, seven days per week.

105.7. OWNER'S REPRESENTATIVES

Where the Contract documents indicate that determinations, directions or approvals shall be made by the OWNER or "OWNER'S representatives," this shall mean the OWNER acting directly, or through duly authorized persons acting within the limit of authority delegated to them.

105.7.1. Authority of the Engineer. All work shall be performed in a good and workmanlike manner and to the satisfaction of the Engineer. The Engineer shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the Contract, compensation, mutual rights between CONTRACTORS under these specifications and suspension of the work. Engineer shall determine the amount and quality of work performed and materials furnished, and Engineer's decisions and estimates shall be final. Engineer estimate in such event shall be a condition precedent to the right of the CONTRACTOR to receive money due under the Contract.

105.7.2. OWNER'S Representative's Final Determination. The OWNER'S representative's determinations shall be final relative to the proper performance of the work and the materials used, and the CONTRACTOR is bound thereby.

It is hereby covenanted and agreed between the two parties of this Contract that the OWNER'S representative shall review and determine all disputes, controversies or claims of either party in relation to this Contract or its performance. Such determination shall be made in writing by the OWNER'S representative within a reasonable time and shall be final and conclusive upon both the CONTRACTOR and the OWNER. It is further covenanted and agreed between the two parties to the Contract that the determination by the OWNER'S representative shall be a condition precedent to the right of any legal action at law or in equity that either party may have against the other.

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105.8. SERVICE OF NOTICES

The OWNER and the CONTRACTOR shall designate an address and, if available, a facsimile number, an email address, and other mutually agreeable contact methods where all notices, directions or other communications may be delivered.

Notices to the surety or sureties on Contract bonds shall be directed or delivered to the surety's home office or to the surety's designated agent for delivery of notices.

Service by mail shall be presumed complete upon deposit of the paper, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service. Service by facsimile or email after 5:00 p.m. local time of the recipient shall be deemed delivered on the following business day.

A party may change its designated address, facsimile number, email address, or other mutually agreeable method of communication by delivering written notice of the change, properly signed, to all interested parties.

Nothing herein contained shall be deemed to preclude hand delivery of any notice, direction or communication to a party mentioned above.

105.9. INSPECTION

It is the intent of the OWNER to inspect all work on this project. The CONTRACTOR shall obtain written verification from the OWNER if an inspector is not needed before proceeding with that particular item of work. The CONTRACTOR must pay for all testing needed to determine acceptability for any work done without inspection, as directed by the OWNER.

The CONTRACTOR shall furnish the OWNER with every reasonable facility for ascertaining whether or not the work performed was in accordance with the requirements and intent of the plans and specifications. Any work done (except excavation) or materials used without suitable inspection by the OWNER may be ordered removed and replaced at the CONTRACTOR'S expense.

105.9.1. Removal of Defective and Unauthorized Work. All work which has been rejected or condemned shall be repaired, or if it cannot be repaired satisfactorily, it shall be 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 plans or as given, save as herein provided, work done without written authority and prior agreement in writing as to process, shall be done at the CONTRACTOR'S risk and shall 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 or condemned work or materials immediately after receiving notice from the OWNER, the OWNER shall, 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. Alternatively, the OWNER may, at its option, declare the CONTRACTOR in default, in which event the performance bond surety shall complete the Contract.

105.9.2. Final Inspection. Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, the CONTRACTOR shall notify the OWNER that the improvement is ready for final inspection. If the work is not acceptable to the OWNER at the time of such inspection, OWNER shall inform CONTRACTOR as to the particular defects to be remedied before final acceptance shall be made. CONTRACTOR shall promptly remedy the identified defects. The OWNER will notify the CONTRACTOR of the time allowed for correction of the unacceptable items found during the final inspection. The OWNER shall make final inspection of all work included in the Contract as soon as practicable after remedies have been made and the work is ready for acceptance.

105.9.3. Inspection Overtime. Project inspectors must be paid via the contract. The CONTRACTOR is required to reimburse the OWNER or its designated representative for the cost of all inspection overtime which may be necessary for the successful and expeditious prosecution of the work included in this Contract. Requests for overtime inspection must be submitted to the OWNER two working days in advance and on the proper form. Payment to the OWNER or its designated representative for overtime inspection costs will be made within 10 days of receipt of invoice. Failure to submit payment for overtime inspection may result in the

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OWNER withholding the next monthly partial payment. No additional compensation or time shall be granted the CONTRACTOR for withheld monthly partial payments due to nonpayment of inspector overtime.

The maximum overtime rate for construction inspectors shall be determined by the OWNER. In case of disputes, the OWNER'S decision shall be final. Model Form A.8. Inspection Overtime is included in Appendix A.

105.10. ACCEPTANCE

Once the work is satisfactory to the OWNER and in accordance with the specifications and Contract documents, the CONTRACTOR shall be issued a certificate of acceptance. The Certificate of Acceptance will not be issued until all work required by the Contract, including all water and wastewater appurtenances have been adjusted to their final position.

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ITEM 106. CONTROL OF MATERIAL

106.1. SUBSTITUTION OF MATERIALS

The specifications for materials set out the minimum standard of quality that the OWNER believes necessary to procure a satisfactory project. No substitutions will be permitted until the CONTRACTOR has received written permission of the OWNER to make a substitution for the material that has been specified. Requests for substitution shall be made prior to the date of the preconstruction conference.

Where the term "or equal," or "or approved equal" is used, it is understood that if a material, product, or piece of equipment bearing the name so used is furnished it will be approvable, as the particular trade name was used for the purpose of establishing a standard of quality acceptable to the OWNER. If a product of any other name is proposed for use, the OWNER'S approval thereof must be obtained before the CONTRACTOR procures the proposed substitute.

Where the term "or equal," or "or approved equal" is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, as the representative of the OWNER, shall be the sole judge of the acceptability of substitutions. The provisions of this sub-section as related to "Substitutions" shall be applicable to all sections of these specifications.

Should an authorized substitution require redesign of a portion of the work or alterations to the plans or specifications in order for the materials or articles which are to be substituted to properly fit or in other ways to be satisfactory, the OWNER shall accomplish such redesigns and alterations. The CONTRACTOR shall bear all reasonable costs associated with redesign and alteration efforts performed by the OWNER.

106.2. MATERIALS AND EQUIPMENT

The CONTRACTOR shall be free to obtain the approved materials, equipment and articles from sources of its own selection. However, if the OWNER finds that the work shall be delayed or adversely affected in any way because a selected source of supply cannot furnish a uniform product in sufficient quantity and at the time required and a suitable source does exist, or the product is not suitable for the work, the OWNER shall have the right to require the original source of supply changed by the CONTRACTOR. The CONTRACTOR shall have no claim for extra cost or damage because of this requirement.

The CONTRACTOR warrants to the OWNER that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Contract documents and that same shall be of good quality and workmanship, free from faults and defects and in conformance with the Contract documents. All materials and equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective and shall be promptly repaired or replaced by the CONTRACTOR at the CONTRACTOR'S sole cost upon demand of the OWNER. If required by the OWNER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

106.3. SALVAGEABLE MATERIAL

All salvageable material shall be designated by and remain the property of the OWNER. Any designated salvageable material that is destroyed or damaged due to negligence of the CONTRACTOR shall be replaced with new material by the CONTRACTOR at no expense to the OWNER. Salvage material, unless designated for reuse, shall be returned to a location designated by the OWNER.

106.4. OFF-SITE STORAGE

Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When directed by the OWNER, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground, and shall be placed under cover when directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

Payment for costs incurred in storage of materials or equipment away from the project site will not be made by the OWNER unless:

(1) the OWNER has approved off-site storage in writing; and
(2) the materials will not be incorporated into the project within the next 60 days;

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(3) the materials or equipment are stored in a bonded warehouse located in the County approved by the OWNER and identified with the project for which they are stored as evidenced by warehouse receipts and appropriate documents of title;
(4) an official PAID receipt from the material supplier is provided; and
(5) CONTRACTOR may invoice only for the amount actually paid for the storage of the material.
(6) Storage in facilities of the manufacturer or CONTRACTOR will not be permitted or paid for, unless such storage is expressly approved in writing by the OWNER.

106.4.1. Early Delivery to Project Site. All materials or equipment delivered to the project site earlier than thirty (30) days prior to an approved schedule for delivery to the project site shall be classified as an "early delivery". All early delivery materials or equipment must have written permission of the OWNER to be stored on the project site. Should any unauthorized early delivery occur, CONTRACTOR shall, at the CONTRACTOR'S expense, cause such early delivery to be removed from the project site and stored off-site until required at the project site. All costs of labor, transportation and storage will be included as part of the expense. If the CONTRACTOR fails or refuses to remove unauthorized early delivery materials, the OWNER may cause such materials to be removed at the CONTRACTOR'S sole expense, and amounts may be withheld from the CONTRACTOR'S Application for Payment to reimburse the OWNER for any costs incurred in removing unauthorized early delivery materials. The OWNER will not be responsible for the protection of or risk of loss on any early delivery materials or equipment, nor will the OWNER be liable for any payment thereon.

106.5. SAMPLES AND TESTS OF MATERIALS

Unless otherwise stipulated in the Contract documents, initial testing of all materials, construction items or products incorporated in the work shall be performed at the direction and expense of the OWNER, including initial compaction and density tests deemed necessary.

In the event materials, construction items or products incorporated in the work fail to satisfy the minimum requirements of the initial test, appropriate prove out test shall be made as directed by the OWNER to determine the extent of the failure and to verify that the corrective measures have brought the item up to specification requirements. The cost of all testing necessary to determine the extent of the failure and the adequacy of the corrective measures shall be the responsibility of the CONTRACTOR.

The failure of the OWNER to make any tests of materials shall in no way relieve the CONTRACTOR of its responsibility of furnishing materials conforming to the Contract documents.

Tests, unless otherwise specified, shall be made in accordance with the latest methods of the American Society for Testing and Materials. The CONTRACTOR shall provide such facilities as the OWNER may require for collecting and forwarding samples and shall not use the materials represented by the samples until tests have been made. The CONTRACTOR shall furnish adequate samples without charge. Test materials and samples shall be stored so as to ensure the preservation of their quality and fitness for the Work. If directed by the OWNER, they shall be placed on wooden platforms or other hard, clean surfaces and shall be placed under cover when directed. Stored materials shall be placed and located so as to facilitate prompt inspection.

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 determine what extra inspection is and shall determine the additional cost incurred thereby and payable by the CONTRACTOR, and such determination shall be final.

106.6. SURPLUS MATERIALS

Surplus materials shall be disposed of by the CONTRACTOR at his expense. Surplus materials including excavation shall be removed from the site unless specified otherwise under the performance specifications.

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ITEM 107. LEGAL RELATIONS AND CONTRACTOR RESPONSIBILITIES

107.1. CONTRACTOR INDEPENDENCE

While engaged in carrying out and complying with the terms and conditions of this Contract the CONTRACTOR is, and shall be, an independent CONTRACTOR and shall not, with respect to its acts or omissions, be deemed an officer, employee or agent of the OWNER. The CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the OWNER.

CONTRACTOR is, and shall remain, an independent CONTRACTOR, with full, complete and exclusive power and authority to direct, supervise, and control its own employees and SUBCONTRACTORS and to determine the method of the performance of the work covered under this Contract. The fact that the OWNER or the Engineer shall have the right to inspect or observe CONTRACTOR'S work during performance and to exercise the other rights and prerogatives expressly reserved to the OWNER or the Engineer under this Contract is not intended to, and shall not any time, change or affect the status of the CONTRACTOR as an independent CONTRACTOR with respect to the OWNER, the CONTRACTOR'S own employees or any other person, firm or corporation.

Nothing contained in the Contract documents shall create any contractual or agency relationship between the Engineer and the CONTRACTOR.

107.2. NO THIRD PARTY CONTRACTUAL RIGHTS

This Contract is solely for the benefit of the parties to this Contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

107.3. INDEMNIFICATION

CONTRACTOR covenants and agrees to and does hereby indemnify, hold harmless and defend, at its own expense, OWNER, its officers, officials, agents and employees, from and against any and all claims or suits, judgments and costs and expenses for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of the work and services to be performed hereunder by CONTRACTOR, its officers, officials, agents, employees, SUBCONTRACTORS, licensees or invitees, whether or not caused, in whole or in part, by the alleged negligence of the officers, agents, and employees, of the OWNER. CONTRACTOR likewise covenants and agrees to, and does hereby, indemnify and hold harmless OWNER from and against any and all injuries, damage, loss or destruction to property of OWNER during the performance of any of the terms and conditions of this contract, whether arising out of in whole or in part, any and all alleged acts or omissions of officers, agents, or employees of OWNER.

The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

107.4. OWNER'S OFFICERS, EMPLOYEES OR AGENTS

107.4.1. Claim Against Officers, Employees or Agent of the OWNER. No claim whatsoever shall be made by the CONTRACTOR against any officer, employee, or agent of the OWNER for or on account of, anything done or omitted to be done in connection with this Contract.

107.4.2. Financial Interest in Any Contract by OWNER'S Officers, Employees or Agents. CONTRACTOR is hereby advised to comply with the OWNER'S financial interest or comparable policy. If OWNER does not implement a financial interest or comparable policy of its own, provisions of this Item shall govern matters of financial interest.

No officer, employee, or agent of the OWNER shall have a financial interest, direct or indirect, in any contract with the OWNER or be financially interested, directly or indirectly, in the sale to the OWNER of any land, materials, supplies or services, except on behalf of the OWNER as an officer or employee. Any violation of this article with the knowledge, expressed or implied, of the persons, partnership, company, firm, association or corporation contracting with the OWNER shall render the Contract involved voidable by the OWNER.

107.4.3. Conflict of Interest. CONTRACTOR shall complete and submit the State of Texas Conflict of Interest Questionnaire, form CIQ as required by Texas Local Government Code, Chapter 176.

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107.5. VENUE AND GOVERNING LAW

The parties herein agree that this Contract shall be performed in the county in which the OWNER'S principal office is located, and if legal action is necessary in connection therewith, exclusive venue shall lie in this county. The terms and provisions of the Contract documents shall be construed in accordance with the laws and court decisions of the State of Texas.

107.6. NO WAIVER OF LEGAL RIGHTS

Inspection by the OWNER; any order, measurement, quantity or certificate by the OWNER; any order by the OWNER for payment of money; any payment for or acceptance of any work; or any extension of time or any possession taken by the OWNER shall not operate as a waiver of any provisions of the Contract or any power therein reserved to the OWNER of any rights or damages therein provided. Any waiver of any breach of Contract shall not be held to be a waiver of any other or subsequent breach. The OWNER reserves the right to correct any error that may be discovered in any estimate that may have been paid and to adjust the same to meet the requirements of the Contract documents. The OWNER reserves the right to recover by process of law sums as may be sufficient to correct any error or make good any deficiency in the work resulting from such error, dishonesty or collusion by the CONTRACTOR or its agents that is discovered in the work by the OWNER after the final payment has been made.

Neither final acceptance of the work nor final payment shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship, and the CONTRACTOR shall promptly remedy any defects due thereto and pay for any damage to other work resulting therefrom. Likewise, neither final acceptance nor final payment, nor partial or entire use or occupancy of the work by the OWNER shall constitute acceptance of work not done in accordance with the Contract documents or relieve CONTRACTOR of liability with respect to any expressed or implied warranties or responsibility for faulty materials or workmanship, whether same be patently or latently defective.

The OWNER, or any officer or agent thereof, shall not be precluded at any time, either before or after final completion and acceptance of the work and final payment therefrom:

(1) showing the true and correct amount, classifications, quality and character of the work done and materials furnished by the CONTRACTOR or any other person under this Contract, or
(2) from showing at any time that any determination, return, decision, approval, order, letter, payment or certification is untrue and incorrect or improperly made in any particular, or
(3) that the work or the materials or any parts thereof do not in fact conform to the Contract requirements; and
(4) demanding the recovery from the CONTRACTOR of any overpayments made to it, or such damages as the OWNER may sustain by reason of the CONTRACTOR'S failure to perform each and every part of this Contract in strict accordance with its terms; or both.

107.7. SEVERABILITY

In the event a term, condition, or provision in this Contract is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition or provision, shall be deleted and the remainder of the Contract shall remain in full force and effect.

107.8. HEADINGS

The title and headings contained in the Contract documents and the subject organization are used only to facilitate reference, and in no way define or limit the scope of intent of any of the provisions of this Contract.

107.9. OBLIGATIONS TO PERFORM FUNCTIONS

Any failure or neglect on the part of OWNER, Engineer or inspectors to enforce provisions herein dealing with supervision, control, inspection, testing or acceptance and approval of the work shall never operate to relieve CONTRACTOR from full compliance with the Contract documents nor render OWNER liable to CONTRACTOR for money damages, extensions of time or increased compensation of any kind.

107.10. PERFORMANCE OF THE WORK

In addition to those matters elsewhere expressly made the responsibility of the CONTRACTOR, the CONTRACTOR shall have the full and direct responsibility for the performance and completion of the work under this Contract and for any act or neglect of the CONTRACTOR, its agents, employees or SUBCONTRACTORS. CONTRACTOR shall bear all losses, if any, resulting on account of the amount and character of the work, or because the conditions under

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which the work must be done are different from what CONTRACTOR estimated or anticipated, or because of weather, floods, elements or other causes, regardless of the expected completion date set forth in the Contract Documents.

107.11. SUCCESSORS AND ASSIGNS

Subject to the limitations upon assignment and transfer herein contained, this Contract shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns.

107.12. SUPERVISION AND CONSTRUCTION PROCEDURES

The CONTRACTOR shall supervise and direct all the work, using its best skill and attention. CONTRACTOR shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

The CONTRACTOR shall carefully study and compare the Contract documents and shall at once report to the OWNER any error, inconsistency or omission it may discover. The CONTRACTOR shall perform no portion of the work at any time without Contract documents or, where required, approved shop drawings, product data or samples for such portion of the work.

The CONTRACTOR shall be responsible to the OWNER for the acts and omissions of the OWNER'S employees, SUBCONTRACTORS, and agents, as well as the CONTRACTOR'S employees and SUBCONTRACTORS performing any of the work under a contract with the CONTRACTOR. The CONTRACTOR shall at all times enforce strict discipline and good order among its employees and shall not employ on the work site any unfit person or anyone not skilled in the task assigned to him or her.

The CONTRACTOR shall not be relieved from its obligations to perform the work in accordance with the Contract documents either by the activities or duties of the OWNER in its administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the CONTRACTOR.

The CONTRACTOR shall give to the work the consistent attention necessary to facilitate the progress thereof, and the CONTRACTOR shall cooperate with the OWNER, and with other CONTRACTORS in every way possible.

The OWNER and the OWNER'S representatives shall at all times have free access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide safe, convenient and proper facilities for such access and inspection.

107.13. LABOR AND MATERIALS

Unless otherwise provided in the Contract documents, the CONTRACTOR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated into the work.

107.14. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract the CONTRACTOR agrees as follows:

107.14.1. Nondiscrimination Toward Employees. The CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, military or veteran status, disability unrelated to job performance, or national origin. The CONTRACTOR shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, sex, religion, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees or applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

107.14.2. Nondiscrimination Employment Practices. The CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, national origin or age.

107.14.3. Labor Unions. The CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided, advising the said labor union or workers' representatives of the CONTRACTOR'S commitments under this

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section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

107.14.4. Provisions in Subcontracts. The CONTRACTOR shall include the provisions of this section in all subcontracts pertaining to the work.

107.14.5. Reports. During the course of the work, the CONTRACTOR shall submit to the OWNER, on a monthly basis, a breakdown by minority group of all employees at the site of the work.

107.15. STATE AND LOCAL SALES AND USE TAXES

The OWNER qualifies for exemption from the state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise and Use Tax Act. Therefore, the CONTRACTOR shall not pay such taxes which would otherwise be payable in connection with the performance of this Contract.

The CONTRACTOR shall issue an exemption certificate in lieu of the tax on the purchase of:

(1) all materials, supplies, equipment and other tangible personal property incorporated into the real property being improved; and

(2) all materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for the performance of the Contract with the OWNER which is to be completely consumed at the job site.

Tangible personal property necessary and essential for the performance of the Contract includes only such materials, tools and supplies specifically needed and directly used to incorporate tangible personal property into the real estate being improved under the Contract. Overhead supplies and supplies used indirectly or only incidental to the performance of the Contract with the OWNER are not included in the exemption. Tangible personal property is "completely consumed" if after being used once for its intended purpose it is used up or destroyed. Any exemption certificate issued by the CONTRACTOR is subject to the existing rules and interpretation governing the exemption issued by the Comptroller of Public Accounts of the State of Texas. The OWNER will not make interpretations of the extent or applicability of the exemption in a particular case; if the CONTRACTOR, or any SUBCONTRACTOR or supplier of the CONTRACTOR, has any questions about the extent or applicability of the exemption in specific circumstances, guidance should be sought from the State Comptroller's Office.

Under "reasons said purchaser is claiming this exemption" in the exemption certificate, the CONTRACTOR must name the OWNER and the project for which the equipment, material and supplies are being purchased, leased or rented.

107.16. PATENTS

The CONTRACTOR shall pay all royalties and license fees and shall provide, by suitable legal agreement with the patentee or OWNER, for the use of any design, device, material or process covered by letters, patent or any copyright. The CONTRACTOR shall indemnify, defend, hold and save the OWNER and its officers, employees and agents harmless from all liability and claims for infringement of any patent, copyright, mark or license.

In the event that any claims, suit or action at law or in equity of any kind whatsoever is brought against the OWNER, or its officers, employees or agents involving any such patents, copyrights or license rights, then the OWNER shall have the right to and may retain from any money due or to become due to the CONTRACTOR such sum deemed necessary by the OWNER for its protection until such claim or suit shall have been settled and satisfactory evidence to that effect shall have been furnished the OWNER.

107.17. COMPLIANCE WITH LAWS

The CONTRACTOR shall fully comply with all local, state and federal laws, including all codes, ordinances and regulations applicable to this Contract and the work to be done thereunder, which exist or which may be enacted later by governmental bodies having jurisdiction or authority for such enactment. CONTRACTOR shall correct any work not in compliance with local, state or federal laws.

The CONTRACTOR shall secure and pay for all permits and licenses necessary for the execution of the work and shall fully comply with all their terms and conditions.

All work required under this Contract shall comply with all requirements of law, regulation, permit or license. If the CONTRACTOR finds that there is a variance, it shall immediately report this to the OWNER for resolution.

107.17.1. Pleas of Misunderstanding. No pleas of misunderstanding or ignorance thereof will be considered. The CONTRACTOR and the CONTRACTOR'S Sureties shall indemnify and save harmless the OWNER

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against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or order whether by the CONTRACTOR, its employees, or SUBCONTRACTORS.

All work required under this contract shall comply with all required documents of law, regulation, permit or license, if the CONTRACTOR finds that there is a variance, the CONTRACTOR shall immediately report such to the OWNER for resolution.

OWNER shall not be liable for interest on any progress or final payment to be made under this Contract, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended.

107.18. SANITARY PROVISIONS

The CONTRACTOR shall establish and enforce among its employees such regulations in regard to cleanliness and disposal of garbage and waste as shall tend to prevent the inception and spread of infectious or contagious diseases and to prevent effectively the creation of a nuisance about the work on any property either public or private, and such regulations as are required by the OWNER shall be put into immediate force and effect by the CONTRACTOR. The 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 a manner and at such points as shall be approved by the OWNER, and their use shall be strictly enforced by the CONTRACTOR. All sanitary laws and regulations of the State of Texas and the OWNER'S jurisdiction shall be strictly complied with.

107.19. PUBLIC CONVENIENCE AND SAFETY

Materials stored about the work site shall be so placed, and the work shall at all times be so conducted, as to cause no greater obstruction to the traveling public than is considered necessary by the OWNER. The CONTRACTOR shall make provisions by bridges or otherwise at all cross streets, highways, sidewalks and private driveways for the free passage of pedestrians and vehicles, provided that where bridging is impracticable or unnecessary, in the opinion of the OWNER, the CONTRACTOR may make arrangements satisfactory to the OWNER for the diversion of traffic and shall, per the Contract, provide all material and perform all work necessary for the construction and maintenance of roadways and bridges for the diversion of traffic. Sidewalks must not be obstructed except by special permission of the OWNER. The materials excavated, and the construction materials or plant used in the construction of the work, shall be placed so as not to endanger the work or prevent free access to all fire hydrants, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, sanitary sewers and fire alarm or police call boxes in the vicinity.

The OWNER reserves the right to remedy any neglect on the part of the CONTRACTOR as regards to the public convenience and safety which may come to its attention, after 24 hours' notice in writing to the CONTRACTOR, save in cases of emergency, when it shall have the right to remedy any neglect without notice; and in either case, the cost of such work done by the OWNER shall be deducted from the monies due or to become due the CONTRACTOR. The CONTRACTOR shall notify the OWNER when any street is to be closed or obstructed; such notice shall in the case of major thoroughfares or streets upon which transit lines operate be made 48 hours in advance. The CONTRACTOR shall, when directed by the OWNER, keep any street or streets in condition for unobstructed use by emergency services. Where the CONTRACTOR is required to construct temporary bridges or to make other arrangements for crossing over ditches or streams, its responsibility for accidents shall include the roadway approaches as well as the structures of such crossings.

Where the work passes over or through private property, the OWNER shall provide such right-of-way. The CONTRACTOR shall notify the proper representatives of any public utility, corporation, any company or individual, not less than 48 hours in advance of any work which might damage or interfere with the operation of property along or adjacent to the work. The CONTRACTOR shall be responsible for all damage or injury to property of any character (except such as may be required by the provisions of the Contract documents or caused by agents or employees of the OWNER) by reason of any negligent act or omission on the part of the CONTRACTOR, its employees, agents or SUBCONTRACTORS, or at any time due to defective work or materials, or due to its failure to reasonably or properly prosecute the work, and said responsibility shall not be released by the fact that the work shall have been completed and accepted.

When and where any such damage or injury is done to public or private property on the part of the CONTRACTOR, restoration shall be completed according to Item 107.27. Restoration of Property.

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107.20. PROTECTION OF WORK AND PERSONS AND PROPERTY

107.20.1. Protection of Work. During performance and up to date of final acceptance, the CONTRACTOR shall be under the absolute obligation to protect all work against any damage, loss or injury. In the event of damage, loss or injury, the CONTRACTOR shall promptly replace or repair the work, whichever the OWNER shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Contract prior to final acceptance shall be absolute and shall not be affected by the OWNER'S approval of or failure to prohibit means and methods of construction used by the CONTRACTOR. All risk of loss or damage to the work shall be borne solely by the CONTRACTOR until final completion and acceptance of all work by the OWNER, as evidenced by the OWNER'S issuance of a certificate of acceptance.

107.20.2. Protection of Persons and Property. The CONTRACTOR shall have the responsibility to provide and maintain all warning devices and take all precautionary measures required by law or otherwise 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. Compensation shall 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 or otherwise for the protection of persons or property according to Item 801.1. Barriers and Warning and Detour Signs.

The CONTRACTOR shall assume all duties owed 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 its own cost and expense provide such flagmen and watchmen in addition to its responsibility to furnish, erect and maintain such warning devices, barricades, lights, signs, and other precautionary measures for the protection of persons or property as are required by law. During periods when schools are in session, the CONTRACTOR will be required during the construction of the Work to:

(1) Maintain a suitable all-weather footpath across the Work at all designated school crosswalks.
(2) Move and reinstall pedestrian crossing warning signs as construction and routing of traffic lanes require.

The CONTRACTOR'S responsibility for providing and maintaining flagmen, watchmen, warning devices, barricades, signs, and lights, and other precautionary measures shall not cease until directed in writing by the OWNER or until final payment, whichever occurs first. If the OWNER 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 OWNER may order such additional precautionary measures as required by law to be taken to protect persons and property. The CONTRACTOR shall reimburse the OWNER for any expense incurred by the OWNER in taking any additional precautionary measures as a result of the CONTRACTOR'S failure to do so.

In addition, the CONTRACTOR will be held responsible for all damage 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.

Minimum standards for safeguarding pedestrian and vehicular traffic are contained in the current *Texas Manual of Uniform Traffic Control Devices*, as amended, Texas Department of Transportation. Signage, barricades and other traffic control devices for detouring and maintenance of traffic on this Contract shall be as provided in above said manual and as directed by the OWNER. Costs associated with the acquisition and removal of required traffic control devices shall be considered incidental to the Work.

107.20.3. Trench Safety.

107.20.3.1. Regulations. The CONTRACTOR shall be responsible for complying with state laws and federal regulations relating to trench safety, including those which may be enacted during the performance under this Contract. The CONTRACTOR is advised that Federal Regulations 29 C.F.R. 1926.650-1926.652 have been, in their most recent version as amended, in effect since January 2, 1990.

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The CONTRACTOR shall fully comply with the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) regulations pertaining to excavations, trenching, and shoring and shall provide and familiarize its employees involved in excavation and trenching with the provisions in OSHA pamphlet number 2226, excavation and trenching operations.

107.20.3.2. Indemnification. **In addition to any other indemnification, CONTRACTOR agrees to defend, indemnify and hold OWNER, its officers, agents and employees, completely harmless from any claims, lawsuits, judgments, costs and expenses (including attorney's fees, if any) for any personal injury (including death), property damage or other harm for which recovery of damages is sought (including any injury, death or damage suffered by the CONTRACTOR'S own employees) arising out of or occasioned by the use of any trench excavation plans, regardless of their origin, or by any negligent, grossly negligent, strictly liable or intentional act of the CONTRACTOR, a SUBCONTRACTOR or any individual employee or laborer (whether or not an employee of the CONTRACTOR or a SUBCONTRACTOR) in the performance or supervision of actual trench excavation under the contract.** ***This indemnity applies regardless of whether OWNER'S or consulting engineer's negligence or fault in the administration of this contract or in the preparation, review or approval of the OWNER'S or*** **CONTRACTOR'S** ***trench excavation plan contributed to the injury, death or damage.*** **OWNER** ***accepts no liability whatsoever as a result of its preparation, review or approval of any trench excavation plan under this contract;*** **OWNER** ***makes no warranty, express or implied, concerning the adequacy or correctness of any trench excavation plan.***

(The provisions of this paragraph are solely for the benefit of the parties to the contract and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. This paragraph shall not be construed to waive any governmental immunity of the OWNER. This paragraph controls in the event of a conflict with any other indemnity or OWNER- warranty provision in the specifications).

107.20.3.3. Trench Safety Plan. The CONTRACTOR shall be responsible for providing to the OWNER an acceptable trench safety plan signed and sealed by a Professional Engineer qualified to do such work and licensed/registered in the State of Texas. The CONTRACTOR shall be responsible for selecting an appropriate method of providing trench safety after due consideration of the job conditions, location of utilities, pavement conditions and other relevant factors. Slope-back methods which may result in unnecessary displacement of utilities and/or destruction of pavement shall not be used without permission from the OWNER. Plans for devices used to provide trench safety such as trench shields and shoring systems will be likewise certified by Professional Engineers licensed/registered in the State of Texas or by a Professional Engineer licensed/registered in the state of manufacture of the shield or shoring system.

107.20.3.4. Shoring and Sheeting. The sides of all excavation shall be supported in accordance with the trench safety plan. Where bracing or sheeting and bracing are used, the trench width shall be increased accordingly, shall be considered as incidental work, and shall not be paid for as a separate item. In wet, saturated or flowing materials where it is necessary to install tight sheeting or cofferdams, wood or steel sheet piling of a design and type approved by the OWNER shall be used. All sheeting, shoring and bracing shall have sufficient strength and rigidity to withstand the pressure exerted, to maintain the sides of the excavation properly in place, and to protect all persons or property from injury or damage. When excavations are made adjacent to existing buildings or other structures or in paved streets, particular care shall be taken to adequately sheet, shore and brace the sides of the excavation to prevent undermining of or settlement beneath the structures or pavement. Underpinning of adjacent structures or pavement shall be done at the CONTRACTOR'S own cost and expense and in a manner satisfactory to the OWNER, or, when required by the OWNER, the pavement shall be removed, the void satisfactorily filled, compacted and the pavement replaced by the CONTRACTOR. The entire expense of such removal and subsequent replacement thereof shall be borne by the CONTRACTOR. Wooden sheeting, shoring and bracing shall be left in place where it is adjacent to the pipe embedment for the initial lift of backfill.

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The removal of all sheeting, shoring and bracing shall be done in such manner as not to endanger or damage either new or existing structures, or private or public properties; and so as to avoid cave-ins or sliding of the banks. All holes or voids left by the removal of the sheeting, shoring or bracing shall be immediately and completely filled and compacted with suitable materials. If, for any reason, the CONTRACTOR, with the approval of the OWNER, elects to leave in place the sheeting, shoring or bracing, no payment shall be allowed for such material left in place unless ordered by the OWNER to be left in place.

107.20.3.5. Inspection. The CONTRACTOR shall cause all shoring or bracing to be inspected by an OSHA competent person. According to OSHA regulations, a competent person is defined as one who is capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

107.20.3.6. Payment for Trench Safety and Shoring. Payment for trench safety shall be by the lineal feet of trench exceeding a depth of 4-ft. unless otherwise specified in the Contract. Excavation for slope-back methods shall be subsidiary to the trench safety pay item including replacement and re-compaction. Excess excavation for other trench safety methods is also subsidiary to the trench safety pay item. Costs relating to the preparation of the trench safety plan including geotechnical investigation, testing and report preparation fees are all subsidiary to the pay item for trench safety. Should trench safety measures be required during Contract performance where no pay item has been provided, then the CONTRACTOR shall immediately notify the OWNER and, if directed to do so, provide trench safety under the provisions of Item 104.2.3. Extra Work and/or Item 109.3. Payment for Extra Work. Should the OWNER fail to authorize the work as provided for in Item 104.2.3. Extra Work and Item 109.3. Payment for Extra Work, then the CONTRACTOR shall proceed under the provisions of Item 104.3. Disputed Work and Claims for Additional Compensation and Item 104.4. Performance of Extra or Disputed Work. Trench safety requirements are mandatory and shall not be waived.

107.21. PROJECT SIGNS

Project signs shall be furnished, constructed, and erected by the CONTRACTOR as directed by the OWNER. Signs shall be placed in a location selected by the OWNER and maintained in good condition until the completion of the project. Project signs shall be removed by the CONTRACTOR upon the completion and acceptance of the project by the OWNER.

107.22. WORKING AREA

The CONTRACTOR shall confine its equipment, storage of materials and construction operations to the area shown on the Contract drawings or stated in the specifications, prescribed by ordinance, laws, or permits or as may be directed by the OWNER, and shall not unreasonably encumber the site or public right-of-way with its construction equipment, plant or materials.

Such area shall not be deemed for the exclusive use of the CONTRACTOR. Other CONTRACTORS of the OWNER may enter upon and use such portions of the area and for such items as determined by the OWNER are necessary for all purposes required by its contracts. The CONTRACTOR shall give to such other CONTRACTORS all reasonable facilities and assistance to the end that the work on this and other contracts shall not be unduly or unreasonably delayed. Any additional areas desired by the CONTRACTOR for its use shall be provided at its own effort, cost and expense.

All rights-of-way and easements shown on the plans for construction will be provided by the OWNER. If private property is leased or occupied by the CONTRACTOR for use in conjunction with the Work, the CONTRACTOR shall provide to the OWNER, in writing prior to final acceptance of the Work, a release of the CONTRACTOR and OWNER from any and all claims the private property OWNER has or may have as a result of the CONTRACTOR'S use of the private property during the course of the Work. The release shall be signed by the private property OWNER or the private property OWNER'S agent.

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107.23. RAILWAY CROSSINGS

Where the work encroaches upon any right-of-way of any railway, the OWNER shall secure the necessary easement for the work. Where railway tracks are to be crossed, the CONTRACTOR shall observe all the regulations and instructions of the railway company as to methods of doing the work or precautions for safety of property and the public. All negotiations with the railway company, except for right-of-way, shall be made by the CONTRACTOR. The railway company shall be notified by the CONTRACTOR not less than five days prior to commencing the work. The CONTRACTOR shall not be paid separate compensation for such railway crossing but shall receive only the compensation as set out in the proposal.

Prior to crossing or working on Railroad Right-of-Way, the CONTRACTOR will be required to contact the railroad company, or companies, and to execute CONTRACTOR'S Agreements as may be required by each railroad company involved. No work shall be permitted where railroads are involved until the OWNER is furnished sufficient correspondence from the railroad company involved to ascertain that either the agreement has been executed or a certified copy of the insurance policy furnished, or that no such action is required.

107.24. EXISTING STRUCTURES, FACILITIES AND APPURTENANCES

107.24.1. General. This Item 107.24. Existing Structures, Facilities and Appurtenances addresses only matters arising from certain existing, man-made surface and subsurface structures, facilities and appurtenances, not naturally occurring conditions. **AS PROVIDED IN ITEM 103.1. CONTRACTOR'S WARRANTIES AND UNDERSTANDING, THE OWNER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY CLAIM ARISING FROM A DIFFERING, NATURALLY OCCURRING SURFACE OR SUBSURFACE CONDITION, OR FROM ANY MAN-MADE CONDITION THAT IS NOT A SURFACE OR SUBSURFACE STRUCTURE, FACILITY OR APPURTENANCE.** The OWNER'S responsibility for any claim arising from existing, man-made surface and subsurface structures, facilities and appurtenances is governed solely by this Item 107.24. Existing Structures, Facilities and Appurtenances, and any situation involving a differing subsurface condition not included herein shall be governed solely by Item 103.1. CONTRACTOR'S Warranties and Understanding.

107.24.2. Showing Locations. The plans show the general locations of all known, existing man-made surface and subsurface structures, facilities and appurtenances. The locations of many gas mains, water and wastewater mains, storm sewers, drains, culverts, conduits and other man-made utility structures, facilities and appurtenances, however, are unknown. **THE OWNER DOES NOT WARRANT THE PLANS TO SHOW THE EXACT LOCATIONS OF ANY AND ALL KNOWN, EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES, AND DOES NOT WARRANT THAT IT KNOWS OF THE EXISTENCE OF ALL POSSIBLE EXISTING MAN-MADE SURFACE AND SUBSURFACE STRUCTURES, FACILITIES AND APPURTENANCES.** The OWNER assumes no responsibility, except as provided below, for any failure to show any or all of these structures on the plans or to show them in their exact locations.

Wherever the OWNER has caused certain test borings to be made on the site, or when any information pertaining to the character or depth of materials is found from observations, records or otherwise, such information revealed thereby may be indicated on the plans. The action of the OWNER in revealing such information shall not in any manner be construed as conclusive or as a warranty on the part of the OWNER of the exact nature of the subsurface conditions that shall be encountered during construction of the work. Although the information is shown as accurately as possible, the OWNER does not guarantee that any materials to be encountered at any point or points are even approximately the same, either in character or elevations, as those shown on the plans. The information thus furnished by the OWNER is intended only as a guide to the CONTRACTOR'S own investigations preliminary to submitting a bid for the work.

107.24.2.1. Soil Borings. Soil Borings are to be used for information only and are not warranted accurate or conclusive in any way. The OWNER accepts no responsibility for any deviation from or variance in soil types and/or depths shown on the borings.

107.24.3. Conditions for Increases to Work or Payment. The CONTRACTOR and OWNER mutually, expressly agree that the failure of the OWNER to show any existing, man-made surface or subsurface structure, facility or appurtenance on the plans, or the failure to show them on the plans in their exact locations, shall not be considered as a basis of a claim for Extra Work, damages or other compensation of

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any kind, nor shall it be considered as a basis for increasing the quantities of work or unit prices on any bid item, unless:

(1) The CONTRACTOR could not have discovered the existing, man-made surface or subsurface structure, facility or appurtenance by a reasonable review of the plans and specifications and a reasonable, careful inspection of the work site prior to bid opening or award of the Contract; and

(2) The existing, man-made surface or subsurface structure, facility or appurtenance is in a location that necessitates a substantial change in the alignment, depth or hydraulic gradient of the work to be constructed under the Contract because the CONTRACTOR cannot, by the use of reasonable skill or care, place the work in accordance with the original alignment, depth or hydraulic gradient; or

(3) The existing surface or subsurface structure, facility or appurtenance requires the construction of a special structure, facility, appurtenance or other special work, provisions for which are not already made in the plans and specifications, to protect either the existing, man-made surface or subsurface structure, facility or appurtenance or the work to be constructed under the Contract from damage.

If the elements of (1) and either (2) or (3) occur, the provisions of the specifications regarding claims for Extra Work apply. Otherwise, the condition is considered part of the Contract work and OWNER shall not be liable for extra compensation. Provided, however, that the OWNER will not be liable for payment of Extra Work claims under this subsection that are not timely filed in accordance with other provisions of the specifications, nor shall the OWNER be liable to pay for any additional work or additional costs arising solely from a decision of the CONTRACTOR to change the original means or methods of construction chosen because an existing, man-made surface or subsurface structure, facility or appurtenance is encountered.

107.24.4. Utility Coordination and Protection. It is the intention of the OWNER that all known conflicts between utility-owned facilities and the proposed construction will be cleared prior to the issuance of the work order. Utility information shown on the plans must be confirmed by actual field check in advance of construction. Table 107.24.4.(a) Utility Coordination lists the most frequently needed contacts.

Table 107.24.4.(a) Utility Coordination

Entity	Contact Information
Texas One Call system	811
Municipal, Governmental, or Quasi-Governmental Utility OWNER	CONTRACTOR shall contact the respective entity

It will be the CONTRACTOR'S responsibility to locate and report all utility conflicts to the OWNER promptly in order to avoid unnecessary delays, and the CONTRACTOR will cooperate with utility OWNER s in making the adjustment(s). Conflicts that are found during construction will be resolved as expeditiously as possible.

The CONTRACTOR will be required to protect adequately all utility-owned facilities from damage or displacement by its operations.

The adjustment or location of any utility-owned facility which the CONTRACTOR may desire for its own convenience or ease of construction will be its responsibility to coordinate and will be at its own expense.

CONTRACTOR shall further abide by the provisions of Item 201.2. Determining Location and Protection of Existing Structures and Utilities.

107.25. PROJECT CLEAN-UP

The CONTRACTOR shall keep the project site in a neat and orderly condition as an integral part of the contracted work and as such shall be considered subsidiary to the appropriate bid items. Clean up work shall be done as needed or as directed by the OWNER as the work progresses. Clean-up shall be done on a daily basis. Clean up work shall include, but not be limited to:

(1) Removing the trash, paper, rubbish and debris resulting from operations
(2) Sweeping streets clean of dirt or debris
(3) Alleviating any dust nuisance in the work area
(4) Storing excess material in appropriate and organized manner
(5) Keeping trash of any kind off of residents' property

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The CONTRACTOR, prior to utilizing any private property, shall provide a written agreement between the CONTRACTOR and the Property OWNER to the Project Manager or Construction Superintendent. The agreement shall state what uses are allowed for the property, the length of time the CONTRACTOR is allowed to use it and the final condition the property shall be returned to once all work is completed. CONTRACTOR shall provide a written release from the Property OWNER once the area has been restored.

The work shall be so conducted as to create a minimum amount of inconveniences to the public. At any time when in the judgment of the OWNER the CONTRACTOR has obstructed or closed or is carrying on operations in a greater portion of a park, street or public way than is necessary for the proper execution of the work, the OWNER may require the CONTRACTOR to finish the sections on which work is in progress before operations are started on any additional section.

The CONTRACTOR will be required to remove spoil from the job site in a timely manner. If, in the opinion of the OWNER, the spoil is not being removed as required, the CONTRACTOR will be directed to remove the spoil. The CONTRACTOR must comply with this directive within 24 hours. There will be no additional compensation to the CONTRACTOR for removing this spoil at a time other than as planned.
CONTRACTOR shall comply with all requirements and regulations for any spoil removed from the project.

The CONTRACTOR shall perform such cleanup work as deemed necessary by the OWNER. Failure of the CONTRACTOR to maintain the site in a neat and orderly condition will be cause for withholding an additional ten percent (10%) of the total payments until said condition is corrected. Storage areas, either fenced or open, shall be kept free of weeds, tall grass, and other debris. In instances of large scale irrigation and planting installation, the entire site shall be kept neat and orderly with no tall grass or weed growth allowed. It shall be the CONTRACTOR'S responsibility to see that the turf areas are kept mowed during entire progress of the work. If the CONTRACTOR fails to alleviate poorly maintained conditions upon written notice by the OWNER, the OWNER will take necessary steps to correct the poor conditions with cost of such corrections to be deducted from the Contract.

Upon completion of the work and before final acceptance and final payment shall be made, the CONTRACTOR shall completely clean and remove from the site of the work all equipment, construction materials, surplus and discarded materials, temporary structures and debris of every kind. CONTRACTOR shall leave the site of the work in a neat and orderly condition equal to that which originally existed, or as called for in the Contract documents. Surplus and waste materials removed from the site of the work shall be disposed of at locations satisfactory to the OWNER, and at the CONTRACTOR'S sole cost.

107.26. DISPOSAL OF MATERIALS

Surplus excavation and other materials removed as a part of the construction may be deposited at a legal disposal site in accordance with all applicable federal, state and local laws and regulations. In addition, if the materials are disposed of within private property, a release from the property OWNER must be obtained before final acceptance of the Work as described in Item 107.22. Working Area.

Surplus excavation and other materials must not be deposited in areas designated as flood plain or along natural drainage ways. Material so deposited will be required to be removed at the CONTRACTOR'S expense and the area restored to its natural condition.

Failure to comply promptly with the requirements of this special provision will result in withholding of payments due.

107.27. RESTORATION OF PROPERTY

When and where any damage or injury is done to public or private property on the part of the CONTRACTOR, it shall restore or have restored at its own cost and expense such property to a condition equal (or improved) to that existing before such damage was done by repairing, rebuilding or otherwise restoring as may be directed, or it shall make good such damage or injury in a manner acceptable to the property OWNER or the OWNER. Replacement of previously constructed items, such as curb, gutter, sidewalks, driveways, paving, etc., shall conform to the specifications for new construction, unless directed otherwise by the OWNER.

In case of failure on the part of the CONTRACTOR to restore such property or make good such damage or injury, the OWNER may, upon 48 hours written notice, under ordinary circumstances, and without notice when a nuisance or hazardous condition results, proceed to repair, rebuild or otherwise restore such property as may be determined necessary, and the cost thereof shall be deducted from any monies due or to become due the

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CONTRACTOR under its Contract; or where sufficient Contract funds are unavailable for this purpose the CONTRACTOR or its surety shall reimburse the OWNER for all such costs.

107.28. ENVIRONMENTAL COMPLIANCE

The CONTRACTOR and its SUBCONTRACTORS are deemed to have made themselves familiar with and at all times shall comply with any and all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A §§ 1201, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq., the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and the latest judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

In the event the CONTRACTOR encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of work required under the contract documents, the CONTRACTOR shall immediately stop work in the affected area and report in writing the facts of such encounter to the OWNER. Work in the affected area shall not thereafter be resumed except by written order of the OWNER unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The OWNER may choose to remediate the Hazardous Substance with a separate CONTRACTOR or through a Change Order with the CONTRACTOR. If the OWNER determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the CONTRACTOR or any of its SUBCONTRACTORS, the CONTRACTOR shall be responsible for remediating the condition at the sole expense of the CONTRACTOR in accordance with the CONTRACTOR'S Spill Prevention and Response Plan. An extension of working time for any delay in the progress schedule caused as a result of the discovery and remediation of a hazardous substance may be granted by the OWNER only if all remaining work on the project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any claim or request for an extension of working time by the CONTRACTOR in connection with the discovery and remediation of a hazardous substance is subject to the provisions of NCTCOG.

The CONTRACTOR shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the CONTRACTOR or any SUBCONTRACTOR or supplier. The CONTRACTOR shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the OWNER so that they may observe the activities; provided, however, that it shall be the CONTRACTOR'S sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.

The CONTRACTOR shall deposit surplus or waste excavation or other materials removed as part of the work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The CONTRACTOR shall submit to the OWNER for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the CONTRACTOR'S records for reference purposes, to be provided upon request to the OWNER or any governmental regulatory agency with jurisdiction over the matter.

107.28.1. Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the work at the Project site, the CONTRACTOR shall submit to the OWNER for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the CONTRACTOR'S planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include

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methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the OWNER. The CONTRACTOR shall not commence any fieldwork prior to approval of such plan by the OWNER. The following additional rules shall apply with respect to spills caused by the CONTRACTOR or a SUBCONTRACTOR:

(1) The CONTRACTOR shall immediately report any spill or release at the Project site, whether or not it is associated with this contract, to the OWNER or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the CONTRACTOR shall submit a written report describing such event in a degree of detail reasonably acceptable to the OWNER.
(2) The CONTRACTOR shall immediately respond in accordance with the SPRP in the event of a spill.
(3) The CONTRACTOR shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the CONTRACTOR shall use only those transporters and disposal facilities that are approved in advance in writing by the OWNER. A copy of all transport manifests for the spilled materials shall be obtained and retained in the CONTRACTOR'S records for reference purposes, to be provided upon request of the OWNER or any governmental regulatory agency with jurisdiction over the matter. All costs of collection, containment, and disposal of spilled materials shall be the sole responsibility of the CONTRACTOR.
(4) The term spill includes any kind of environmental discharge or release.

107.28.2. Texas Pollutant Discharge Elimination System. The CONTRACTOR is responsible for obtaining coverage under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. and Chapter 26 of the Texas Administrative Code. These regulations require the filing of a Notice of Intent (NOI) to obtain and abide by the general stormwater permit for construction activities promulgated by EPA as administered by the TCEQ, including but not limited to demolition, clearing, grading, embankment, and excavation that disturb the applicable amount of total land area. In addition, the CONTRACTOR shall comply with all regulations of the OWNER relating to stormwater and stormwater runoff management at the Project site.

107.28.3. Stormwater Permit. The CONTRACTOR shall provide a Storm Water Pollution Prevention Plan (SWPPP) in accordance with the requirements of the TPDES Construction General Permit, and Storm Water Pollution Prevention Plan, of these Specifications. The CONTRACTOR is responsible for obtaining an Storm Water Discharge Permit that may be required for construction of this project under regulations contained in 40 CFR Part 122, as amended, under the authority of the Clean Water Act, 33 U.S.C. 1251 et seq. These regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities, including cleaning, grading, and excavation, that disturb the applicable amount of total land area. For permitting information and requirements, contact USEPA Region VI, Fountain Place 12th Floor, Suite 1200, 1445 Ross Ave., Suite 1200, Dallas, Texas 75202-2733, (214) 665-2200 and Texas Commission on Environmental Quality.

If a permit is required, the CONTRACTOR shall provide measures to control soil erosion sediment and water pollution created by construction operations for the duration of the Contract as directed by the OWNER. These measures shall be in addition to those required of the CONTRACTOR under Item 202. Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control of these specifications.

107.28.4. Asbestos-Related Materials. The CONTRACTOR shall not install any materials in the performance of the work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, trifoliate, anthophylite or actinolite, whether friable or non-friable.

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107.28.5. Failure to Comply. The OWNER reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the OWNER and without an extension of time, in the event the CONTRACTOR fails or refuses after seven (7) days advance written notice from the OWNER to comply with these provisions, the terms of the SPRP, any environmental permit or submittal issued in connection with the work, or any applicable environmental law, rule, regulation, or ordinance:

(1) suspend all or any portion of the work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the CONTRACTOR and approved by the OWNER;
(2) if the CONTRACTOR fails to properly address the noncompliance within the time stipulated by the OWNER, perform the necessary remediation or correction work and back charge the CONTRACTOR for the cost of the remediation or correction; or
(3) terminate the contract for default as provided in the General Conditions and the Addendum.

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ITEM 108. PROSECUTION AND PROGRESS

108.1. PROGRESS SCHEDULE

The CONTRACTOR must submit to the OWNER a detailed Construction Schedule outlining the major items of work on the project. This schedule must be approved as to form by the OWNER prior to CONTRACTOR starting work on the project. The schedule must be updated on a monthly basis unless otherwise specified by the Contract. The OWNER has the authority to stop work on the project if the CONTRACTOR fails to provide an updated schedule as requested.

108.2. PROSECUTION OF THE WORK

The CONTRACTOR shall begin the work to be performed under this Contract not later than 10 days from the date specified in the work order and shall conduct the work in such a manner and with sufficient equipment, material and labor as is necessary to insure its completion within the working time. It is the intent of this specification to provide a continuous construction operation without delay except as occasioned by unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, and it shall be the CONTRACTOR'S responsibility to execute the work in the most expeditious manner.

Work shall be done only during the hours between 7:00 am and 6:00 pm unless the OWNER approves other hours.

CONTRACTOR may work on Saturdays if it so desires and permission of the OWNER has been granted. Work on Sundays shall be permitted only with the written permission of the OWNER. If Saturday or Sunday work is permitted, working time shall be charged on the same basis as weekdays. Where the working time is expressed as calendar days or a specific date, the concept of working days shall no longer be relevant to the Contract. Work requiring inspection will not be permitted on a legal City holiday except by special written permission of the OWNER. Any work done without proper inspection is subject to removal and replacement at the direction of the OWNER.

The rate of progress shall be such that the whole work shall be performed, including completion of all punch list items, and the premises cleaned up in accordance with the Contract within the working time established in the Contract, unless an extension of time is made in the manner as specified in Item 108.8. Delays; Extension of Time; Liquidated Damages.

108.2.1. Prosecution of the Work Discontinued By CONTRACTOR. Should the prosecution of the work be discontinued by the CONTRACTOR, the CONTRACTOR shall notify the OWNER at least twenty-four hours in advance of resuming operations.

108.3. OTHER CONTRACTORS; OBLIGATION TO COOPERATE

The OWNER may award other contracts for additional work on this project, or in or near the project area, and the CONTRACTOR shall fully cooperate with such other CONTRACTOR(s) and shall coordinate and fit its work to be done hereunder to such additional work as may be contracted by the OWNER. At the time of bidding, prospective bidders shall be advised of other planned contract work, which is expected to affect the work area. The CONTRACTOR shall not commit or permit any act, which shall interfere with the performance of work by any other CONTRACTOR.

Upon receiving written notice from the CONTRACTOR that another CONTRACTOR is failing to coordinate its work with the work under this Contract as directed by the OWNER, the OWNER shall promptly investigate the charge and take such necessary action as the situation may require. However, the OWNER shall not be liable to the CONTRACTOR for damages suffered by the CONTRACTOR due to the fault or negligence of another CONTRACTOR or through failure of another CONTRACTOR to carry out the directions of the OWNER. Should any interference occur between CONTRACTORS, the OWNER may furnish the CONTRACTOR with written instructions designating priority of effort or change in methods, whereupon the CONTRACTOR shall immediately comply with such direction. In such event, the CONTRACTOR shall be entitled to an extension of working time only for unavoidable delays verified by the OWNER; however, no increase in the Contract price shall be due the CONTRACTOR.

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108.4. EMPLOYEES

The CONTRACTOR shall employ only competent, efficient workpeople and shall not use on the work any unfit person or one not skilled in the work assigned to him or her and shall at all times maintain good order among its employees.

Whenever the OWNER shall inform the CONTRACTOR in writing that, in its opinion, any employee is unfit, unskilled, disobedient or is disrupting the orderly progress of the work, such employee shall be removed from the work and shall not again be employed on it.

Under urgent circumstances, the OWNER may orally require immediate removal of an employee for cause, to be followed by written confirmation.

108.5. SUBCONTRACTS

The CONTRACTOR shall not make any subcontract for performing any portion of the work included in the Contract without written notice to the OWNER. This Contract having been made pursuant to the bid submitted by the CONTRACTOR and in reliance with the CONTRACTOR'S personal qualifications and responsibility, the OWNER reserves the right to withhold approval of any SUBCONTRACTOR which the OWNER may deem would not be in the OWNER'S best interest.

The CONTRACTOR shall, as soon as practicable after signing the Contract, submit a separate written notice to the OWNER identifying each proposed SUBCONTRACTOR. Upon request of the OWNER, the CONTRACTOR shall promptly furnish additional information tending to establish that any proposed SUBCONTRACTOR has the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and conditions of this Contract.

If the OWNER determines that any proposed SUBCONTRACTOR is unacceptable, it shall so notify the CONTRACTOR, who may thereupon submit another proposed SUBCONTRACTOR unless the CONTRACTOR decides to do the work itself. Disapproval by the OWNER of any proposed SUBCONTRACTOR shall not provide a basis for any claim time extension or additional compensation of any nature, including but not limited to anticipated profit, overhead or delay, by the CONTRACTOR.

If an approved SUBCONTRACTOR fails to properly perform the work undertaken, it shall be removed from the job upon request of the OWNER, following notification to the CONTRACTOR in writing of the request for removal and the reasons therefore.

Each subcontract entered into shall provide that the provisions of this Contract shall apply to all SUBCONTRACTORS and their officers and employees in all respects as if they were employees of the CONTRACTOR. The OWNER'S decision not to disapprove of any subcontract shall not relieve the CONTRACTOR of any of its responsibilities, duties and liabilities hereunder. The CONTRACTOR shall be solely responsible for the acts, omissions, negligence or defaults of its SUBCONTRACTORS and of such SUBCONTRACTOR'S officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the CONTRACTOR to the extent of its subcontract.

The CONTRACTOR agrees to bind each SUBCONTRACTOR and each SUBCONTRACTOR agrees to be bound by the terms of the Contract documents insofar as applicable to its respective work. The CONTRACTOR and each SUBCONTRACTOR jointly and severally agree that nothing in the Contract documents or otherwise shall create or be deemed to create any rights in favor of a SUBCONTRACTOR against the OWNER; nor shall be deemed or construed to impose upon the OWNER any obligation, liability or duty to a SUBCONTRACTOR; or to create any contractual relation whatsoever between a SUBCONTRACTOR and the OWNER.

The provisions contained herein shall likewise apply to any sub-subcontracts.

108.6. CONTRACTOR WORK BY ITS OWN FORCES

Except as otherwise provided, CONTRACTOR shall perform no less than 25% of the Work with its own workforce. If the CONTRACTOR proposes to perform less than 50% of the work by its own forces, then the OWNER may require additional documentation with the bid submittal regarding qualifications of SUBCONTRACTORS actually performing work.

108.6.1. Assignments. The CONTRACTOR shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in it or any part thereof without the previous written consent of the surety company and the written approval of the OWNER.

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The CONTRACTOR shall not assign, either legally or equitably, by power of attorney or otherwise, any of the monies due or to become due under this Contract or its claim thereto without the prior written consent of the surety company and the written approval of the OWNER. Nothing in this paragraph is intended to conflict with Texas Business and Commerce Code.

The approval of the OWNER of a particular assignment, transfer or conveyance shall not dispense with such approval to any further or other assignments.

The approval by the OWNER of any assignment, transfer or conveyance shall not operate to release the CONTRACTOR or surety hereunder from any of the Contract and bond obligations, and the CONTRACTOR shall be and remain fully responsible and liable for the defaults, negligent acts and omissions of its assignees, its agents and employees, as if they were its own.

108.7. OWNER'S RIGHT TO TEMPORARILY SUSPEND WORK

108.7.1. Reasons for Suspension. The OWNER shall have the right by written order to temporarily suspend the work, in whole or in part, whenever, in the judgment of the OWNER, such temporary suspension is required:

(1) in the interest of the OWNER generally,
(2) due to government or judicial controls or orders which make performance of this Contract temporarily impossible or illegal,
(3) to coordinate the work of separate CONTRACTORS at the job site,
(4) to expedite the completion of a separate contract even though the completion of this particular Contract may be thereby delayed,
(5) because of weather conditions unsuitable for performance of the work, including of designated ozone alerts as determined by the National Weather Bureau or other authorized agency; or
(6) because the CONTRACTOR is proceeding contrary to Contract provisions or has failed to correct conditions considered unsafe for workers.

The written order of the OWNER to the CONTRACTOR shall state the reasons for suspending the work and the anticipated periods for such suspension. Upon receipt of the OWNER'S written order, the CONTRACTOR shall suspend the work covered by the order and shall take such means and precautions as may be necessary to properly protect the finished and partially finished work, the unused materials and uninstalled equipment, including the providing of suitable drainage about the work and erection of temporary structures where necessary. The CONTRACTOR shall not suspend the work without written order from the OWNER and shall proceed with the work promptly when notified by the OWNER to resume operations.

108.7.2. No Additional Compensation. No additional compensation shall be paid to the CONTRACTOR for any suspension under Item 108.7.1. (6) above or otherwise where same is caused by the fault of the CONTRACTOR. Where such temporary suspension is not due to the fault of the CONTRACTOR, it shall be entitled to:

(1) an extension of working time for the completion of the work, not to exceed the delay caused by such temporary suspension, as determined by the OWNER; and
(2) the actual and necessary costs of properly protecting the finished and partially finished work, unused materials and uninstalled equipment during the period of the ordered suspension as determined by the OWNER as being beyond the Contract requirements, such costs, if any, to be determined on the basis set forth in Item 109.3. Payment for Extra Work herein; and
(3) where the CONTRACTOR elects to move equipment from the job site and then return it to the site when the work is ordered resumed, the actual and necessary costs of these moves, in an amount determined by the OWNER under the provisions of Item 109.3. Payment for Extra Work; provided, however, no compensation shall be allowed if the equipment is moved to another construction project for the OWNER.
(4) where such temporary suspension is not due to the fault of the CONTRACTOR and is the result of a designated Ozone Alert Period, the CONTRACTOR shall be entitled to additional time as provided in (1) above, but is not entitled to additional compensation.

Other than the additional time and compensation stated above, CONTRACTOR shall not be entitled to any other time extension related to the suspension, nor any additional compensation in any way related to such suspension.

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108.7.3. Emergency Contract Termination Clause. Whenever, because of a national emergency, so declared by the President of the United States, or other lawful authority, it shall be impossible for the CONTRACTOR to obtain all labor, materials, and equipment necessary for the prosecution of the work with reasonable continuity, the CONTRACTOR shall notify the OWNER. If the OWNER cannot, after a reasonable time, help obtain priorities for the materials and equipment within a reasonable effort, then the Contract shall be considered as terminated, and the CONTRACTOR shall be entitled to payment for work performed that is acceptable to OWNER based upon unit prices contained in the bid or, if the Contract is lump sum, then based upon the schedule of values submitted by the CONTRACTOR. CONTRACTOR shall not be entitled to any compensation for anticipated profit, overhead, delay damages or any other compensation for work that has not been performed.

108.8. DELAYS; EXTENSION OF TIME; LIQUIDATED DAMAGES

The CONTRACTOR shall be entitled to an extension of working time under this Contract only when claim for such extension is submitted to the OWNER in writing by the CONTRACTOR within fourteen (14) days from and after the time when any alleged cause of delay shall occur, and then only when such time is approved by the OWNER. The CONTRACTOR shall notify the OWNER immediately upon encountering any condition that the CONTRACTOR believes may cause a claim for a time extension. In adjusting the contract time for the completion of the project, unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to inability to obtain supplies and materials when orders for such supplies and materials were timely made and materials are not available from other sources, acts of God or the public enemy, acts of the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather conditions, ozone alerts as determined by the National Weather Bureau or other authorized agency, or delays of SUBCONTRACTORS due to such causes beyond their control shall be taken into consideration.

If the satisfactory execution and completion of the Contract should require work and materials in greater amounts or quantities than those set forth in the Contract, requiring more time for completion than the anticipated time, then the Contract time shall be increased, but not more than in the same proportion as the cost of the additional work bears to the cost of the original work contracted for. No allowances shall be made for delays or suspension of the performance of the work due to the fault of the CONTRACTOR.

No adjustment of the Contract time shall be made if, concurrently with the cause for delay, hindrance, disruption, force majeure, impact or interference, there existed a cause for delay due to the fault or negligence of the CONTRACTOR or CONTRACTOR'S agents, employees or SUBCONTRACTORS. Notwithstanding any other provisions of the Contract Documents, including the General and Special Provisions, no adjustment shall be made to the Contract price and the CONTRACTOR shall not be entitled to claim or receive any additional compensation as a result of or arising out of any delay, hindrance, disruption, force majeure, impact or interference, foreseen or unforeseen, resulting in adjustment of the Contract time to complete the project, ***including but not limited to those caused in whole or in part by the acts, omissions, failures, negligence or fault of the OWNER, its officers, officials, agents, Engineer, Consulting Engineer or employees***. This provision is intended to cover all delays except as prohibited by law. If a recoverable delay is caused by the sole fault of the OWNER, compensation will be limited to an amount to be determined pursuant to Section 109.3.3. Force Account Work notwithstanding any other provision of the Contract documents, all claims for extension of working time must be submitted in accordance with Item 108.8. Delays; Extension of Time; Liquidated Damages, and no act of the OWNER shall be deemed a waiver or entitlement of such extension.

108.8.1. Liquidated Damages for Failure to Complete on Time. The time of completion is the essence of this Contract. For each day that any work shall remain uncompleted after the time specified in the proposal and the Contract, or the increased time granted by the OWNER, or as equitably increased by additional work or materials ordered after the Contract is signed, the sum per day given in the Schedule 108.8.1. (a) Liquidated Damages, unless otherwise specified, shall be deducted from the monies due the CONTRACTOR.

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Schedule 108.8.1. (a) Liquidated Damages

Amount of Contract ($)	Amount of Liquidated Damages ($)
Less than 25,000.00	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More than 1,000,000.00	500.00 Per Day

The sum of money thus deducted for such delay, failure or noncompletion is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that the CONTRACTOR shall be in default after the time stipulated in the Contract for completing the work. The said amounts are fixed and agreed upon by and between OWNER and CONTRACTOR because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the OWNER in such event would sustain; and said amounts are agreed to be the amount of damages which the OWNER would sustain and which shall be retained from the monies due, or that may become due, the CONTRACTOR under this Contract; and if said monies be insufficient to cover the amount owing, then the CONTRACTOR or its surety shall pay any additional amounts due.

In the event that the actual damages incurred by the OWNER exceed the amount of liquidated damages, OWNER shall be entitled to recover its actual damages.

108.9. CONTRACTOR DEFAULT: OWNER'S RIGHT TO SUSPEND WORK AND ANNUL CONTRACT

The work or any portion of the work under this Contract shall be suspended immediately on written order of the OWNER declaring the CONTRACTOR to be in default. A copy of such notice shall be served on the CONTRACTOR'S surety. The Contract may be terminated by the OWNER for any good cause or causes, among others of which special reference is made to the following:

(1) failure of the CONTRACTOR to start the work within 10 days from date specified in the written work order issued by the OWNER to begin the work;
(2) substantial evidence that the progress of the work being made by the CONTRACTOR is insufficient to complete the work within the specified working time;
(3) failure of the CONTRACTOR to provide sufficient and proper equipment, materials or construction forces for properly executing the work;
(4) substantial evidence that the CONTRACTOR has abandoned the work or discontinued the performance of the work or any part thereof and failure to resume performance within a reasonable time after notice to do so;
(5) substantial evidence that the CONTRACTOR has become insolvent or bankrupt, or otherwise financially unable to carry on the work;
(6) deliberate failure on the part of the CONTRACTOR to observe any requirements of the Contract Documents or to comply with any orders given by the OWNER or Engineer as provided for in the Contract Documents;
(7) failure of the CONTRACTOR to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the OWNER;
(8) substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the OWNER in the construction of work under Contract;
(9) repeated and flagrant violations of safe working procedures;
(10) the filing by the CONTRACTOR of litigation against the OWNER prior to final completion of the work.

When the work is suspended for any of the causes itemized above, or for any other cause or causes, the CONTRACTOR shall discontinue the work or such part thereof as the OWNER shall designate, whereupon the surety may either at its option assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue and perform the same or, with the written consent of the OWNER, sublet the same, provided, however, that the surety shall exercise its option within two weeks after the written notice to discontinue the work has been served upon the CONTRACTOR and upon the surety or its authorized agents. The surety in such event shall assume the CONTRACTOR'S place in all respects and shall be paid by the OWNER for all work performed by it in accordance with the terms of the Contract, but in no event shall such payments exceed the Contract amount, regardless of the cost to the surety to complete the work.

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All monies remaining due the CONTRACTOR at the time of its default shall thereupon become due and payable to the surety as the work progresses, subject to all terms of the Contract. In case the surety does not, within the hereinabove specified time, exercise its obligation to assume the Contract or that portion thereof which the OWNER has ordered the CONTRACTOR to discontinue, then the OWNER shall have the power to complete by contract or otherwise, as it may determine, the work herein described or such part thereof as it may deem necessary; and the CONTRACTOR hereto agrees that the OWNER shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies and property of every kind provided by the CONTRACTOR for the purpose of its work and to procure other tools, equipment and materials for the completion of the same and to charge to the account of the CONTRACTOR the expense of said contract for labor, materials, tools, equipment and expenses incident thereto. The expense so charged shall be deducted by the OWNER out of such monies as may be due or may at any time thereafter become due the CONTRACTOR under and by virtue of the Contract or any part thereof.

The OWNER shall not be required to obtain the lowest bid for the work of completing the contract, but the expenses to be deducted shall be the actual cost of such work. In case such expense is less than the sum which would have been payable under the Contract if the same had been completed by the CONTRACTOR, then in such case the OWNER may pay the CONTRACTOR the difference in the cost, provided that the CONTRACTOR shall not be entitled to any claim for damages or for loss of anticipated profits.

In case such expense shall exceed the amount which would have been payable under the Contract if the same had been completed by the CONTRACTOR, the CONTRACTOR and its surety shall pay the amount of the excess to the OWNER on notice from the OWNER for excess due including any costs incurred by the OWNER, such as inspection, legal fees and liquidated damages. When any particular part of the work is being carried on by the OWNER by contract or otherwise under the provisions of this section, the CONTRACTOR shall continue the remainder of the work in conformity with the terms of the Contract and in such manner as not to hinder or interfere with the performance of workers employed as above provided by the OWNER or surety.

108.10. SUSPENSION BY COURT ORDER AGAINST THE OWNER

The CONTRACTOR shall suspend such part or parts of the work pursuant to a court order issued against the OWNER and shall not be entitled to additional compensation for anticipated profits, overhead, delay damage or any other form of compensation by virtue of such court order; neither shall the CONTRACTOR be liable to the OWNER in the event the work is suspended by such court order, unless such suspension is due to the fault or negligence of the CONTRACTOR.

108.11. TERMINATION FOR CONVENIENCE OF THE OWNER

108.11.1. Notice of Termination. The performance of the work under this Contract may be terminated by the OWNER in whole or from time to time in part, in accordance with this section, whenever the OWNER shall determine that such termination is in the best interest of the OWNER. Any such termination shall be effected by serving in accordance with Item 105.8. Service of Notices a notice of termination to the CONTRACTOR specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective. Further, it shall be deemed conclusively presumed and established that such termination is made with just cause as therein stated; and no proof in any claim, demand or suit shall be required of the OWNER regarding such discretionary action.

108.11.2. CONTRACTOR Action. After receipt of a notice of termination, and except as otherwise directed by the OWNER, the CONTRACTOR shall:

(1) stop work under the Contract on the date and to the extent specified in the notice of termination;
(2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion the work under the Contract as is not terminated;
(3) (terminate all subcontracts, purchase orders or options to the extent that they relate to the performance of work terminated by the notice of termination or at the OWNER'S written request, deliver and assign to the OWNER, or any person or entity acting on the OWNER'S behalf, any or all subcontracts, purchase orders and options made by CONTRACTOR in the performance of the work, and deliver to the OWNER true and correct originals and copies of such Contract Documents;

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(4) transfer title to the OWNER and deliver in the manner, at the times, and to the extent, if any, directed by the OWNER:
   a. the fabricated or un-fabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the notice of termination; and
   b. the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the OWNER.

(5) complete performance of such part of the work as shall not have been terminated by the notice of termination; and

(6) take such action as may be necessary, or as the OWNER may direct, for the protection and preservation of the property related to its Contract which is in the possession of the CONTRACTOR and in which the OWNER has or may acquire an interest.

At a time not later than 30 days after the termination date specified in the notice of termination, the CONTRACTOR may submit to the OWNER a list, certified as to the quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the OWNER. Not later than 15 calendar days thereafter, the OWNER shall accept title to such items and remove them or enter into a storage agreement covering the same, provided that the list submitted shall be subject to verification by the OWNER upon removal of the items, or, if the items are stored, within 45 calendar days from the date of submission of the list, and provided that any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

108.11.3. Termination Claim. Within 60 days after notice of termination, the CONTRACTOR shall submit its termination claim to the OWNER in the form and with the certification prescribed by the OWNER. Unless one or more extensions in writing are granted by the OWNER upon request of the CONTRACTOR, made in writing within such 60-day period or authorized extension thereof, any and all such claims shall be conclusively deemed waived.

108.11.4. Amounts. Subject to the provisions of Item 108.11.3. Termination Claim, the CONTRACTOR and OWNER may agree upon the whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of work pursuant hereto, provided that such agreed amount or amounts shall never exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount. No amount shall be due for lost or anticipated profits. Nothing in Item 108.11.5. Failure to Agree hereunder, prescribing the amount to be paid to the CONTRACTOR in the event of failure of the CONTRACTOR and the OWNER to agree upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the CONTRACTOR pursuant to this paragraph.

108.11.5. Failure to Agree. In the event of the failure of the CONTRACTOR and the OWNER to agree, as provided in Item 108.11.4. Amounts, upon the whole amount to be paid to the CONTRACTOR by reason of the termination of work pursuant to this section, the OWNER shall determine, on the basis of information available to it, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amounts determined. No amount shall be due for lost or anticipated profits. The OWNER'S determination shall be final.

108.11.6. Deductions. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the CONTRACTOR, applicable to the terminated portion of this Contract; (b) any claim which the OWNER may have against the CONTRACTOR in connection with this Contract; and (c) the agreed price for or the proceeds of sale of any materials, supplies or other things kept by the CONTRACTOR or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the OWNER.

108.11.7. Adjustment. If the termination hereunder be partial prior to the settlement of the terminated portion of this Contract, the CONTRACTOR may file with the OWNER a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract

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(the portion not terminated by the notice of termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; nothing contained herein, however, shall limit the right of the OWNER and the CONTRACTOR to agree upon the amount or amounts to be paid to the CONTRACTOR for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.

108.11.8. No Limitation of Rights. Nothing contained in this section shall limit or alter the rights, which the OWNER may have for termination of this Contract under Item 108.9. CONTRACTOR Default: OWNER'S Right to Suspend Work and Annual Contract or any other right which OWNER may have for default or breach of Contract by CONTRACTOR.

108.12. CLAIMS AGAINST OWNER AND ACTION THEREON

No claim against the OWNER under the Contract or for breach of the Contract or additional compensation for extra or disputed work shall be made or asserted against the OWNER under the Contract or in any court action except pursuant to the provisions of Item 109.3. Payment for Extra Work, Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and unless the CONTRACTOR shall have strictly complied with all requirements relating to the giving of notice and information with respect to such claim as required under said sections. The requirements cannot be waived by the OWNER'S representative, and are not waived by a claimed breach of contract by the OWNER.

108.13. USE OF COMPLETED PORTIONS OF WORK

The OWNER may, after written notice to the CONTRACTOR, and without incurring any liability for increased compensation to the CONTRACTOR, take over and use any completed portion of the work prior to the final completion and acceptance of the entire work included in the Contract, and notwithstanding that the time allowed for final completion has not expired. The CONTRACTOR shall not object to, nor interfere in any way with, such occupancy or use after receipt of the OWNER'S written notice.

Immediately prior to such occupancy and use, the OWNER shall inspect such portion of the work to be taken over and shall furnish the CONTRACTOR a written statement of the work, if any, still to be done on such part. The CONTRACTOR shall promptly thereafter complete such unfinished work to permit occupancy and use on the date specified in the OWNER'S written order, unless the OWNER shall permit specific items of work to be finished after the occupancy and use by the OWNER.

The provisions in the last two paragraphs above shall not apply to portions of roads, streets, bridges or detours upon which traffic is diverted to enable the continuation of the Contract work.

Neither such usage, as performed under this section, nor the written statement of work still to be done shall be held in any way as an acceptance of said work or structure or any part thereof, nor as a waiver of any of the provisions of these specifications or other Contract Documents pending final completion and acceptance of the work; all necessary repairs and removals of any section of the work so put into use, due to the defective materials or workmanship or to operations of the CONTRACTOR, shall be performed by the CONTRACTOR at its own expense.

In the event the CONTRACTOR is unreasonably delayed by the OWNER exercising its rights under this section, the CONTRACTOR may submit a request for an extension of time under Item 108.8. Delays; Extension of Time; Liquidated Damages; no additional compensation or delay damages will be paid.

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ITEM 109. MEASUREMENT AND PAYMENT

109.1. PAYMENT FOR LABOR AND MATERIAL; NO LIENS

The CONTRACTOR shall furnish payrolls and personnel records, which pertain to this current Contract with the OWNER for the purpose of ascertaining compliance with minimum wage rates published by the OWNER. Monthly and final estimates for payment will not be processed unless the CONTRACTOR complies with this requirement in a timely manner.

The CONTRACTOR for itself or any of its SUBCONTRACTORS shall pay all indebtedness, which may become due to any person, firm or corporation having furnished labor, material or both in the performance of this Contract. It shall be the responsibility of each person, firm or corporation claiming to have furnished labor, materials or both, in connection with this Contract, to protect its interest in the manner prescribed by applicable laws of the State of Texas, provided, however, that as this Contract provides for a public works project, no lien of any kind shall ever exist or be placed against the work or any portion thereof, or any public funds or retainage held by the OWNER; and any SUBCONTRACTOR shall look solely to the CONTRACTOR and the payment bond surety, and not the OWNER, for payment of any outstanding amounts due for labor, materials or any other indebtedness in connection with the work. If the CONTRACTOR or SUBCONTRACTOR or supplier places a lien against the work or a portion thereof then the CONTRACTOR shall cause the removal of the lien. However, the OWNER may, at any time prior to making final payment, require the CONTRACTOR to furnish a Consent of Surety to any payment due the CONTRACTOR for completed work and may, at the discretion of the OWNER or the request of the Surety, make the check jointly payable to the CONTRACTOR and the Surety.

The OWNER may conduct random sampling of wage rates on each CONTRACT. The OWNER may interview the CONTRACTOR'S and CONTRACTOR'S SUBCONTRACTOR'S employees in the field to verify the employee is working in and being paid for the classification shown on the payroll. In instances of noncompliance, the OWNER MAY initiate action as outlined in the CONTRACT Documents.

109.2. PAYMENT FOR MATERIALS

109.2.1. Materials On-Hand. Materials purchased and stored more than 30 days before use may be considered materials on-hand. Payment for such materials shall be made according to Item 109.5. Monthly Estimate, Partial Payments, Retainage, Final Inspection, Acceptance and Final Payment.

109.2.2. Materials Stored Off-Site. Off-site storage of such materials and payment for off-site storage may be accomplished according to Item 106.4. Off-Site Storage.

109.2.3. Measurement of Quantities. The determination of quantities of work acceptably completed under the terms of the contract, or as directed by the OWNER in writing, shall be made by the OWNER, based on measurements made by the OWNER. These measurements shall be taken according to the U.S. Standard measurements used in common practice and shall be the actual length, area, solid contents, numbers and weight.

109.3. PAYMENT FOR EXTRA WORK

109.3.1. General. Extra Work done by the CONTRACTOR, as authorized and approved by the OWNER, shall be compensated for in the manner described in this Item 109.3. The compensation provided for Extra Work done constitutes full and final payment for the cost of the Extra Work, which cost is limited to: (1) all reasonable costs of labor, materials, supplies, tools, equipment or machinery rental, power, fuel, lubricants, water and other similar operation expenses (but only for the time that such of the above things are employed or used on such Extra Work) incurred in the performance of the Extra Work, and a ratable proportion of premium expenses for all bonds and insurance required under the Contract, to the extent that the Extra Work would cause an increase in such bond or insurance premiums; and (2) a markup amount of not-to-exceed 15-percent of the above mentioned costs to cover and compensate the CONTRACTOR for profit, overhead, profit-and-overhead markups charged to CONTRACTOR by other SUBCONTRACTORS and suppliers, general supervision, field office expense and all other elements of cost and expense not embraced within the cost of the Extra Work as described in this Item 109.3.1. General. No cost of off-site storage shall be included in the above description of cost unless off-site storage has been approved and directed by the OWNER in writing. No other claims or reservations of right as to additional costs, prices, markups, costs not permitted to be

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included under this paragraph, disallowed costs or other future additional money or time shall be accepted; each change order shall be specific and final as described in Item 104.2.4 Finality of Change Orders.

109.3.2. Method of Determination. The method of determination and payment of cost, or credit to the OWNER, for any Extra Work shall be one of the following:

(1) Unit prices agreed on in writing, approved by the OWNER and executed by the OWNER and CONTRACTOR before the Extra Work is commenced, or unit prices already included in the Contract documents, subject to all other conditions of the Contract. Mutual acceptance of a not-to-exceed lump sum properly itemized and supported by sufficient substantiating data to permit evaluation before the Extra Work is commenced, subject to all other conditions of the Contract.

(2) A not-to-exceed cost to be determined in a manner agreed upon by the parties plus a mutually acceptable fixed or percentage fee, agreed upon before the Extra Work is commenced and subject to all other conditions of the Contract.

(3) The force account method provided in Item 109.3.3. Force Account Work.

109.3.3. Force Account Work. If the CONTRACTOR and the OWNER cannot agree to one of the methods of calculating cost provided in Item 109.3.2. Method of Determination above, or if the parties agree to a method but cannot agree to a final dollar figure, or if the CONTRACTOR for whatever reason fails or refuses to sign the Change Order in question, the CONTRACTOR, provided it receives a written order signed by the OWNER, shall promptly proceed with the work involved. Nothing in this paragraph shall be construed to relieve the CONTRACTOR of any obligations it has under the disputed work provisions of Item 104.3. Disputed Work and Claims for Additional Compensation, and Item 104.4. Performance of Extra or Disputed Work, and where applicable the CONTRACTOR is still obligated to abide with those Items as well as this Item 109.3.3. Force Account Work. The cost of the work involved shall then be calculated on a force account basis, on the basis of the actual, reasonable field cost of the work attributable to the changes, plus a reasonable allowance for overhead, profit, markups of other SUBCONTRACTORS and suppliers, general supervision, field office expense and other elements of cost not embraced within the actual field cost as specified herein, such allowance in any case never to exceed 15%. In such case, the CONTRACTOR shall keep a detailed itemized account of the work involved and the actual field cost incurred, in a format acceptable to the OWNER and with such appropriate supporting data as the OWNER may prescribe. Sworn copies of the itemized accounting shall be directed to the OWNER each day during the performance of the force account work. Failure of the CONTRACTOR to submit the sworn-to itemized accounting daily as required herein shall constitute a waiver by the CONTRACTOR of any right to dispute the OWNER'S determination of the amount due the CONTRACTOR for force account work.

Actual, reasonable field cost of the work to be charged under this Item 109.3.3. Force Account Work for force account work is limited to the following:

(1) The reasonable wages of all workers, foremen, timekeepers, mechanics and laborers, plus costs of social security, old age and unemployment insurance, fringe benefits required by agreement or custom (excluding employee or executive bonuses), and worker's compensation insurance, for the time such labor is actually employed or used on force account work.

(2) Reasonable costs of materials, tools, supplies and equipment (but not to include off-site storage unless so approved and directed in writing by the OWNER), whether incorporated or consumed into the force account work.

(3) Reasonable rental costs of machinery and equipment, exclusive of hand tools, only for the time actually employed or used on force account work, whether rented from the CONTRACTOR or others.

(4) A pro rata portion of premium expenses for all bonds and insurance to the extent force account work would cause an increase in such bond or insurance premiums.

Pending final determination of the cost to the OWNER, payment of undisputed amounts on force account shall be included on the monthly estimate as work is completed unless otherwise expressly provided in the written order signed by the OWNER to perform the work. Nothing in this Item 109.3.3. Force Account Work shall be construed as directing the CONTRACTOR'S means and methods of performing the work in question.

109.3.4. Distinguishing Extra Work. For purposes of this Item or any other provision of the Contract documents that allows a claim for Extra Work, the term "Extra Work" means work that is not reasonably within the scope of the Contract Documents or not otherwise incidental or necessary to performance of the

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Contract. The term does not include any change by the CONTRACTOR in the means and methods of performing the Work from that anticipated or bid (even if such change in means or methods is requested or directed by the OWNER), whether or not the change is due to foreseeable or unforeseeable events or conditions, if the intended result or scope of the Work is not expanded or increased. The OWNER shall not be liable for any claim due to a change in the means or methods of construction by the CONTRACTOR, resulting in additional costs, if the OWNER has not changed the plans or specifications and if the intended result and scope of the work required by and reasonably inferred from the Contract Documents remains the same. The OWNER shall also not be liable for any claim for work required in performance of the Contract, without which the Contract could not be completed, notwithstanding that the CONTRACTOR did not contemplate or foresee the degree or amount of work that would be necessary or required to complete the Contract and notwithstanding that it cost the CONTRACTOR more to complete the Contract work than the original Contract price.

109.4. PAYMENT WITHHELD

In addition to express provisions elsewhere contained in the Contract, the OWNER may withhold from any payment otherwise due the CONTRACTOR such amount as determined necessary to protect the OWNER'S interest, or, if it so elects, may withhold or retain all or a portion of any payment or refund payment on account of:

(1) unsatisfactory progress of the work not caused by conditions beyond the CONTRACTOR'S control,
(2) defective work not corrected,
(3) CONTRACTOR'S failure to carry out instructions or orders of the OWNER or its representative,
(4) a reasonable doubt that the Contract can be completed for the balance then unpaid,
(5) work or execution thereof not in accordance with the Contract documents,
(6) claim filed by or against the CONTRACTOR or reasonable evidence indicating probable filing of claims,
(7) failure of the CONTRACTOR to make payments to any SUBCONTRACTOR or suppliers for material or labor used in the performance of the Work,
(8) damage to another CONTRACTOR or OWNER,
(9) unsafe working conditions allowed to persist by the CONTRACTOR,
(10) failure of the CONTRACTOR to provide work schedules as required by the OWNER,
(11) use of SUBCONTRACTORS without the OWNER'S approval or,
(12) failure of the CONTRACTOR to keep current as-built record drawings at the job site or to turn same over in completed form to the OWNER.

When the grounds for withholding payment are removed, payment shall be made for amounts withheld because of them, and OWNER shall never be liable for interest on any delayed or late payment.

109.5. MONTHLY ESTIMATE, PARTIAL PAYMENTS, RETAINAGE, FINAL INSPECTION, ACCEPTANCE AND FINAL PAYMENT

109.5.1. Monthly Estimate. Except as otherwise provided by the Contract, between the 25th day and the last day of each month, the OWNER shall make an approximate estimate of the value of the work done during the month under the specifications. The monthly estimate may include acceptable nonperishable materials as referenced in Item 109.2. Payment for Materials; such payment shall be allowed on the same percentage basis of the net invoice value as provided hereinafter. The percent retained by OWNER shall normally be up to 10 percent at completion, unless otherwise stated. At the midpoint, or at any subsequent time, if OWNER determines that the progress on the Contract is satisfactory in all respects, it may at its discretion cease to retain additional funds until the completion of the project, or until progress ceases to be satisfactory. The OWNER shall make the sole determination in this matter.

Except as otherwise provided by the Contract, between the 25th day and the last day of each month the CONTRACTOR shall make an estimate of the value of the work done during the month under the specifications. The CONTRACTOR shall prepare the estimate on a form approved by the OWNER. The CONTRACTOR shall forward the estimate required above to the OWNER by not later than the last day of the month. The monthly estimate may include acceptable nonperishable materials delivered to and stored at the work site or a storage facility accessible to the OWNER; payment for such stored materials shall be allowed on the same percentage basis of the value as provided hereinafter. The monthly estimate shall also provide such supporting documentation as the OWNER or the other applicable provisions of the specifications may require.

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The OWNER shall verify that the CONTRACTOR'S estimate matches the total value of work done and acceptable non-perishable materials delivered to the work site or storage facility, based upon the bid proposal prices and quantities measured or verified by OWNER. In the event of a discrepancy between quantities of work as shown in the CONTRACTOR'S estimate and measured quantities as shown in the OWNER'S verification, the OWNER'S determination or measurement shall be final, and the CONTRACTOR'S estimate shall be adjusted to reflect the quantities of work as shown by the OWNER'S verification. Payment shall be made by OWNER about thirty (30) days after receipt of the estimate from CONTRACTOR. OWNER shall not be liable for interest on any late or delayed payment caused by any claim or dispute, any discrepancy in quantities as described above, any failure to provide supporting documentation or other information required with the estimate or as a precondition to payment under the Contract, or due to any payment the OWNER has a right to withhold under the Contract.

The CONTRACTOR shall furnish to the OWNER such detailed information as OWNER may request to assist in the preparation of monthly estimates. It is understood that the monthly estimates shall be approximate only, and all monthly estimates and partial payments shall be subject to correction in the estimate rendered following the discovery of an error in any previous estimate, and such estimate shall not in any respect be taken as an admission of the OWNER of the amount of work done or of its quality or sufficiency nor as an acceptance of the work or the release of the CONTRACTOR of any of its responsibility under the Contract.

109.5.2. Retainage. As security for the faithful completion of the work by the CONTRACTOR, the OWNER shall retain 15-percent of the total dollar amount of work done on all contracts $25,000.00 and less; 10-percent of the total dollar amount of work done on all contracts in excess of $25,000.00 and less than $400,000.00; five-percent of the total dollar amount of work done on all contracts of $400,000.00 or more. On all contracts in excess of $400,000, the following shall apply:

(1) on all contracts in excess when work progress is 80-percent complete, retainage may, at the OWNER'S option, be reduced to two percent of the dollar value of all work satisfactorily completed to date (not to include material on hand), provided that the CONTRACTOR is making satisfactory progress and there is no cause of greater retainage as determined by the OWNER;
(2) when work progress is substantially complete, the retainage may be further reduced to only that amount necessary to assure completion as determined by the OWNER;
(3) if the OWNER determines that the CONTRACTOR is not making satisfactory progress or if there is other specific cause, the OWNER may, at its discretion, reinstate up to the five percent retainage.

109.5.3. Final Inspection and Acceptance. Final inspections and acceptance shall proceed according to Item 105.9. Inspection and Item 105.10. Acceptance.

109.5.4. Final Payment. Whenever the improvements provided for by the Contract shall have been completely performed on the part of the CONTRACTOR, as evidenced in the certificate of acceptance obtained according to Item 105.10. Acceptance, and all required submissions provided to the OWNER, a final estimate showing the value of the work shall be prepared by the OWNER as soon as the necessary measurements and computations can be made. All prior estimates upon which payments have been made are subject to necessary corrections or revisions in the final payment. The amount of the final estimate, less any sums that have been previously paid, deducted or retained under the provisions of this Contract, shall be paid to the CONTRACTOR within a reasonable period of time (not to exceed 90 days) after final acceptance and the CONTRACTOR has provided to the OWNER:

(1) a consent of surety to final payment;
(2) the final CONTRACTOR'S Report of SUBCONTRACTOR/Supplier Payment, evidencing that all indebtedness connected with the work and all sums of money due for any labor, materials, apparatus, fixtures or machinery furnished for or used in the performance of the work have been paid or otherwise satisfied, or that the person or persons to whom the same may be respectively due have consented to final payment; and
(3) such other affidavits, lien waivers and other documentation as the OWNER may reasonably require to protect its interests.

In addition, the CONTRACTOR shall be required to execute the OWNER'S standard Affidavit of Final Payment and Release as a precondition to receipt of final payment.

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The acceptance by the CONTRACTOR of the final payment as aforesaid shall operate as and shall be a release to the OWNER from all claims, damages or liabilities under the Contract, including all SUBCONTRACTOR claims, or claims for additional compensation, for anything done or furnished or relating to the work under the Contract or for any act or neglect of said OWNER relating to or connected with the Contract.

All warranties and guarantees shall commence from the date of the certificate of acceptance. No interest shall be due the CONTRACTOR on any partial or final payment or on the retainage.

109.5.5. Compensation and Acknowledgement of Work. The CONTRACTOR shall receive and accept compensation, as herein provided, as full payment for furnishing all labor, tools, material, equipment and incidentals; for performing all work contemplated and embraced under the Contract; for all loss or damage arising out of the nature of the work, or from the action of the elements; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the OWNER; for all risks of whatever description connected with the prosecution of the work; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the work as herein specified; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

109.6. WIRE TRANSFERS

Payments to the CONTRACTOR may, at the discretion of the OWNER, be made by wire transfer to a bank of the CONTRACTOR'S choice. The CONTRACTOR must furnish the following information:

(1) The ABA number of the bank.
(2) The CONTRACTOR'S account number.
(3) Or other such information as may be required by sending and receiving financial institutions.

The request must be on the CONTRACTOR'S letterhead and signed by an authorized representative of the CONTRACTOR (cannot be a copy).

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ITEM 110. AIR QUALITY REQUIREMENT FOR EQUIPMENT

As of 2016, ten (10) counties in North Central Texas have been designated by the EPA as being nonattainment for the pollutant ozone, and additional counties are expected to be designated in the near future. As a result, development of an air quality plan, known as the State Implementation Plan (SIP), is required for all nonattainment areas in order to demonstrate how ozone will be reduced to levels compliant with EPA standards. The SIP for the Dallas-Fort Worth nonattainment area includes programs to implement control strategies to all emission sources, including non-road construction equipment sources. To support these efforts, air quality requirements for equipment are applicable to the Contract.

110.1. EQUIPMENT REQUIREMENTS

All construction equipment being used to perform work on the Contract shall meet EPA emissions standards of Tier 3 or equivalent, or cleaner. Model Form A.14. Schedule for Phase-In of Tier 1-Tier 4 Non-Road Engines is included in Appendix A. Compliance may be achieved through the use of equipment powered by an EPA-certified engine, through engine repowers, or through the use of retrofits which have been verified by the EPA and/or California Air Resources Board. A list of available retrofits is available online at EPA's website "Verified Technologies List for Clean Diesel."

Equipment that meets one or more of the following conditions may be exempt from these requirements:

(1) Equipment powered by an engine that is less than or equal to ten (10) years old.
(2) Equipment that must be used to fulfill use or reporting requirements for a grant program or other clean air initiative. Documentation of such obligations must be submitted to OWNER for verification.
(3) Equipment that is designated as low-use equipment, which is defined as any piece of construction equipment which is used for less than ten (10) hours per week on a single public works contract. A Low-Use Exemption Weekly Reporting Form will be required for all equipment for which this exemption is claimed. Model Form A.15. Low-Use Exemption Weekly Reporting Form is included in Appendix A.
(4) Equipment that is being used to address a critical or emergency public works need, including, but not limited to, broken water mains or sanitary sewer lines. This exemption is limited to work performed in a situation in which the procurement of construction services is performed on an emergency basis, as provided for by State law.

110.2. OPERATIONAL REQUIREMENTS

All diesel fuel used to perform work on the public works contract shall be Ultra-Low Sulfur Diesel (ULSD) fuel which also complies with Texas Low Emission Diesel (TxLED) program requirements. This may include TxLED-compliant Biodiesel blends.

The CONTRACTOR shall limit idling of equipment to no more than five (5) minutes, unless the idling is applicable to one or more of the following exceptions:

(1) is being used for emergency response purposes;
(2) is idling as a necessary component of mechanical operation, maintenance, or diagnostic purposes; or
(3) is idling for the health or safety of the equipment operator.

To the greatest extent possible, CONTRACTOR shall stage equipment away from, and minimize operation near, sensitive receptors including, but not limited to, fresh air intakes, hospitals, schools, licensed day care facilities, and residences.

110.3. REPORTING TO OWNER

On or before the day construction activity commences, the CONTRACTOR shall submit to the OWNER an inventory report containing identifying data for each piece of equipment to be used on the worksite. A form for submitting such information will be provided by the OWNER. Model Form A.16. Contract Equipment Inventory is included in Appendix A. This inventory may be used by the OWNER or INSPECTOR to conduct site inspections and/or verify compliance with specification elements.

If additional equipment is brought on-site after construction begins, the CONTRACTOR shall provide this same inventory information to the OWNER for the new equipment on or before the day it begins work on-site.

Reports shall be provided for all equipment used on-site.

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110.4. ENFORCEMENT

All construction equipment used on the job site is subject to inspection by the OWNER at random. CONTRACTOR is responsible for ensuring that all SUBCONTRACTORS meet the requirements of this specification.

The provisions of this specification shall be enforced as established in the Terms and Conditions of the Contract. If the provisions of this specification are not met, the OWNER may declare the CONTRACTOR to be in default of the contract.

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Exhibit B
Added Provisions

EXHIBIT B
ADDED PROVISIONS TO CONTRACT

ACCESS:

Once the installation starts, Contractor is to have full access and right of way to the project area. The Owner will specifically designate access routes for the Contractor to the jobsite, of which will be appropriate and stable enough to withstand the weight of the truckloads that will be needed for this project.

LIGHTING, ELECTRICITY & FACILITIES:

Sufficient temporary lighting, power and facilities are to be supplied and maintained by Owner, for Contractor use during project construction. All utilities will be supplied at no charge to Contractor. Temporary Facilities (water) will be furnished at the location by the Owner. Staging areas for materials, tools, and equipment will be provided by the Owner.

UNDERGROUND SERVICES OR OBSTRUCTIONS:

Contractor shall be bound by all the provisions of Section 102.3 of the Contract documents. Contractor, its subcontractors, agents and representatives have the full and complete duty to inspect and examine all plans, specifications and the site of any work to be performed. Owner has not made any representations regarding any of these matters, and Contractor acknowledges they are solely responsible for properly performing any inspection or examinations and shall not rely on Owner or hold Owner responsible for any conditions or details of the work to be performed. Owner will be solely responsible for all costs associated with removal/relocation of any underground obstructions such as rock, hazardous materials, contaminated fill or any unidentified substances, utilities, or services that are not able to be determined from the geotechnical boring and the 6" diameter sample it provides. If Owner fails to notify Contractor of anyunderground PRIVATE utilities and said utilities are damaged, Owner shall be fully responsible for any costs incurred as a result of any damage to those utilities and for any expense incurred by Contractor due to the delay of the project. In addition, the constructionschedule and substantial completion date shall be adjusted to reflect the number of days the project is delayed due to any damage and repair of the utilities.

MOBILIZATION:

Contractor has bid this job allowing for (1) one mobilization to the site. If any additional mobilizations, at no fault of Contractor, are required to complete this project, a mobilization fee of up to $25,000.00 / mobilization will be incurred and paid to Contractor by the Owner. If Contractor has to demobilize and remobilize under Contractor's own accord, no remobilization fee will be required.

FORCE MAJEURE

Extensions in the Substantial Completion date shall be granted by Owner to the extent that such delay: (i) has not been caused by Contractor or any of its subcontractors or agents, (ii) are the result of "force majeure" delays, delays caused by "acts of God" (tornadoes, earthquakes, hail, floods, fires, or other natural catastrophes), weather delays, strikes, lockouts, riots, act of terrorism, acts of war, chemical spills or reactions, nuclear explosions, vandalism, government agency actions, significant and unforeseen price fluctuations or shortages in supplies beyond the control of Contractor, or delays caused by the Owner and (iii) other such items beyond the reasonable control of Contractor. Contractor is not responsible for delays caused by any of the above circumstances and shall be granted extensions of time for each such occurrence.

DISPUTE RESOLUTION:

Before any suits shall be filed in a court of competent jurisdiction, notice must be given to the other party with 30 days to cure the defect. If the issue is not resolved, the parties must first attempt to mediate the case with an agreed mediator and split the mediation fees 50/50. If the parties are not able

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to resolve the case in mediation, then either party may then file suit.

FINAL PAYMENT:

Final payment, constituting the unpaid balance of this Contract amount, shall be made within fifteen (15) days after the last of the following to occur (1) full completion of the work by Subcontractor, including punch list work, (2) final acceptance of the Work by the Architect (3) the delivery of all guarantees and warranties with respect to the Work by Subcontractor. In no event shall Contractor be required to fulfill any warranty for this project without full payment being made of the work performed.

LIQUIDATED DAMAGES:

In no event shall Contractor incur liquidated damages in excess of $500.00 per day for failing to achieve substantial completion or final completion.

ADVERTISNG AND PROMOTION:

The Owner agrees to grant Contractor the right to Owners trademarks and logo use and the right to take, print and reproduce images, both photos and video, of the work performed by Contractor for the use of advertising and promotion. This shall only apply to the work performed by Contractor.

BILLING

If Owner or Architect requires the Contractor to use any Electronic Billing System, Owner shall pay for any such related costs. Contractor has not budgeted for this as a condition of this contract and is under no duty to use such system unless paid for by Owner.

Owner- City Of Texarkana

_____
Dr. David Orr, City Manager

_____
Date

Symmetry Sports , LLC

_____
Jason Bell- President

_____
Date

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Exhibit C
Addendum to General Provisions

EXHIBIT C

ADDENDUM TO SYMMETRY SPORTS CONSTRUCTION GENERAL PROVISIONS

105.7.1. shall be amended to read as follows:

> 105.7.1. Authority of Engineer. All work shall be performed in a good and workmanlike manner and to the satisfaction of Engineer and Owner. The Engineer, in consultation with Owner, shall decide all questions which arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress of the work, sequence of the construction, interpretation of the plans and specifications, acceptable fulfillment of the Contract compensation, mutual rights between CONTRACTORS under these specifications and suspension of the work. Engineer shall determine the amount and quality of work performed and materials furnished. Engineer estimate and Owner approval in such event shall be a condition precedent to the right of the CONTRACTOR to receive money due under the Contract.

The third paragraph of 106.1 SUBSTITUTIONS OF MATERIALS shall be amended to read as follows:

> Where the term “or equal,” or “or approved equal” is not used in the specifications, this does not necessarily exclude alternative items or material or equipment which may accomplish the intended purpose. However, the CONTRACTOR shall have the full responsibility of proving that the proposed substitution is, in fact, equal, and the Engineer, in consultation with the Owner, shall determine the acceptability of substitutions. The provisions of this sub-section as related to “Substitutions” shall be applicable to all sections of these specifications.

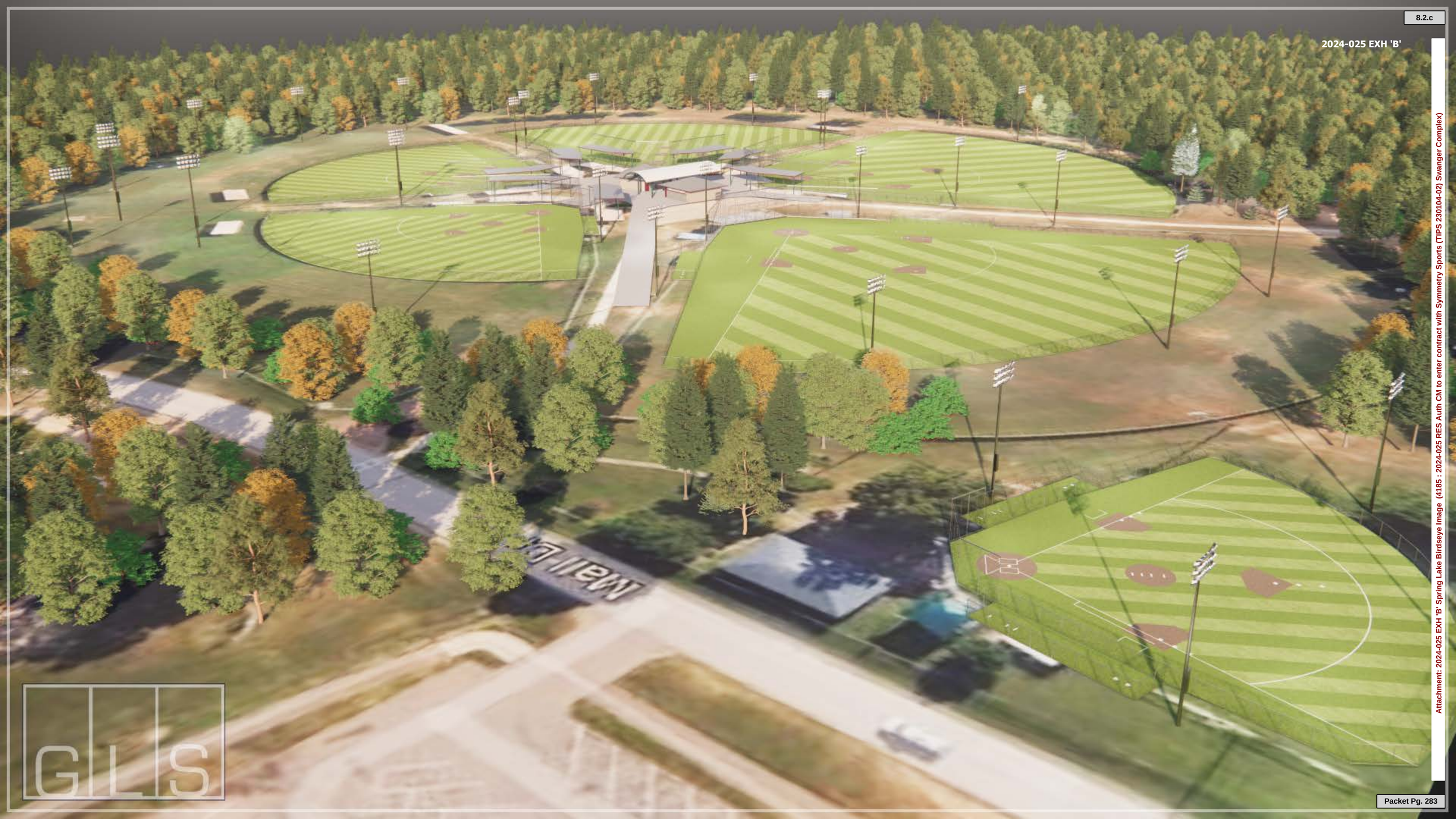
Paragraph 108.7.3 shall be deleted in its entirety.

Section 100. AIR QUALITY REQUIREMENT FOR EQUIPMENT is not applicable to this Contract, and shall be deleted in its entirety.

Owner	**Symmetry Sports, LLC**
_____	_____
Dr. David Orr, City Manager	Jason Bell, President
_____	_____
Date	Date

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2024-025 EXH 'B'



Attachment: 2024-025 EXH 'B' Spring Lake Birdseye Image (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS 230104-02) Swanger Complex)



Attachment: 2024-025 EXH 'C' Spring Lake Plan Image (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS 230104-02) Swanger Complex)

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☑ Provide a Safe Community ☑ Deliver Quality Services ☑ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☑ Maximize Partnership Opportunities ☑ Provide Courteous & Responsive Customer Service ☑ Model a Positive City Image ☐ Deliver Efficient Services ☑ Cultivate Community Involvement & Access
Manage the Resources	☑ Maintain Fiscal Strength ☑ Maximize Utilization & Resources ☑ Invest in Infrastructure & Transportation
Develop Personnel	☑ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved:	No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☑	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☑	Press Release
☐	E-News Distribution	☑	Website Notice
☑	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☑	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	

Other:

Attachment: 2024-025 Goals & Perspectives (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS 230104-02) Swanger

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 2/8/2024 10:28 AM

Lead Department: Economic Development **Action Officer:** Lisa Thompson, Economic Development/PIO

Subject: Ordinance No. 2024-016 amending Ordinance No. 2015-029 for a TIRZ agreement for Caldera I East in the TIRZ #1 District and providing a map of agreed upon properties on which to base reimbursement.

Briefing: 2/26/2024 **Public Hearing:** 2/26/2024 **Council Vote:** 2/26/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The City Council established Tax Reinvestment Zone # 1, as authorized under the Texas Tax Code Chapter 311 in 2009 and approved Ordinance 2015-029 on April 27, 2015 for the extension of Gibson Lane to Texas FM 989 (Kings Hwy). This project was approved as a Public Infrastructure Project for Tax Increment Reinvestment Zone #1 by the TIRZ #1 Board, and approved for the development agreement by City Council in April of 2015.

The City Manager was authorized to enter into a contract with Caldera East I LLC or other parties in a grand total amount not to exceed TWO MILLION AND N0/ 100 DOLLARS ($ 2, 000,000.00) for funding street construction and improvements to Gibson Lane between Pleasant Grove Road and Texas FM 989. The contract and Development Agreement was executed and entered into on June 8, 2015; and

At this time, the Parties of the agreement desire to better describe the TIRZ Zone for which this project applies and from which reimbursement funds are derived. To that end, staff is proposing that the TIRZ Agreement for Caldera I East in the TIRZ #1 District in the City of Texarkana, Texas be amended to provide a map of agreed upon properties upon which to base reimbursement. All other provisions of the Development and Reimbursement Agreement shall remain in full force and effect.

Potential Options:

- Approve
- Deny

Fiscal Implications:

Funding will be derived from TIRZ District #1 for reimbursement.

Staff Recommendation:

Staff recommends approval.

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and Updating Map (DOC)
b. 2024-016 ATTH 01 First Amendment (DOCX)
c. 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (PDF)
d. 2024-016 ATTH 03 ORD 2015-029 signed (PDF)
e. 2024-016 ATTH 04 Map of Reimbursement Parameters (PDF)
f. 2024-016 Goals & Perspectives (DOCX)

Staff Coordination

Economic Development	Completed	Lisa Thompson 02/08/2024 8:25 AM	Department Head Review	
City Manager	David Orr	City Manager Review	Completed	02/08/2024 8:44 AM
City Council	Jennifer Evans	Meeting	Completed	02/12/2024 6:00 PM

Meeting History

02/12/24	City Council	MOVED FORWARD	Next: 02/26/24

ORDINANCE NO. 2024-016

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING ORDINANCE NO. 2015-029 FOR A TIRZ AGREEMENT FOR CALDERA I EAST IN THE TIRZ #1 DISTRICT IN THE CITY OF TEXARKANA, TEXAS, AND PROVIDING A MAP OF AGREED UPON PROPERTIES UPON WHICH TO BASE REIMBURSEMENT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council approved Ordinance No. 2015-029 on April 27, 2015; and

WHEREAS, the City Council established Tax Reinvestment Zone # 1, as authorized under the Texas Tax Code Chapter 311 in 2009; and

WHEREAS, the Public Infrastructure Project list for Tax Increment Reinvestment Zone # 1 includes an amount not to exceed **NINE MILLION DOLLARS ($9,000,000)** for the extension of Gibson Lane to Texas FM 989 (Kings Hwy); and

WHEREAS, the TIRZ Board has recommended this proposed street extension project, and it is listed in its annual report; and

WHEREAS, the City Council recognizes the need for funding for this proposed street extension project through reimbursement of approved construction costs using funds generated from future development revenue dedicated to the TIRZ #1 fund; and

WHEREAS, the City Council believes this to be in the best interest of the citizens and the safety of the community; and

WHEREAS, The City Manager was authorized to enter into a contract with Caldera East I LLC or other parties in a grand total amount not to exceed **TWO MILLION DOLLARS ($2,000,000)** for funding street construction and improvements to Gibson Lane between Pleasant Grove Road and Texas FM 989; and

WHEREAS, said contract and development agreement was executed and entered on June 8, 2015; and

WHEREAS, future revenue from new development in Tax Increment Reinvestment Zone # 1 will be the sole source of funding for the reimbursement of construction costs; and

WHEREAS, the parties desire to better describe the TIRZ Zone for which this project applies and from which reimbursement funds are derived.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

Attachment: 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and Updating Map [Revision 1] (4168 : 2024-016 ORD Amending TIRZ

SECTION 1: The TIRZ Agreement for Caldera I East in the TIRZ #1 District in the City be amended to provide a map of agreed upon properties upon which to base reimbursement. All other provisions of the Development and Reimbursement Agreement shall remain in full force and effect.

SECTION 2: This Ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **26th day of February, 2024**.

ATTEST:

_____ _____

JENNIFER EVANS, CITY SECRETARY BOB BRUGGEMAN, MAYOR

Attachment: 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and Updating Map [Revision 1] (4168 : 2024-016 ORD Amending TIRZ

FIRST AMENDMENT TO
DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This First Amendment (the "Amendment") to that certain Development and Reimbursement Agreement executed on June 8, 2015 (the "Development Agreement") is made and entered into on this the ____ day of _____, 2024 (both the Amendment and the Development Agreement are collectively referred to herein as the "Agreement"), by and between the City of Texarkana, Texas, a home-ruled municipality with an address of 220 Texas Blvd, Texarkana, Texas of Bowie County, Texas (the "City"), and Caldera I East, LLC with an address of 5502 Cowhorn Creek Road, Suite B, Texarkana, TX 75503 (the "Developer")(collectively referred to herein as the "Parties").

WHEREAS, the Parties entered into the Development Agreement for certain public infrastructure projects in the City's Tax Reinvestment Zone (the "TIRZ Zone"); and

WHEREAS, under the Agreement the Developer was entitled to reimbursement under certain conditions and with funds derived solely from the TIRZ fund; and

WHEREAS, the Parties desire to better describe the TIRZ Zone for which this project applies and from which reimbursement funds are derived;

NOW THEREFORE, the Parties agree as follows:

Paragraph 15(b) of the Development Agreement shall be amended to read as follows:

> "(b) thereafter, any and all payments to Developer shall be funded solely from revenue received by TIRZ #1 (which area is more specifically defined in the map attached hereto as Exhibit "C") from new revenue generating development completed after the execution of this Agreement or that is directly attributable to completion of the Extension ("Future Revenue"). Such amounts shall be determined on an annual basis by the Bowie County Appraisal District (BCAD) and submitted to the City. City shall submit a report to Developer within thirty (30) days after receipt of the revenue information from BCAD annually setting forth the Future Revenue during that fiscal year (the "Annual Report") and submit payment for same within ten (10) days of providing Developer with the Annual Report. Notwithstanding the above, all payments to Developer are conditioned upon Developer having fulfilled all obligations under this Agreement, and the availability and receipt of Future Revenue."

All other provisions of the Development and Reimbursement Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto, acting under authority, have caused this Amendment to be duly executed in several counterparts, each of which shall constitute an original, as of the day and the year written above.

Attachment: 2024-016 ATTH 01 First Amendment (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and updating map)

CITY OF TEXARKANA, TEXAS

By: _____ _____
Dr. David Orr, City Manager Date

Attested to by:

_____
Jennifer Evans, City Secretary

DEVELOPER: CALDERA I EAST, LLC

By: _____ _____
Rayfield Walsh, Jr., Member/Manager Date

Attachment: 2024-016 ATTH 01 First Amendment (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and updating map)

DEVELOPMENT AND REIMBURSEMENT AGREEMENT

This Development and Reimbursement Agreement is made by and between the City of Texarkana, Texas, a municipal corporation of the State of Texas, with offices located at 220 Texas Blvd, Texarkana TX 75502 ("City") and Caldera I East, LLC (Developer), a Texas limited liability company, with an address of 5502 Cowhorn Creek Rd. Suite B (the "Developer).

WHEREAS, in 2009 the City Council established Tax Reinvestment Zone ("TIRZ") #1, as authorized under the Texas Tax Code Chapter 311; and

WHEREAS, the TIRZ # 1 Board has recommended various Public Infrastructure Projects for TIRZ #1, including a street extension project ("the TIRZ Project") for the extension of Gibson Lane from University Avenue to Texas FM 989 (Kings Highway), budgeted in an amount not to exceed $9,000,000; and

WHEREAS, the City Council finds and determines the public need for funding for the proposed TIRZ Project through reimbursement of approved construction costs using revenue generated solely from future development within TIRZ #1; and

WHEREAS, the Developer owns certain property located within TIRZ # 1 between Pleasant Grove Road and Texas FM 989 in Bowie County, Texarkana, Texas, more specifically set forth in Exhibit "A" attached hereto (the "Property"); and

WHEREAS, Developer desires to construct a portion of the TIRZ Project for the extension of Gibson Lane between Pleasant Grove Road and Texas FM 989 (the "Extension"), and intends to offer the completed street for dedication upon acceptance by City; and

WHEREAS, the City Council finds and determines that the Extension, upon completion, will be a public benefit to City in furthering the City's goal of facilitating the creation of additional economic development in the area, and therefore the best interests of the City and Developer will be advanced by establishing conditions, guidelines and procedures governing the construction and installation of the Extension and the manner in which the Developer may be eligible for reimbursement.

NOW THEREFORE, in accordance with the consideration of the mutual promises contained herein and for other good and valuable consideration, receipt of which is mutually acknowledged, the parties do hereby agree as follow:

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

I. AGREEMENT

1. Subject to the terms and conditions contained in this Agreement, and pursuant to plans and specifications consistent with City ordinances approved by City prior to the start of construction (the "Approved Plans and Specifications"), Developer agrees to construct a minimum 50-foot wide street with appropriate turn lanes extending Gibson Lane from Pleasant Grove Road to connect to Texas FM 989 in Texarkana, Bowie County, Texas as set forth in Exhibit "B", which depicts the parameters of the Extension. A more detailed survey will be provided to City by Developer setting forth the specific parameters of the right of way being conveyed prior to acceptance and any payments being made to Developer.

2. The construction of the Extension shall include any infrastructure and improvements necessary to support street construction in conformity with the Approved Plans and Specifications: the infrastructure and improvements include but are not necessarily limited to road paving, curbing, soil erosion control measures, street lights, street signs, signal lights or signalization, grading, electric lines, telephone lines, cable television lines, natural gas lines, water, wastewater, drainage and sewer (including the relocation of lines if necessary) (the "Improvements").

II. APPROVALS

3. Developer shall be required to obtain any and all local, county, state and other governmental approvals necessary to install the Improvements, as generally described on the Approved Plans and Specifications. This Agreement shall not be construed to grant such governmental approvals. Any approvals needed from City will be submitted and approved under City's ordinances and normal and customary practice.

4. Developer shall be required to obtain and submit to City a survey that identifies the route for the Extension and all properties that will be affected by the Extension. Any deficiency identified by City in the submitted survey shall be corrected by Developer at Developer's expense.

5. Developer shall submit to City a horizontal layout of the Extension, and the rights-of-way that will be required from each owner whose property will be crossed by the Extension. Any deficiency identified by City in the submitted layout shall be corrected by Developer at Developer's expense. After City approves the layout, Developer shall then submit the layout to the Texas Department of Transportation for approval. Copies of any documents received by Developer from the Texas Department of Transportation shall be promptly submitted to City.

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

III. EXTENSION AND IMPROVEMENTS

6. In connection with obtaining the necessary governmental approvals to construct the Improvements, Developer has and will continue to prepare engineering plans and drawings. Those engineering plans and drawings, after they have been approved by the applicable governmental agency, will be submitted to the City's municipal engineer and/or other City designee, as applicable, for City approval (collectively, the "Municipal Engineer") and shall thereafter be incorporated into and made a part of this Agreement as the Approved Plans and Specifications. After City approval, the Developer shall construct the Improvements in accordance with the Approved Plans and Specifications. City reserves the right to inspect any aspect of Developer's work at any time and at any stage of the construction.

7. Upon request by Developer, and prior to the issuance of a Certificate of Completion, the Municipal Engineer shall inspect all aspects of the Extension and Improvements, including the final grading and road bed, to determine compliance with the Approved Plans and Specifications. City agrees to accept dedication of the Extension within 45 days after the Municipal Engineer certifies compliance with the Approved Plans and Specifications.

8. Except as otherwise set forth herein, Developer will maintain the Extension and Improvements unless and until accepted for dedication by City.

9. The Extension and Improvements shall, at all times, be installed and constructed in a good and workmanlike manner and in accordance with all local, county, state and federal laws, statutes, regulations and ordinances. Developer, its successors and assigns, agree to indemnify and hold City, its elected officials, employees, professionals, agents, servants, insurers, successors and assigns, harmless from and against any and all claims, actions, liability, and expenses in connection with injury or loss of life to person or damage to property arising from the Developer's performance of its obligations under this Agreement, and agrees to subrogate any claim it may have or allege against City.

10. Developer shall provide City with a copy of the following:

(a) copies of the recorded and signed plat and/or dedicated rights-of-way;

(b) copy of "as built" drawings from Developer's engineer; and

(c) a signed, sealed and dated statement from Developer's design engineer that the work was performed under the engineer's supervision, that the

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

engineer has inspected the same, and the construction conforms in all respects to the requirements and provisions of the Approved Plans and Specifications.

IV. BONDING

11. Developer will post performance guaranties for the Extension and Improvements in accordance with City ordinances or other requirements. The performance guaranties shall be posted prior to the commencement of construction and installation of the Extension and Improvements. Promptly after the completion of the Extension and Improvements, the Municipal Engineer will perform a final inspection, and if the Extension and Improvements meet with the approval of the Municipal Engineer, and subject to any limitations and requirements of City, the performance guaranty shall be released. Prior to final acceptance and release of any performance guaranty, Developer shall provide to the Municipal Engineer as built documents for any installed infrastructure, if applicable. The as built documents shall be provided in both reproducible hard copy and an electronic format compatible with Municipal Engineer's system.

V. REIMBURSEMENT

12. The Developer shall be entitled to reimbursement for the cost and expense associated with the construction and installation of the Extension and Improvements, which costs and expenses include but are not necessarily limited to hard construction costs, application fees, permit fees, professional fees, performance bond fees, interest on construction loan, and maintenance costs (the "Reimbursable Expenses") up to a maximum reimbursement of Three Million and No Dollars ($3,000,000.00) (the "Reimbursable Cap").

13. City shall reimburse Developer for the costs incurred in constructing and completing the Extension and Improvements only after the following conditions have been met:

(a) Developer shall provide a full and complete accounting to City that substantiates and verifies all costs incurred are in accordance with the Approved Plans and Specifications;

(b) The City and Municipal Engineer shall review the documented costs provided by Developer to confirm that the cost estimate set forth in the Approved Plans and Specifications is in accordance with the actual costs incurred by the Developer;

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

(c) The Extension and Improvements have been constructed, completed, and are in compliance with Approved Plans and Specifications, and a detailed survey acceptable to City of the right of way being conveyed has been provided to City ;

(d) The Extension and Improvements have been inspected and approved by the Municipal Engineer;

(e) Developer has provided a release executed by each supplier, contractor, and subcontractor stating they have been paid in full by Developer and no liens have been filed within 30 days after certification of completion by the Municipal Engineer; and

(f) Developer has provided proof that Developer has no outstanding City liens on any properties, no outstanding property taxes, and no Code violations relating to this or any other of Developer's properties within the City's jurisdiction.

14. This Agreement is intended to cover only the Extension depicted in Exhibit "B". In the event that Developer installs any additional improvements not covered in this Agreement, Developer shall not be entitled to any reimbursement for those additional improvements.

15. Upon fulfillment of the above conditions by Developer and subject to the availability of funds derived solely from revenue from TIRZ #1, City shall reimburse Developer as follows:

(a) One Million Dollars and No Cents ($1,000,000.00) upon the occurrence of all conditions set forth in paragraph 13 of this Agreement;

(b) thereafter, any and all payments to Developer shall be funded solely from revenue received by TIRZ # 1 from new revenue-generating development completed after the execution of this Agreement that either abuts Gibson Lane or is directly attributable to completion of the Extension ("Future Revenue"). Such amounts shall be determined on an annual basis by the Bowie County Appraisal District (BCAD) and submitted to the City. City shall submit a report to Developer within thirty (30) days after receipt of the revenue information from BCAD annually setting forth the Future Revenue during that fiscal year (the "Annual Report") and submit payment for same within ten (10) days of providing Developer with the Annual Report. Notwithstanding the above, all payments to Developer are

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

conditioned upon Developer having fulfilled all obligations under this Agreement, and the availability and receipt of Future Revenue.

VI. WARRANTIES/GUARANTEES

16. Developer makes the following warranties and representation to City as a material inducement to the execution of this Agreement:

a. Developer either owns the Property or has an agreement with all owners located within TIRZ #1 in Texarkana, Texas, which includes the proposed route to extend Gibson Lane from Pleasant Grove Road to Texas FM 989 in Texarkana, Bowie County, Texas, as set forth in ExhibitB.

b. Developer is authorized to enter into this Agreement to carry out its obligations hereunder and has authorized its signatory on the last page of this Agreement to sign and execute the document on behalf of Developer.

17. Developer warrants and guarantees Developer will correct or replace any or all aspects of the Extension and Improvements determined by City to be faulty, defective, or inadequate in any respect during the twelve month period following acceptance by City (if accepted by City). Replacement or correction of such faulty, defective, or inadequate work shall not be a reimbursable expense. Following City's acceptance and the dedication of the Extension to City, City shall be responsible for street maintenance.

VII. INSURANCE

18. During the term of this Agreement, and before commencing work, the Developer shall be required, at its own expense, to furnish City ~~within ten (10) days of execution of this Agreement~~ certified copies of all insurance certificates showing the following insurance coverage to be in force throughout the term of this Agreement. City shall have no duty to pay or perform under this Agreement until such certificate has been delivered to and approved by City.

(a) Commercial General Liability (CGL) insurance at minimum combined single limits of $1,000,000 per-occurrence and $2,000,000 general aggregate for bodily injury and property damage. Coverage must be written on an

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

occurrence form. The general aggregate limit must be at least two (2) times the per-occurrence limit. CGL shall include coverage for:

(1) Premises/Operations
(2) Products Completed Operations
(3) Independent Contractors
(4) Personal Injury
(5) Contractual Liability

(b) Workers Compensation insurance at statutory limits.

(c) Commercial Automobile Liability insurance at minimum combined single limits of $500,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired vehicle coverage.

The required limits may be satisfied by any combination of primary, excess or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following form. Developer may maintain reasonable and customary deductibles, subject to approval by City.

A comprehensive general liability insurance form may be used in lieu of a commercial general liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of $500,000 per occurrence, combined single limit; and coverage must include a broad form comprehensive general liability endorsement, coverage for products/completed operations, and broad form contractual liability covering the obligations included in the contract.

With reference to the foregoing insurance requirement, Developer shall specifically endorse applicable insurance policies as follows:

(1) The City shall be named as an additional insured with respect to general liability.

(2) A waiver of subrogation in favor of City shall be contained in the workers compensation coverage.

(3) All insurance policies shall be endorsed to require the insurer to immediately notify City of any material change in the insurance coverage.

(4) All insurance policies shall be endorsed to the effect that City will receive at least 10 days' notice prior to cancellation, non-renewal or termination of the insurance.

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

All insurance shall be purchased from an insurance company that meets the following requirements: (i) a financial rating of A: VII or better as assigned by the BEST rating Company or A or better by Standard and Poor's; and (ii) written by companies approved by the State of Texas and acceptable to City.

VIII. DEFAULT

19. In the event that either party fails to perform its duties and obligations under this Agreement after ten (10) days written notice, then there shall be an event of default and the aggrieved party shall have the rights as set forth in article IX of this Agreement; provided that if the failure to perform is of such nature that it cannot reasonably be cured in ten (10) days, then there shall be no default so long as the party is making a diligent and good faith effort to correct the deficiency.

IX. DISPUTE RESOLUTION

20. If a dispute arises between the parties relating to rights, duties, or obligations arising out of the Contract, the parties agree to the following dispute resolution procedures:

(a) A meeting shall be held promptly between the parties or their designated representatives to attempt in good faith to informally negotiate a resolution of the dispute. Such negotiations may include one or both parties securing legal counsel or consultants who may participate in the negotiation.

(b) If resolution is not readily achieved by informal negotiations, the parties may agree to select a neutral third party ("NTP") to assist in resolution of the dispute. The NTP shall promptly convene a private meeting with all representatives of the parties to hear the parties' positions and render oral recommendations for resolution of the dispute. The recommendations of the NTP shall not be binding on any party. By separate written agreement, the parties may further define the role of the NTP and may expand the NTP to consist of a team of persons possessing the necessary expertise. Use of the NTP is voluntary. No party will be deemed to be in breach of this Contract solely because of a refusal to utilize a NTP.

(c) If resolution is not achieved by informal negotiations, the dispute shall be settled by mandatory arbitration in accordance with and governed by Texas state law. Each party shall select a disinterested representative; then the parties' respective shall choose a third person; and the three persons shall then comprise the "arbitration panel" with authority as provided under Chapter 171 of the Texas Civil

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

(a) Developer completes the construction of the Extension and Improvements and receives reimbursement for all Reimbursable Expenses for said construction and Improvements as shown on the Approved Plans and Specifications, with such Reimbursable Expenses being less than the Reimbursable Cap;

(b) City has paid Developer the Reimbursable Cap;

(c) the Tax Increment Reinvestment Zone #1 expires (which the parties anticipate shall occur in 2035), and in such event City shall have no further obligation for any payment under this Agreement, including payment of Reimbursable Expenses; or

(d) Developer does not qualify for reimbursement under the terms of this Agreement for any reason, and in such event this Agreement shall terminate thirty (30) days after Developer has terminated work on the Extension or Improvements or completed same.

XIII. THIRD PARTY IMPROVEMENTS

25. By executing this Agreement, City is taking no position concerning the potential right of third parties to construct improvements in the road beds or on adjacent property, and this Agreement is not intended to prohibit such third parties from asserting their rights under applicable law. Developer, by executing this Agreement, does not acknowledge that third parties have a right to construct improvements in the road beds or adjacent property. The parties acknowledge that City has the right, but not the obligation, to make public improvements in the road beds and in any rights-of-way including, but not limited to water, wastewater, and sewer.

XIV. MISCELLANEOUS PROVISIONS

26. Governing Law. The terms and conditions of this Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue for this Agreement shall be in Bowie County, Texas, the place of performance.

27. Headings. The article headings contained in this Agreement are for reference only and for the convenience of the parties. They shall not be deemed to constitute a part of this Agreement nor shall they alter, modify, or supersede the contents of any of the provisions themselves.

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

28. Severability. If any of the provisions of this Agreement are deemed invalid, void, or illegal, then the provisions so affected shall be deleted from this Agreement. All remaining provisions shall remain in full force and effect.

29. Availability of Funds. Developer (s) understands and acknowledges that all funds used for payment according to this Agreement shall be received solely from Future Revenue from new development in Tax Increment Reinvestment Zone #1.

30. Further Assurances. Developer and City agree that each will take any action including but not limited to the execution of any documentation, which may be reasonably necessary to effectuate the intent of the parties as set forth in this Agreement.

31. Authorization. Developer and City further agree and represent that the parties executing this Agreement each have been duly authorized to execute this Agreement and have the requisite authority to execute this Agreement, and be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Development and Reimbursement Agreement on the dates indicated below.

CITY OF TEXARKANA, TEXAS

_____ Date: June 4th, 2015
By: John Whitson, City Manager

DEVELOPER: CALDERA I EAST, LLC

_____ Date: June 8, 2015
By: Rayfield Walsh, Jr., Member/Manager

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

Tract 1
Property Description
12.947 Acres
Bowie County, Texas

All that certain lot, tract or parcel of land lying and situated in the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, being a part of that certain tract of land described as 27.5 acres in the deed from Marie K. Arrington to Brenda Raney, dated July 9th, 2008, recorded in Volume 5424, Page 333 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch steel rod set for a corner, capped MTG 101011-00, lying in the South line of Hatridge 3RD Addition, a replat of lots 8, 9, 10 and 11, Block 3, of Hatridge Addition, according to the plat recorded in Volume 5299, Page 222 of the Real Property Records of Bowie County, Texas, the Northeast corner of the said 27.5 acre tract and an outside ell corner of that certain tract of land described as 24 1/4 acres in the deed from Muriel Kunkel to Bancorpsouth Bank Asset Management & Trust as Trustee of the Muriel Kunkel Irrevocable Trust, dated May 30, 2012, recorded in Volume 6238, Page 249 of the Real Property Records of Bowie County, Texas, same being that certain tract of land described as 24 1/4 acres in the deed from S. D. Crumpton, et ux, Annie Crumpton to Cleo Norton, dated August 26, 1942, recorded in Volume 320, Page 408 of the Deed Records of Bowie County, Texas, said corner bears North 87 degrees 16 minutes 26 seconds East a distance of 40.17 feet to a 1 inch pipe found for a corner, an inside ell corner of the said 24 1/4 acre tract, the Southeast corner of the said addition;

THENCE South 02 degrees 49 minutes 24 seconds East (basis of bearings) at a distance of 281.80 feet passing a 1 1/2 inch steel pipe found for a corner (control monument), the Southwest corner of the said 24 1/4 acre tract, the Northwest corner of that certain tract of land described as Lot 2, Block 1 of Waggoner Creek West, a subdivision of a part of the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, according to the plat recorded in Volume 6051, Page 271 of the Real Property Records of Bowie County, Texas, and continuing in all a total distance of 917.69 feet to a 1 inch steel pipe found for a corner, the Southwest corner of the said 27.5 acre tract and the Northeast corner of that certain tract of land described as 7.00 acres in the deed from D. H. Curran and Margie L. Curran to Joe Paul Crane, Jr. and Charlene M. Crane, dated April 12, 1979, recorded in Volume 648, Page 113 of the Deed Records of Bowie County, Texas;

Thence South 87 degrees 56 minutes 41 seconds West a distance of 620.36 feet along the South line of the said 27.5 acre tract and the North line of the said 7.00 acre tract to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, an outside ell corner of the said 27.5 acre tract, the Southeast corner of that certain tract of land described as 7.71 acres in the deed from Lawrence L. Arrington, et ux, to E. F. Raney, et ux, dated September 20, 1965, recorded in Volume 459, Page 645 of the Deed Records of Bowie County, Texas;

THENCE North 02 degrees 45 minutes 12 seconds West a distance of 377.85 feet along the East line of the said 7.71 acre tract, the West line of the said 27.5 acre tract, generally and partially along a fence to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, the Northeast corner of the said 7.71 acre tract, an angle point of the said 27.5 acre tract;

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

THENCE North 01 degrees 43 minutes 41 seconds West a distance of 532.66 feet generally along a fence to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, lying in the South line of the said Addition and the North line of the said 27.5 acre tract;

THENCE North 87 degrees 16 minutes 26 seconds East a distance of 609.67 feet along the North line of the said 27.5 acre tract and the South line of the said Addition to the point of beginning and containing 12.947 acres of land, at the time of this survey.

This description is based on the survey and plat made by Jeffrey A. Wood, Registered Professional Land Surveyor No. 6220, on May 28, 2015.

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

Tract 2
Property Description
Bowie County, TX

All that certain lot, tract or parcel of land lying and situated in the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, being all of that certain tract of land described as Lot 2, Block 1 of Waggoner Creek West, a subdivision of a part of the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, according to the plat recorded in Volume 6051, Page 271 of the Real Property Records of Bowie County, Texas.

Save & Except the following tract of land:

All that certain lot, tract or parcel of land lying and situated in the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, being a part of that certain tract of land described as Lot 2, Block 1 of Waggoner Creek West, a subdivision of a part of the George Brinlee Headright Survey, Abstract 18, Bowie County, Texas, according to the plat recorded in Volume 6051, Page 271 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 1/2 inch steel rod set for a corner, capped MTG 101011-00, lying in the West line of the said Lot 2, the East line of that certain tract of land described as 7.00 acres in the deed from D. H. Curran & Margie L. Curran to Joe Paul Crane Jr. and Charlene M. Crane, dated April 12, 1979, recorded in Volume 648, Page 113 of the Deed Records of Bowie County, Texas, the beginning of a circular curve to the left, said corner bears North 02 degrees 10 minutes 47 seconds West a distance of 14.65 feet and North 02 degrees 49 minutes 24 seconds West a distance of 635.88 feet to a 1 1/2 inch steel pipe found for a corner, the Northwest corner of the said Lot 2, the Northwest corner of the said subdivision;

THENCE in a Northeasterly direction along the arc of the said circular curve a distance of 21.53 feet, with a delta angle of 01 degrees 30 minutes 56 seconds, a radius of 813.94 feet, a chord bearing of North 87 degrees 53 minutes 26 seconds East, and a chord distance of 21.53 feet to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, at the end of the said circular curve;

THENCE North 87 degrees 07 minutes 58 seconds East a distance of 417.74 feet to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, at the beginning of a circular curve to the left;

THENCE in a Northeasterly direction along the arc of the said circular curve a distance of 130.05 feet, with a delta angle of 13 degrees 32 minutes 52 seconds, a radius of 550.00 feet, a chord bearing of North 80 degrees 21 minutes 32 seconds East, and a chord distance of 129.75 feet to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, at the end of the said circular curve;

THENCE North 73 degrees 35 minutes 06 seconds East a distance of 144.39 feet to a 1/2 inch steel rod set for a corner, capped MTG 101011-00;

THENCE South 02 degrees 09 minutes 27 seconds East a distance of 893.43 feet to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, lying in the South line of the said Lot 2 and the North line of that certain tract of

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

land described as 18.188 acres in the deed from Marjorie Prater to Roy W. Nutt, et ux, dated August 11, 1978, recorded in Volume 638, Page 234 of the Deed Records of Bowie County, Texas, said corner bears North 75 degrees 42 minutes 02 seconds East at a distance of 961.69 feet to a Type I TxDOT right-of-way marker found for a corner lying in the West right-of-way line of Farm-to-Market Road 2878 (Pleasant Grove Road), the Southeast corner of the said Lot 2, the Southeast corner of the said subdivision and the Northeast corner of the said 18.188 acre tract, North 08 degrees 17 minutes 11 seconds East at a distance of 208.13 feet to a Type I TxDOT right-of-way marker (control monument no. 1), and North 10 degrees 28 minutes 41 seconds East (basis of bearings) a distance of 1130.49 feet to a 2 inch steel pipe found for a corner (control monument no. 2), the Northeast corner of the said Lot 2;

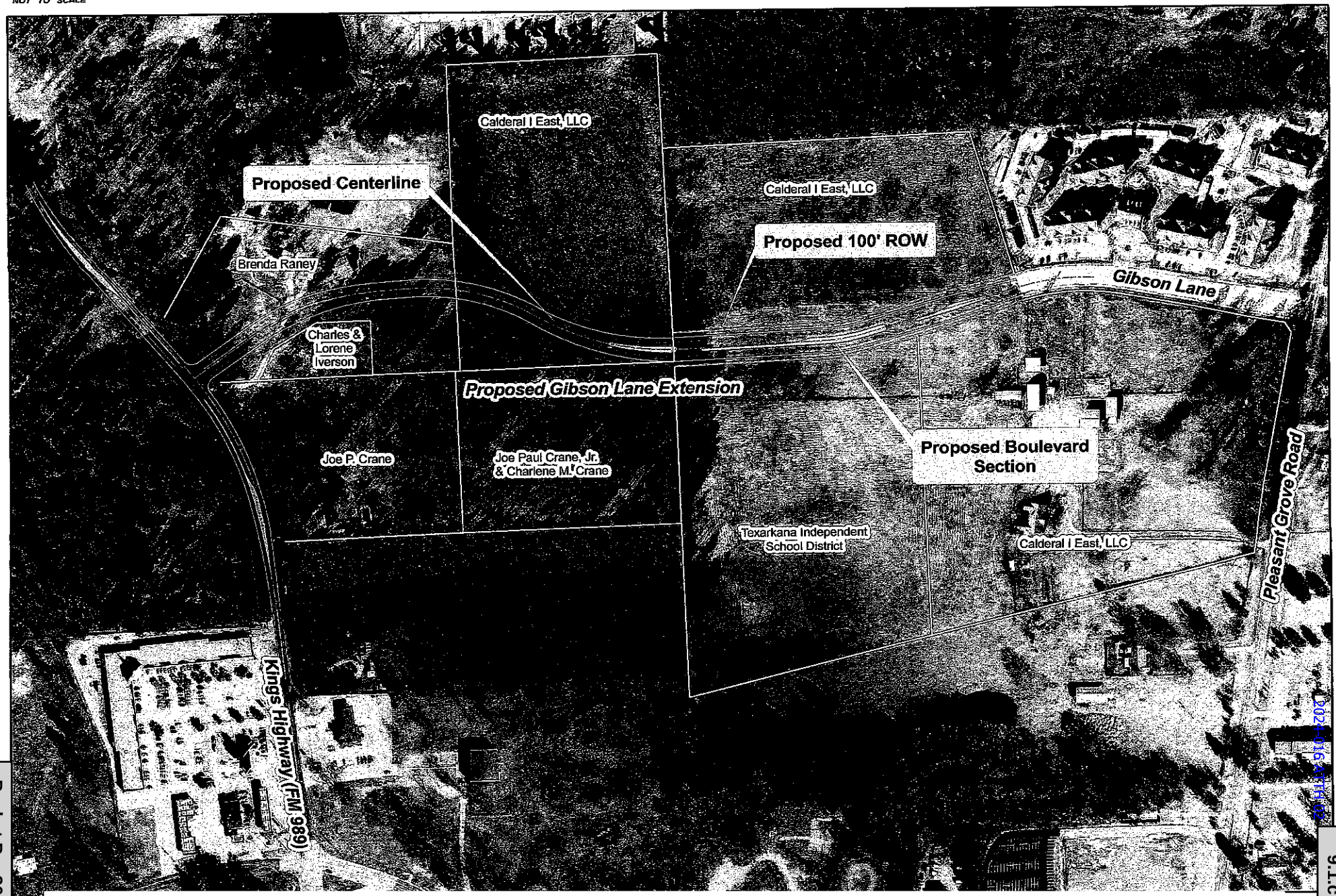
THENCE South 75 degrees 42 minutes 02 seconds West a distance of 723.63 feet along the South line of the said Lot 2 and the North line of the said 18.188 acre tract, to a 1/2 inch steel rod set for a corner, capped MTG 101011-00, lying in the East line of Lot No. 2 of the Amended Cross Pointe Subdivision, according to the plat recorded in Volume 5624, Page 312 of the Real Property Records of Bowie County, Texas, the Southwest corner of the said Lot 2 of Waggoner Creek Crossing West, the Northwest corner of the said 18.188 acre tract;

THENCE North 02 degrees 10 minutes 47 seconds West, a distance of 980.02 feet along the East line of the said Lot No. 2 of the Amended Cross Point Subdivision, the East line of that certain tract of land described as 12.5 acres in the deed from Ann Tye to John Wilson Cross, Jr., dated June 3, 1992, recorded in Volume 1778, Page 155 of the Real Property Records of Bowie County, Texas, same being that certain tract of land described as 12.5 acres in the deed from John Wilson Cross, Jr. to Anne Tye, dated August 1, 1979, recorded in Volume 659, Page 14 of the Deed Records of Bowie County, Texas, and the East line of the said 7.00 acre tract to the point of beginning, and containing 14.999 acres of land, at the time of this survey.

Attachment: 2024-016 ATTH 02 EXECUTED Dev and Reimb Agmt (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and

Proposed Gibson Lane Extension
Caldera I East, LLC

NOT TO SCALE



ORDINANCE NO. 2015-029

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACTS WITH CALDERA EAST I LLC OR OTHER PARTIES FOR THE FUNDING OF STREET CONSTRUCTION AND IMPROVEMENTS TO COMPLETE THE EXTENSION OF GIBSON LANE FROM PLEASANT GROVE ROAD TO TEXAS FM 989 (KINGS HWY); APPROVING THE REIMBURSEMENT OF THE APPROVED CONSTRUCTION COSTS USING FUNDS GENERATED FROM FUTURE DEVELOPMENT REVENUE FROM THE TAX INCREMENT REINVESTMENT FUND #1 IN AN AMOUNT NOT TO EXCEED TWO MILLION DOLLARS ($2,000,000); AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Council established Tax Reinvestment Zone #1, as authorized under the Texas Tax Code Chapter 311 in 2009; and

WHEREAS, the Public Infrastructure Project list for Tax Increment Reinvestment Zone #1 includes an amount not to exceed $9,000,000 for the extension of Gibson Lane to Texas FM 989 (Kings Hwy); and

WHEREAS, the TIRZ Board has recommended this proposed street extension project and it is listed in their annual report; and

WHEREAS, the City Council recognizes the need for funding for this proposed street extension project through reimbursement of approved construction costs using funds generated from future development revenue dedicated to the TIRZ #1 fund; and

WHEREAS, the City Council believes this to be in the best interest of the citizens and the safety of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: That the City Manager be and is hereby authorized to enter into a contract with Caldera East I LLC or other parties in a grand total amount not to exceed TWO MILLION AND N0/100 DOLLARS ($2,000,000.00) for funding street construction and improvements to Gibson Lane between Pleasant Grove Road and Texas FM 989.

SECTION 2: That the future revenue from new development in Tax Increment Reinvestment Zone #1 will be the sole source of the funding for the reimbursement of construction costs.

SECTION 3: That this Ordinance shall be in full force and effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **27th day of April, 2015**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

7:27 p.m.

Attachment: 2024-016 ATTH 03 ORD 2015-029 signed (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and updating map)

Hawk Ln
Stone Ledge Blvd
Cascades Blvd
Arista Blvd
Pearson Ln
Ave West Fork Dr
Westridge
Windermere Pl
Gin Rd
Mcknight Rd
Twin Oak Dr
Sarah Cir
Jonathan St
Elizabeth Ann St
Lesley Ln
Pavilion Pkwy
Gibson Ln
University Park
University Ave
Cooper Ridge Dr
Cooper Ridge Ln
Cooper Ridge Way
Cooper Ridge Blvd
France Ln
Cooper Ln
David Dr
Crumpton Dr
Hillside Dr
Skylark Dr
Pleasant Grove Rd
Connie Ln
Sylvia Dr
Melody Ln
N Kings Hwy
Arrington Rd
Oak Creek Rd
Dogwood Ln
Hampton Rd
I-30 E
I-30
Lone Star Crossing
St Michael Dr
Ochsenbien Rd
Mall Dr
West Park Blvd
Guss Orr Dr
N Bishop Rd
Walton Dr
Systems Dr
Atwoods Dr
N Pecan St
Dustin Ter
Ashlee Blvd
Robin Dr
Alumax Rd
Watts St
Post St

EXHIBIT C
Reimburseable Zone Area
(as outlined in pink)

N

Attachment: 2024-016 ATTH 04 Map of Reimbursement Parameters (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and updating map)

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:	
Perspectives	**Goals**
Serve the Community	☐ Promote an Environmentally Sensitive & Livable Community ☐ Provide a Safe Community ☑ Deliver Quality Services ☐ Foster a Healthy Community
Run the Operations	☐ Enhance Community Preparedness & Responsiveness ☑ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☐ Model a Positive City Image ☐ Deliver Efficient Services ☐ Cultivate Community Involvement & Access
Manage the Resources	☐ Maintain Fiscal Strength ☐ Maximize Utilization & Resources ☑ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture
Perspectives and Goals Additional Comments:	

Resource Impact:	
Staff time required if item is approved:	No Additional
Other Potential Impacts:	

Public Information Plan:			
☐	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☐	Press Release
☐	E-News Distribution	☐	Website Notice
☐	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☐	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☑	None Required	☐	
Other:			

Attachment: 2024-016 Goals & Perspectives (4168 : 2024-016 ORD Amending TIRZ #1 Caldera East I Agreement and updating map)

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 2/8/2024 3:56 PM

Lead Department: Parks, Recreation & Health **Action Officer:** Keith Beason,

Subject: Resolution No. 2024-022 authorizing the City Manager to terminate the current Natural Resource Damage Assessment (NRDA) Interlocal Agreement and directing staff to work with the NRDA Trustees on restoration alternatives.

Briefing: 2/26/2024 **Public Hearing:** 2/26/2024 **Council Vote:** 2/26/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

February 12, 2024:
NOT APPLICABLE

Executive Summary and Background Information:

The City of Texarkana, Texas was awarded a $9,800,000.00 grant in 2020 through the Natural Resource Damage Assessment, to restore and naturalize streamlines of creeks in Texarkana, TX that flow into Days Creek. This was awarded due to ecological damage from run off from the previous Kerr-McGee/Tronox site. Since the award we have worked with an engineering firm, AquaStrategies, to develop plans for stream restoration for this project. The NRDA Trustees have decided to move to another engineering firm after the planning process with AquaStrategies did not meet the Trustees' goals for progress on the project. With this change the Trustees have requested us to terminate the existing interlocal agreement, and work toward establishing a new agreement as we evaluate the feasibility of the projects that were identified by the City as our priorities.

Potential Options:

- Approve
- Deny

Fiscal Implications:

The Trustees are engaged in restoration planning utilizing the remaining award amount to identify potential restoration alternatives in or near the City.

Staff Recommendation:

Staff recommends approval of this request.

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

City of Texarkana, Texas

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-022 RES NRDA terminating agreement (DOCX)
b. 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (PDF)
c. 2024-022 Goals & Perspectives (DOCX)

Staff Coordination

Parks, Recreation & Health	Completed	Robby Robertson 02/08/2024 2:34 PM	Department Head Review	
City Manager	David Orr	City Manager Review	Completed	02/08/2024 3:41 PM
City Council	Jennifer Evans	Meeting	Completed	02/12/2024 6:00 PM

Meeting History

02/12/24 City Council MOVED FORWARD Next: 02/26/24

RESOLUTION NO. 2024-022

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO TEMINATE AN INTERLOCAL AGREEMENT WITH THE NATURAL RESOURCE DAMAGE ASSESSMENT (NRDA) TRUSTEES, AND TO DIRECT STAFF TO WORK WITH THE NRDA TRUSTEES TO ESTABLISH A NEW AGREEMENT FOR CREEK RESTORATION ALTERNATIVES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City was awarded a **NINE MILLION EIGHT HUNDRED THOUSAND DOLLAR ($9,800,000)** grant through the Natural Resource Damage Assessment in 2020; and

WHEREAS, the City hired the engineering firm AquaStrategies as consultants through the planning phases of the project; and

WHEREAS, after working with AquaStrategies on engineering plans for a 30% design and a 60% design, the NRDA Trustees felt that the project was not meeting the desired outcomes, and decided to hire a new engineering company to finish the project; and

WHEREAS, once AquaStrategies was removed from the project, the NRDA Trustees requested to terminate the existing Interlocal Agreement to engage in restoration planning utilizing the remaining award amount to identify potential restoration alternatives in or near the City; and

WHEREAS, the letter requesting this agreement termination is attached as **ATTH 01.**

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS:

SECTION 1: The City Manager be and is hereby authorized to terminate the existing Interlocal Agreement with the NRDA Trustees and enter negotiations to establish a new agreement for restoration alternatives.

SECTION 2: This Resolution shall be in full force and in effect from and after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **26th day of February, 2024**.

ATTEST:

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2024-022 RES NRDA terminating agreement (4182 : 2024-022 RES NRDA termination of agreement)

Agreed Termination of the Agreement for the Enhancement and Restoration of Days Creek Watershed Project in Texarkana, Bowie, Texas

1. Premises and Authority

1.1 Effective June 8, 2020, the Texas Commission on Environmental Quality, the Texas General Land Office, and the Texas Parks and Wildlife Department (collectively, the Trustees), in their capacities as natural resource trustees, and the City of Texarkana (the Performing Party), a local government of the State of Texas, entered into an Agreement for the Enhancement and Restoration of Days Creek Watershed Project in Texarkana, Bowie, Texas (the Agreement).

1.2 The Parties to the Agreement and this Agreed Termination are the Trustees and the Performing Party.

1.3 The Trustees are member agencies of the Natural Resource Trustee Council for the former Kerr-McGee Chemical Corporation wood-treating facility (Tronox LLC) and are authorized to act on behalf of the public to assess damages and seek recovery for natural resources injured or lost as a result of releases of hazardous substances at or from the former Kerr-McGee Chemical Corporation wood-treating facility in Texarkana, Bowie County, Texas (the Tronox Facility).

1.4 Funds provided under the Agreement result from natural resource damage settlements concerning the release of hazardous substance at or from the Tronox Facility.

1.5 The Agreement sets forth terms and conditions upon which the Parties will cooperatively conduct authorized governmental functions and activities consistent with the Restoration Plan/Environmental Assessment for the Tronox Facility, March 2019. Specifically, the Trustees agreed to provide funds to the Performing Party to (i) conserve approximately 200 acres of forested riparian habitat and (ii) implement projects to restore and stabilize approximately six miles of urban creek channels of the Days Creek Watershed in Texarkana, Texas.

1.6 The Parties entered into the Agreement pursuant to Chapter 791 of the Texas Government Code.

1.7 Additionally, the Trustees entered into the Agreement pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*; the Clean Water Act, 33 U.S.C. 1251 *et seq.*; and other applicable laws and/or authority.

1.8 The Parties have agreed to terminate the Agreement.

1.9 The Parties agree that the representations, indemnifications, warranties, and continuing obligations described in Paragraph 22 of the Agreement will survive as provided under the Agreement.

2. Waivers and Releases

2.1 The Performing Party has executed a Final Waiver and Release of Claims, attached hereto as Exhibit A and incorporated herein by reference.

2.2 The Parties agree that the executed Exhibit A satisfies any and all requirements of Paragraph 10.8 (*i.e.*, a conditional waiver and release of all claims) of the Agreement.

2.3 The Trustees agree to waive and release the obligations of the Performing Party to perform conforming Agreement activities.

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

2.4 The Parties agree to waive all conditions precedent prescribed in the Agreement for termination of the Agreement, including notice and opportunity to cure and material noncompliance provided under the Agreement.

3. Termination

3.1 The Agreement, excluding the surviving obligations described in Paragraph 22 of the Agreement, is hereby terminated upon the agreement of the Parties.

3.2 This Agreed Termination may be signed in any number of copies. Each copy when signed is deemed an original and each copy constitutes one and the same Agreement.

3.3 The undersigned each acknowledges that he/she have the authority to sign this Agreement on behalf of the Party that he/she represents.

3.4 Termination of the Agreement shall be effective on the date of the last signature.

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

For Performing Party, City of Texarkana

_____ _____
(Signature) Date

_____
(Name)

_____
(Title)

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

For Trustee, Texas Commission on Environmental Quality:

_____ _____

Kelly Keel
Executive Director

Date

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

For Trustee, Texas Parks and Wildlife Department:

_____ _____

David Yoskowitz, Ph.D.
Executive Director

Date

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

For Trustee, Texas General Land Office:

_____ _____

Mark Havens
Chief Clerk

Date

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

Exhibit A

Final Waiver and Release of Claims

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

Final Waiver and Release of Claims – City of Texarkana

The City of Texarkana and its successors and assigns release, discharge and relinquish the Texas Commission on Environmental Quality, the Texas General Land Office, the Texas Parks and Wildlife Department, and the United States Fish and Wildlife Service, acting on behalf of the United States Department of the Interior (collectively, the Trustees), their officers, agents, and employees from all claims, known or unknown, arising out of or relating to the Agreement for the Enhancement and Restoration of Days Creek Watershed Project, effective June 8, 2020.

It is expressly agreed and understood that this FINAL waiver and release of all claims is effective, without any further action of any party, upon the Agreed Termination of the Agreement for the Enhancement and Restoration of Days Creek Watershed Project in Texarkana, Bowie, Texas, between the City of Texarkana and the Trustees, becoming effective.

Executed on this _____ day of _____, 2024.

Authorized Representative, City of Texarkana

_____
(Signature)

_____
(Name)

_____
(Title)

Attachment: 2024-022 ATTH 01 - Agrm. to Terminate Interlocal Agreement (4182 : 2024-022 RES NRDA termination of agreement)

City of Texarkana, Texas

Developing Perspectives and Goals Pending Approval by the City Council:

Perspectives	Goals
Serve the Community	☑ Promote an Environmentally Sensitive & Livable Community ☑ Provide a Safe Community ☐ Deliver Quality Services ☑ Foster a Healthy Community
Run the Operations	☑ Enhance Community Preparedness & Responsiveness ☑ Maximize Partnership Opportunities ☐ Provide Courteous & Responsive Customer Service ☑ Model a Positive City Image ☐ Deliver Efficient Services ☑ Cultivate Community Involvement & Access
Manage the Resources	☑ Maintain Fiscal Strength ☑ Maximize Utilization & Resources ☑ Invest in Infrastructure & Transportation
Develop Personnel	☐ Develop a Skilled & Diverse Workforce ☐ Create a Positive & Rewarding Work Culture

Perspectives and Goals Additional Comments:

NONE

Resource Impact:

Staff time required if item is approved:	No Additional

Other Potential Impacts:

NONE APPLICABLE

Public Information Plan:

☐	Newspaper Notice (Required by Statute)	☐	Public Hearing (Required by Statute)
☐	Public Forum/Input Session	☑	Press Release
☐	E-News Distribution	☑	Website Notice
☑	Social Media (Twitter, Facebook, etc.)	☐	Special Mailing
☑	Flyers Posted	☐	Banners Posted
☐	Survey	☐	Automated Phone Call
☐	None Required	☐	

Other:

Attachment: 2024-022 Goals & Perspectives (4182 : 2024-022 RES NRDA termination of agreement)