CITY OF TEXARKANA

CITY COUNCIL

MINUTES ● MARCH 11, 2024

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

220 TEXAS BLVD., TEXARKANA, TX 75501

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

Attendee Name	Title	Status	Arrived
Bob Bruggeman	Mayor	Present	
Jean H. Matlock	Ward 1	Late	6:30 PM
Mary Hart	Ward 2	Present	
Betty Williams	Ward 3	Present	
Christie Page	Ward 4	Absent	
Cole Meador	Ward 5	Present	
Jay Davis	Ward 6	Present	

Staff Present: City Manager David Orr, Jennifer Evans, Kristin Peeples, Ross Cowling, J.W. Bramlett, Karey Parker, Chris Black, Gary Smith, Lisa Thompson, Chiquita Burks, Robby Robertson, and Mashell Daniel.

Municipal Court: Judge Sherry Jackson Hawkins.

Legal Counsel: Jeff Lewis.

II. INVOCATION AND PLEDGE LED BY COUNCIL MEMBER MARY HART

III. SPECIAL PRESENTATIONS

PlayTXK - by Leadership Texarkana (No representatives were in attendance.)

Developmental Disabilities Awareness Month Proclamation

Mayor Bruggeman read the proclamation and presented it to Community Healthcore representatives, Stacy Tidwell and Linda Hooks. Ms. Tidwell said she hopes the proclamation will bring awareness and consideration to individuals living in the community with a developmental disability who also work and lead similar lives as everyone else. Ms. Hooks shared she has a son at home with special needs who has graduated from high school.

Both were grateful for the proclamation recognizing March as Developmental Disabilities Month.

RESULT:	**CLOSE ACTION**

IV. MAYOR'S REMARKS AND ITEMS OF COMMUNITY INTEREST

The city held the annual Fire Department Awards Ceremony on Saturday, March 9th at the Texarkana Texas Convention Center. It was a great event and well attended, including several council members. Fire personnel were thanked for their service and given well wishes for continual safety as they perform their duties each day.

Upcoming City Council Meetings
Monday, March 25, 2024, at 6:00 p.m.
Monday, April 22, 2024 at 6:00 p.m.

Parks & Recreation Activities:

March 16th - 17th	USSSA Baseball Tournament	Spring Lake Park/Swanger Complex
March 21st - 23rd	Dixie Huggins Tournament	Spring Lake Park/Swanger Complex
March 23rd	TYSA Softball Tournament	Karrh Park

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

Upcoming Show at the Perot Theatre
March 26th at 7:00 p.m. - Janets Planet - A Tour of the Solar System - presented by TRAHC. Tickets are available at perottheatre.org.

Solarbration - Two States, Total Eclipse
The "Solarbration" celebration will be held April 5-8, 2024. For a list of programs, activities, and events, please visit solarbrationtxk.com. Council and staff enjoying the solar glasses a little early!

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.

Mary Bruce asked for the status of the Capp Street extension project as outlined in the city's Capital Improvement Plan. Capp Street is currently a dead end street and needs two way flow to better serve the community in that neighborhood.

VI. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Council Member Meador recommended the reappointment of Brian Barry to the Permit and License Appeal Board.

Mayor Bruggeman recommended the reappointment of Steven Kelley to the Permit and License Appeal Board.

Motion to make reappointments to the Permit and License Appeal Board.

(6:16 p.m.)

RESULT:	**ADOPTED [5 TO 0]**
MOVER:	Betty Williams, Ward 3
SECONDER:	Mary Hart, Ward 2
AYES:	Bruggeman, Hart, Williams, Meador, Davis
ABSENT:	Page
AWAY:	Matlock

VII. ITEMS FOR CONSIDERATION

Consent Items

(6:17 p.m.)

RESULT:	**ADOPTED [5 TO 0]**
MOVER:	Mary Hart, Ward 2
SECONDER:	Jay Davis, Ward 6
AYES:	Bruggeman, Hart, Williams, Meador, Davis
ABSENT:	Page
AWAY:	Matlock

1. Consider approval of the minutes of the Regular Meeting of the City Council held on February 26, 2024 at 6:00 PM.

2. Resolution No. 2024-031 authorizing the City Manager to execute a contract with Hart Construction of Hooks, Texas, for the parking lot/road repair at the Wright Patman Water Treatment Plant in the amount not to exceed $61,325, with budgeted funds in the Lake Texarkana Water Supply Corporation Capital Improvement Fund.

   Public Hearing:
   Council Vote: March 11, 2024

Action Items

[There were no Action Items considered at this meeting.]

VIII. FIRST BRIEFINGS

1. Ordinance No. 2024-021 amending the Zoning Code, Chapter 140, by adding Section 140-182, "Telecommunications Tower & Stealth Telecommunications Tower", adding corresponding definitions to Section 140-179 and corresponding uses to "Utility and Service Uses" in Section 140-81, and adding compliance provisions to Section 140-108, "Planned Development".

   Public Hearing: March 25, 2024
   Council Vote: March 25, 2024

   Mashell Daniel briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 3/25/2024 6:00 PM**

2. Ordinance No. 2024-028 amending the Zoning Code, Chapter 140, Article V - Special District Regulations, Section 140-111, "UPDD University Planned Development District", by amending subsections 140-111(e) and 140-111(h) to provide for "wayfinding guides" applicable for educational institutions.

   Public Hearing: March 25, 2024
   Council Vote: March 25, 2024

   Mashell Daniel briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 3/25/2024 6:00 PM**

3. Ordinance No. 2024-029 authorizing assignment pay for a Firefighter assigned to specialized duties of Building Maintenance and Repair, and setting conditions and rate of pay.

Public Hearing: March 25, 2024
Council Vote: March 25, 2024

Chris Black briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 3/25/2024 6:00 PM**

4. Ordinance No. 2024-030 authorizing assignment pay for a Firefighter assigned to the specialized duties of Deputy Emergency Management Coordinator, and setting conditions and rate of pay.

Public Hearing: March 25, 2024
Council Vote: March 25, 2024

Chris Black briefed this agenda item.

RESULT:	**MOVED FORWARD**	**Next: 3/25/2024 6:00 PM**

IX. PUBLIC HEARINGS

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

Gene Joyce, of the Texarkana Soccer Association, spoke in favor of council adopting this resolution.
(6:31 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jay Davis, Ward 6
SECONDER:	Mary Hart, Ward 2
AYES:	Bruggeman, Matlock, Hart, Williams, Meador, Davis
ABSENT:	Page

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

Brandon Allison, of Texarkana Dixie Baseball, spoke in favor of council adopting this resolution.
(6:35 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Jay Davis, Ward 6
SECONDER:	Betty Williams, Ward 3
AYES:	Bruggeman, Matlock, Hart, Williams, Meador, Davis
ABSENT:	Page

X. CITY MANAGER'S REPORT

Cross Department Collaboration Teams Launch
As part of city-wide goals for 2024, several cross-departmental staff collaboration teams have been created, with different job responsibilities, to come together and work towards common goals and solutions using the Strategic Doing model, championed locally by Leadership Texarkana. Staff teams include a Neighborhood Solutions Team, Travel & Tourism Team, Culture Champions Team, and a temporary team to help celebrate the 100-Year Anniversary of City Hall and the Perot Theatre.

EPA Brownfields Job Training Kickoff Event
Please join the City of Texarkana, Texas, Texarkana College, and EPA Brownfields Region 6 staff for an EPA Brownfields Job Training kickoff event on March 21st at 2:00 p.m., at the McCullogh Industrial Technology Center (Texarkana College campus) to learn more about this program and the benefits to the community. This job training program was made possible by a $500,000 grant from the U.S. EPA Brownfields Program.

Economic Development Quarterly Report - March
The city's latest quarterly economic development report is now available. It includes information on new developments that are planned, new retail announced/recently opened, commercial construction permits, residential construction permits and much more. For more information on the city's economic development efforts, check out the economic development web page at Economic Development | Texarkana, TX - Official Website (texarkanatexas.gov) <https://texarkanatexas.gov/255/Economic-Development>.

XI. ADMINISTRATIVE COMMENTS

1. City Council

   Council had no administrative comments for staff.

2. City Staff

City Manager Orr thanked council for the supportive votes adopting the two resolutions related to the 2023 Bond Fund and sports tourism for local parks that will move the city forward.

He also thanked city staff and the Symmetry Sports group for all the hard work put into both recreational projects.

XII. ADJOURNMENT

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

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

Jennifer Evans
City Secretary

Bob Bruggeman
Mayor

Briefing Sheet

Version:
Update Date: 3/4/2024 3:09 PM

Lead Department: City Manager **Action Officer:** Jennifer Evans, City Secretary

Subject: Developmental Disabilities Awareness Month Proclamation

Attachments

a. Developmental Disabilities Awareness (March) (PDF)

PROCLAMATION

WHEREAS, an estimated 549,000 individuals in Texas have developmental disabilities and, in Texarkana, that number is estimated to be over 200; and

WHEREAS, the hopes and dreams of Texans affected by developmental disabilities do not differ from the aspirations of others in the state, and like all Texans, they have unique skills and experiences that fortify our state's rich diversity; and

WHEREAS, it is important to raise awareness not only in the state of Texas but right here in our Texarkana community; and

WHEREAS, including people of all abilities in every aspect of our lives such as classrooms, workplaces, and houses of worship creates stronger communities.

NOW, THEREFORE, I, Bob Bruggeman, Mayor of the City of Texarkana, Texas, in recognition thereof, do hereby proclaim the month of March 2024 as

"DEVELOPMENTAL DISABILITIES AWARENESS MONTH"

and encourage the City of Texarkana to come together to raise and increase awareness about developmental disabilities to support full inclusion and equality for all individuals with developmental disabilities as well as their families and caregivers.

_____

Bob Bruggeman, Mayor

_____

Jennifer Evans, TRMC, City Secretary

Attachment: Developmental Disabilities Awareness (March) (4202 : Developmental Disabilities March Proclamation)

CITY OF TEXARKANA

CITY COUNCIL

MINUTES • FEBRUARY 26, 2024

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

220 TEXAS BLVD., TEXARKANA, TX 75501

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

Attendee Name	Title	Status	Arrived
Bob Bruggeman	Mayor	Present	
Jean H. Matlock	Ward 1	Absent	
Mary Hart	Ward 2	Present	
Betty Williams	Ward 3	Present	
Christie Page	Ward 4	Present	
Cole Meador	Ward 5	Present	
Jay Davis	Ward 6	Present	

Staff Present: City Manager David Orr, Jennifer Evans, Kristin Peeples, J.W. Bramlett, Dusty Henslee, Karey Parker, Brooke Stone, Chris Black, Robby Robertson, Keith Beason, and Chiquita Burks.

Municipal Court: Judge Sherry Jackson Hawkins.

Legal Counsel: Jeff Lewis.

II. INVOCATION AND PLEDGE LED BY MAYOR BOB BRUGGEMAN

III. YOUTH ADVISORY COUNCIL PRESENTATION - BY CHLOE HILL

2024 Texas Youth Advisory Council Summit - This summit was held for schools, cities, and community youth groups to come together to network and learn from each other. Several groups presented community service projects that allowed everyone to be inspired by their accomplishments.

TYAC students who attended learned about "Standing on Business" and defining effective community leadership, public speaking, networking, volunteering, and money basics.

These youths have set a goal to volunteer at Heritage Plaza to assist with activities and games for the residents. They also plan to be involved with the annual Big Event project, coming up in April, which is designed for student governments to participate in a full day of service projects around the community.

Ms. Hill was accompanied by fellow TYAC students Zuri Muldrow and Trinity Chase.

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

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>

The Mayor reminded citizens this is a busy time of year for obtaining birth certificates for tax season, school sports, and applying for passports. Citizens should allow ample time to obtain a birth certificate and verify with the office that requires the certificate as to which form is acceptable.

Citizens were also encouraged to visit the city's website to ensure everything that's required to purchase a birth certificate is in hand. Any Texas birth certificate can be obtained from Austin.

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.

Tim Young said he believed he had a pre-historic find on his property located at 152 Lake Breeze Drive. Mayor Bruggeman thanked Mr. Young for sharing his information and suggested he contact his Precinct Commissioner, Sammy Stone, as his property is located in Precinct 1 of Bowie County outside of the city limits.

VI. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

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

VII. ITEMS FOR CONSIDERATION

Consent Items

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

(6:18 p.m.)

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

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

   Keith Beason briefed this agenda item.
   (6:22 p.m.)

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

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

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

   Ross Cowling briefed this agenda item and introduced, Nick Robertson, of Symmetry Sports Construction. Mr. Robertson shared a video and comments about the proposed enhancements for the Wallace Soccer Complex, located at Grady T. Wallace Park and the Swanger Complex, located at Spring Lake Park.

RESULT:	**MOVED FORWARD**	**Next: 3/11/2024 6:00 PM**

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

   This resolution coincided with the first briefing comments for Resolution No. 2024-024.

RESULT:	**MOVED FORWARD**	**Next: 3/11/2024 6:00 PM**

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.

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

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

Richard Reynolds said the developers are grateful the city has created this financial vehicle which allows them to get in front of some of their needs for infrastructure.
(6:35 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Mary Hart, Ward 2
SECONDER:	Jay Davis, Ward 6
AYES:	Bruggeman, Hart, Williams, Page, Meador, Davis
ABSENT:	Matlock

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

There were no public comments made at this hearing.
(6:36 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Christie Page, Ward 4
SECONDER:	Mary Hart, Ward 2
AYES:	Bruggeman, Hart, Williams, Page, Meador, Davis
ABSENT:	Matlock

X. CITY MANAGER'S REPORT

Cell Tower Ordinance Revision Update
Staff, along with the Planning & Zoning Commission, has been working on proposed changes to the city's cell tower ordinance since October 2023. A final version will be presented for P&Z approval at its next meeting on March 4th. After P&Z approval, staff anticipates this item will come before the City Council in March for consideration.

Governor Abbott Reappoints Mitchell, Names Chair of Sulphur River Basin Authority Board of Directors
AUSTIN - Governor Greg Abbott has reappointed Kelly Mitchell to the Sulphur River Basin Authority Board of Directors for a term set to expire on February 1, 2029. Additionally, the Governor named Mitchell as presiding officer of the Board. The Board has the responsibility of controlling, storing, preserving, and distributing the water of the Sulphur River watershed.

New Airport Terminal Update - Photo shoot
In anticipation of the new airport terminal opening later this year, there will be an onsite photo shoot on March 14th to be used for advertising and on the airport website. Mark your calendars as more information will be coming out later in the week about the schedule.

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

City's Bond Projects
The city is very excited about the bond projects forthcoming. City staff, along with the Synmetry Sports team, were thanked for all of the hard work done over the last several months in moving forward these projects to enhance recreational activities at city parks.

Save the Date - Short Term Rentals (Airbnb/VRBO) Taxes & Tourism Workshop, Friday, March 1st 9:00 a.m. at the Perot Theatre, 219 Main Street, Texarkana, Texas, hosted by the Texarkana Arts & Historic District.

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.
(6:39 p.m.)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Betty Williams, Ward 3
SECONDER:	Christie Page, Ward 4
AYES:	Bruggeman, Hart, Williams, Page, Meador, Davis
ABSENT:	Matlock

Jennifer Evans
City Secretary

Bob Bruggeman
Mayor

Minutes Acceptance: Minutes of Feb 26, 2024 6:00 PM (Consent Items)

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 3/7/2024 2:58 PM

Lead Department: Water Utilities **Action Officer:** Michelle Warren,

Subject: Resolution No. 2024-031 authorizing the City Manager to execute a contract with Hart Construction of Hooks, Texas, for the parking lot/road repair at the Wright Patman Water Treatment Plant in the amount not to exceed $61,325, with budgeted funds in the Lake Texarkana Water Supply Corporation Capital Improvement Fund.

Briefing: 3/11/2024 **Public Hearing:** **Council Vote:** 3/11/2024

Item Schedule
Schedule 1: Brief twice - vote once (six weeks)

Updates/History of Briefing: "NOT APPLICABLE"

Executive Summary and Background Information:

Bids were received Tuesday, February 27, 2024 for the Wright Patman WTP Parking Lot/Road Repair Project. Five (5) contractors bid on the project. Hart Construction of Hooks, Texas was the apparent low bidder with a low Base Bid of $61,325.00. This project consists of the removal and replacement of approximately 1,200 square yards of asphalt, 10 square yards of sidewalk, proof rolling the sub-base, repair of sub-base soft spots, installation of two ADA sidewalk ramps, and all appurtenances necessary to complete this work. The existing pavement is in dire need of repair and replacement.

Potential Options:
None

Fiscal Implications:
Payment for services rendered for parking lot/road repair not to exceed $61,325.00.

Staff Recommendation:
The Utility Staff recommends acceptance of these bids.

Advisory Board/Committee Review:
N/A

Board/Committee Recommendation:
N/A

City of Texarkana, Texas

Advisory Board/Committee Meeting Date and Minutes:
N/A

Attachments

a. 2024-031 RES WP WTP Parking Lot (DOCX)
b. 2024-031 ATTH 01 Bid Summary (DOCX)
c. 2024-031 ATTH 02 Bid Tab (PDF)
d. 2024-031 Goals & Perspectives (DOCX)
e. 2024-031 RES WTP Parking Lot Repair signed (PDF)

Staff Coordination

Water Utilities	Gary Smith 03/01/2024 10:59 AM	Department Head Review	Completed	
Water Utilities	Michelle Warren 03/01/2024 10:57 AM	Water Utilities Review	Skipped	
TWU Finance	Tricia Briggs	TWU Finance Review	Completed	03/01/2024 11:09 AM
Public Works Department	Angela Humphrey 03/01/2024 12:16 PM	Reviewer	Completed	
City Manager	David Orr	City Manager Review	Completed	03/01/2024 1:25 PM
City Council	Jennifer Evans	Meeting	Completed	03/11/2024 6:00 PM

Meeting History

RESOLUTION NO. 2024-031

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID AND EXECUTE A CONTRACT WITH HART CONSTRUCTION OF HOOKS, TEXAS, IN AN AMOUNT NOT TO EXCEED $61,325 FOR THE WRIGHT PATMAN WTP PARKING LOT/ROAD REPAIR PROJECT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on February 27, 2024, five (5) bids were received, a copy of which is attached hereto as **ATTH01**, by Texarkana Water Utilities for the Wright Patman WTP Parking Lot/Road Repair Project; and

WHEREAS, the project will consist of removing and replacing approximately 1,200 square yards of asphalt, 10 square yards of sidewalk, proof rolling the subbase, repair of subbase soft spots, installation of two ADA sidewalk ramps, and related appurtenances; and

WHEREAS, the lowest and best bid by a responsible vendor for this project was submitted by Hart Construction of Hooks, Texas, a copy of which is attached hereto as **ATTH02** in an amount not to exceed $61,325; and

WHEREAS, funds are available in the Texarkana Water Utilities 2023-2024 budget in the Lake Texarkana Water Supply Corporation Capital Improvement Fund in the amount of $61,325.

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

SECTION 1: The lowest and best bid by a responsible vendor, submitted by Hart Construction of Hooks, Texas, a copy of which is attached hereto as **ATTH02** be and is hereby approved in an amount not to exceed $61,325 for the removing and replacing approximately 1,200 square yards of asphalt, 10 square yards of sidewalk, proof rolling the subbase, repair of subbase soft spots, installation of two ADA sidewalk ramps, and related appurtenances for the Wright Patman WTP Parking Lot/Road Repair Project.

SECTION 2: The City Manager be and is authorized to execute a contract with Hart Construction of Hooks, Texas, for the above-described services.

SECTION 3: This Resolution shall be in full force and 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: 2024-031 RES WP WTP Parking Lot (4201 : 2024-031 RES Parking Lot Repair WTP)

Bid Summary

Wright Patman WTP Parking Lot/Road Repair

Tuesday, February 27, 2024, 2:00 P.M.

		Base Bid
1.	Hart Construction Hooks, Texas	$61,325.00
2.	Contech Texarkana, Texas	$62,631.55
3.	TEC Hooks, Texas	$65,838.50
4.	Francis Excavating Nash, Texas	$73,987.50
5.	CDM Holdings New Boston, Texas	$96,295.00

Time First Bid Opened: 2:00 P.M

Number of Bidders: 5

Apparent Low Bidder: Hart Construction

Attachment: 2024-031 ATTH 01 Bid Summary (4201 : 2024-031 RES Parking Lot Repair WTP)

Bid Tabulation
Wright Patman WTP Parking Lot/Rd Repair
Project No. 63-000-135111-L122201
February 27, 2024

BASE BID:

				FRANCIS EXCAVATING		CONTECH		HART		CDM HOLDINGS		TEC	
				Nash, TX		Texarkana, TX		Hooks, TX		New Boston, TX		Hooks, TX	
Item	Quantity	Unit	Description	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid
1	1	LS	Mobilization, Bonds, & Submittals	$14,061.00	$14,061.00	$7,187.50	$7,187.50	$6,640.00	$6,640.00	$10,000.00	$10,000.00	$4,950.00	$4,950.00
2	1	STA	Right of Way Preparation	$2,500.00	$2,500.00	$1,725.00	$1,725.00	$2,000.00	$2,000.00	$1,000.00	$1,000.00	$1,990.00	$1,990.00
3	1	LS	Furnish & Install Erosion Control	$1,000.00	$1,000.00	$1,725.00	$1,725.00	$500.00	$500.00	$1,000.00	$1,000.00	$2,800.00	$2,800.00
4	1200	SY	Removal & Disposal of 1.5" ACP from Parking Lot	$4.62	$5,544.00	$3.16	$3,792.00	$6.75	$8,100.00	$10.00	$12,000.00	$4.32	$5,184.00
5	1	LS	Removal of Island & Build up of Subbase	$2,300.00	$2,300.00	$2,070.00	$2,070.00	$600.00	$600.00	$5,500.00	$5,500.00	$2,410.00	$2,410.00
6	10	SY	Removal & Disposal of 4" Concrete Sidewalk	$150.35	$1,503.50	$28.75	$287.50	$82.00	$820.00	$100.00	$1,000.00	$110.00	$1,100.00
7	12	LF	Removal & Disposal of Concrete Curb & Gutter	$45.00	$540.00	$23.00	$276.00	$20.00	$240.00	$100.00	$1,200.00	$35.00	$420.00
8	2.5	HR	Proof Rolling Subbase	$150.00	$375.00	$287.50	$718.75	$150.00	$375.00	$150.00	$375.00	$180.00	$450.00
9	10	SY	Repair Soft Spots in Subbase	$125.00	$1,250.00	$57.50	$575.00	$120.00	$1,200.00	$300.00	$3,000.00	$130.00	$1,300.00
10	200	TON	Furnish & Install 3" HMAC Surface	$187.00	$37,400.00	$181.93	$36,386.00	$174.00	$34,800.00	$253.00	$50,600.00	$174.00	$34,800.00
11	2	EA	Furnish & Install ADA Sidewalk Ramps	$3,325.00	$6,650.00	$3,530.40	$7,060.80	$2,500.00	$5,000.00	$4,000.00	$8,000.00	$4,675.00	$9,350.00
12	200	LF	Furnish & Install Pavement Stripping	$0.87	$174.00	$1.61	$322.00	$1.00	$200.00	$5.00	$1,000.00	$0.40	$80.00
13	1	LS	Furnish & Install Pavement Wording	$90.00	$90.00	$23.00	$23.00	$150.00	$150.00	$425.00	$425.00	$16.50	$16.50
14	1	LS	Furnish & Install Handicap Pavement Logo	$120.00	$120.00	$23.00	$23.00	$150.00	$150.00	$425.00	$425.00	$36.00	$36.00
15	1	EA	Furnish & Install Handicap Sign	$240.00	$240.00	$230.00	$230.00	$250.00	$250.00	$250.00	$250.00	$800.00	$800.00
16	2	EA	Furnish & Install Parking Bumpers	$120.00	$240.00	$115.00	$230.00	$150.00	$300.00	$260.00	$520.00	$76.00	$152.00
			TOTAL BASE BID		$73,987.50		$62,631.55		$61,325.00		$96,295.00		$65,838.50

Prepared by Len McBride, E.I.T.
Certified Correct

Len M Bride 2-27-24

Len McBride, Design Engineer, TWU

Attachment: 2024-031 ATTH 02 Bid Tab (4201 : 2024-031 RES Parking Lot Repair WTP)

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: 2024-031 Goals & Perspectives (4201 : 2024-031 RES Parking Lot Repair WTP)

RESOLUTION NO. 2024-031

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID AND EXECUTE A CONTRACT WITH HART CONSTRUCTION OF HOOKS, TEXAS, IN AN AMOUNT NOT TO EXCEED $61,325 FOR THE WRIGHT PATMAN WTP PARKING LOT/ROAD REPAIR PROJECT; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on February 27, 2024, five (5) bids were received, a copy of which is attached hereto as **ATTH01**, by Texarkana Water Utilities for the Wright Patman WTP Parking Lot/Road Repair Project; and

WHEREAS, the project will consist of removing and replacing approximately 1,200 square yards of asphalt, 10 square yards of sidewalk, proof rolling the subbase, repair of subbase soft spots, installation of two ADA sidewalk ramps, and related appurtenances; and

WHEREAS, the lowest and best bid by a responsible vendor for this project was submitted by Hart Construction of Hooks, Texas, a copy of which is attached hereto as **ATTH02** in an amount not to exceed $61,325; and

WHEREAS, funds are available in the Texarkana Water Utilities 2023-2024 budget in the Lake Texarkana Water Supply Corporation Capital Improvement Fund in the amount of $61,325.

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

SECTION 1: The lowest and best bid by a responsible vendor, submitted by Hart Construction of Hooks, Texas, a copy of which is attached hereto as **ATTH02** be and is hereby approved in an amount not to exceed $61,325 for the removing and replacing approximately 1,200 square yards of asphalt, 10 square yards of sidewalk, proof rolling the subbase, repair of subbase soft spots, installation of two ADA sidewalk ramps, and related appurtenances for the Wright Patman WTP Parking Lot/Road Repair Project.

SECTION 2: The City Manager be and is authorized to execute a contract with Hart Construction of Hooks, Texas, for the above-described services.

SECTION 3: This Resolution shall be in full force and 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

6:17 p.m.

Attachment: 2024-031 RES WTP Parking Lot Repair signed (4201 : 2024-031 RES Parking Lot Repair WTP)

Bid Summary

Wright Patman WTP Parking Lot/Road Repair

Tuesday, February 27, 2024, 2:00 P.M.

		Base Bid
1.	Hart Construction Hooks, Texas	$61,325.00
2.	Contech Texarkana, Texas	$62,631.55
3.	TEC Hooks, Texas	$65,838.50
4.	Francis Excavating Nash, Texas	$73,987.50
5.	CDM Holdings New Boston, Texas	$96,295.00

Time First Bid Opened: 2:00 P.M

Number of Bidders: 5

Apparent Low Bidder: Hart Construction

Attachment: 2024-031 RES WTP Parking Lot Repair signed (4201 : 2024-031 RES Parking Lot Repair WTP)

2024-031 ATTH 02

Bid Tabulation
Wright Patman WTP Parking Lot/Rd Repair
Project No. 63-000-135111-L122201
February 27, 2024

BASE BID:													
				FRANCIS EXCAVATING		CONTECH		HART		CDM HOLDINGS		TEC	
				Nash, TX		Texarkana, TX		Hooks, TX		New Boston, TX		Hooks, TX	
Item	Quantity	Unit	Description	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid	Unit Price	Total Bid
1	1	LS	Mobilization, Bonds, & Submittals	$14,061.00	$14,061.00	$7,187.50	$7,187.50	$6,640.00	$6,640.00	$10,000.00	$10,000.00	$4,950.00	$4,950.00
2	1	STA	Right of Way Preparation	$2,500.00	$2,500.00	$1,725.00	$1,725.00	$2,000.00	$2,000.00	$1,000.00	$1,000.00	$1,990.00	$1,990.00
3	1	LS	Furnish & Install Erosion Control	$1,000.00	$1,000.00	$1,725.00	$1,725.00	$500.00	$500.00	$1,000.00	$1,000.00	$2,800.00	$2,800.00
4	1200	SY	Removal & Disposal of 1.5" ACP from Parking Lot	$4.62	$5,544.00	$3.16	$3,792.00	$6.75	$8,100.00	$10.00	$12,000.00	$4.32	$5,184.00
5	1	LS	Removal of Island & Build up of Subbase	$2,300.00	$2,300.00	$2,070.00	$2,070.00	$600.00	$600.00	$5,500.00	$5,500.00	$2,410.00	$2,410.00
6	10	SY	Removal & Disposal of 4" Concrete Sidewalk	$150.35	$1,503.50	$28.75	$287.50	$82.00	$820.00	$100.00	$1,000.00	$110.00	$1,100.00
7	12	LF	Removal & Disposal of Concrete Curb & Gutter	$45.00	$540.00	$23.00	$276.00	$20.00	$240.00	$100.00	$1,200.00	$35.00	$420.00
8	2.5	HR	Proof Rolling Subbase	$150.00	$375.00	$287.50	$718.75	$150.00	$375.00	$150.00	$375.00	$180.00	$450.00
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10	200	TON	Furnish & Install 3" HMAC Surface	$187.00	$37,400.00	$181.93	$36,386.00	$174.00	$34,800.00	$253.00	$50,600.00	$174.00	$34,800.00
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12	200	LF	Furnish & Install Pavement Stripping	$0.87	$174.00	$1.61	$322.00	$1.00	$200.00	$5.00	$1,000.00	$0.40	$80.00
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14	1	LS	Furnish & Install Handicap Pavement Logo	$120.00	$120.00	$23.00	$23.00	$150.00	$150.00	$425.00	$425.00	$36.00	$36.00
15	1	EA	Furnish & Install Handicap Sign	$240.00	$240.00	$230.00	$230.00	$250.00	$250.00	$250.00	$250.00	$800.00	$800.00
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			TOTAL BASE BID		$73,987.50		$62,631.55		$61,325.00		$96,295.00		$65,838.50

Prepared by Len McBride, E.I.T.
Certified Correct

Len M Bride 2-27-24
Len McBride, Design Engineer, TWU

Attachment: 2024-031 RES WTP Parking Lot Repair signed (4201 : 2024-031 RES Parking Lot Repair

City of Texarkana, Texas

Version: A

Briefing Sheet

Update Date: 2/27/2024 11:19 AM

Lead Department: Building Code Administration **Action Officer:** Mashell Daniel,

Subject: Ordinance No. 2024-021 amending the Zoning Code, Chapter 140, by adding Section 140-182, "Telecommunications Tower & Stealth Telecommunications Tower", adding corresponding definitions to Section 140-179 and corresponding uses to "Utility and Service Uses" in Section 140-81, and adding compliance provisions to Section 140-108, "Planned Development".

Briefing: 3/25/2024 **Public Hearing:** 3/25/2024 **Council Vote:** 3/25/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

Current City Code provisions and administrative practices allow for locating telecommunications towers in certain zoning areas only with a specific use permit approved by the City Council. The locations of cell towers within the City are depicted in ATTH 01.

Telecommunications companies typically perform months, even years, of research and due diligence to determine the optimum locations for telecommunications towers for provision of cellular and broadband coverage needs. City staff researched and studied ordinances of other municipalities in an effort to recommend to the City Council revisions to the City Code for greater predictability on locating telecommunications towers in specific zoning districts within the City together with defining by ordinance an administrative process specific to such towers.

Highlights of the proposed ordinance:

- Defining both “telecommunications tower” and “stealth telecommunications tower”, and providing for a use by right for such towers in the following zoning districts [see zoning map – ATTH 02 and ATTH 04]:

P	Parking District
O	Office District
GR	General Retail District
LC	Limited Commercial District
CB	Central Business District
C	Commercial District
I-1	Light Industrial District
I-2	Heavy Industrial District

- Requiring a specific use permit for towers or stealth towers in zoning districts Agricultural District and Neighborhood Service District
- Not allowing towers or stealth towers in any residential zoning districts.
- No waiver of any Code requirements governing Planned Development and excluding the UPDD from its provisions
- Providing a detailed application process and design plan submission, including drawings to scale and visual depictions of simulations of the proposed tower or stealth tower and ancillary facilities, to scale, together with engineering plans certified by a Texas registered professional engineer
- Requiring monopole construction for both towers and stealth towers as distinguished from lattice and guy towers [see pictures contained in ATTH 03]
- Requiring landscaping and screening for all towers and stealth towers
- Providing for notice procedures of any change in operational status and, under defined circumstances of disuse, removal and restoration of the site
- Providing for a performance bond for all new towers and new stealth towers, including relocated towers
- Excepting certain provisions from application to legacy towers authorized by prior ordinance of the City Council
- Providing a penalty for failure to comply or noncompliance with the ordinance

Additional information:

GAO 20-535:
BROADBAND -- Observations on Past and Ongoing Efforts to Expand Access and Improve Mapping Data https://www.gao.gov/assets/gao-20-535.pdf

GAO 22-104611:
BROADBAND -- National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide
https://www.gao.gov/assets/gao-22-104611.pdf

National Spectrum Strategy
https://www.ntia.gov/sites/default/files/publications/national_spectrum_strategy_final.pdf

Potential Options:

Approval, approval with changes, or denial.

Fiscal Implications:

The proposed administrative changes are within budgeted parameters.

Staff Recommendation:

Staff recommends for approval.

Advisory Board/Committee Review:

City staff hosted a workshop for the Planning & Zoning Commission (P&Z) on September 5, 2023, to present a summary of the data collected and an initial draft of a proposed ordinance, to which P&Z made comments which were addressed in subsequent drafts and P&Z regular meetings held on October 2, 2023, November 6, 2023, December 4, 2023, January 2, 2024, February 5, 2024, and March 4, 2024.

Board/Committee Recommendation:

The proposed ordinance was presented to P&Z during its regular meeting on March 4, 2024, and P&Z unanimously recommended to the City Council approval of this ordinance to revise the Zoning Code.

Advisory Board/Committee Meeting Date and Minutes:

February 5, 2024; March 4, 2024

Attachments

a. 2024-021 ORD cell towers (DOCX)
b. 2024-021 ATTH 01 Existing Cell Towers (PDF)
c. 2024-021 ATTH 02 Zoning Map (PDF)
d. 2024-021 ATTH 03 Tower Pictures (DOCX)
e. 2024-021 ATTH 04 Use by right & SUP for towers (PDF)
f. 2024-021 Goals & Perspectives (DOCX)

Staff Coordination

Building Code Administration	Completed	Mashell Daniel	Department Head Review	02/27/2024 11:01 AM
City Attorney	Jeffery C. Lewis	City Attorney Review	Completed	02/27/2024 11:19 AM
City Manager	David Orr	City Manager Review	Completed	02/27/2024 5:31 PM
City Council	Jennifer Evans	Meeting	Completed	03/11/2024 6:00 PM

Meeting History

PUBLISH

ORDINANCE NO. 2024-021

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE ZONING CODE, CHAPTER 140, OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS, BY ADDING SECTION 140-182, "TELECOMMUNICATIONS TOWER AND STEALTH TELECOMMUNICATIONS TOWER"; ADDING CORRESPONDING DEFINITIONS TO SECTION 140-179 AND CORRESPONDING USES TO "UTILITY AND SERVICE USES" IN SECTION 140-81; ADDING COMPLIANCE PROVISIONS TO SECTION 140-108, "PLANNED DEVELOPMENT"; CONTAINING SEVERABILITY AND SUPERSEDING CLAUSES; CONTAINING LEGISLATIVE FINDINGS; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

Recitals

WHEREAS, the telecommunications industry and federal government investments over the past years have expanded access to broadband in the United States: from 2009 through 2017, the industry made capital investments of about $795 billion, including investments in broadband infrastructure; federal investments totaled about $47.3 billion to target broadband infrastructure for rural areas over the same time; the Federal Communications Commission's Universal Service Fund high-cost program expanded service to about 2.3 million residential and small business locations, mostly from 2015 through 2017; the FCC reported that fixed broadband service was available to 94.4 percent of the U.S. population in 2018, up from 81.2 percent in 2012, although affordability and digital literacy remain barriers to adoption and use; and while service availability for people in rural areas increased from 45.7 percent in 2012 to 77.7 percent in 2018, service in rural areas continues to lag behind urban areas [source: United States Government Accountability Office (GAO-20-535), released June 25, 2020]; and

WHEREAS, in 2022, the United States Government Accountability Office, finding that the U.S. broadband efforts were not guided by a national strategy with clear roles, goals, objectives, and performance measures, recommended that the National Telecommunications and Information Administration (NTIA) identify key statutory limitations to program alignment and develop legislative proposals as appropriate, and that the Executive Office of the President develop and implement a national broadband strategy [source: United States Government Accountability Office (GAO-22-104611) released May 31, 2022];

WHEREAS, in 2023, NTIA issued the National Spectrum Strategy, a comprehensive plan to modernize federal spectrum policy and make the most efficient use possible of this vital national resource: the strategy focuses on promoting innovation and United States leadership in wireless technologies; collaborative long-term planning among government agencies and the private sector to support the nation's evolving spectrum needs; driving technological innovation, including innovative spectrum sharing technologies; boosting United States industrial competitiveness; protecting the security of the American people; fostering scientific advancements and promoting digital equity and inclusion; maintaining U.S. leadership in global markets for wireless equipment

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

and services; and the ultimate goal -- enhancing the quality of life for all Americans by expanding access to advanced wireless broadband networks and technologies [source: NTIA "National Spectrum Strategy" released November 13, 2023]; and

WHEREAS, under federal and state law, the location and type of wireless facility project determines a municipality's time to review and act on a request for locating such a project: for locations on private property, federal law, as interpreted by the FCC, and FCC rules, governs; and for locations on rights-of-way, Chapter 284 of the Texas Local Government Code governs; and

WHEREAS, current City Code provisions and administrative practices allow for locating telecommunications towers in certain zoning areas only with a specific use permit approved by the City Council; and

WHEREAS, telecommunications companies typically perform months, even years, of research and due diligence to determine the optimum locations for telecommunications towers for provision of cellular and broadband coverage needs, and City staff researched and studied ordinances of other municipalities in an effort to recommend to the City Council revisions to the City Code for greater predictability on locating telecommunications towers in specific zoning districts within the City together with defining by ordinance an administrative process specific to such towers; and

WHEREAS, City staff hosted a workshop for the Planning & Zoning Commission (P&Z) on September 5, 2023, to present a summary of the data collected and an initial draft of a proposed ordinance, to which P&Z made comments which were addressed in subsequent drafts and P&Z regular meetings held on October 2, 2023, November 6, 2023, December 4, 2023, January 2, 2024, and February 5, 2024, culminating in presentment of the submitted proposed ordinance to P&Z during its regular meeting on March 4, 2024, and P&Z unanimously recommending to the City Council approval of this ordinance to revise the Zoning Code; and

WHEREAS, the City Council finds and determines that this ordinance: furthers federal, state, and local policy for citizens' access to telecommunications technology; provides for greater predictability in locating telecommunications towers within the City; provides for an appropriate administrative process specific to requests for locating such towers; is necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and is in the best interests of the citizens of the City of Texarkana, Texas.

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

SECTION 1: The Zoning Code, Chapter 140, Article VII – Supplemental Regulations, Section 140-179, of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended to add the following definitions:

> *Telecommunications tower* ("tower") means a facility, including self-supporting lattice towers, guy towers or monopole towers, but not including stealth communication towers, designed to support one or more antennas and to contain ancillary facilities designed and used for the purpose of transmitting, receiving, and relaying voice, data, and other similar signals to or from various wireless

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

PUBLISH

communication devices; provided, however, that a *telecommunication tower* shall not be defined to include the following: "*Radio, television, or microwave towers*"; amateur radio transmission facilities not used for commercial purposes; or facilities used exclusively for the transmission of television and radio signals.

Stealth telecommunications tower ("stealth tower") means a facility that is designed in such a way that the facility is not readily recognizable as a *telecommunications tower* or telecommunications equipment. By way of example and not limitation, *stealth towers* may include the following: totally enclosed antennas; wireless facilities that replicate, duplicate, or simulate the construction of common structures such as flagpoles, signs, monopoles with totally enclosed antennas, or light poles and that serve as a function of the use or uses of the site; or camouflaged wireless facilities that are constructed to blend into the surrounding environment.

SECTION 2: The Zoning Code, Chapter 140, Article VII – Supplemental Regulations, of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended to add the following new section 140-182, "Telecommunications Tower and Stealth Telecommunications Tower", to provide as follows:

Sec. 140-182. - Telecommunications Tower and Stealth Telecommunications Tower.

(a) Location, placement, and distance.

(1) Use and Zoning Districts. Subject to the requirements of this section, land use for a Telecommunications tower ("tower") and Stealth telecommunications tower ("stealth tower") is a use by right in zoning districts P, O, GR, LC, CB, C, I-1, and I-2, but shall only be allowed by specific use permit in zoning districts A and NS. Towers and stealth towers shall not be allowed in any residential zoning districts.

(2) Setbacks. Towers and stealth towers shall be setback either a minimum of five hundred feet (500') or two feet for each foot in height, whichever is greater, from a one-family, two-family, or multifamily district or from any residential zoning or residential use.

(3) Distance from other towers or stealth towers. A minimum of a half-mile (or 2,640 feet) shall be required between each and every tower or stealth tower.

(4) Planned Development. Nothing in this section shall be construed to waive the requirements of section 140-108 (Planned development).

(5) The Board of Adjustment (*see* section 140-342, *et seq.*) shall not have authority to grant variances to the requirements of this subsection.

(b) Application for placement approval; design plan.

(1) Application; general requirements. A property owner desiring to locate a tower or stealth tower as authorized by 140-182(a)(1) shall submit an application to the Inspections Department with authorizations and information required by this section and a performance bond and removal bond as required by section (g).

(2) Owner or agent authorization. The property owner or agent of the

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

property owner shall sign the application. An agent of the property owner must be authorized by power of attorney or other notarized document granting the agent both the authority to represent the property owner and the authority to use the specific land for situs of a tower or stealth tower.

a. The application shall include a plan or plans containing the following: The metes and bounds legal description of the entirety of the owner's property where the tower or stealth tower is proposed to be located.

b. The metes and bounds of the specific area within the owner's property where the tower or stealth tower and ancillary facilities are to be located.

c. A drawing or drawings to scale of the following:

   i. location and height of the tower or stealth tower, including all ancillary facilities;

   ii. tower or stealth tower proximity to all buildings and other structures on both the owner's property and on adjacent properties;

   iii. compliance with setback and distance requirements contained in 140-182(a)(2) and 140-182(a)(3); and

   iv. landscaping plan for the site of the tower or stealth tower, showing existing and proposed topography, existing and proposed fencing and finished color, method of camouflage and illumination, and irrigation methods (type, spacing, and size). Applicable to stealth towers only, the drawing or drawings should demonstrate designs for an appearance that blends with the surrounding landscape; and acceptable designs include trees, flagpoles, or other appearances as approved by the Chief Building Official or Zoning Administrator.

d. A visual depiction or simulation of the proposed tower or stealth tower and ancillary facilities, to scale, in the existing natural or built environment for both day and night views, depicting all written warnings, markings, and lighting as may be proposed or otherwise required by law or regulations, and from the points-of-view of closest public street, closest occupied structure, aerial view, and any other location specified by the Chief Building Official or Zoning Administrator.

e. Engineering plans certified by a Texas registered professional engineer to include, with respect to the proposed tower or stealth tower, wind loads, foundation design, structural analysis, and capacity in terms of the number and types of antennae to be placed or accommodated.

f. A system plan to include the following: rationales for the particular location, design, and height of the tower or stealth

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

tower; the provider's telecommunication facilities presently constructed or approved; and a map indicating the provider's current coverage for the City and the projected coverage change with construction of the tower or stealth tower.

(c) Construction requirements.

(1) All towers or stealth towers shall be of monopole construction, shall meet FCC and FAA guidelines, and shall comply with the current building codes adopted by the City.

(2) Towers and stealth towers shall not be illuminated by artificial means or display strobe lights or other warning lighting unless required by the Federal Aviation Administration or any other federal, state or city law, rule or regulation. Any lighting shall be shielded or directed so as not to project directly onto property zoned residential or any residential use; and light fixtures used to illuminate ancillary facilities, sports facilities, parking or storage areas, or other similar areas may be attached to a tower or stealth tower only when incorporated into the approved design.

(3) Any new tower must be constructed to support a minimum of two separate antenna arrays and at least one additional antenna for every fifteen feet (15') or fraction thereof above sixty feet (60') in height and provide the ground space for any equipment necessary for the operation of additional antenna.

(4) Any new stealth tower must be able to support at least one additional antenna for every fifteen feet (15') or fraction thereof above sixty feet (60') in height and provide the ground space for any equipment necessary for the operation of additional antenna.

(d) Landscaping and screening requirements.

(1) All towers or stealth towers and ancillary facilities must have an eight-foot (8') solid screening fence or corresponding screening shrubs as described below.

a. The screening fence shall be constructed of wood, brick, stone, or reinforced concrete.

b. Screening shrubs shall be installed around a fence and screen from view the associated structures. All screening shrubs shall be a minimum of three feet (3') in height at planting, have the potential to grow to a mature height of a minimum of six feet (6') in three years and must have a permanently installed irrigation system that provides total water coverage to all plant materials. The vegetation shall always be kept in an attractive state and in good condition. The preservation of mature trees on the existing lot may be proposed as an alternative for screening shrubs.

(2) Outdoor storage of vehicles, materials, or equipment is prohibited. Outside parking of vehicles or equipment is prohibited unless such is being used by an authorized person on site in direct support of the tower or stealth tower and ancillary facilities.

(3) Unless expressly required by federal or state laws, rules, or regulations, or unless otherwise disclosed and approved in the visual depiction submitted pursuant to 140-182(b)(2)(e), banners, signs, moving objects, or other

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

attention devices are prohibited on the tower or stealth tower and ancillary facilities.

(e) Notice of change in status; removal upon cessation of operation.

(1) With respect to the normal business operation as proposed of the tower or stealth tower, the property owner or agent of the property owner shall give notice to the Chief Building Official within forty-five (45) days of any of the following: any change in the status of operation; any disconnection of electrical service for more than thirty (30) days; or any cessation for more than thirty (30) days of the use of a tower or stealth tower for the support of active communications antennae.

(2) If disconnection of electrical service or cessation of use of all antennae on the tower or stealth tower to transmit, receive, or relay voice and data signals to or from wireless communication devices persists for twelve (12) months, the property owner shall promptly remove the tower or stealth tower (and associated components of the facility) and restore the site to its original condition to a depth of two feet.

(3) After notice and opportunity to be heard is provided, the City may remove or cause the removal of a tower or stealth tower (and associated components of the facility) described in subsection (e)(2) of this section and assess the costs of removal, storage, and disposal against the property. The City shall mail to the property owner a notice of the City's intent to remove or cause such removal before taking such action; the property owner may request a hearing before the Board of Adjustment to show cause why the abandoned tower or stealth tower and associated components should not be removed from the property at the expense of the property owner; and the failure by a property owner to request a hearing within thirty (30) days after receipt of notice shall be deemed a failure to exhaust administrative remedies and a waiver of the right to a hearing.

(f) Exclusions. This section does not apply to the following:

(1) The UPDD -- section 140-111 of this Code; and

(2) Temporary, mobile towers erected under the authority of Chapter 14 of this Code.

(g) A performance bond shall be required for all new towers and new stealth towers, including relocated towers, where a previous bond has not been accepted, in a form acceptable to the City; a cash deposit may be substituted in lieu of a bond, in an amount sufficient to provide for removal, storage, and disposal of the tower, plus an additional fifteen percent (15%) contingency to restore the site, including stabilization and re-vegetation as necessary. An estimate of the removal cost from a Texas-licensed company experienced in contracting for removal of standard components shall accompany the bond. Unless the tower or stealth tower is located on property owned by a governmental entity where a guarantee is in place for removal of the tower when no longer in use, a separate bond will be required for each tower regardless of owner(s) or location. All bonds shall provide for the City to collect the full amount of the guarantee if the applicant fails to comply with this section. This subsection shall not apply to a governmental entity or public utility company.

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

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(h) Limited legacy exception. Subsections (a), (b), (c), and (d)(1) shall not apply to legacy towers or stealth towers authorized by a specific ordinance of the City Council adopted prior to enactment of this section.

(i) Penalty. Any person violating or failing to comply with any of the provisions of this section shall, upon conviction, be fined not less than $500.00 or more than $2,000.00, and each day any violation or non-compliance continues shall constitute a separate and distinct offense.

SECTION 3: The Zoning Code, Chapter 140, Article VII – Supplemental Regulations, of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended to add "Telecommunications Tower" and "Stealth Telecommunications Tower" to the listing of "Utility and Service Uses" contained in Section 140-81 – "Legend for interpreting schedule of use".

SECTION 4: The Zoning Code, Chapter 140, Article V – Special District Designations, section 140-108, "Planned development", subsection (b) "Application procedures", sub-subsection (b)(1) "Proposed uses", of the Code of Ordinances of the City of Texarkana, Texas, is hereby amended to add a concluding sentence as follows (additional sentence in underscore and boldface):

(1) Proposed uses. An application for a PD district shall specify and describe the category or type of use or the combination of uses proposed. Permitted uses under PD zoning shall be specified in each PD ordinance. If such ordinance specifies permitted uses by references to a zoning district, the permitted uses shall include those uses permitted in the referenced district, including those permitted through the cumulative provision of this chapter. **If an application for a PD district specifies a tower or stealth tower, regardless of whether such use is a permitted use in the referenced district, a separate application in compliance with the provisions of section 140-178 shall also be required.**

SECTION 5: In the event a section, clause, sentence, or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this Ordinance.

SECTION 6: Except as provided herein, in the event of any conflict between this Ordinance and any other ordinances or parts of ordinances, this Ordinance shall supersede and control; provided, however, that all ordinances or parts of ordinances authorizing towers or stealth towers prior to enactment of this Ordinance shall control and remain in full force and effect except as provided or augmented in the "limited legacy exception" set out in Section 140-182 (f) of the Code of Ordinances.

SECTION 7: The Recitals set out in this Ordinance are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

SECTION 8: The City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3, of the Charter of the City of Texarkana, Texas.

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)

PUBLISH

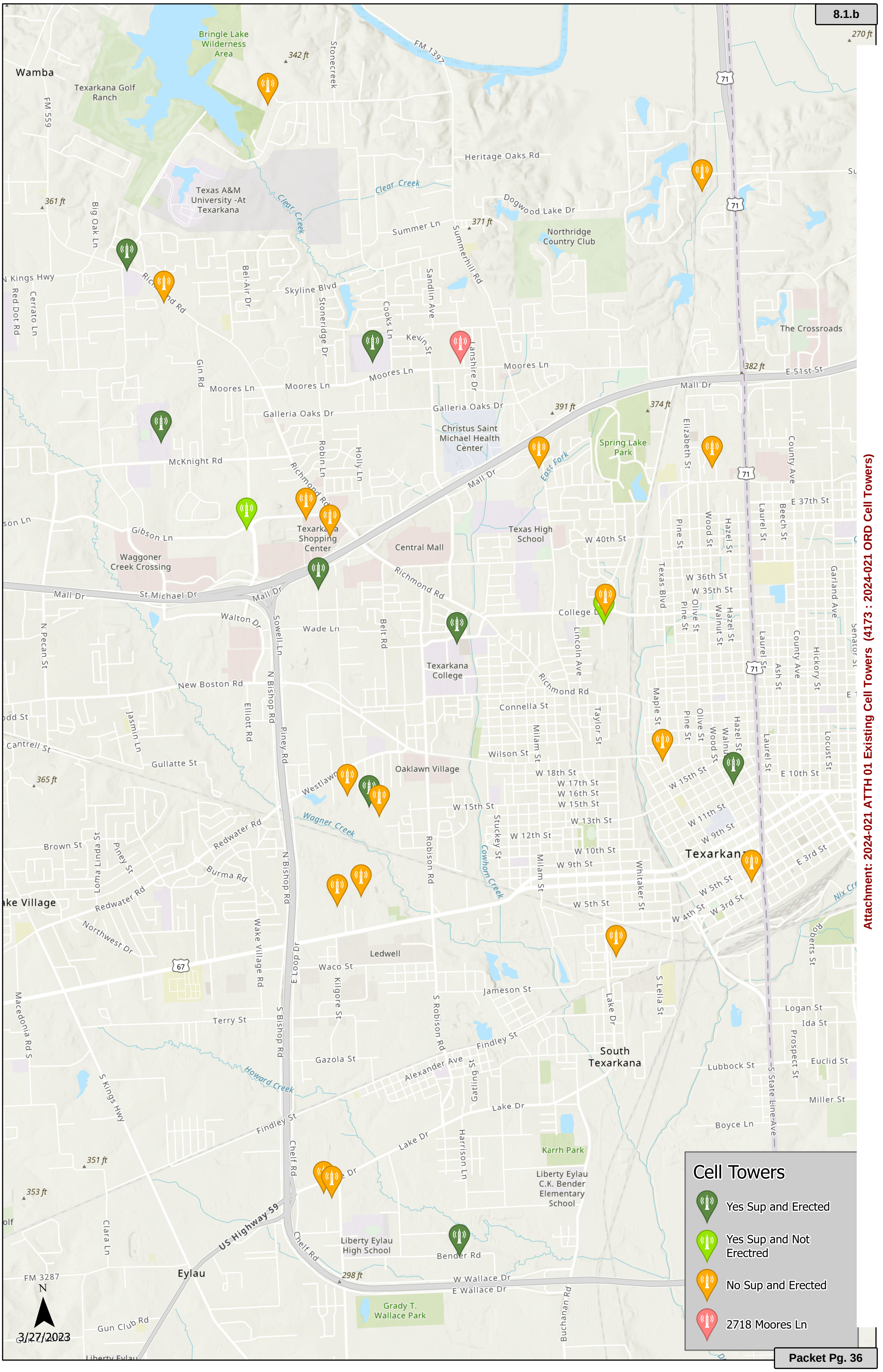
SECTION 9: This Ordinance shall be in full force and effect ten (10) days after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **25th day of March, 2024**.

ATTEST:

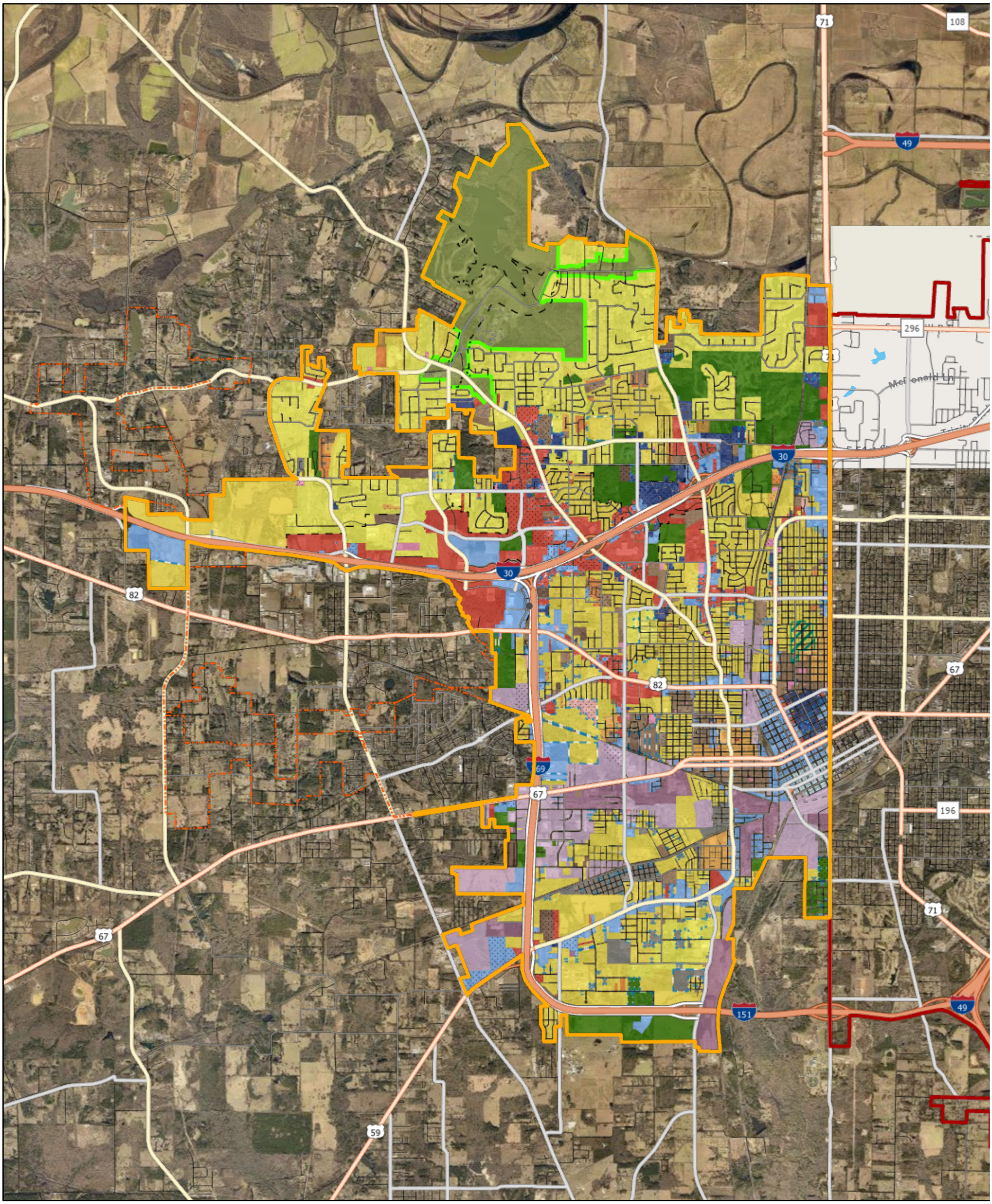
_____	_____
JENNIFER EVANS, CITY SECRETARY	BOB BRUGGEMAN, MAYOR

Attachment: 2024-021 ORD cell towers (4173 : 2024-021 ORD Cell Towers)



Attachment: 2024-021 ATTH 01 Existing Cell Towers (4173 : 2024-021 ORD Cell Towers)

ArcGIS Web Map



Attachment: 2024-021 ATTH 02 Zoning Map (4173 : 2024-021 ORD Cell Towers)

2/8/2024, 11:41:19 AM

Municipal Boundaries
- Leary
- Nash
- Red Lick, TX
- Wake Village
- Texarkana, AR
- Texarkana, TX

Street Centerline
- Freeway
- Highway
- Frontage Road
- Major Arterial
- Minor Arterial
- Collector
- Local
- Ramp
- Service

Zoning Texarkana TX
- Agricultural District
- Neighborhood Service
- Limited Commercial
- Commercial
- General Retail
- Central Business District
- Office
- Industrial 1
- Industrial 2
- Parking

1:72,224

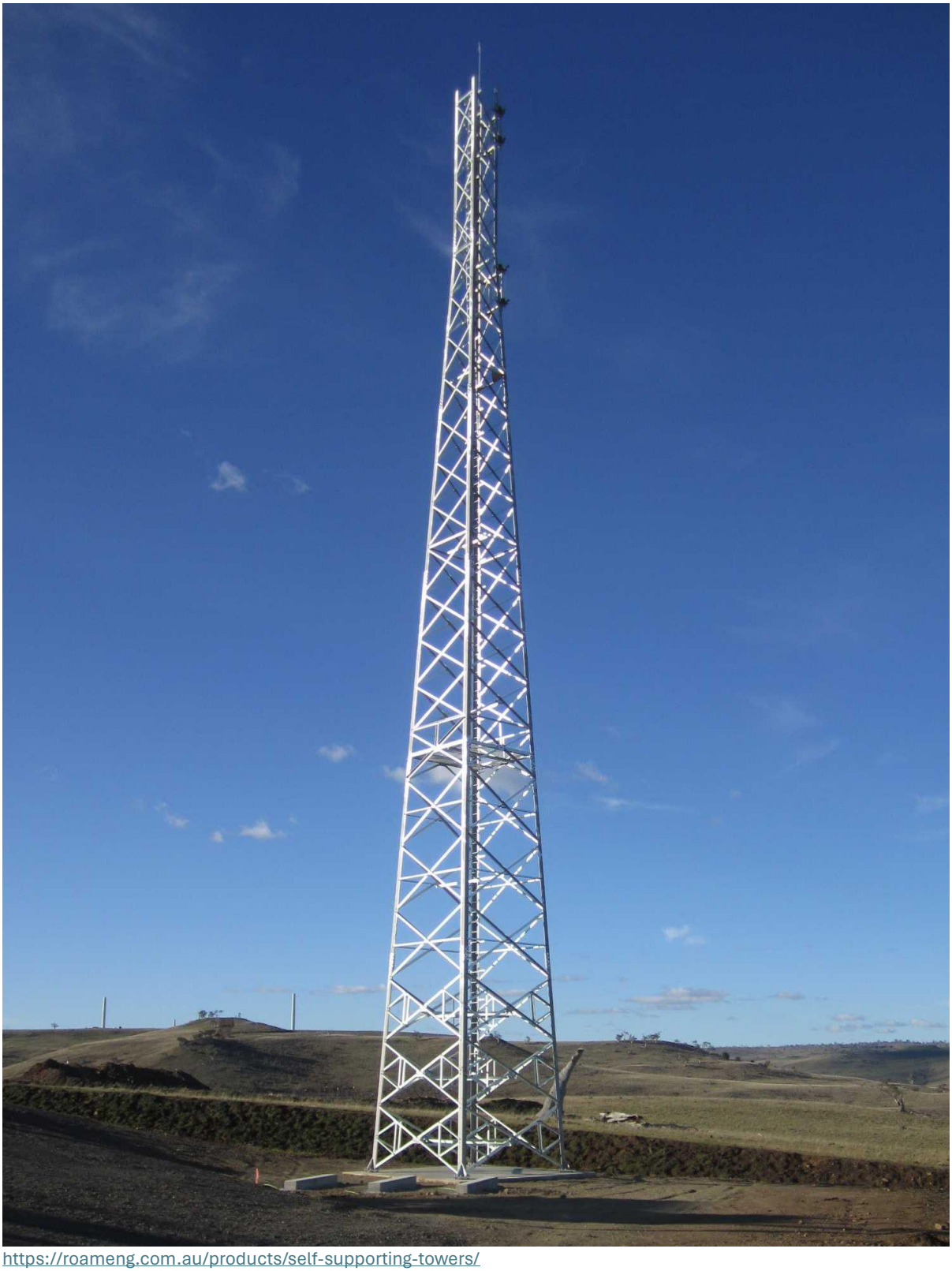
0 0.5 1 2 mi

0 1 2 4 km

City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS | none | GISMO |

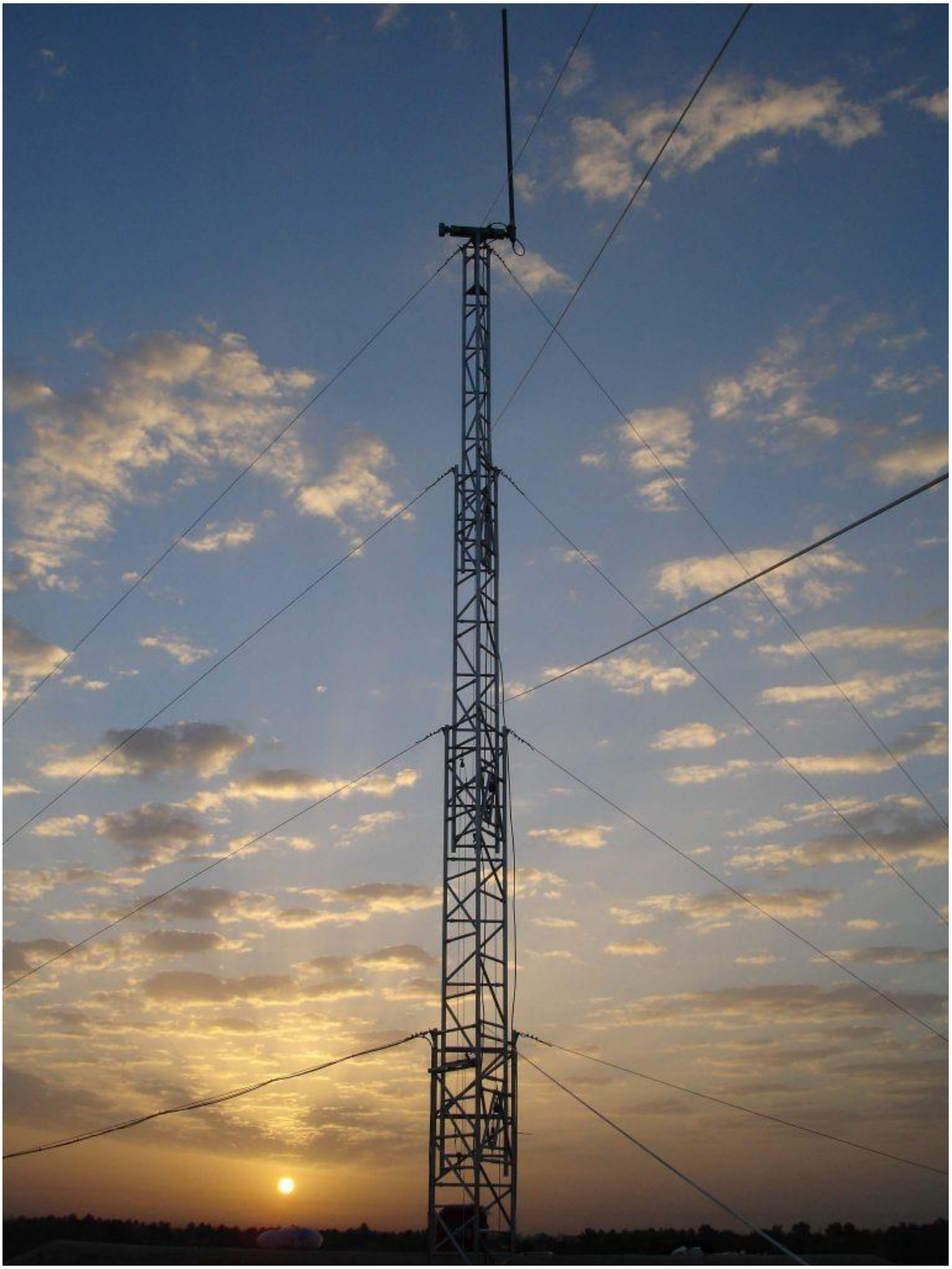
Self-Supporting Lattice Tower



https://roameng.com.au/products/self-supporting-towers/

Attachment: 2024-021 ATTH 03 Tower Pictures (4173 : 2024-021 ORD Cell Towers)

Guy Tower



https://www.alumatower.com/products/towers/telescopic-guyed/

Attachment: 2024-021 ATTH 03 Tower Pictures (4173 : 2024-021 ORD Cell Towers)

Monopole Tower

https://www.nelloinc.com/wireless-cell-towers/monopole-towers.cfm

Attachment: 2024-021 ATTH 03 Tower Pictures (4173 : 2024-021 ORD Cell Towers)

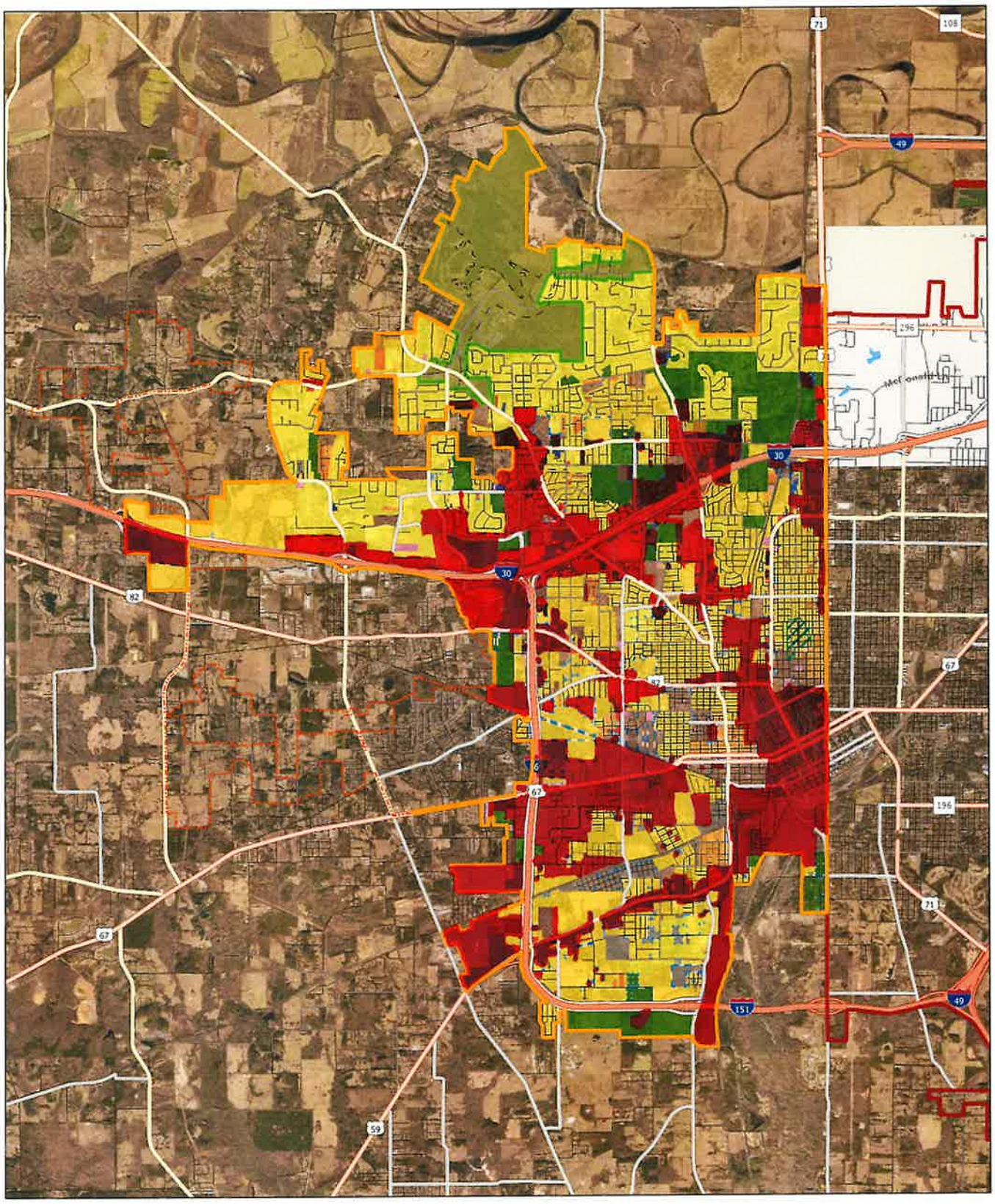
Stealth Tower

https://www.raycap.com/products/tree-towers/

https://www.raycap.com/products/towers-silos-signs/

Attachment: 2024-021 ATTH 03 Tower Pictures (4173 : 2024-021 ORD Cell Towers)

Telecommunications Tower Locations **ArcGIS Web Map** Allowed as Use by Right



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Zoning Texarkana TX
- Agricultural District
- Neighborhood Service
- Limited Commercial
- Commercial
- General Retail
- Central Business District
- Office
- Industrial 1
- Industrial 2
- Parking

Area Towers are Allowed

1:72,224

0 0.5 1 2 mi

0 1 2 4 km

City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

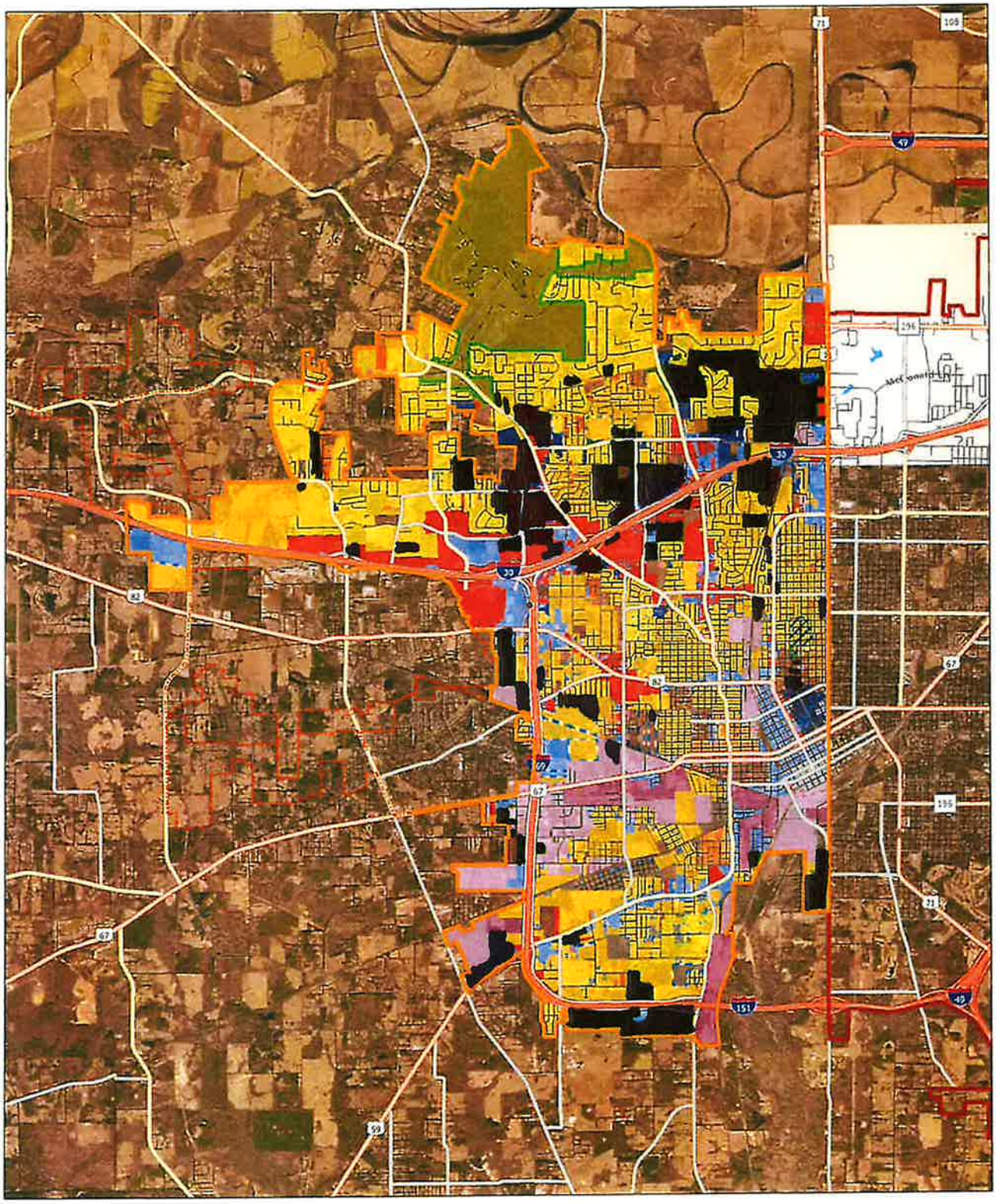
City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USF

ArcGIS Web AppBuilder

Attachment: 2024-021 ATTH 04 Use by right & SUP for towers (4173 : 2024-021 ORD Cell Towers)

SUP Required for Tower Placement

ArcGIS Web Map



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Zoning Texarkana TX
- Agricultural District
- Neighborhood Service
- Limited Commercial
- Commercial
- General Retail
- Central Business District
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- Industrial 1
- Industrial 2
- Parking

SUP Required for Tower

1:72,224

0 0.5 1 2 mi
0 1 2 4 km

City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

ArcGIS Web AppBuilder

City of Texarkana, TWU, Arkansas GIS Office, Texas Parks & Wildlife, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS | none | GISMO |

Attachment: 2024-021 ATTH 04 Use by right & SUP for towers (4173 : 2024-021 ORD Cell Towers)

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: 2024-021 Goals & Perspectives (4173 : 2024-021 ORD Cell Towers)

City of Texarkana, Texas

Version: A

Briefing Sheet

Update Date: 3/22/2024 9:30 AM

Lead Department: Building Code Administration **Action Officer:** Mashell Daniel,

Subject: Ordinance No. 2024-028 amending the Zoning Code, Chapter 140, Article V - Special District Regulations, Section 140-111, "UPDD University Planned Development District", by amending subsections 140-111(e) and 140-111(h) to provide for "wayfinding guides" applicable for educational institutions.

Briefing: 3/25/2024 **Public Hearing:** 3/25/2024 **Council Vote:** 3/25/2024

Item Schedule

Schedule 2: Brief once - vote once (two weeks)

Updates/History of Briefing:

N/A

Executive Summary and Background Information:

Texas A&M University – Texarkana has requested to allow the use of way-finding banners to existing street light poles along University Drive on each side of their main entrance. These way-finding guides are defined as a network of signs, minimal in number, installed and maintained by educational institutions to which the Texas Education Code applies, which guide the traveling public to said institution.

In order to receive approval, the University will have to submit signage locations, details of the proposed design and graphics, an updated site plan, and written permission from the pole owner in which the way-finding guides will be placed. When all documents are sufficient, the UPDD Committee will review the request through the site plan approval process.

Potential Options:

Approve or deny

Fiscal Implications:

NOT APPLICABLE

Staff Recommendation:

Staff recommends for approval.

Advisory Board/Committee Review:

Planning and Zoning Commission

Board/Committee Recommendation:

Recommendation for approval

City of Texarkana, Texas

Advisory Board/Committee Meeting Date and Minutes:

March 4, 2024

Attachments

a. 2024-028 ORD Wayfinding UPDD v2 (DOCX)
b. 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (DOCX)
c. 2024-028 ATTH 02 UPDD w-wayfinding revised [short detail] (DOCX)
d. 2024-028 ATTH 03 TAMU-T Banner Examples (PDF)
e. 2024-028 Goals & Perspectives (DOCX)

Staff Coordination

Building Code Administration		Mashell Daniel	Reviewer	Completed
	03/06/2024 2:34 PM			
City Attorney	Jeffery C. Lewis	Department Head Review	Completed	
	03/06/2024 3:14 PM			
Public Works Department		Dusty Henslee	Reviewer	Completed
	03/06/2024 3:18 PM			
City Manager	David Orr	Reviewer	Completed	03/07/2024
10:35 AM				
City Manager	David Orr	City Manager Review	Completed	03/07/2024
10:35 AM				
City Council	Jennifer Evans	Meeting	Completed	03/11/2024
6:00 PM				

Meeting History

PUBLISH

ORDINANCE NO. 2024-028

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AMENDING THE ZONING CODE, CHAPTER 140, ARTICLE V – SPECIAL DISTRICT REGULATIONS, SECTION 140-111, "UPDD UNIVERSITY PLANNED DEVELOPMENT DISTRICT", OF THE CODE OF ORDINANCES OF THE CITY OF TEXARKANA, TEXAS, BY AMENDING SUBSECTIONS 140-111(e) AND 140-111(h) TO PROVIDE FOR "WAYFINDING GUIDES" APPLICABLE TO EDUCATIONAL INSTITUTIONS; CONTAINING SEVERABILITY AND SUPERSEDING CLAUSES; CONTAINING LEGISLATIVE FINDINGS; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

Recitals

WHEREAS, Texas A & M University – Texarkana has requested authorization to install and maintain wayfinding guides at the entrance of the campus located in the University Planned Development District at University Drive; and

WHEREAS, wayfinding guide signs have been described as a systematic network of directional signs installed and maintained by a city to guide the traveling public to major civic, cultural, visitor, and recreational destinations within a specified region with the minimum number of signs; the goal of such a system should be to call out and promote a region's most prominent features and assets, but only as required to serve visitor guidance **[***source***:** TxDOT Guidelines for Wayfinding Guide Signing, v. 6/2007]; and many educational institutions use wayfinding guide signs to direct the traveling public to said institution and to enhance campus aesthetics; and

WHEREAS, the Texas Education Code, referencing "educational institutions", generally provides that "[t]his code applies to all educational institutions supported in whole or in part by state tax funds unless specifically excluded by this code" [Tex. Educ. Code Sec. 1.001(a)]; and

WHEREAS, during the regular meeting of the Planning & Zoning Commission on March 4, 2024, the Commission unanimously recommended approval of this ordinance, revising the Zoning Code to authorize wayfinding guide signs for educational institutions in the University Planned Development District; and

WHEREAS, the City Council finds and determines that this ordinance: furthers state and local policy for citizens' access to educational institutions; provides for an administrative process specific to the request of wayfinding guides; is necessary to preserve the good government, order, and security of the municipality and its inhabitants; and is in the best interests of the citizens of the City of Texarkana, Texas.

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

SECTION 1: The Zoning Code, Chapter 140, Article V, Special District Regulations, Section

Attachment: 2024-028 ORD Wayfinding UPDD v2 [Revision 1] (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

PUBLISH

140-111, "UPDD University Planned Development District", is hereby amended to provide for "Wayfinding guides" applicable to educational institutions, as follows:

A. The following definition is added to subsection (h):

> *Wayfinding guides* means a network of signs, minimal in number, installed and maintained by an educational institution to which the Texas Education Code applies, utilized as a traffic control device in off-street or access areas, whose primary purpose is to direct traffic to said institution.

B. The heading to subsection (e) is amended as follows (additions underscored):

> (e) Building and site design.

C. Item nos. 3, 4, and 5 of subsection (e)(6), "Sign regulations (excludes Single-Family Residential)", sub-part c, "Location", are amended as follows (additions underscored, deletions strikethrough):

> 3. Excepting Wayfinding guides, s~~S~~igns shall not be inside a ROW; ~~and~~
> 4. Signs can be located within a city utility easement, but any repairs or damage incurred ~~occurred~~ to signage due to utilities will be at owner's expense; and
> 5. Wayfinding guides shall only be allowed within 1,000 feet each direction from the street entrance/entrances to the educational institution site; and such guides can be attached to existing street light poles (provided, however, if a pole is not city-owned, written permission from the pole owner shall be a prerequisite to the site plan submittal).

D. Subsection (e)(6)d.2.(ii) is amended as follows (additions underscored):

> (ii) Banners (exception: Wayfinding guides)

E. Subsection (e)(8)b.3(iv) is amended as follows (additions underscored):

> (iv) Signage location and detail (including, for Wayfinding guides, proposed design and graphics);

F. Subsection (e)(8)b is amended to add item no. 7, as follows:

> 7. Changes to an approved site plan shall adhere to the same process as required by this section.

SECTION 2: In the event a section, clause, sentence, or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair

Attachment: 2024-028 ORD Wayfinding UPDD v2 [Revision 1] (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

PUBLISH

or invalidate the remainder of this Ordinance.

SECTION 3: In the event of any conflict between this Ordinance and any other ordinances or parts of ordinances, this Ordinance shall supersede and control.

SECTION 4: The Recitals set out in this Ordinance are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

SECTION 5: The City Secretary shall give notice of the passage of this Ordinance as provided in Article XI, Section 3, of the Charter of the City of Texarkana, Texas.

SECTION 6: This Ordinance shall be in full force and effect ten (10) days after its passage and approval.

PASSED AND APPROVED in Regular Council Session on this the **25th day of March, 2024**.

ATTEST:

_____	_____
JENNIFER EVANS, CITY SECRETARY	BOB BRUGGEMAN, MAYOR

Attachment: 2024-028 ORD Wayfinding UPDD v2 [Revision 1] (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

Sec. 140-111. UPDD University Planned Development District.

(a) *Purpose of district.* The purpose of this district is to provide appropriate design standards for the development of properties within the UPDD University Planned Development District boundary. These standards recognize and support the area's unique development character and significance of the university as a primary source for development in this subject area. This article's purpose and vision are paraphrased below in the goals of the district.

(b) *Goals of the district.*

(1) *Land use.*

a. Provide for a more compact and integrated mix of land uses and densities that will encourage economic vitality, maintain and embrace the integrity of the existing single-family neighborhoods, efficient use of land and city services and a strong sense of community.

b. Provide a greater variety of housing to accommodate a broad range of student and family demand, including both more urban style housing within walking distance of campus amenities and to integrate and complement the existing, single-family housing within the UPDD.

c. Retail areas should be designed to be pedestrian-oriented and be integrated with neighboring residential and commercial areas. This could be created through a mixed-use project that serves as a transition from retail to its surroundings, by the inclusion of walkways, roadways, trails and other means of access.

d. Strengthen the university's position as the cultural heart of the district by encouraging retail, restaurant and residential uses with development standards designed to enhance the district's form, character and function.

(2) *Framework.*

a. Provide University Avenue with landscaping, furnishings and public art to enhance the university lifestyle, and provide the district with cohesive design elements that accommodate vehicular, pedestrian and bicycle traffic.

b. Ensure that the character of both private and public buildings and structures reflects a sense of permanence and public pride through prominent locations and high quality of design, landscaping, materials and construction.

c. Identify and protect sceneries that contribute to the district's character and uniqueness, particularly Bringle Lake.

(3) *Development.*

a. In the mixed-use areas set out in this plan, the site layout for commercial and for loft, townhome and urban housing developments should encourage buildings to be placed close to the roadway, with parking primarily located to the rear or side of buildings.

b. Landscaping must be designed, installed, maintained and replanted to ensure that design objectives and the long-term health of plant materials are achieved.

c. Building facades should be consistent with the overall Texas A&M University-Texarkana (TAMU-T) Campus. The facades of large commercial buildings should be designed and detailed in a manner and scale that minimizes their visual impact on the district.

d. Implement sign standards to minimize visual clutter while providing clear identity and information.

e. Use site design considerations including layout, screening and buffering to minimize negative visual impacts on adjacent properties.

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

(4) University district design concept (from TAMU-T campus entrance to University Avenue Bridge). Boundary areas (refer to UPDD site map):

a. *Area boundaries.* UPDD development areas are those areas within close proximity to Texas A&M University-Texarkana campus and the University Corridor from Richmond Road to Summerhill Road, as shown in the boundary map on file in the city secretary's office.

b. *Compliance required.* All property within the boundaries of the UPDD shall adhere to the UPDD development standards.

c. *Application to develop inside UPDD.* Upon receipt of a request for building permit or subdivision plat within the designated UPDD development area, the applicant will receive a copy of the UPDD development standards and submittal requirements.

(c) *UPDD zoning districts established.* The UPDD is hereby divided into nine zoning districts. The use, height and area regulations as set out herein are uniform throughout each district. The boundaries of the zoning districts set out herein are delineated by the zoning district map of the UPDD on file in the city secretary's office. The nine districts established herein shall be known as:

(1) Texas A&M University-Texarkana Campus.

(2) Reserved.

(3) Retail and Mixed Uses.

Additional Retail and Mixed Uses.

(4) Bringle Lake and park.

(5) Single-Family Residential.

(6) Mixed-Use Residential.

(7) Office and Residential Uses.

(8) Richmond Road Mixed-Use Development.

(9) Summerhill Road Retail Development.

(10) Future district expansion.

(d) *Use regulations.* A church or chapel is allowed in all areas.

(1) Texas A&M University-Texarkana Campus:

a. Office use;

b. Educational buildings;

c. Public schools;

d. Food services;

e. High density university housing;

f. Parking garages;

g. Sporting event centers; and

h. College or university.

(2) Reserved.

(3) Retail and Mixed Uses:

a. School, public;

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

b. Bank, credit union, or financial services;

c. Food and beverage store (no package stores);

d. Restaurant or eateries (no drive-thru service allowed east of bridge) roof top/patio/outside seating allowed (only along Bringle Lake frontage);

e. Office use;

f. Mixed uses with ground floor retail, personal services and/or offices, upper floor condominiums;

g. Brownstone condominiums;

h. Department stores;

i. Dry cleaner stores with cleaning facilities outside the UPDD;

j. Civic, cultural, and community facilities;

k. Medical clinic;

l. Coffee, bakery or confectionary shop;

m. Retail and shops under 10,000 square feet of gross leasable floor area; and

n. Single-family homes (site-built homes, not modular or industrial/manufactured homes).

(4) Additional Retail and Mixed Uses:

a. Hotels;

b. Apartments, townhomes;

c. University housing;

d. Restaurant or eateries (drive thru service allowed east of bridge);

e. Parking garages;

f. Drug store or pharmacy; and

g. Cinema/theatre.

(5) Bringle Lake and Park:

a. Nature and walking/mountain biking trails;

b. Park pavilions and picnic areas;

c. Playgrounds;

d. Boat ramps; and

e. Park buildings (including restrooms, maintenance and offices).

(6) Single-Family Residential: Single-family homes (one unit per lot, only site-built homes no modular or industrial/manufactured homes).

(7) Mixed Use Residential (no apartments, townhomes or duplexes allowed):

a. Brownstone townhome/condominiums; and

b. Single-family homes (one unit per lot, only site-built homes no modular or industrial/manufactured homes).

(8) Office and Residential Uses:

a. Office use;

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b. Single-family homes (one unit per lot, only site-built homes no modular or industrial/manufactured homes); and

c. Brownstone townhomes/condominiums.

(9) Additional Retail and Mixed Use:

a. Special event venue; and

b. Bed and breakfast inn.

(10) Richmond Road Mixed Use Development: All that is allowed in Retail and Mixed-Use, plus:

a. Fast food eateries;

b. Gas stations;

c. Townhomes (no duplexes, triplexes or apartments);

d. Day care facility;

e. Neighborhood health center;

f. Landscape maintenance business with outdoor display sales and equipment;

g. Application of permanent cosmetics;

h. Mini-warehouse development with retail and/or office uses fronting on Richmond Road, University Avenue, Kings Highway or Pleasant Grove Road;

i. Garden shop and plant sales;

j. Veterinarian (office only);

k. Barber and beauty shop; and

l. Day spa.

(11) Summerhill Road Retail Development (all that is allowed in Mixed Use Residential), plus:

a. Food and beverage store (no package store);

b. Fast food eateries;

c. Gas stations;

d. Offices;

e. Retail stores;

f. Dry cleaners; and

g. Coffee, bakery or confectionary shop.

(12) Future Development (golf course and Bringle Lake Park property):

a. Golf course;

b. Golf course amenities;

c. Golf course clubhouse with restaurant and bar;

d. Golf course clubhouse gift shop; and

e. Park green space.

(e) *Building and site design.*

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(1) *Height regulations (see University District map).* In the following zoning districts, the maximum height of buildings and structures shall be:

a. Texas A&M University-Texarkana Campus—No height restriction.

b. (Removed from district).

c. Retail and Mixed Uses—Three stories (35-foot maximum) six stories.

d. Additional Retail and Mixed Uses.

e. Bringle Lake and Park—2½ stories (35-foot maximum).

f. Single-family Residential—2½ stories (35-foot maximum).

g. Mixed Use Residential—3½ stories (40-foot maximum).

h. Office and Residential Uses—2½ stories (35-foot maximum).

i. Richmond Road Mixed Use Development—3½ stories (40-foot maximum).

j. Summerhill Road Retail Development—2½ stories (35-foot maximum).

k. Future Development—2½ stories (35-foot maximum).

(2) *Architectural style requirements; applicability.* All structures/buildings with the exception of Single-Family Residential within the district shall comply with the standards in this section.

a. *Exterior building material requirements; masonry requirement*. One hundred percent of the exterior of all buildings (excluding doors and windows) shall be finished in one or more of the following materials:

1. Brick, stone, cast stone, rock, marble and/or granite shall be used in at least 50 percent of exterior walls of the building.

2. Exterior Insulating Finishing System (E1FS) shall not exceed 30 percent of any exterior wall of the building, nor be located in the first ten feet of the structure.

3. Glass with less than 20 percent reflectance. However, only a maximum of 30 percent of a building facade may be constructed in glass. Buildings over three stories will be allowed to increase glass surface with UPDD site plan approval.

4. Poured-in-place concrete and tilt-wall concrete shall have an integrated color and be textured or patterned. Tilt-wall concrete structures shall include reveals, punch-outs, or other similar surface characteristics and adornments to enhance the facade on at least ten percent of each facade.

5. Wood and concrete board, such as Hardy Plank or other similar material, properly installed may be allowed up to 30 percent of a facade, excluding all windows, doors and glass construction materials.

6. Established chain restaurants and national retailers with specific tradedress designs will be allowed with UPDD site plan approval.

b. *Architectural features.* The facades of all primary commercial and multifamily structures which face a street shall include the following key architectural features:

1. Classical architectural elements, such as a distinct base, wall, columns and cornice or top.

2. The use of covered walkways, architectural awnings, canopies or porticos is required along the primary facade.

3. Windows, which may include see-through doors, shall be provided along all facades which face streets.

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4. TAMU-T University is the focal point of the district and designs shall enhance or complement the overall architectural features of the campus.

c. *Roofs.*

1. Roofline variations are required to reduce the visual scale of buildings and to create additional interest. The roofs of nonresidential and multifamily residential buildings shall include:

(i) Parapet walls that conceal flat roofs and rooftop equipment from public view at adjacent public streets. Parapet walls shall vary in height and will include architectural detailing, cornices, moldings, trims, variations in brick coursing and/or other similar type detailing.

(ii) Or at least two of the following elements:

A. Overhanging eaves, extending no less than 18 inches past the supporting walls.

B. Two or more roof slope planes.

C. Sloped roofs shall be finished with tile, 30-year or better deep profile composite shingle, metal shingles, slate shingles or standing seam metal. UPDD site plan approval is required for material color.

D. Roof top patios.

2. Single-family residential buildings shall have sloped roofs.

3. Brownstone townhomes shall have sloped roofs on 75 percent of the building.

d. *Color.* All commercial and multifamily buildings shall comply with the standards in this section.

1. Exterior colors shall be low reflectance, subtle, neutral, earth tone or colors compatible with the surrounding area. Some color recommendations are neutral or earth tones such as beige, brown, white, earthy greens and yellows or colors matching with the university, such as a muted red brick.

2. The use of high intensity, primary or fluorescent colors is prohibited.

3. Established chain restaurants with specific tradedress colors will be allowed with UPDD site plan approval.

e. *Retaining walls; visible.*

1. Retaining wall blocks and designs shall consist of the same materials as the building facade. Keystone or gravity stone may also be used in a color palette consistent to the color palette of the facade.

2. Retaining wall blocks and designs are required to be detailed in the site plan approval process.

3. Nonvisible. Alternate materials must be approved by the UPDD.

(3) *Site design.*

a. Building placement and site orientation (except Single-Family Residential).

1. Minimum setbacks from property lines adjacent to University Avenue:

(i) Fifteen-foot front yard setbacks;

(ii) Ten-foot side yard setbacks;

(iii) Fifteen-foot rear yard setback.

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2. Minimum setbacks from property lines not adjacent to University Avenue:

    (i) Fifteen-foot front yard setbacks;

    (ii) Five-foot side yard setbacks;

    (iii) Five-foot rear yard setback.

3. Minimum setbacks from property lines adjacent to Bringle Lake:

    (i) Fifteen-foot front yard setbacks (facing university);

    (ii) Ten-foot side yard setbacks;

    (iii) Zero-foot rear setback for deck (lake side);

    (iv) Twenty-foot rear setback for building (lake side).

4. Minimum setbacks from property lines for Brownstone townhome/condominium:

    (i) Fifteen-foot front yard setbacks (facing university).

    (ii) Ten-foot side yard setback from end of building cluster. No side yard setback is required between attached buildings.

    (iii) Five-foot rear yard setback.

    (iv) A brownstone condominium shall not contain more than eight dwelling units and shall not exceed 200 feet in length.

5. Buildings not adjacent to the lake should be located as close as possible to the front property line to improve the overall appearance from adjacent streets and provide a strong building wall on either side of street.

6. Site layouts on individual lots shall be developed in such a manner that pedestrian connections between buildings both on that lot and between lots within the overall district can be achieved.

7. Residential parking areas shall be placed at the side or rear of buildings adjacent to University Avenue to improve the overall appearance from the streets.

b. *Single-family residential building placement and site orientation.*

1. Minimum setbacks from property lines adjacent to University Avenue:

    (i) Twenty-five foot front yard setbacks;

    (ii) Eight-foot side yard setbacks;

    (iii) Ten-foot rear yard setback.

2. New driveways for Residential Use must provide an on-site turn-around to prevent backing out onto University Avenue.

c. *Accessory uses.*

1. Residential accessory buildings are structures allowed only within a residential dwelling unit. These structures shall be of consistent material and color to the primary structure and located in the rear yard only. Accessory buildings shall not exceed 50 percent of the rear yard. Only one of each type listed below is allowed per lot:

    (i) Storage building or shed;

    (ii) Free standing garage;

    (iii) Workshops;

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(iv) Gazebos; and

(v) Pool house.

2. Commercial accessory buildings shall be of the same material and color of the primary structure.

d. *Lot regulations.* The following table provides information on lot regulations:

Dwelling Type	Minimum Lot Area Per Dwelling Unit (S.F.)	Minimum Lot Width (Feet)	Minimum Lot Depth (Feet)	Lot Coverage
Single-family	12,000	90	100	40%
Duplex	5,000	70	100	40%
Triplex	3,000	70	100	40%
Fourplex	2,500	70	100	50%
Townhouses	1,600	16	100	60%
Apartments/condominiums	1,800	60	100	60%
Mixed use lofts	1,000	n/a	n/a	60%
Dorms	550	n/a	n/a	60%
Nonresidential	n/a	n/a	n/a	50%

e. *Parking regulations.*

1. *Parking space requirements.* It is the intent of the district to be a pedestrian friendly community. In the event of a UPDD parking garage, parking minimums may be decreased. Credit can be given for bike racks. The following table provides parking requirements per building use:

Building Use	Parking Requirements
Hotel	One space per guestroom, one space per employee per shift, one space per three seats in meeting room, (plus restaurant requirements)
Restaurant	One space per three seats, one space per employee per shift
Retail	One space per 200 square feet
Single-Family Residential	Two spaces per unit
Multiple-Family Residential	One space per bedroom, one designated visitor space per four units
Brownstone Townhome/ Condominium	Two spaces per unit, one designated visitor space per six units
QSR-Quick Service Restaurants	One space per 100 square feet

2. *Parking layout and access requirements.*

(i) No on-street parking will be allowed on University Avenue.

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(ii) No parking in grass, yard or landscaped areas.

(iii) No parking spaces shall be located in front of multiple-family residential units.

(iv) Parking space sizes shall be 180 square feet. Two-foot overhangs are allowed where a minimum five-foot sidewalk is provided or additional green space.

(v) Compact car off-street parking spaces may account for up to ten percent of the required parking spaces, provided the spaces are permanently designated by signs as being for use by compact cars only. All compact car parking spaces shall be a minimum eight feet in width and a minimum of 16 feet in depth.

(vi) All parking areas shall provide a drive aisle connection to adjoining properties for cross access. Pedestrian connections shall also connect to adjoining properties.

(vii) Three public pedestrian access points will be required from University Avenue to the lakefront boardwalk. These points are subject to development location and access shall be required. Maintenance of these boardwalk connections located off of private property will be the city's responsibility.

(viii) Required stacking space for drive-through aisles shall be a minimum of three vehicles and shall not block parking drive aisles or passageways. Stacking space shall not impair the streetscape of University Avenue.

(ix) Parking areas and driveways shall be concrete with curb and gutter. However, the utilization of other paving materials not immediately adjacent to University Avenue is allowable with UPDD approval.

(x) In areas where sidewalk is not provided adjacent to University Avenue, continuous ten-foot wide concrete sidewalks shall be placed along the entire property frontage.

(xi) Installation of bicycle racks and seating benches are encouraged to accommodate pedestrian and bicycle traffic. Installation of bicycle racks and seating benches will offset parking space 1:1 for bicycle racks and 2:1 for seating benches up to a total of two parking spaces.

3. *Parking garage requirement.*

(i) Parking spaces for restaurants and businesses may meet requirements by using assigned parking garage spaces.

(ii) Parking deck shall conform to architectural style requirements of the UPDD.

(iii) UPDD lighting requirements must be followed, including LED interior lighting or approved equivalent for parking areas.

(iv) It is encouraged that the structure be mixed use with retail space available on the ground level.

f. *Site drainage*.

1. All parking lot runoff shall be directed to sanitary sewer. Any collection of drainage shall be filtered of hydrocarbons before leaving the site. Proper maintenance of the filtration is the responsibility of the property owner.

2. Lakefront properties may be allowed to direct runoff towards Bringle Lake. Any discharge towards the lake shall be filtered of hydrocarbons, debris and harmful chemicals to fish and wildlife. Proper maintenance of the filtration is the responsibility of the property owner.

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3. All drainage calculations, sizing and reporting to city engineers shall follow the city drainage ordinance with exceptions as noted in the UPDD.

4. All stormwater pollution prevention shall be in accordance with the city MS4 permit.

(4) Landscaping, fencing and screening requirements.

a. A landscaping plan, including planting and irrigation details, shall be submitted in conjunction with the site plan review process. The landscape plan can either be a separate print or be included on the required site plan print. Minimum information required on the landscape plan shall include:

1. Locations of existing boundary lines, dimensions of the lot or property, proposed and existing utility easements on or adjacent to the lot and location of overhead power lines and any underground utilities.

2. The location of the proposed water faucets or a note indicating the installation of the irrigation system covering the entire lot.

3. A plant schedule listing the botanical and/or common names of all plants and the size of plant material, date, scale, north arrow, name and phone number.

b. Landscaping shall be required on all developments (except Single-Family Residential) and shall be completed prior to the issuance of the certificate of occupancy.

c. Tree preservation.

1. The preservation of existing trees is encouraged throughout the district. No tree over 12 inches caliper shall be removed in the district without a UPDD approved site plan.

2. All site plans shall be submitted with a tree survey showing location, size, and type of all trees greater than 12 inches in diameter. Additionally, it shall be indicated on all site plans if these trees are to be retained or removed.

3. Preservation of trees over 12 inches caliper shall be given landscaping credits:

(i) Twelve inches to 18 inches equals ten points.

(ii) Eighteen inches to 24 inches equals 15 points.

(iii) Twenty-four inches and larger equals 20 points.

d. Every site adjacent to University Avenue shall include a 15 foot buffer strip, landscaped and irrigated. The landscape buffer shall consist of trees, shrubs, groundcover, berms and related elements as specified below. All sidewalks shall be a minimum of four feet in width.

1. One three-inch caliper or greater deciduous shade tree per 75 feet of linear frontage along University Avenue. Large shade trees:

(i) Red maple (not silver maple);

(ii) White oak;

(iii) Red oak;

(iv) Shumard oak;

(v) Pin oak;

(vi) Additional selections must have UPDD approval.

2. A landscape screen with a minimum height of 18 inches and a maximum height of 36 inches (as measured from the finished grade of the parking area) shall be provided in locations where the landscape buffer separates a surface parking area from University

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Avenue. Landscape screens can be achieved through a combination of the following methods:

(i) Shrubbery hedges forming a continuous living screen not to exceed 36 inches in height. Shrubs shall be one or a combination of the following:

A. Yaupons;

B. Boxwoods;

C. Roses;

D. Yews;

E. Additional selections must have UPDD approval.

(ii) Earthen berms not to exceed 24 inches in height shall be allowed in conjunction with small planting on top of the berm.

(iii) Any landscaping shall conform to the required visibility triangles.

e. Every site adjacent to the Bringle Lake Wilderness Area, regardless of zoning use shall include a 15-foot buffer strip, landscaped and irrigated. The landscape buffer shall consist of trees, shrubs, groundcover, berms and related elements as specified in subsection (e)d. of this section.

f. A ten-foot tree landscape buffer and fencing as noted in subsection (e)5e. of this section. Screening and fencing requirements is required covering 70 percent of the buffer area with trees along the property line between area 5 and area 7 as shown on the UPDD map and shall also include the southern boundary of zone 8 and the southwestern boundary of zone 8 along the Briarwood Circle neighborhood through Parcel 6005.

g. Parking lot landscaping. Landscaped areas in a parking lot shall be contained within the parking area, based on the standards below:

1. One two-inch caliper tree and six shrubs shall be planted for each 12 parking spaces.

2. All new trees within a parking lot shall be planted in a landscaped island of at least 150 square feet and have a minimum dimension of 8½ feet, (e.g., 8.5 feet by 18 feet). However, up to 20 percent of the required trees may be planted in islands of at least 25 square feet and have a minimum dimension of five feet.

h. Remaining site landscaping. (Points will be allowed for landscaping in the ROW.)

1. In addition to the above requirements, landscape plans must earn a minimum of 100 points by using some or all of the required electives listed below in a project:

(i) Irrigation system—20 points.

(ii) Drought tolerant vegetation (50 square feet/minimum)—Ten points (maximum 20 points).

(iii) Grass/groundcover (50 square feet/minimum)—Ten points (maximum 20 points).

(iv) Small tree (each, see plant list)—Five points.

(v) Large tree (each, see plant list)—Ten points.

(vi) Planter box (each)—Five points (maximum ten points).

(vii) Landscape entry/exit (annuals)—Ten points (maximum 20 points).

(viii) Landscape around signage—Ten points.

(ix) Foundation planting—Ten points/facade side (maximum 20 points).

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i. All required landscaping shall be maintained in a neat and orderly manner at all times. This shall include mowing, edging, pruning or trimming, fertilizing, weeding, watering and other such activities common to the maintenance of landscaping. Plant materials which die shall be replaced with plant material of similar variety and size within 30 days, weather permitting.

j. No permits shall be issued for building, paving, grading or construction until a qualifying landscape plan is submitted. In the event that the proposed project is in a planned development district, a landscape plan is required as part of the site plan approval process by the city council.

k. Prior to the issuance of a certificate of occupancy for any building or structure all landscaping requirements shall be in place. If the building official determines that it would be impractical to plant trees, shrubs, grass or to lay turf, due to the season of the year, a temporary certificate of occupancy may be issued. All landscaping required by the landscaping plan must be installed within six months of the date of the issuance of the certificate of occupancy or penalties shall be applied.

l. Plant list. (Suggested, but other plants can be approved if plant zone requirements are met according to the temperature ranges of the Texarkana area):

Large Trees — 30 - 60 feet	
Oaks-Pin, Shumard, Red, White, Post, Live, Black, etc.	Quercus species
Pine-Loblolly	Pinus taeda
Ash	Fraxinus species
Maple Red (No Silver Maples)	Acer species
Bald Cypress	Taxodium distichum
Birches-River, Paper	Betula species
Elms-American, Cedar, Lacebark, Winged	Ulmus species
Southern Magnolia	Magnolia grandiflora
Pistache	Pistacia chinensis
Small (Accent) Trees — 10 - 20 feet	
Redbud	Ceris canadensis
Crape Myrtle (any species)	Lagerstroemia indica
Crab Apple	Malus angustifloia
Hollies-Foster, Nellie R. Stevens, Savannah	Ilex species
Loquat	Eriobotrya japonica
Magnolias-Jane, Little Gem, Saucer, Star, Sweet Bay, Tulip	Magnolia species
Redbuds-Chinese, Eastern, Mexican, Oklahoma, Texas	Cercis species
Vitex	Vitex agnus-castus
Wax Myrtle	Myrica cerifera
Japanese Maple	Acer palmatum
Dogwood	Cornus Florida
(Bradford Pears not recommended for this district)	
Shrubs — 3 - 8 feet	
Dwarf Crape Myrtle	Lagerstroemia indica nana
Yaupon Holly	Ilex vomitoria
Dwarf Yaupon Holly	Ilex vomitoria "Nana"

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Foster Holly	Ilex fosteri
Elaeagnus	Elaeagnus species
Fraser's Photinia	Photinia Fraseri
Abelia	Abelia grandiflora
Azaleas	Rhododendron species
Barberries-Crimson, Pigmy, Golden, Rose Glow, Wintergreen	Berberis species
Boxwoods-Harland, Japanese Wintergreen	Buxus species
Cleyera	Ternstroemia gymnanthera
Hollies-Dwarf Burford, Dwarf Chinese Carissa, Helleri	Ilex species
Nandinas-Dwarf, Fire Power, Gulf Stream, Harbour Dwarf	Nandina domestica species
Pittosporum	Pittosporum tobira
Sasanquas	Camelia sasanqua species
Spiraea	Spiraea japonica
Yews	Taxus species
Loropetalum Ruby	Loropetalum Chinese var. rubrum

(5) *Screening and fencing requirements (excludes Single-Family Residential).*

a. *Screening of mechanical equipment.*

1. Properties that may be viewed from residential uses, streets, lakefront or public park areas shall screen all roof, ground and wall-mounted mechanical equipment (compressors, duct work, transformers, meters, elevator equipment, etc.) from view at ground level on adjacent properties or public streets or parks.

2. Roof-mounted mechanical equipment shall be shielded from view on four sides; use of dog-house screening is prohibited. Screening shall consist of materials consistent with the primary building materials, and may include metal screening or louvers that are painted to blend with the primary building.

3. Screening shall result in the mechanical equipment blending in with the primary building, and not appearing separate from the building,

4. Wall or ground-mounted equipment screening shall be constructed of:

(i) Planting screens.

(ii) Brick, stone or other similar masonry materials.

(iii) Redwood or cedar pressure treated wood.

(iv) All fence posts shall be rust-protected metal, concrete-based masonry or concrete pillars.

(v) A combination of the above.

b. *Screening of outside storage.*

1. Outside storage shall be located on the side or rear of the primary building and shall be screened from public view on streets, lakefront or park areas.

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2. Outside storage shall be screened with a minimum seven foot tall screen or a screen that is a minimum of one foot above the top of the storage materials, whichever is taller. Screening shall be:

    (i) A masonry wall or other material that is similar to the primary structure.

    (ii) A berm.

    (iii) A planting enclosure of large evergreen shrubs planted a maximum of four feet apart that shall create a solid screen to a minimum height of seven feet within two years as determined by a registered landscape architect, certified nurseryman or master gardener.

    (iv) A combination of the above.

3. Outside storage for a landscape maintenance business shall be screened with an eight-foot fence with construction materials of brick or stone columns (maximum of 20 feet between columns) and a wooden fence stained or painted to compliment the business. Gates for access to the area will match fence materials.

c. *Screening of waste containers.*

1. Waste containers shall consist of the following:

    (i) Dumpsters.

    (ii) Compactors.

    (iii) Grease storage.

    (iv) Recycling containers.

    (v) Composting areas.

    (vi) Cardboard storage.

    (vii) Crates/pallets.

2. Waste containers shall be located on the side or rear of the building and screened from public view on streets, lakefront or public park areas.

3. Waste containers shall be located outside of the required building setback areas:

    (i) When adjacent to residentially zoned property, the waste container must be located at least 50 feet away from residential property lines.

    (ii) When adjacent to the lakefront, the waste container must be located at least 50 feet away from the northern property line.

4. Waste containers shall be screened on four sides, using an enclosure that is seven feet tall or of a height that is a minimum of one foot above the top of the dumpster, whichever is taller.

    (i) Screening materials shall match the primary masonry structure exterior.

    (ii) Gates shall be solid and painted to match the primary structure. Gate materials shall consist of metal, redwood or cedar pressure treated wood. All fence posts shall be rust-protected metal, concrete-based masonry or concrete pillars.

5. Any drainage runoff occurring from dumpster shall be incorporated with overall drainage plan and filtered of pollutants.

d. *Screening of loading and service areas.*

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1. Loading and service areas shall be located at the side or rear of buildings. Exception: Lakefront developments shall not have loading docks adjacent to the lake.
2. Loading areas shall be screened from view of any residential uses, streets, lakefront or public park areas.
3. Loading areas shall be enclosed on three sides by a wall not less than eight feet in height.
4. Loading areas shall not be located closer than 50 feet to any single-family lot, unless wholly within an enclosed building.
5. Screening materials shall be comprised of a wall that has a similar finish and material to the primary structure.

e. *Fencing.*

1. Fencing shall be required whenever a nonresidential development abuts to a single-family and multiple-family residential area. Multiple-family residential areas shall be fenced if adjacent to a single-family residential area. Fencing shall be required when the property is developed and shall be maintained by the property owner.
2. Fencing shall create a solid visual barrier.
3. Fencing materials shall be limited to the following or a combination of the following: stone, brick, decorative spit faced block masonry, decorative concrete or other masonry materials.
4. To create a consistent fence line, fencing along that line, shall be similar in material, pattern and design.
5. Fences shall be a minimum of seven feet in height, measured from ground level.
6. Fencing shall not block drainage and shall leave a two-inch space between the ground and the fence. Should drainage require additional spacing, sufficient drainage plans and fence elevations must be provided with UPDD site plan approval.

f. *Retaining walls*. See subsection (e)(2) of this section, architectural style requirements.

(6) *Sign regulations (excludes Single-Family Residential).*

a. *Monument signage.* A permanent ground sign fully supported by the base without the use of poles as the primary support that is constructed out of brick, stone, concrete or similar materials that complement the architecture of the primary structure, across the entire base of the structure.

Building Use	Maximum Height (Feet)	Maximum Copy Area (square feet)	Maximum Total Area (including copy area square feet)	Number of Signs	Minimum Spacing (feet)
Commercial, Restaurant, Office or Retail	6	60	90	One per street frontage	60
Apartments or High-Density Residential	6	30	45	One per street frontage	60

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Multitenant Mixed Use Development, three tenants or less	8	80	110	One per street frontage	60
Multitenant Mixed Use Development, four tenants or more	10	120	150	One per street frontage	100
Directional	2.5	8	n/a	One per drive	n/a

b. *Lighting.*

1. Sign shall be internally lit or lit by the use of ground lighting incorporated with landscaping (no flood lighting);
2. No neon lighting;
3. No electronic or changeable messaging; and
4. Exception: each entrance into the UPDD will be allowed one electronic or changeable message sign. This sign will have joint use of the district for advertising purposes.

c. *Location.*

1. Signs must be located within 30 feet of ROW;
2. Signs shall not block sight distances;
3. Excepting Wayfinding guides, signs shall not be inside a ROW; ~~and~~
4. Signs can be located within a city utility easement, but any repairs or damage incurred ~~occurred~~ to signage due to utilities will be at owner's expense; and
5. Wayfinding guides shall only be allowed within 1,000 feet each direction from the street entrance/entrances to the educational institution site; and such guides can be attached to existing street light poles (provided, however, if a pole is not city-owned, written permission from the pole owner shall be a prerequisite to the site plan submittal).

d. *Business name.* Name of business and main address must be located on a single tenant sign.

1. *Wall signage*. Signs should be located and attached to the exterior of a building.
   (i) Attached signs shall not extend above the roof or parapet wall;
   (ii) Wall signs shall not exceed 150 square feet per wall facade. An additional ten square feet of signage will be allowed per 20 feet in building height over 35 feet in height;
   (iii) Lake front signage shall be limited to 30 square feet in area; and
   (iv) Individual letter height shall not exceed six feet.
2. *Prohibited signs.* The following are signs not allowed in district:
   (i) Off-premises advertising signs;
   (ii) Banners (exception: Wayfinding guides);
   (iii) Flags (does not include TAMU-T flags, state or United States of America flags);
   (iv) Inflatable objects;

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

(v) 3-D imaging;

(vi) Streamers or balloons;

(vii) Coroplast, stake or placards;

(viii) Flashing or arrow signs;

(ix) A-frame or sandwich boards;

(x) Writing on windows;

(xi) Exception: on-campus signage is not regulated.

(7) *Lighting (excludes Single-Family Residential).* The intent of the lighting is to enhance amenities, promote safety and encourage dark skies. In an effort to promote dark skies, excess lighting can be limited by the UPDD.

a. The following standards shall apply to all outdoor lighting:

1. The use of LIED lighting or approved equivalent is required for all outside fixtures in the UPDD;

2. Structures of pole lighting shall match or complement the street light pole design;

3. Lighting for parking light poles shall have a maximum of 20 feet;

4. No flood lighting will be allowed;

5. Ground lighting or up lighting can be used along parking lots, screening and landscaping areas;

6. Christmas outdoor lighting will be consistent for the overall UPDD with the same signage restrictions as section 6;

7. Outdoor lighting shall be hooded, shielded, and aimed downward as shown in the images below, including doorway lighting;

8. The hood or shield shall mask the direct horizontal surface of the light source. The light shall be aimed to ensure that the illumination is only pointing downward onto the ground surface;

9. All outdoor lighting fixtures shall be designed, installed, located and maintained such that all direct illumination is kept within the boundaries of the fixture owner's property;

10. Ground mounted accent lighting for buildings, directed onto the building.

(i) Direct light emissions shall not be visible above the roofline or beyond the building edge.

(ii) All upward aimed light shall be fully shielded, fully confined from projecting into the sky by eaves, roofs or overhangs and all fixtures shall be located as close to the building being illuminated as possible.

(iii) All ground mounted accent fixtures shall be permanently fixed such that they are resistant from tampering or redirection of the light source. Ground mounted spotlights shall not be located in such a way as to have the bulb or lamp visible from a pedestrian or vehicular egress.

11. Pedestrian walkway lighting 12 feet or less in height above the adjacent walkway grade may be permitted. This includes lighting applications such as bollards, light fixtures located in retaining and landscape walls, and lighting fixtures located on or within structures utilized for pedestrian safety, for example, stairwell lighting.

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

(8) *Site plan approval process.*

a. The site plan approval process will be a review to assure compliance, by a five-member panel consisting of the director of city planning or zoning, or their designee, the planning and zoning chairperson, the city engineer, or their designee, and two citizens of Ward 5 who reside in the city limits as shown by the member committee zone map (exhibit "D"). The citizen members shall serve no more than one consecutive three-year term. The initial term of one citizen member shall be two years, which citizen member to be determined by lot or chance. Appointment of the citizen members shall be by nomination from the Ward 5 city councilmember then sitting with confirmation by a vote of the city council.

b. Site plan submittal requirements for UPDD.

1. The site plan shall be clearly defined and drawn to an appropriate scale to permit accurate review for compliance with UPDD standards.

2. Two copies of the site plan shall be given not to exceed 24 inches by 36 inches. The site plan shall be drawn on dimensionally stable reproducible sheets and shall be appropriately drafted at an engineering scale of one inch equals 30 inches or larger.

3. The following features, as a minimum, shall be required on all site plans before they will be accepted for review:

(i) Legal description, address, property lines and dimensions;

(ii) Location, sizes and names of adjacent or included streets, alleys, easements and cross connectivity agreements;

(iii) Location, setbacks, dimensions and square footage of existing/proposed buildings, existing/proposed elevations with finished floor elevation;

(iv) Signage location and detail (including, for Wayfinding guides, proposed design and graphics);

(v) Location of buildings on adjoining property within 20 feet of the subject property;

(vi) Location and dimensions of existing/proposed parking spaces, driveways, vehicle maneuvering areas, curb cuts, loading facilities and sight visibility triangle areas;

(vii) Parking calculation table;

(viii) Existing/proposed surfacing, landscape/buffer areas and screening or fencing;

(ix) Location of facilities for refuse disposal with appropriate screening;

(x) Landscape and irrigation plan;

(xi) Lighting plan, including foot candles and areas affected by the lighting;

(xii) Drainage direction and outfall, filtration device, location type and size of drainage facilities (calculations when necessary);

(xiii) Proposed uses, north arrow, graphic scale and date of plan preparation;

(xiv) Floodplain limits, if applicable.

4. Where not stated in the UPDD, all building codes, drainage ordinances, subdivision platting and stormwater MS4 will still apply.

5. If denied, the appeal process for the site plan approval will go to the planning and zoning commission for recommendation to the city council. The city council will make the final

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

decision. If the planning and zoning commission recommends for denial, a percent vote of the city council will be required.

6. To amend this district, a request will be filed with the planning and zoning commission. If the request is recommended by the planning and zoning commission, it will be sent to the city council.

7. Changes to an approved site plan shall adhere to the same process as required by this section.

(f) *Penalty.* Any person violating or failing to comply with any of the provisions of this article shall be fined upon conviction not less than $500.00 or more than $2,000.00, and each day any violation or noncompliance continues shall constitute a separate and distinct offense.

(g) *Applicability of other city ordinances.* This article shall take precedence over any other city ordinance governing the matters contained herein. However, any matter not specifically controlled by this article shall continue to be governed by any other city ordinance that may be applicable.

(h) *Definitions.*

Accessory use means a use subordinate to and incidental to the primary use of the main building or to the primary use of the premises.

Apartment means a room or suite of rooms in a multifamily dwelling or apartment house arranged, designed or occupied as a place of residence by a single-family, individual or group of individuals.

Building means any structure built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind. When subdivided in a manner sufficient to prevent the spread of fire, each portion so subdivided may be deemed a separate building.

City council means the governing body of the city.

Coverage means the percent of a lot or tract covered by the roof or first floor of a building. Roof eaves to the extent of three feet from the walls of a building shall be excluded from coverage computations.

District means a section of the city for which the regulations governing the area, height or use of the land and buildings are uniform.

Dwelling, brownstone townhome condominium, means a specific type of family development consisting of single-family attached units, typically with two to four floors per unit. The exterior facade shall comply with all architectural style requirements of the UPDD.

Dwelling, multiple-family, means any building or portion thereof, which is designed, built, rented, leased or let to be occupied as three or more dwelling units or apartments or which is occupied as a home or residence of three or more families.

Dwelling, one-family, means a detached building having accommodations for and occupied by not more than one family or by one family and not more than three boarders and lodgers.

Dwelling, two-family, means a detached building having separate accommodations for and occupied by not more than two families or by two families and not more than three boarders and lodgers.

Dwelling unit means a building or portion of a building which is arranged, occupied or intended to be occupied as living quarters and includes facilities for food preparation and sleeping.

Family means any number of individuals living together as a single housekeeping unit in which not more than three individuals are unrelated by blood, marriage or adoption.

Height means the vertical distance of a building measured from the finished floor of the front door, to:

(1) The highest point of the roofs surface if a flat surface;

(2) To the deck line of mansard roofs; or

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

(3) To the mean height level between eaves and ridge for hip and gable roofs and, in any event, excluding chimneys, cooling towers, elevator bulkheads, penthouses, tanks, water towers, radio towers, ornamental cupolas, domes or spires and parapet walls not exceeding ten feet in height.

If the street grade has not been officially established, the average front yard grade shall be used for a base level.

LED lighting approved equivalent means a metal halide, high pressure sodium or other fixture with the same color temperature range as existing LED street lighting.

Legal height means the maximum height of a building permitted by any airport zoning ordinance or other ordinance restricting the height of structures.

Living unit means the room, or rooms, occupied by a family and must include cooking facilities.

Lot coverage means the percentage of the total area of a lot occupied by the base (first story or floor) of buildings located on the lot or the area determined as the maximum cross sectional area of a building's. story. The height between the successive floors of a building or from the top floor to the roof. The standard height for a story is 11 feet, six inches.

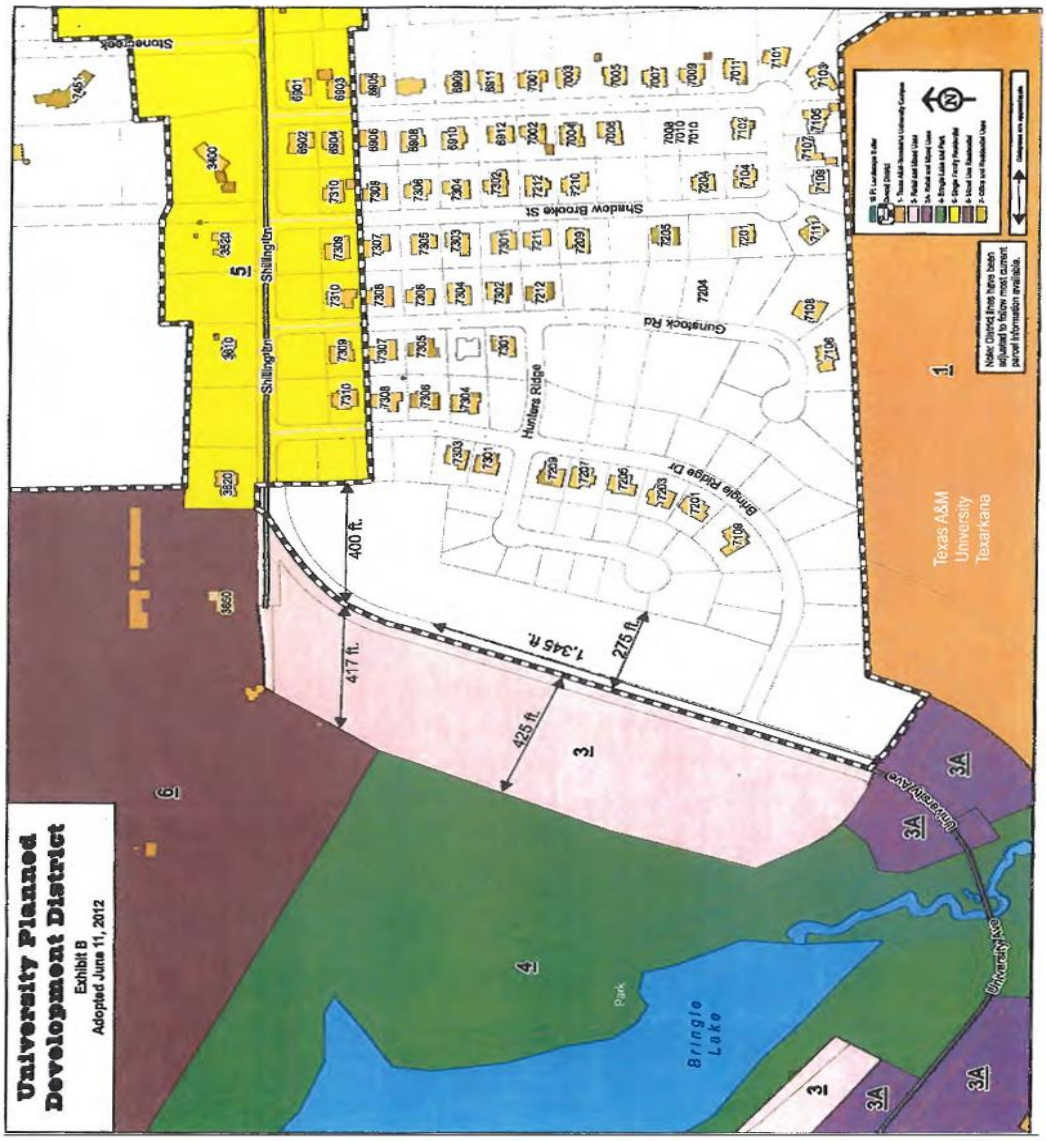
Wayfinding guides means a network of signs, minimal in number, installed and maintained by educational institutions to which the Texas Education Code applies, utilized as a traffic control device in off-street or access areas, whose primary purpose is to direct traffic to said institution.

Planning and zoning commission means the agency appointed by the city council as an advisory body to it and which is authorized to recommend changes in the zoning.

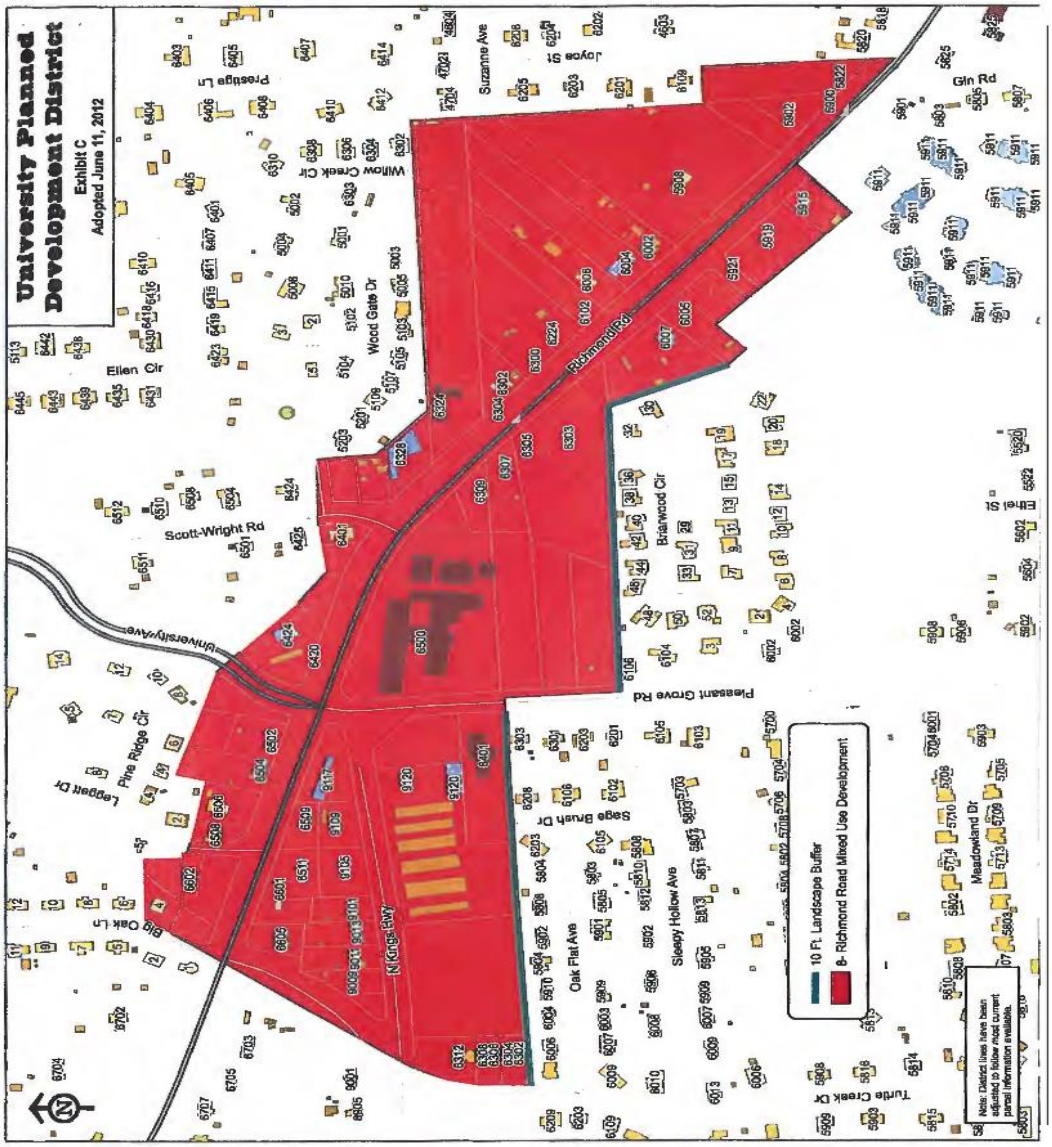
For additional definitions refer to article II of this chapter.

(i) *Review.* The UPDD will be reviewed by the planning and zoning commission and the city council for amendments no sooner than annually but not less than every five years thereafter.

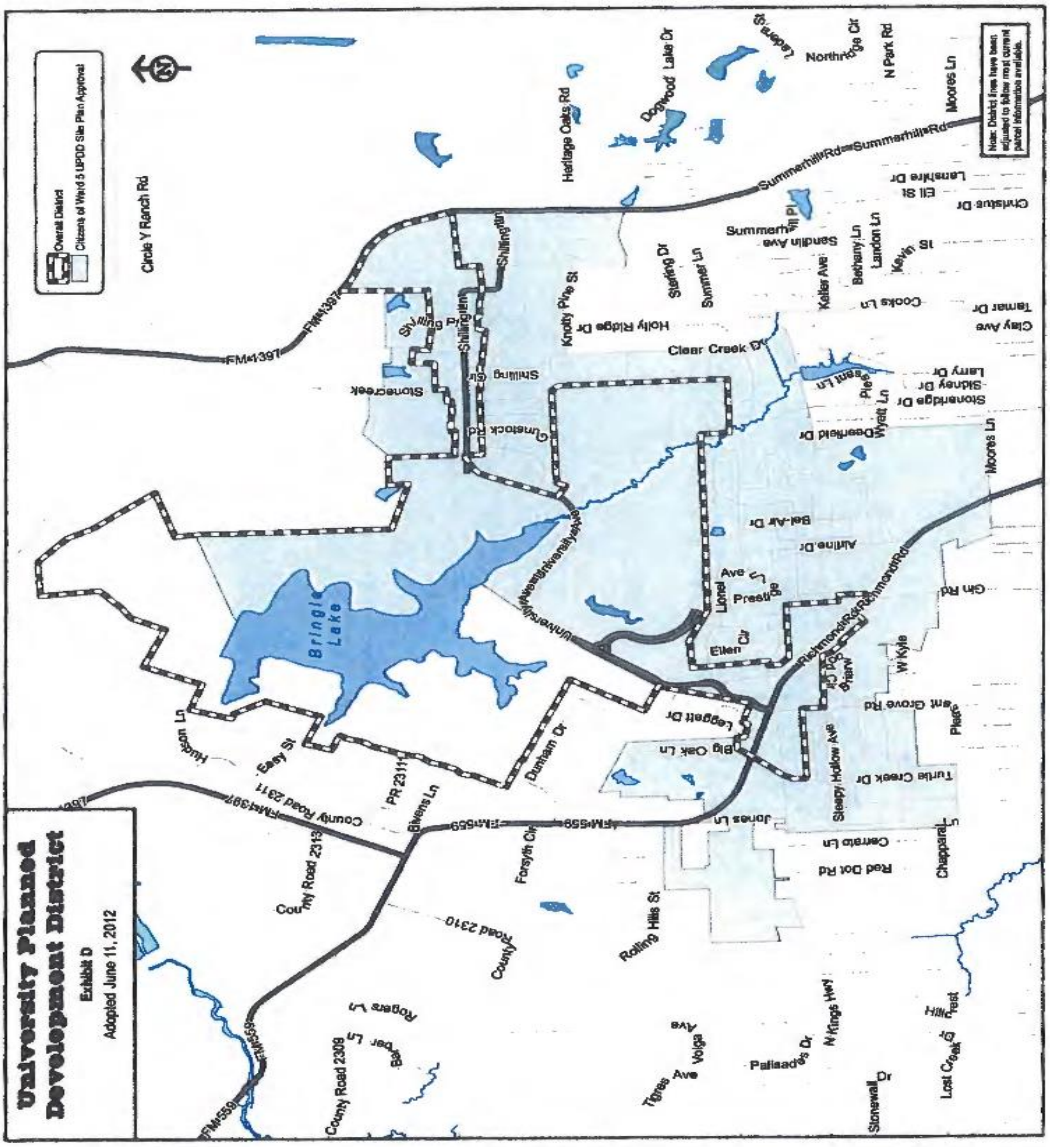
Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)



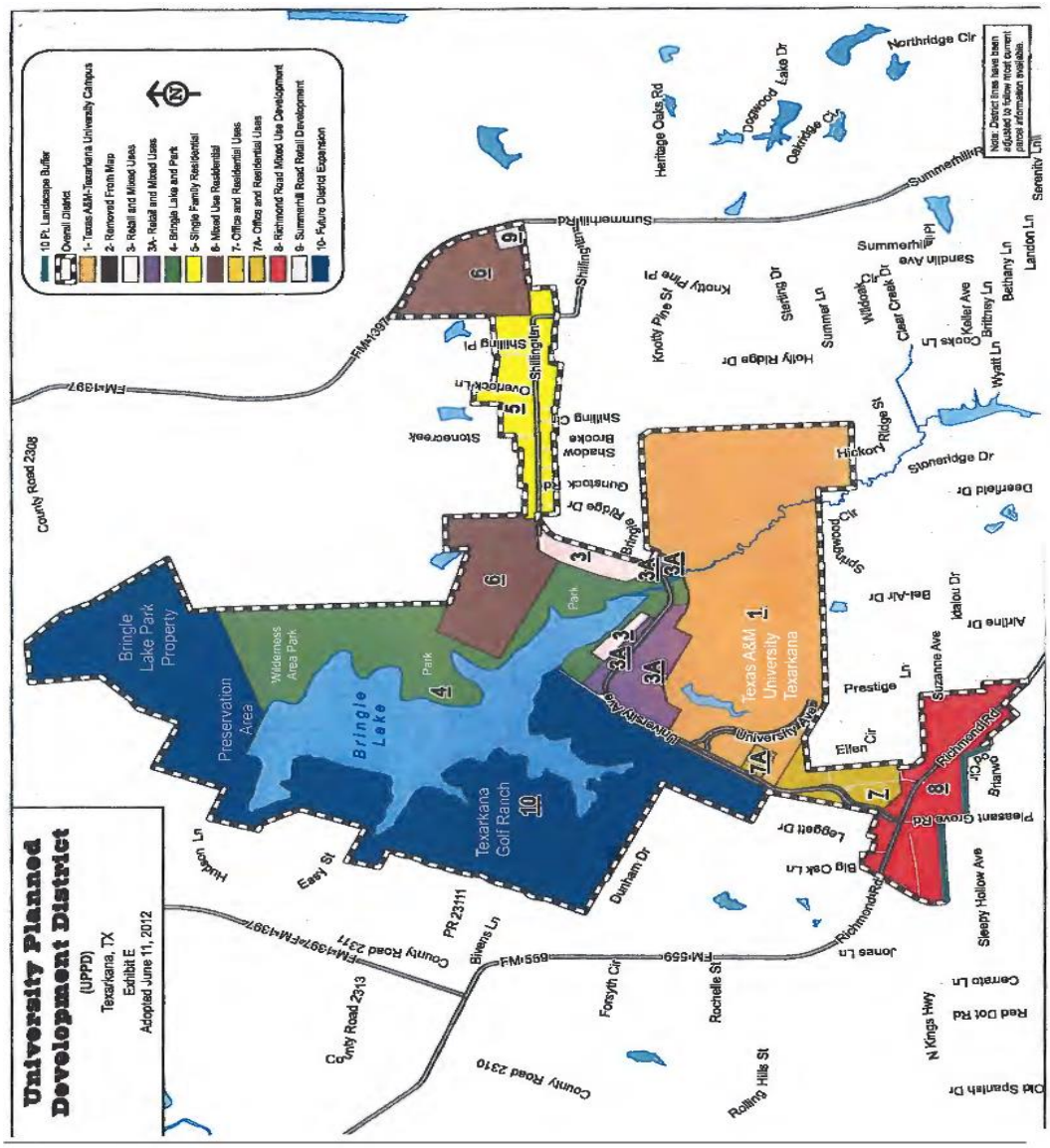
Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)



Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)



Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)



(Ord. No. 052-2012, 6-11-2012; Ord. No. 2014-069 , § 1, 7-14-2014; Ord. No. 2017-121 , § 1, 12-11-2017; Ord. No. 2019-001 , § 1, 1-28-2019)

Attachment: 2024-028 ATTH 01 UPDD red line w-wayfinding revised v2 (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

(e) *Building and site design.*

(6) *Sign regulations (excludes Single-Family Residential).*

c. *Location.*

1. Signs must be located within 30 feet of ROW;

2. Signs shall not block sight distances;

3. Excepting Wayfinding guides, signs shall not be inside a ROW; ~~and~~

4. Signs can be located within a city utility easement, but any repairs or damage incurred ~~occurred~~ to signage due to utilities will be at owner's expense; and

5. Wayfinding guides shall only be allowed within 1,000 feet each direction from the street entrance/entrances to the educational institution site; and such guides can be attached to existing street light poles (provided, however, if a pole is not city-owned, written permission from the pole owner shall be a prerequisite to the site plan submittal).

d. *Business name.* Name of business and main address must be located on a single tenant sign.

2. *Prohibited signs.* The following are signs not allowed in district:

(ii) Banners (exception: Wayfinding guides);

(8) *Site plan approval process.*

b. Site plan submittal requirements for UPDD.

3. The following features, as a minimum, shall be required on all site plans before they will be accepted for review:

(iv) Signage location and detail (including, for Wayfinding guides, proposed design and graphics);

6. To amend this district, a request will be filed with the planning and zoning commission. If the request is recommended by the planning and zoning commission, it will be sent to the city council.

7. Changes to an approved site plan shall adhere to the same process as required by this section.

(h) *Definitions.*

Wayfinding guides means a network of signs, minimal in number, installed and maintained by educational institutions to which the Texas Education Code applies, utilized as a traffic control device in off-street or access areas, whose primary purpose is to direct traffic to said institution.

Attachment: 2024-028 ATTH 02 UPDD w-wayfinding revised [short detail] (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

Pole flags 30"x80"

Attachment: 2024-028 ATTH 03 TAMU-T Banner Examples (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

Attachment: 2024-028 ATTH 03 TAMU-T Banner Examples (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

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:

The addition of wayfinding banners will add positive aesthetics and a sense of pride for Texas A&M University – Texarkana.

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: 2024-028 Goals & Perspectives (4203 : 2024-028 ORD Wayfinding guides in the UPDD)

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 3/7/2024 3:08 PM

Lead Department: Fire Department **Action Officer:** Chris Black, Fire Chief

Subject: Ordinance No. 2024-029 authorizing assignment pay for a Firefighter assigned to specialized duties of Building Maintenance and Repair, and setting conditions and rate of pay.

Briefing: 3/25/2024 **Public Hearing:** 3/25/2024 **Council Vote:** 3/25/2024

Item Schedule

Updates/History of Briefing:

Executive Summary and Background Information:

Beginning FY 2024, the City's Fire Department became responsible for all building maintenance and repairs to the seven properties that the Fire Department utilizes. These properties include five fire stations, one administration building, and a 5-acre plot of land that includes the Fire Department's training field, classroom and warehouse. A person to properly monitor and manage the issues that arise to these facilities on a day-to-day basis requires consistent knowledge of the facilities and the steps needed to ensure proper maintenance and repairs are taking place. This person will also have to be available nights and weekends to schedule emergency repairs. Due to this need, it is recommended to identify a member of the administrative staff to manage and oversee the maintenance of the City's Fire Department facilities. These additional duties have been taken on by Captain Nick Smith and require him to perform outside the scope of a typical Captain within the department.
After consulting with the Human Resources Department, City staff seeks approval of assignment pay in the amount of $250.00 per month for a designated Fire Captain to oversee building maintenance for the City's Fire Department's facilities. Assignment pay is allowed under Civil Service, Section 143.042, for additional duties.

Potential Options:

- Approve
- Not Approve

Fiscal Implications:

Funds are available in the current budget to cover a pay increase.

Staff Recommendation:

Staff recommends approval.

City of Texarkana, Texas

Advisory Board/Committee Review:

NONE

Board/Committee Recommendation:

NOT APPLICABLE

Advisory Board/Committee Meeting Date and Minutes:

NOT APPLICABLE

Attachments

a. 2024-029 ORD Fire Dept. Assignment Pay (DOCX)
b. 2024-029 ATTH 01 LGC 143.042 (DOCX)
c. 2024-029 Goals & Perspectives (DOCX)

Staff Coordination

Fire Department	Chris Black	Department Head Review	Completed	02/29/2024 1:05 PM
City Attorney	Jennifer Evans	Review	Skipped	02/29/2024 3:18 PM
Finance Department	Kristin Peeples	Review	Completed	03/01/2024 10:14 AM
City Manager	David Orr	City Manager Review	Completed	03/01/2024 1:43 PM
City Council	Jennifer Evans	Meeting	Completed	03/11/2024 6:00 PM

Meeting History

ORDINANCE NO. 2024-029

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING ASSIGNMENT PAY FOR FIREFIGHTERS ASSIGNED TO SPECIALIZED DUTIES OF BUILDING MAINTENANCE AND REPAIR; SETTING CONDITIONS AND RATE OF PAY FOR SAID DUTIES; CONTAINING A REPEALER CLAUSE; CONTAINING A SEVERABILITY CLAUSE; CONTAINING LEGISLATIVE FINDINGS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code Section 143.042 allows for a municipality's governing body to authorize assignment pay for firefighters who perform specialized functions in the Fire Department; and

WHEREAS, assignment pay for specialized functions is in addition to regular pay, with conditions and rate of pay for such duties set by ordinance; and

WHEREAS, the Fire Department has a firefighter currently performing the duties of building maintenance and repair; and

WHEREAS, the City Council finds and determines that the best interests of the citizens of the City of Texarkana, Texas, will be served by authorizing Building Maintenance and Repair assignment pay, for the Fire Department, in the amount of $250 per month for the firefighter assigned to such duties as appointed by the Fire Chief.

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

SECTION 1: The Building Maintenance and Repair assignment pay for the Fire Department is authorized in the amount of $250 per month for the firefighter assigned to those duties as appointed by the Fire Chief.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 3: In case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

SECTION 4: The Recitals set out in this Ordinance are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

SECTION 5: 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 **25th day of March, 2024**.

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2024-029 ORD Fire Dept. Assignment Pay (4199 : 2024-029 ORD Fire Dept. Assignment Pay)

Sec. 143.042. ASSIGNMENT PAY. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The governing body of a municipality may authorize assignment pay for fire fighters and police officers who perform specialized functions in their respective departments.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

(d) If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter and police officer who meets training or education criteria for an assignment, or the ordinance may set criteria that provide for payment only to a fire fighter or police officer in a special assignment.

(e) The head of the fire or police department is not eligible for the assignment pay authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Attachment: 2024-029 ATTH 01 LGC 143.042 (4199 : 2024-029 ORD Fire Dept. Assignment Pay)

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: 2024-029 Goals & Perspectives (4199 : 2024-029 ORD Fire Dept. Assignment Pay)

City of Texarkana, Texas

Briefing Sheet

Version:
Update Date: 3/8/2024 9:52 AM

Lead Department: Fire Department **Action Officer:** Chris Black, Fire Chief

Subject: Ordinance No. 2024-030 authorizing assignment pay for a Firefighter assigned to the specialized duties of Deputy Emergency Management Coordinator, and setting conditions and rate of pay.

Briefing: 3/25/2024 **Public Hearing:** 3/25/2024 **Council Vote:** 3/25/2024

Item Schedule

Updates/History of Briefing:

NOT APPLICABLE

Executive Summary and Background Information:

The City of Texarkana, Texas Fire Department has a need to help ensure the City's emergency management preparedness is capable of properly protecting the health and safety of our community. The City of Texarkana, Texas had a shared Office of Emergency Management with the City of Texarkana, Arkansas until 2013. The office housed an Emergency Management Coordinator (EMC) and a Deputy Emergency Management Coordinator. After the passing of the EMC (Dave Hall), and the resigning of the Deputy EMC, the Texarkana, Texas Fire Department absorbed those positions for the City of Texarkana, Texas. The Fire Chief holds the position of (EMC), but the workload necessitates the support of another individual that has historically been done by the Deputy EMC. The key functions of the Deputy EMC have included daily monitoring of weather systems to ensure the City is prepared for severe weather events, assisting with grants that have resulted in significant financial savings to the City in the purchase of equipment for public safety, updating the hazard mitigation plan which provides for future grant opportunities, reviewing annexes in the City's Hazard Mitigation Plan that ensure the City is prepared for future emergency events and require ongoing updates throughout the year. The Texarkana, Texas Fire Department employed a Deputy EMC since inception until October of 2022 when that individual retired and since October of 2022, the additional workload of the Deputy EMC has fallen to the Fire Chief to manage. To better address the day-to-day functions of the duties previously held by the City's Deputy EMC, Driver/Engineer Owen Jones has been learning and performing this position for the past 1 ½ years. The additional duties placed on Driver/Engineer Jones has required him to perform outside the scope of a typical Driver/Engineer and has necessitated hours of additional training in order to ensure the City remains compliant with its emergency management program with regards to both State and Federal requirements.

After consultation with and consideration of the Human Resources Department, staff is recommending assignment pay of $250.00 per month for the additional responsibilities of helping to manage the City's emergency management program.

Potential Options:

- Approve
- Not Approve

Fiscal Implications:

Funds are available in the current budget to cover the pay increase.

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. 2024-030 ORD Deputy EMC Pay (DOCX)
b. 2024-030 ATTH 01 LGC 143.042 (DOCX)
c. 2024-030 Goals & Perspectives (DOCX)

Staff Coordination

Fire Department	Chris Black	Department Head Review	Completed	02/29/2024 3:36 PM
City Attorney	Jeffery C. Lewis	Review	Completed	02/29/2024 3:58 PM
Finance Department	Kristin Peeples	Review	Completed	02/29/2024 4:38 PM
City Manager	David Orr	City Manager Review	Completed	03/01/2024 1:44 PM
City Council	Jennifer Evans	Meeting	Completed	03/11/2024 6:00 PM

Meeting History

ORDINANCE NO. 2024-030

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AUTHORIZING ASSIGNMENT PAY FOR FIREFIGHTERS ASSIGNED TO SPECIALIZED DUTIES OF DEPUTY EMERGENCY MANAGEMENT COORDINATOR; SETTING CONDITIONS AND RATE OF PAY FOR SAID DUTIES; CONTAINING A REPEALER CLAUSE; CONTAINING A SEVERABILITY CLAUSE; CONTAINING LEGISLATIVE FINDINGS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code Section 143.042 allows for a municipality's governing body to authorize assignment pay for firefighters who perform specialized functions in the Fire Department; and

WHEREAS, assignment pay for specialized functions is in addition to regular pay, with conditions and rate of pay for such duties set by ordinance; and

WHEREAS, the Fire Department has a firefighter currently performing the duties of Deputy Emergency Management Coordinator; and

WHEREAS, the City Council finds and determines that the best interests of the citizens of the City of Texarkana, Texas, will be served by authorizing Deputy Emergency Management Coordinator assignment pay, for the Fire Department, in the amount of $250 per month for the firefighter assigned to such duties as appointed by the Fire Chief.

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

SECTION 1: The Deputy Emergency Management Coordinator assignment pay is authorized in the amount of $250 per month for the firefighter assigned to those duties as appointed by the Fire Chief.

SECTION 2: All ordinances or parts of ordinances in conflict herewith are specifically repealed to the extent of such conflict.

SECTION 3: In case a section, clause, sentence or part of this Ordinance shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair, or invalidate the remainder of this Ordinance.

SECTION 4: The Recitals set out in this Ordinance are true and correct and are incorporated herein and made a part hereof as legislative findings of the City Council for all purposes.

SECTION 5: 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 **25th day of March, 2024**.

JENNIFER EVANS, CITY SECRETARY

BOB BRUGGEMAN, MAYOR

Attachment: 2024-030 ORD Deputy EMC Pay [Revision 1] (4200 : 2024-030 ORD Deputy EMC Assignment Pay)

Sec. 143.042. ASSIGNMENT PAY. (a) This section does not apply to a municipality with a population of 1.5 million or more.

(b) The governing body of a municipality may authorize assignment pay for fire fighters and police officers who perform specialized functions in their respective departments.

(c) The assignment pay is in an amount and is payable under conditions set by ordinance and is in addition to the regular pay received by members of the fire or police department.

(d) If the ordinance applies equally to each person who meets the criteria established by the ordinance, the ordinance may provide for payment to each fire fighter and police officer who meets training or education criteria for an assignment, or the ordinance may set criteria that provide for payment only to a fire fighter or police officer in a special assignment.

(e) The head of the fire or police department is not eligible for the assignment pay authorized by this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Attachment: 2024-030 ATTH 01 LGC 143.042 (4200 : 2024-030 ORD Deputy EMC Assignment Pay)

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: 2024-030 Goals & Perspectives (4200 : 2024-030 ORD Deputy EMC Assignment Pay)

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: 3/11/2024 **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)
e. 2024-024 RES Symmetry Wallace Complex signed (PDF)

Staff Coordination

Parks, Recreation & Health	Completed	Robby Robertson 02/21/2024 4:03 PM	Department Head Review	
Finance Department	Kristin Peeples	Finance Review	Completed	02/22/2024 12:21 PM
City Manager	Jennifer Evans	City Manager Review	Skipped	02/26/2024 6:11 PM
City Council	Jennifer Evans	Meeting	Completed	02/26/2024 6:00 PM

Meeting History

02/26/24	City Council	MOVED FORWARD	Next: 03/11/24

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 RES Symmetry Sports (TIPS 230104-02) Wallace Soccer Complex (4184 : 2024-024 RES Auth CM to enter contract with

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

Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

2024-024 EXH 'A'

Division 100

General Provisions

Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

DIVISION 100 GENERAL PROVISIONS

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Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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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: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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

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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

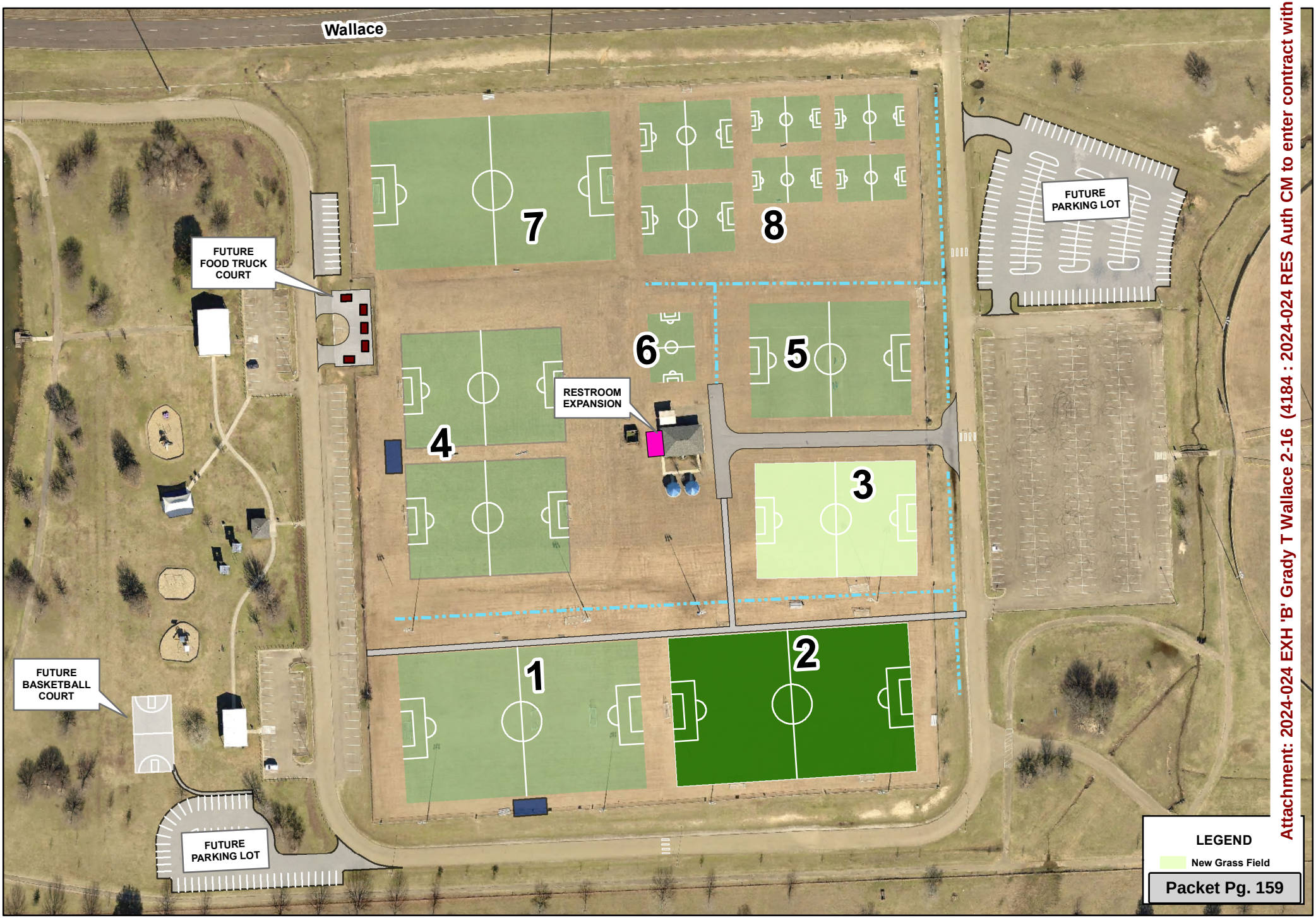
Attachment: 2024-024 EXH 'A' Wallace_ContractPack_021624 (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

MTG | ENGINEERS & SURVEYORS

GRADY T WALLACE - SOCCER
TEXARKANA, TEXAS

2024-024 EXH 'B'

0 125 250 500 et



Attachment: 2024-024 EXH 'B' Grady T Wallace 2-16 (4184 : 2024-024 RES Auth CM to enter contract with

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

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

6:31 p.m.

Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

2024-024 EXH 'A'

symmetry
Sports Construction

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

Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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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

---

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 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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- 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, DAVID ORR *(Print Name)*, *with the* ***City of Texarkana,*** *have read the General Conditions, Scope, Qualifications and Exclusions and accept the terms and conditions setforth therein.*

SIGNED: _____ ***DATE:*** 3/18/24

TITLE: CITY MANAGER ***P.O.#:*** _____

Rekortan® AstroTurf® Laykold® UIL

Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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Sports Construction

Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

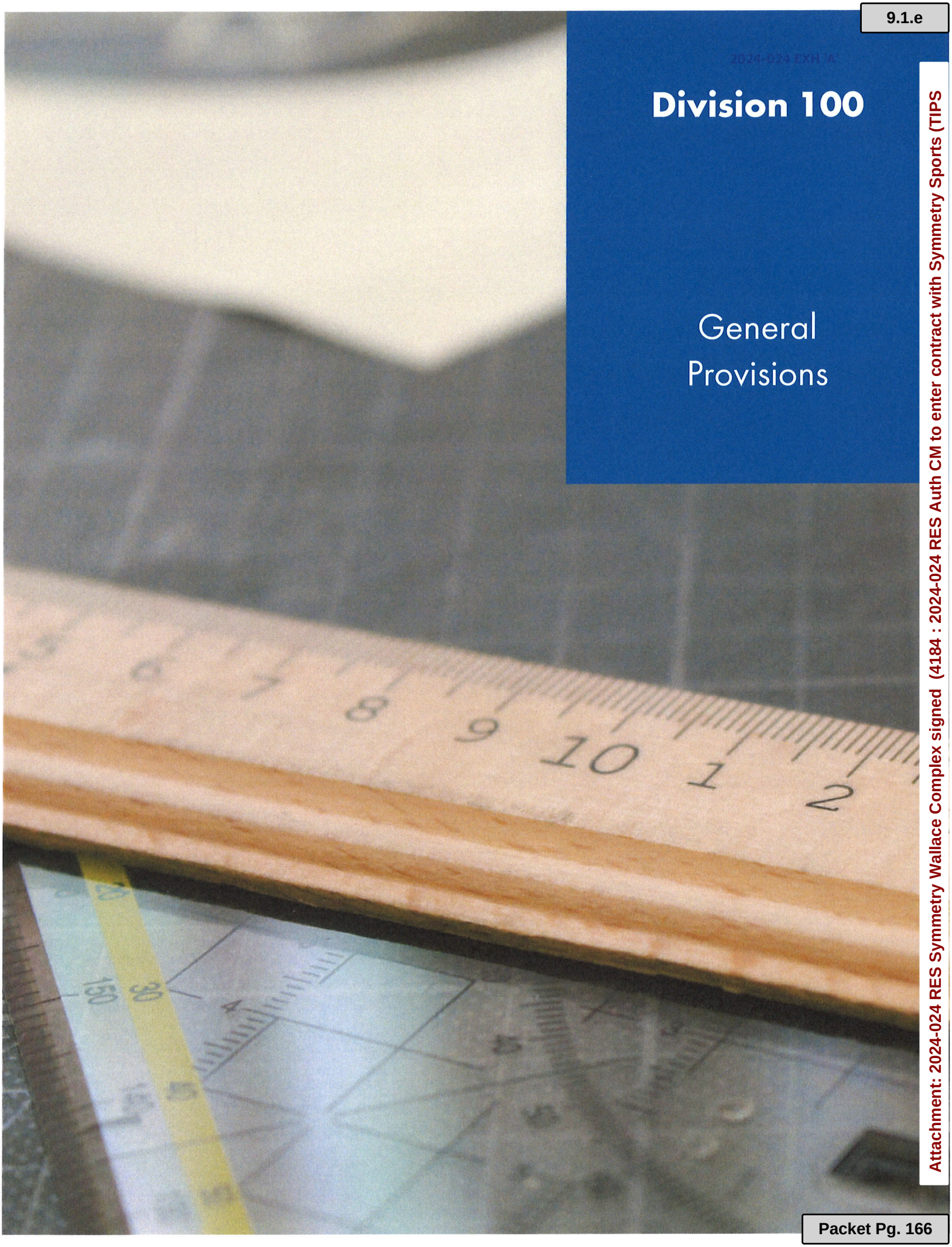
Exhibit A
NCTCOG - General Provisions

312 West Alabama Street | Mount Pleasant, Texas 75455 | (903) 560-8070 Office
www.symmetrysports.com

2024-024 EXH 'A'

Division 100

General Provisions



Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

DIVISION 100 GENERAL PROVISIONS

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Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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.

Attachment: 2024-024 RES Symmetry Wallace Complex signed (4184 : 2024-024 RES Auth CM to enter contract with Symmetry Sports (TIPS

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

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www.symmetrysports.com

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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

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

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: 3/11/2024 **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

City of Texarkana, Texas

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)
f. 2024-025 RES Symmetry Swanger Complex signed (PDF)

Staff Coordination

Parks, Recreation & Health	Robby Robertson	Department Head Review	Completed	02/21/2024 4:03 PM
Finance Department	Kristin Peeples	Finance Review	Completed	02/22/2024 12:50 PM
City Manager	Jennifer Evans	City Manager Review	Skipped	02/26/2024 6:11 PM
City Council	Jennifer Evans	Meeting	Completed	02/26/2024 6:00 PM

Meeting History

02/26/24 City Council MOVED FORWARD Next: 03/11/24

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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- 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

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

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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

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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	**Symmetry Sports , LLC**
_____	_____
Dr. David Orr, City Manager	Jason Bell- President
_____	_____
Date	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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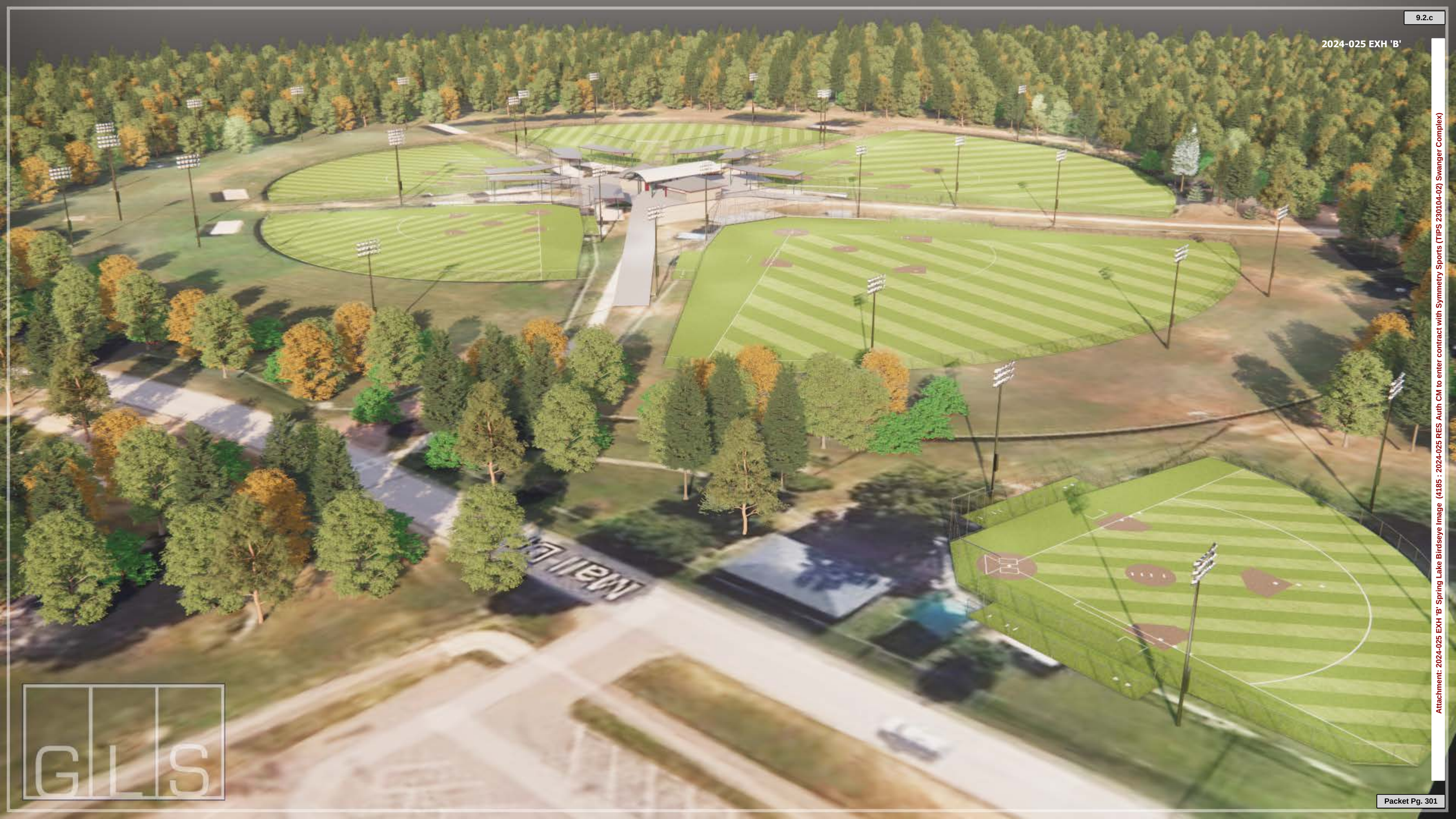
2024-025 EXH 'B'



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

Attachment: 2024-025 RES Symmetry Swanger Complex signed (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS

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); AND ESTABLISHING AN EFFECTIVE DATE.

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 HUNDRRED 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

6:35p.m.

symmetry
Sports Construction

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

Attachment: 2024-025 RES Symmetry Swanger Complex signed (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS

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- 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

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- 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, DAVID ORR (Print Name), *with the* ***City of Texarkana,*** *have read the General Conditions, Scope, Qualifications and Exclusions and accept the terms and conditions setforth therein.*

SIGNED: _____ ***DATE:*** 3/18/24

TITLE: CITY MANAGER ***P.O.#:*** _____

Rekortan AstroTurf Laykold

Attachment: 2024-025 RES Symmetry Swanger Complex signed (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS

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Exhibit A
NCTCOG - General Provisions

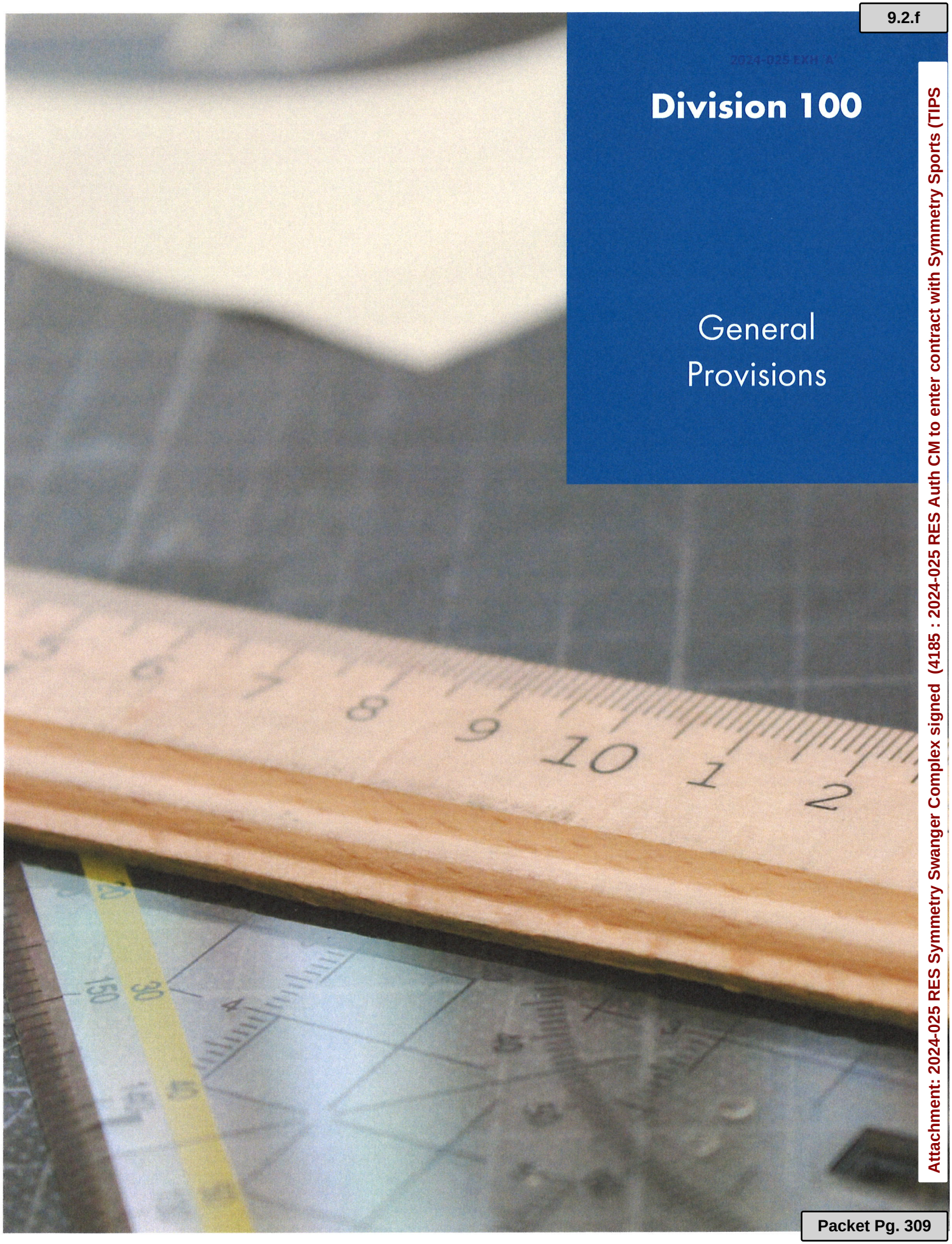
312 West Alabama Street | Mount Pleasant, Texas 75455 | (903) 560-8070 Office
www.symmetrysports.com

Attachment: 2024-025 RES Symmetry Swanger Complex signed (4185 : 2024-025 RES Auth CM to enter contract with Symmetry Sports (TIPS

2024-025 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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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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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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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

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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

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