



BURNET COUNTY COMMISSIONERS COURT

Jim Luther, Jr
Precinct 1

Damon Beierle
Precinct 2

James Oakley
County Judge

Billy Wall
Precinct 3

Joe Don Dockery
Precinct 4

An agenda packet containing detailed information on the items listed below is distributed to the County Judge, Commissioners, and County Clerk the Friday preceding the meeting. The agenda packet is also posted on the county website at www.burnetcountytexas.org, under Public Meetings. A hard copy of the agenda packet is available in the County Clerk's office. Our Mission Statement: The mission of Burnet County is to maintain overall efficient and effective management of county resources while providing the services mandated by state and federal law and desired by the citizens of Burnet County.

REGULAR SESSION MEETING DATE: Friday, OCTOBER 18, 2024

MEETING TIME: 9:00 a.m.

MEETING PLACE: 2nd Floor Courtroom located at 220 S. Pierce, Burnet, Texas

1. Call to Order
2. Invocation and Pledge of Allegiance to the Flags
3. Public Comments - Pursuant to Texas Government Code 551.007 (b), any person may make comment on any item appearing on the agenda. Any comments made will not be addressed by the Commissioners Court during the Public Comments agenda item. Public Comments are limited to three (3) minutes per person.
4. Presentation from Capital Area Council of Governments (CAPCOG), Chris Miller, Executive Director (Oakley)
5. Presentation from Marble Falls ISD Superintendent Jeff Gasaway concerning VATRE - Voter Approved Tax Rate Election (Oakley)

Attachments
Marble Falls ISD
Marble Falls ISD Spanish version
6. Discussion and/or action regarding the approval of the monthly Treasurer's report for September 2024 (Oakley)
7. Discussion and/or action regarding a resolution supporting Operation Green Light for Veterans (Oakley)

Attachments
Operation Green Light Resolution
Operation Green Light Flyer
8. Acknowledgment of Receipt:
 - a. Acceptance of reports of County Officials as required by LGC 115.02 previously examined by the County Auditor
 - b. Updated Employee Handbook from the 10/8 Comm. Court meeting

Attachments
Employee handbook update

9. Discussion and/or action regarding contracts, agreements or grants to be approved and/or ratified:
 - a. Approval to apply for the Texas State Library Archives Commission Family Place Library grant for equipment and supplies for the children's library area and Parent-Child Workshop, consultant fees for medical, Community Resource Center, WIC, CHIP, ECI, and children's counselor and behaviors specialist for the Parent-Child Workshops, and travel to Cedar Park for the required TSLAC training on the family place library
 - b. Approve the Interlocal Agreement with the City of Bertram for a part-time library employee
 - c. Acknowledgment of the executed contract for CR 114 paving project with Ashphalt, Inc., LLC dba Lone Star Paving Company
 - d. Approval to apply and sign the resolution for the FY2025 Formula Grant for Indigent Defense Grant Program from Texas Indigent Defense Commission

Attachments

Interlocal agreement City of Bertram

Executed contract for CR 114

10. Discussion and/or action concerning calling for Bids and Bid openings, request for proposals/qualifications and related openings:
11. The following items are part of the Consent Agenda and require no deliberation by the Commissioner's Court. Any item from this agenda may be considered separately:
 - a. Consideration and approval concerning budget inner departmental line item transfers
 - b. Consideration and approval concerning budget amendments
 - c. Consideration and authorization of payment of claims previously approved by the County Auditor.
 - d. Consideration and approval regarding Departmental equipment requests and/or property transfers.
12. Calendar Review.
13. Adjournment

The Commissioners' Court reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any matters as authorized by the Texas Government Code including, but not limited to, Sections: 551.071 (Consultation with Attorney) 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations) Deliberations about Security Devices), 551.087 (Economic Development), 418.183 (Deliberations about Homeland Security Issues). Compliance with the Americans with Disabilities Act, Burnet County will provide for reasonable accommodations for persons attending Commissioners' Court. To better serve you, requests should be received 24 hours prior to the meetings. Please contact Ms. Stephanie McCormick, Commissioners' Court Coordinator, at (512) 715-5276. Please note, the location of the meeting is subject to change based upon availability of the Courtroom. If meeting location is changed, notice at the above meeting location shall be posted to ensure public access to meeting is granted.

Posted by 5:00 o'clock P.M. on the 11th day of October, 2024
COMMISSIONERS COURT, BURNET COUNTY, TEXAS

CLERK OF THE COURT

Burnet County Commissioners Court

Jim Luther Jr.
Precinct 1

Damon Beierle
Precinct 2

James Oakley
County Judge

Billy Wall
Precinct 3

Joe Don Dockery
Precinct 4

Regular Session

5.

Meeting Date: 10/18/2024

Subject

Presentation from Marble Falls ISD Superintendent Jeff Gasaway concerning VATRE - Voter Approved Tax Rate Election (Oakley)

Attachments

Marble Falls ISD

Marble Falls ISD Spanish version



MFISD

School Funding ELECTION

FOR MORE
INFORMATION

SCAN ME



WHAT IS A SCHOOL FUNDING ELECTION?

A School Funding Referendum, or Voter-Approval Tax Rate Election (VATRE), is a special election that gives the community the power to decide whether to approve a new tax rate for their school district.

WHY IS MFISD HOLDING A SCHOOL FUNDING ELECTION?



19.5%

RISING INFLATION
SINCE 2019-2020



\$2.3 M

OVERCOMING STATE
FUNDING GAP



\$1.1M

MAINTAINING COMPETITIVE
COMPENSATION

SCHOOL FUNDING ELECTION IMPACT



CLASSROOM
SIZES



PROGRAM
OPPORTUNITIES



RETAIN
STAFF

With the proposed
School Funding Election...

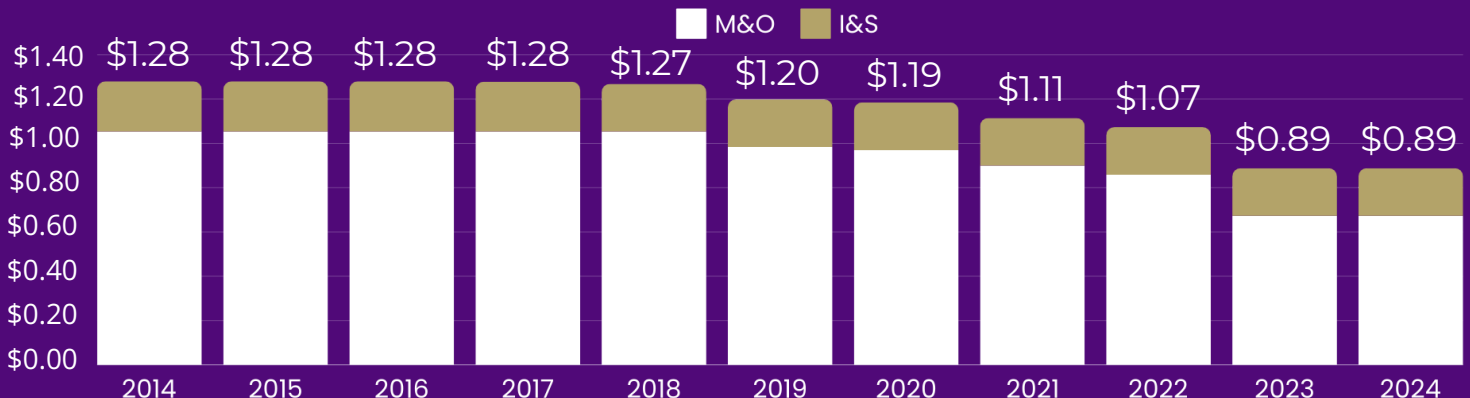
MFISD WILL RECEIVE

\$2,200,000

WITH NO MONEY GOING
BACK TO THE STATE.

MARBLE FALLS ISD TAX RATE HISTORY

Marble Falls ISD's tax rate has been reduced by 30% over the last 10 years, reflecting the district's commitment to managing taxpayer resources efficiently while continuing to support quality education.





MFISD

School Funding E L E C T I O N

FREQUENTLY ASKED QUESTIONS

WILL THE VATRE INCREASE MY PROPERTY TAXES?

If approved, the VATRE will result in a 2.67 cent increase per \$100 of taxable home value in the Maintenance and Operations (M&O) tax rate. The estimated monthly average on homeowners equates to about \$8.90 a month.

WOULD THIS AFFECT HOMEOWNERS AGES 65 AND OLDER?

Property owners age 65 and older with a homestead tax ceiling will see no change in their taxes.

WHAT HAPPENS IF THE SCHOOL FUNDING ELECTION DOES NOT PASS?

If the School Funding Election does not pass, the district will face a reduction in available funding, which may lead the district to consider cuts in staff, programs, and services. The district would have to make difficult decisions, including reducing the workforce and limiting extracurricular or academic programs.

Visit our website to learn more about Marble Falls ISD's School Funding Election.



VOTING INFORMATION

REGISTER TO VOTE BY OCTOBER 7

EARLY VOTING | OCTOBER 21 - NOVEMBER 1

ELECTION DAY | NOVEMBER 5

MARBLE FALLS ISD

www.LoveInspireAchieve.com

FOR MORE
INFORMATION

SCAN ME





MFISD

School Funding ELECTION

PARA MÁS
INFORMACIÓN

ESCÁNEAME



¿QUÉ ES UNA ELECCIÓN DE FINANCIAMIENTO ESCOLAR?

Un Referéndum de Financiamiento Escolar, o Elección de Tasa de Impuestos Aprobada por los Votantes (VATRE), es una elección especial que le otorga a la comunidad el poder de decidir si aprueban una nueva tasa de impuestos para su distrito escolar.

¿POR QUÉ EL DISTRITO ESCOLAR DE MARBLE FALLS (MFISD) ESTÁ LLEVANDO A CABO UNA ELECCIÓN DE FINANCIAMIENTO ESCOLAR?



19.5%

EL AUMENTO DE LA
INFLACIÓN DESDE 2019-2020



\$2.3 M

SUPERAR UNA BRECHA EN EL
FINANCIAMIENTO ESTATAL



\$1.1M

MANTENER UNA
COMPENSACIÓN COMPETITIVA

IMPACTO DE LA ELECCIÓN DE FINANCIAMIENTO ESCOLAR



TAMAÑOS DE
LAS AULAS



OPORTUNIDADES
DE PROGRAMAS



RETENER AL
PERSONAL

Con la propuesta de la Elección de
Financiamiento Escolar...

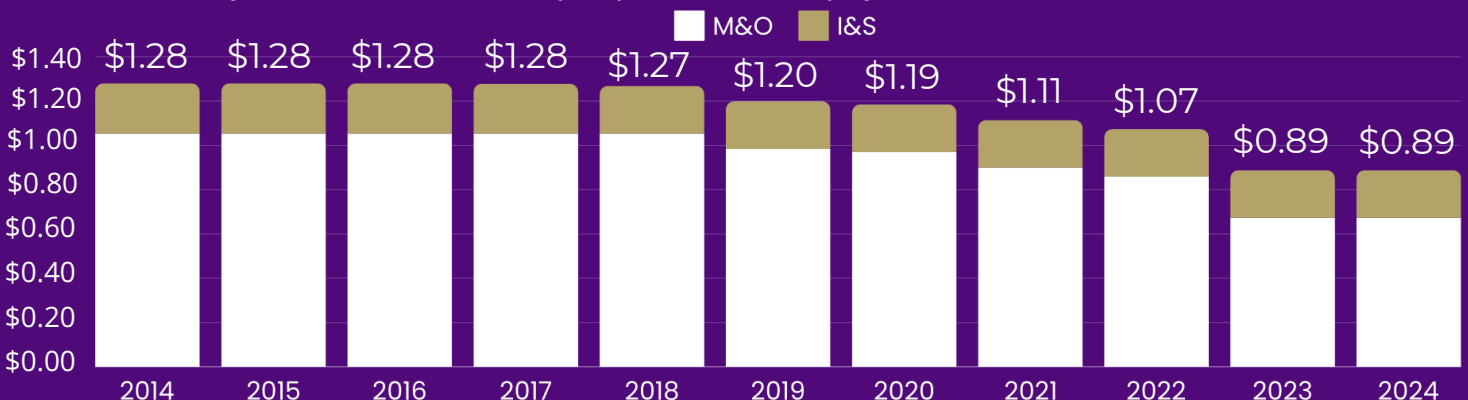
MFISD RECIBIRÁ

\$2,200,000

SIN QUE SE ENVÍE DINERO
DE REGRESO AL ESTADO.

HISTORIAL DE TASAS DE IMPUESTOS DEL DISTRITO ESCOLAR DE MARBLE FALLS (MFISD)

La tasa de impuestos del Distrito Escolar de Marble Falls (MFISD) se ha reducido en un 30% durante los últimos 10 años, lo que refleja el compromiso del distrito con la gestión eficiente de los recursos de los contribuyentes, al mismo tiempo que continúa apoyando una educación de calidad.





MFISD

School Funding E L E C T I O N

PREGUNTAS FRECUENTES

¿AUMENTARÁ EL VATRE MIS IMPUESTOS SOBRE LA PROPIEDAD?

Si se aprueba, el VATRE resultará en un aumento de 2.67 centavos por cada \$100 del valor imponible de la vivienda en la tasa de impuestos de Mantenimiento y Operaciones (M&O). El promedio mensual estimado para los propietarios sería de aproximadamente \$8.90 al mes.

¿AFECTARÍA ESTO A LOS PROPIETARIOS DE VIVIENDAS MAYORES DE 65 AÑOS?

Los propietarios de viviendas mayores de 65 años con un límite en los impuestos de la vivienda principal no verán ningún cambio en sus impuestos.

¿QUÉ PASA SI LA ELECCIÓN DE FINANCIAMIENTO ESCOLAR NO SE APRUEBA?

Si la Elección de Financiamiento Escolar no se aprueba, el distrito enfrentará una reducción en los fondos disponibles, lo que podría llevar al distrito a considerar recortes en personal, programas y servicios. El distrito tendría que tomar decisiones difíciles, incluyendo la reducción de la fuerza laboral y la limitación de programas académicos o extracurriculares.

Visita nuestro sitio web para obtener más información sobre la Elección de Financiamiento Escolar de Marble Falls ISD.



INFORMACIÓN DE VOTACIÓN

REGÍSTRATE PARA VOTAR ANTES DEL 7 DE OCTUBRE

VOTACIÓN ANTICIPADA | 21 de octubre - 1 de noviembre

DÍA DE LA ELECCIÓN | 5 de noviembre

PARA MÁS
INFORMACIÓN

ESCÁNEAME



MARBLE FALLS ISD

www.LoveInspireAchieve.com

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Regular Session

7.

Meeting Date: 10/18/2024

Subject

Discussion and/or action regarding a resolution supporting Operation Green Light for Veterans (Oakley)

Attachments

Operation Green Light Resolution

Operation Green Light Flyer

Supporting Operation Green Light for Veterans

WHEREAS, the residents of Burnet County have great respect, admiration, and the utmost gratitude for all the men and women who have selflessly served our country and this community in the Armed Forces; and

WHEREAS, the contributions and sacrifices of those who served in the Armed Forces have been vital in maintaining the freedoms and way of life enjoyed by our citizens; and

WHEREAS, Burnet County seeks to honor individuals who have made countless sacrifices for freedom by placing themselves in harm's way for the good of all; and

WHEREAS, veterans continue to serve our community in the American Legion, Veterans of Foreign Wars, religious groups, civil service, and by functioning as County Veterans Service Officers in 29 states to help fellow former service members access more than \$52 billion in federal health, disability and compensation benefits each year; and

WHEREAS, Approximately 200,000 service members transition to civilian communities annually; and

WHEREAS, an estimated 20 percent increase of service members will transition to civilian life in the near future; and

WHEREAS, studies indicate that 44-72 percent of service members experience high levels of stress during transition from military to civilian life; and

WHEREAS, active military service members transitioning from military service are at a high risk for suicide during their first year after military service; and

WHEREAS, the National Association of Counties encourages all counties, parishes and boroughs to recognize Operation Green Light for Veterans; and

WHEREAS, Burnet County appreciates the sacrifices of our United States military personnel and believes specific recognition should be granted; therefore be it

RESOLVED, with designation as a Green Light for Veterans County, Burnet County hereby declares from **October 9th, 2024** through Veterans Day, November 11th 2024 a time to salute and honor the service and sacrifices of our men and women in uniform transitioning from active service; therefore, be it further

RESOLVED, that in observance of Operation Green Light, Burnet County encourages its citizens in patriotic tradition to recognize the importance of honoring all those who made immeasurable sacrifices to preserve freedom by displaying green lights in a window of their place of business or residence from November 4th through the 11th, 2024.



JOIN OPERATION GREEN LIGHT FOR VETERANS

America's counties have a long and proud history of serving our nation's veterans, a legacy that continues to this day as we work with our federal, state and local partners to ensure that the former service members in our communities have access to the resources they need to thrive.

This coming Veterans Day, the National Association of Counties (NACo) and the National Association of County Veterans Service Officers (NACVSO) invite the nation's 3,069 counties, parishes and boroughs to **join Operation Green Light and show support for veterans by lighting our buildings green from November 4 to November 11**. By shining a green light, county governments and our residents will let veterans know that they are seen, appreciated and supported.

HOW TO JOIN

- Visit www.naco.org/operationgreenlight to access the Operation Green Light for Veterans County Toolkit.
- Use the County Toolkit template to pass a resolution declaring your county's participation in Operation Green Light for Veterans.
- Coordinate with your county Director of Facilities or Building & Grounds to light municipal buildings in green. Options include using projections, flood lights or green filters for existing lights.
- Use the templates and social media resources in the County Toolkit to promote the campaign to local press, businesses, county residents and Members of Congress.
- Upload details about your county's participation through the form included in the County Toolkit.
- Encourage individuals, businesses and community partners to show support by turning on a green light from November 4 to November 11!
- Support veterans year-round by purchasing supplies from veteran-owned businesses on Amazon Business at www.amazon.com/veteran-owned.

*Scan the QR code for more
about Operation Green Light,
including a county toolkit.*



AMAZON IS PROUD TO SUPPORT OPERATION GREEN LIGHT

Amazon values the unique skills and experience that the military community brings, and we surpassed our 2021 pledge to hire 100,000 veterans and military spouses by 2024.

Military Community Outreach

We are committed to supporting the military community around the world by leveraging our diverse resources and technology to solve critical problems. We focus on supporting disabled veterans, providing mental health and suicide prevention resources, empowering military families and addressing urgent needs like homelessness and food insecurity.

World-Class Veteran & Military Spouse Recruiting

Veterans and military spouses in your community can learn more about career opportunities at Amazon by visiting our military-specific landing page, where they can attend Global Military Affairs webinars to engage with recruiters directly, and search for jobs tailored to their experiences. Visit amazon.jobs/en/military to learn more.

Corporate Leader In Veteran & Military Spouse Retention

We offer extensive resources to assist our veteran employees in their transition from the military, including our Military Mentoring Program, a network of support and tailored training experiences, and a wide array of resources and tools to empower veteran career success.

COUNTIES MATTER FOR VETERANS

County Veteran Service Officers (CVSOs) in 29 states are responsible for successfully processing more than \$52 billion in compensation, pension, health care and other benefits for veterans each year.

Counties across the nation operate Veterans Treatment Courts, through which we can connect justice-involved veterans with programs and benefits that can treat underlying mental health and substance abuse conditions.

Counties support veterans' access to stable housing, employment and education and critical mental health services that treat trauma and prevent suicide.



Burnet County Commissioners Court

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Regular Session

8.

Meeting Date: 10/18/2024

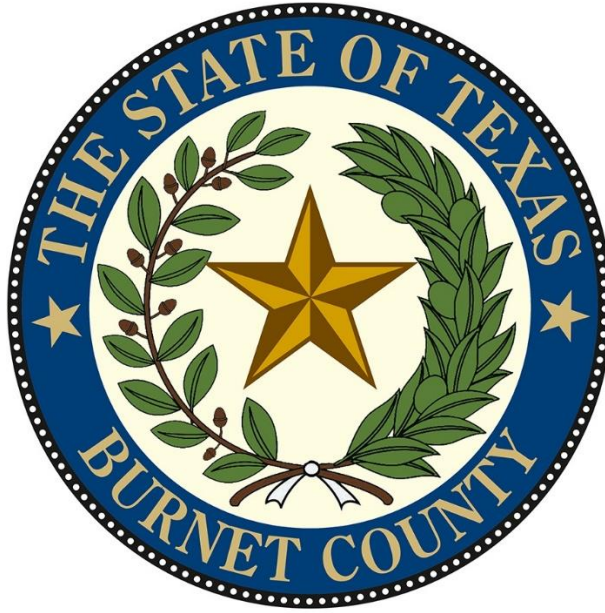
Subject

Acknowledgment of Receipt:

- a. Acceptance of reports of County Officials as required by LGC 115.02 previously examined by the County Auditor
 - b. Updated Employee Handbook from the 10/8 Comm. Court meeting
-

Attachments

Employee handbook update



BURNET COUNTY
PERSONNEL POLICIES & EMPLOYEE HANDBOOK

Last Amended

10/08/2024

NOTICE TO EMPLOYEES

The contents of the Employee Handbook are not a contract of employment or any covenant of such a contract. Specifically, employment at Burnet County is “at-will” employment. Your employment may be terminated by either yourself or the County, at any time, with or without cause, and with or without notice.

This statement of your employment relationship represents the entire agreement between you and the County of the circumstances under which your employment can be terminated. No one in Burnet County has the authority to make any agreement for employment other than employment “at-will”. This handbook is intended only to provide guidance in understanding Burnet County policies, practices, and benefits. Except for the policy of “at-will” employment, Burnet County retains the right to change this handbook, and to modify or cancel any of its employee benefits when the need for change is recognized. The policies contained in this handbook supersede any and all existing or previously issued policies no longer in effect.

EQUAL OPPORTUNITY EMPLOYER

There shall be no discrimination against any person in job structuring, recruitment, examination, selection, appointment, placement, training, upward mobility, discipline, or any other aspect of personnel administration based upon race, religion, color, disability, national origin, sex, political affiliation, belief, veteran status or other protected factors. Personnel decisions shall be made on the basis of occupational qualifications and job related factors such as skill, knowledge, education, experience, and ability to perform a specific job.

The current Equal Employment Opportunity Plan is available upon request from the Human Resources Office. If a department has more than 50 employees it must adopt a separate Equal Employment Opportunity Plan.

Burnet County
Personnel Policies & Employee Handbook

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Burnet County
Personnel Policies & Employee Handbook

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Burnet County
Personnel Policies & Employee Handbook

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Burnet County
Personnel Policies & Employee Handbook

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1.00 – INTRODUCTION

1.01 AUTHORITY

This handbook is adopted by the Commissioners' Court of Burnet County. Amended, revised, or new policies must be adopted by said court.

1.02 PURPOSE

This handbook sets forth the primary rules governing employment with the County of Burnet. These policies inform employees of the benefits and obligations of employment. They have been prepared and adopted in order to promote consistent, equitable, and effective practices by employees and supervisors to achieve high quality service.

This handbook is not intended to imply any contract or contractual rights. Burnet County Commissioners' Court reserves the exclusive right to modify these policies at any time without prior employee notification.

1.03 APPLICABILITY OF PERSONNEL POLICIES

The policies in this handbook apply equally to all employees paid through Burnet County's payroll system unless specifically exempted by law.

In cases where federal or state law or regulations supersede local policy, such laws or regulations will substitute for these personnel policies only insofar as necessary to comply.

Departments specifically exempted from the Burnet County Personnel Policy due to federal or state law or regulations include:

CSCD: Adult Probation and Intermediate Sanction Facility (ISF):

Section 76.006 and 76.008 of the Texas Government Code establishes the relationship between the County and the CSCD. Section 76.006 requires that the County provide adequate facilities, utilities and equipment for the CSCD. The 33rd and 424th Judicial District CSCD has a policy and procedures manual which outlines and defines operations of the 33rd and 424th Judicial District CSCD.

Intermediate Sanction Facility is a program operated by the CSCD, and is a division of CSCD. The ISF also has a policies and procedures manual which is a subsection of the CSCD manual, incorporating all of the basic CSCD personnel policies, but which contain some procedures specific to the operation of the ISF.

In the event that any policy of Burnet County is not addressed in the aforementioned federal or state law or regulations, then Burnet County Policies and Procedures shall apply.

Burnet County
Personnel Policies & Employee Handbook

33rd and 424th Judicial District Court:

Pursuant to the constitution and laws of the State of Texas, the Administrative Judge of the District Court is responsible for appointing the county auditor, assistant county auditors and court reporters, and setting their compensation after public hearing authorized by section 152.905, and is further authorized by section 74.101 to establish a court coordinator system and appoint a court coordinator for the courts to improve justice and expedite the processing of cases through the courts. Section 74.104 authorizes judges to determine reasonable compensation for the court coordinators and court administrative personnel, subject to approval of the Commissioners' Court. Upon approval by the Commissioners' Court of the positions and compensation, the county shall provide the necessary funding through the county's budget process. Whereas the 33rd and 424th Judicial District encompasses four counties for whom Burnet County administers the payroll of the Burnet County Auditors, District Court reporters and the District Court's administrative staff, it is appropriate that District Court employees follow Burnet County Policies.

1.04 DISSEMINATION OF PERSONNEL POLICIES

Employees receive a copy of the Personnel Policies (or accept responsibility for accessing the policies online) at the time of employment. Employees are required to sign an acknowledgement and receipt statement which is kept in their personnel file.

An official record copy shall be filed with the County Clerk, the Human Resources Office, and posted on the County's website at www.burnetcountytexas.org.

1.05 COMMUNICATION

Employees are encouraged to make constructive suggestions for improvement in these policies or procedures in writing to the Human Resources Director.

2.00 – EMPLOYEE RESPONSIBILITIES

2.01 GENERAL

The County of Burnet is a public tax-supported organization. Its employees must adhere to high standards of public service that emphasize professionalism, courtesy, and avoidance of even the appearance of illegal or unethical conduct. Employees are expected to carry out efficiently the work items assigned as their responsibility, to maintain good moral conduct, and to do their part in maintaining good relationships with the public, with other government employees and elected officials, with their supervisors, and with fellow employees.

Remember, we are here to serve all of the people of Burnet County. Our responsibility is to provide fair, efficient service in a courteous manner, respecting the dignity and privacy of every individual. Often your contact with citizens will be the only basis on which our County government is perceived; therefore, you owe it to both the County and yourself to serve the public to the very best of your ability.

Burnet County's diversity initiatives are nondiscriminatory toward all our co-workers and our citizens, embracing the differences in age, color, disability, ethnicity, family or marital status, gender identity or expression, language, national origin, physical and mental ability, political affiliation, race, religion, sexual orientation, socio-economic status, veteran status, and other characteristics that make the people of Burnet County unique.

We believe in treating others the way we would like to be treated.

2.02 TIMELINESS

Employees are to be punctual in maintaining work hours, keeping appointments and meeting schedules for completion of work.

An employee who expects to be absent from work must report the expected absence to his/her supervisor as far in advance of the time to be absent as is practical.

2.03 GIFTS

Employees shall not accept gifts from contractors, vendors, customers or other persons who have business dealings with the county.

2.04 CONFLICT OF INTEREST

An employee may not: (1) solicit or accept or agree to accept a financial benefit, other than from the county, that might reasonably tend to influence his/her performance of duties for the county or that he/she knows or should know is offered with intent to influence employee's performance; (2) accept employment or compensation that might reasonably induce him/her to disclose confidential information acquired in the performance of official duties; (3) accept outside employment or compensation that might reasonably tend to impair independence of judgment in performance of duties for the county; (4) make any personal investment that might reasonably be expected to create a substantial conflict between the employee's private interest and duties for the county; or (5) in exchange for having performed duties as a county employee in favor of that person.

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2.05 POLITICAL ACTIVITY

Employees of the County of Burnet are encouraged to vote and to exercise other prerogatives of citizenship consistent with state and federal law and these policies.

2.06 WORKING HOURS

Full-time county employees have a standard 40-hour work week. Usual working hours are 8:00 am to 5:00 pm Monday through Friday. Offices will maintain the above schedule to the extent possible. Working schedules vary by departments and are determined by the department head. Those employees who work in shifts will have varying hours of work to be set by the elected official over the department.

2.07 OVERTIME WORK

All employees of the county are subject to be called to work at any time by their supervisor of the Commissioners' Court when such action is required to serve the public properly. Exempt employees, as defined under the Fair Labor Standards Act, are expected to render necessary and reasonable overtime services with no additional compensation. In the case of a declared emergency, exempt employees could qualify for overtime compensation.

2.08 WORK BREAKS

The Fair Labor Standards Act requires a reasonable break for nursing mothers to express breast milk during the first year following the birth of a child. Burnet County will provide a paid break up to 30 minutes for nursing mothers. The nursing mother will be allowed whatever time is needed to express breast milk, however, if the break is longer than 30 minutes in duration, the break time will be unpaid time off. The mother will be given a private location, not a bathroom, to express breast milk. The location will be determined on a case by case basis. Burnet County does not allow any retaliation against nursing mothers for asking for this break. Nursing mothers are entitled to this break for 1 year following the birth of their child.

All other breaks are determined by each department head and are not required to be given. If your department provides you with a break, they may not be accumulated or used for time off. The Fair Labor Standards Act does not require any breaks other than for nursing mothers.

2.09 PROOF OF AUTOMOBILE LIABILITY INSURANCE

Every employee who uses a private vehicle for county business must be able to furnish proof of automobile liability insurance.

2.10 DRUG AND ALCOHOL POLICY: DRUG FREE WORKPLACE REQUIREMENTS
PURPOSE

The purpose of this policy shall be to establish a drug and alcohol-free workplace to help ensure a safe and productive work setting for all employees.

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APPLICABILITY

This policy shall apply to all employees of Burnet County regardless of rank or position and shall include temporary and part-time employees.

The only exception to this policy shall be the possession of controlled substances by law enforcement personnel as part of their law enforcement duties.

POLICY

The following shall be a violation of this policy:

- A. The manufacture, distribution, dispensing, possession, sale, purchase, or use of a controlled substance or drug paraphernalia on County property.
- B. Being under the influence of alcohol or illegal drugs while on County property or while on duty for the County. The use or possession of any kind of alcoholic beverage or illegal drugs while on duty is forbidden and will subject the offender to disciplinary action up to and including dismissal at the discretion of the Department Head.
- C. The use of prescription or over-the-counter drugs, while on County property or while on duty for the County, in a manner other than that intended by the manufacturer or prescribed by a physician. An employee shall notify his/her supervisor while taking any prescription medication that has the potential to affect performance of duties.
- D. Employees are not covered under Worker's Compensation if it is established they were under the influence of alcohol or illegal drugs at the time of injury.

DEFINITIONS

- A. A controlled substance shall include any substance listed in Schedules I-V of Section 202 of the Controlled Substance Act (21 U.S.C. S 812), as amended.
- B. County property shall include all County owned, rented, or leased real property such as buildings, land parking lots, etc. and property used by employees such as vehicles, lockers, desks, closets, storage areas, etc.
- C. Drugs shall include any chemical substance that produces physical, mental, emotional, or behavioral change in the user.
- D. Drug paraphernalia shall include equipment, a product, or material that is used or intended for use in concealing an illegal drug or for use in injecting, ingesting, inhaling, or otherwise inducing into the human body an illegal drug or controlled substance.
- E. Illegal drug shall include any drug or derivative thereof which the use, possession, sale, transfer, attempted sale or transfer, manufacture, or storage of is illegal or regulated under any federal, state, or local law or regulation and any other drug, including (but not limited to) a prescription drug, used for any other than a legitimate medical reason, and inhalants used illegally. Included is marijuana or cannabis in all forms.

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- F. Under the influence shall be defined as a state of having a blood alcohol concentration of 0.02 or more or the state of not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage or a controlled substance.

TYPES OF DRUG AND ALCOHOL TESTING

- A. Reasonable Suspicion Testing: If an employee is having a work performance problem or displaying behavior that may be alcohol or drug related, or is otherwise demonstrating conduct that may be in violation of this Drug and Alcohol Policy where immediate management action is necessary, a supervisor will require the employee to submit to a breath test, urinalysis and/or blood test (see Appendix B). The following conditions may be signs of possible alcohol or drug use (this list is not all-inclusive):
- Abnormally dilated or constricted pupils
 - Glazed stare – redness of eyes (sclera)
 - Flushed face
 - Change of speech (i.e. faster, slower, slurred)
 - Constant sniffing
 - Increased or unexplained absences
 - Redness under the nose
 - Sudden weight loss
 - Needle marks
 - Change in personality (i.e. paranoia, anger)
 - Increased appetite for sweets
 - Forgetfulness – performance altering – poor concentration
 - Borrowing money from co-workers or seeking an advance of pay or other unusual display of need for money
 - Constant fatigue
 - Hyperactivity
 - Smell of alcohol
 - Difficulty walking or standing
 - Dulled mental process
 - Slowed reaction rate
- B. Post-Accident Testing: All employees directly involved in an on-the-job accident that results in property damage, lost time or bodily injury will be required to be drug and alcohol tested within 3 hours of the accident. Any accident involving damage to county property at any time shall also require a drug and alcohol test within 3 hours of the accident.

REFUSAL TO BE TESTED

Each employee is expected to fully cooperate and consent to a drug or alcohol test when requested under the terms of this policy. Refusal to consent to a drug test when requested may result in immediate termination.

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POLICY VIOLATIONS

Any employee who violates this policy shall be subject to disciplinary measures up to and including termination.

PRESCRIPTION DRUGS

Employees taking prescription medications shall be required to notify his/her supervisor of any possible effects the medication might have regarding their job performance and physical/mental capacity.

Any information concerning prescription medications being used by an employee, and any other medical information of which the supervisor becomes aware, shall be treated as confidential information.

Prescription medications used at work are to be kept in their original container

TREATMENT

Employees having problems with drugs or alcohol are encouraged to seek treatment from qualified professionals.

Information on benefits provided for treatment of alcohol and drug problems through the County's medical insurance program is available in the employee's insurance coverage booklet or from the Human Resources Office.

RESERVATION OF RIGHTS

Although adherence to this policy is considered a condition of continued employment, nothing in this policy shall alter an employee's status and shall not be deemed a contract or promise of employment.

2.11 HARASSMENT POLICY

A. General Harassment

Burnet County is committed to a workplace free of harassment. Harassment includes unlawful, unwelcome words, acts or displays based on sex, race, color, religion, national origin, age, pregnancy, disability, family or military leave status or veteran's status. Such conduct becomes harassment when (1) the submission to the conduct is made a condition of employment; (2) the submission to, or rejection of, the conduct creates an offensive, intimidating or hostile working environment or interferes with work performance.

Harassment is strictly prohibited by Burnet County whether committed by an elected official, appointed official, department head, co-worker or non-employee with whom the County does business. All harassment should be reported immediately (see Appendix A).

Employees who feel they have been harassed should immediately report the situation to the elected or appointed official who is responsible for the department in which they work. If, for any reason, the employee feels that reporting the harassment to the department head may not be the best course of action, the report should be made to the County Judge or County Attorney. Every reported complaint will be investigated promptly and thoroughly.

Once the investigation is complete, the employee making the claim shall be notified of the result of the investigation and any actions which are to be taken.

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Retaliation against an employee who reports harassment or who cooperates in the investigation is prohibited by law as well as this policy.

Remedial action will be taken in accordance with the circumstances when the county determines unlawful harassment has occurred, up to and including termination.

B. SEXUAL HARASSMENT

Sexual harassment is strictly prohibited by Burnet County, whether committed by elected official, appointed official, department head, co-worker or non-employee the county does business with. It shall be the policy of Burnett County to provide a work place free from sexual harassment for all employees and to take active steps to eliminate any sexual harassment of which the County becomes aware.

Employees engaging in sexual harassment shall be subject to discipline, up to and including termination of employment. Sexual harassment shall include, but be limited to, unwanted sexual advances, requests for sexual favors, and other verbal, non-verbal or physical conduct of a sexual nature, which includes slurs, jokes, statements, gestures, touching, pictures, emails or cartoons where: (1) the submission to such conduct is either an expressed or implied condition of employment; or (2) the submission to or rejection of such conduct is used as a basis for an employment decision affecting the harassed person; or (3) the conduct has the purpose or effect of substantially interfering with an affected person's work performance or creating an intimidating, hostile, or offensive work environment.

All claims of sexual harassment shall be taken seriously and investigated promptly and thoroughly. While all claims of sexual harassment should be handled with discretion, there can be no complete assurance of full confidentiality.

No retaliation or other adverse action shall be taken against an employee who, in good faith, files a claim of sexual harassment or those employees who cooperate in the investigation of a complaint.

Employees who feel they have been sexually harassed should immediately report the situation to the elected or appointed official who is responsible for the department in which they work. If, for any reason, the employee feels that reporting the harassment to the department head may not be the best course of action, the report should be made to the County Judge or to the County Attorney.

Every reported complaint will be investigated promptly and thoroughly.

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Once the investigation is complete, the employee making the claim shall be notified of the result of the investigation and any actions which are to be taken.

Use the following procedures so that your complaint may be resolved quickly and fairly.

1. When practical, confront the harasser and ask them to stop the unwanted behavior.
2. Record the time, place and specifics of each incident, including any witnesses.
3. Report continuing sexual harassment to the elected official or appointed official who is responsible for your department or to the County Judge or the County Attorney.
4. If a thorough investigation reveals that unlawful sexual harassment has occurred, Burnet County will take effective remedial action in accordance with the circumstances, up to and including termination.

Reporting or failing to report claims in accordance with the procedures given in this policy shall not limit other legal recourse an employee may have in regard to sexual harassment charges.

2.12 HIV/AIDS WORKPLACE POLICY

A. POLICY

Burnet County treats AIDS and HIV infection as disabilities in accordance with the policy on Equal Employment Opportunity (EEO) and the requirements of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. Burnet County does not unlawfully discriminate against employees or applicants living with or affected by HIV (Human Immunodeficiency Virus) or AIDS (Acquired Immune Deficiency Syndrome).

B. PROCEDURES

1. The County will treat HIV infection and AIDS the same as other illnesses in terms of all of our employee policies and benefits, including health and life insurance, disability benefits and leaves of absence.
2. An employee's health condition is private and confidential. An employee with AIDS or HIV infection is under no obligation to disclose his or her condition to an elected official, department head or any other employee of the County.
3. Employees living with or affected by HIV infection and AIDS will be treated in the same manner as employees with other disabling conditions.
4. Burnet County will respond to the changing health status of employees by making reasonable accommodations.
5. Co-workers who harass, refuse to work with, or who otherwise discriminate against an employee with HIV infection or AIDS will be subject to the same disciplinary procedures that apply to other policy violations.

3.00 – EMPLOYEE COMPENSATION AND ADVANCEMENT

3.01 CATEGORIES OF EMPLOYMENT

There are three categories of employment with the County of Burnet:

Full-time: A full-time employee is employed to hold an authorized position that is regularly scheduled 40 hours per week or an authorized position in law enforcement that is regularly scheduled 84 hours in a 14-day work period in accordance with paragraph 207(k) of the Fair Labor Standards Act.

Part-time: A part-time employee is employed to hold an authorized position that is regularly scheduled for fewer than 40 hours per week.

Temporary: A temporary employee is an employee hired to complete a specific project within a specified period of time. Temporary employees may be full-time or part-time.

Depending on the nature of an employee's job duties, he/she may be exempt from the overtime requirements of the Fair Labor Standards Act. Exempt employees include executives, administrative employees, and professionals. The Fair Labor Standards Act regulations are keyed to actual job duties of the employee, and an employee does not qualify merely because of the job title.

3.02 WORKDAY/WORKWEEK

The workday for Burnet County shall begin at 12:01 am each day and end 24 consecutive hours later.

For purposes of recordkeeping and to determine overtime in compliance with the Fair Labor Standards Act, the workweek for the County shall begin at 12:01 am on each Saturday and end seven (7) consecutive work days later (168 hours). The only exception to this is law enforcement employees who fall under the 207(k) exemption.

Burnet County Commissioners' Court adopted the Fair Labor Standards Act Section 207(l) exemption for the Sheriff's Department Field Deputies and Corrections Officers. The Burnet County Sheriff's Department shall contain one work period for Field Deputies and Corrections Officers. The work period shall consist of 84 hours and run from Saturday at 12:01 am, 14 consecutive calendar days. This establishes for Burnet County Sheriff's Department a 14 day – 84 hour work period.

3.03 PAYDAYS

Pay checks are issued on a 26-week pay period per year system. Any deviation from this pay schedule will be at the sole discretion of Commissioners' Court. Pay checks will not be issued other than on the official pay date. Department heads may pick up their department pay checks Thursday afternoon for disbursement on Friday. No pay advance loans will be made to any employee for any reason.

3.04 CLASSIFICATION AND COMPENSATION PLAN

The county maintains a classification and compensation plan by which each class of positions is assigned to a pay group.

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3.05 PERFORMANCE EVALUATIONS

“Employee Performance Evaluations” will be completed annually each year for each employee by their Department Head or Supervisor, as described in the Burnet County Compensation Plan. Burnet County employees are not eligible for a merit increase without a current year performance evaluation overall rating of “3” or better on a long form record, or overall rating of “Good” on a short form record. The original of the evaluation is to be filed in the employee’s Personnel File in the Human Resources office.

3.06 TIMEKEEPING

Time Sheet:

Time sheets are governmental documents and as such require accurate and truthful information and are subject to Texas Penal Code 37.10. Falsifying a time sheet, a governmental record, is a Class “A” Misdemeanor.

Electronic Time Clock:

All Burnet County employees required to use the electronic time clock shall clock in upon arrival and clock out when leaving. If they are to be away from the office on personal business for more than 15 minutes they must clock out.

- A. Leave such as vacation, sick, and other approved leave shall also be recorded in the timekeeping system by the supervisor or department head.
- B. All non-exempt employees shall use the timekeeping system except in areas where internet access is not available.
- C. Non-exempt employees shall use their web access to “clock in” at the beginning and end of their workday and as necessary, within the workday, as to appropriately record their meal breaks or approved leave time.
- D. In the case of clock malfunction or other technical problems, it may be necessary to correct or enter missing data. These changes shall be documented and manually added to the employee’s timecard as necessary by their supervisor to accurately report the employee’s hours. Any clock or web access malfunctions should be promptly reported to the County Human Resources Office.
- E. Burnet County uses a 7 minute rounding rule. Employees who clock in 7 minutes before or 7 minutes after any quarter hour will be paid on the quarter hour.
 - Employees should not clock in nor begin any work activities earlier than 7 minutes before their scheduled start time, unless the employee has supervisor approval for early arrival.
 - An employee should not clock out nor continue any work activities any later than 7 minutes after their scheduled end time, unless the employee has supervisor approval for working late.
- F. All employees are required to view and sign their timesheets to ensure accuracy of their official recorded time. An employee should report discrepancies to their supervisor immediately. All employees are required to approve their timesheet at the end of each week.
- G. Supervisors or department timekeepers shall approve their employee’s time at the end of each week.

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- H. Departmental timekeepers shall ensure that employees and supervisors have accurately completed timesheets. At the end of each pay period, departmental timekeepers will “Sign Off” on all employee timesheets, therefore releasing the recorded data to Payroll for processing.
- I. During payroll processing, leave from available banks (excluding Sick Leave) will be added for any full-time employee (as defined in Sec. 3.01) to complete their normal schedule.

3.07 OVERTIME COMPENSATION

Overtime compensation is due to employees as follows:

7-day work weekafter 40 hours
14-day work period.....after 86 hours

Vacation leave, sick leave, personal leave, emergency leave and designated county holidays will not be counted as actual hours worked toward the calculation of overtime, but will be calculated as straight time.

If a full time employee who is subject to the overtime provisions of the Fair Labor Standards Act is required to work extra hours during a workweek in which he or she has used banked leave, the leave time should be reduced to prevent overtime. Leave time may be counted towards hours worked for overtime purposes in the event of an emergency (safety or security) as determined by the department head.

Flex time or equal time off in the same work period may result in changes to the time record.

Non-exempt employees will be paid at one and one-half times their regular rate of pay for each hour actually worked in a work week or work period above their respective limits as listed above (all overtime must be approved by the department head ahead of time).

3.08 LONGEVITY PAY

General: This policy is effective October 1, 2021, and is intended to supersede and replace all previous longevity, step, or salary pay types that are based solely on length of service. Any employee that as of 10/01/2021 would have been paid more under a previous longevity-based pay structure will continue under the older policy until such time that pay under the new policy exceeds the older policy. At no time will an employee receive benefits under more than one longevity-based policy or any other type of policy based solely on years of service.

Eligibility: Eligible positions and amounts will be determined annually by the Commissioners Court during the normal budget process. This additional pay will not be paid if it is not clearly designated and budgeted for during the budget process.

County funded, full-time active employees are eligible based on their years of service in any eligible position with Burnet County. For the purpose of this policy, any employee working less than 40 hours per week is considered part-time. Eligible part-time employees must have two years of consecutive service and a minimum of 750 hours worked in the previous 12-month period. Employees must be a full-time or part-time active employee as of the date the longevity is paid.

Ineligibility: Temporary employees and employees supplemented by the County are not eligible. Grant funded positions will not be eligible unless allowed by the grant or approved and budgeted by the Commissioners Court.

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Guidelines: This policy and these guidelines are not a contract between the County and any of its employees. Nothing herein shall be considered a part of the County's employment relationship with the employee. No employee shall have the right to rely upon or enforce this policy and these guidelines against the County, it being understood that the County may amend, modify, or terminate this policy and these guidelines at any time. No employee shall have any rights or privileges in this policy or guidelines.

FY23 Eligible Positions and Amount: For the FY23 budget year (October 1, 2022 – September 30, 2023), eligible employees in eligible positions who have greater than two years of continuous service as of October 1, 2022, are eligible for longevity pay. For FY23, the amount of longevity pay is calculated at \$20 for every month of service for full-time employees and \$10 for every month of service for part-time employees in an eligible position as of 10/01/2022 with a maximum amount of \$3600 for full-time employees and \$1800 for part-time employees to be paid out in one lump sum payment prior to December 31, 2022. **Any employee that as of 10/01/2021 would have been paid more under a previous longevity-based pay structure will continue under the older policy until such time that pay under the new policy exceeds the older policy. This longevity pay will be paid in one annual payment.**

3.09 HOLIDAY PAY

- A. Normally Scheduled Full Time Employees: On designated county holidays, each employee is paid their hourly rate of pay for an 8 hour work day. (Employee must have been employed on the workday preceding the holiday to qualify.) Those employees (other than those subject to shift work) who are non-exempt and who are required to work on a designated county holiday will receive compensation at their hourly rate of pay for each hour worked in addition to their holiday pay. An employee shall not be allowed to take a day off with pay prior to a holiday in anticipation of working on the holiday.
- B. Full Time Shift Employees: On designated county holidays, each employee who works in a department that operates 24/7 will be given 8 hours of Holiday Leave, whether their regular day off falls on the holiday or the employee works the holiday. Holidays do not accrue and unused hours will not be paid at separation.
- C. Part-time employees are not eligible for holiday pay.
- D. Special consideration shall be given to employees requesting time off for religious or other special observances which are not designated as paid holidays for Burnet County. Each Department Head is responsible for granting this leave based on the needs of their individual departments. Vacation leave or leave without pay may be used for special leave granted.
- E. If an employee is off work due to FMLA, Worker's Compensation, or other unpaid leave of absence, holiday leave will not be earned.

3.10 PROMOTIONS

Promotions are changes in the duty assignment of any employee from a position in one classification to a position in another classification in a higher pay group. A promotion recognizes advancement to a higher classification requiring higher qualifications and involving greater responsibility. A promoted employee will receive a pay increase within budget commensurate with qualifications and responsibility in accordance with the Burnet County Compensation Plan.

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Any reclassification of positions must have prior approval of Commissioners' Court before effecting any change. All changes must begin at the beginning of a pay period.

Any employee promoted to an exempt position from a non-exempt position will be paid for any unused compensatory time at the time of the promotion. Time equivalent to the total hours paid must elapse prior to filling the vacancy created by the promotion, unless otherwise authorized by Commissioners' Court.

3.11 LATERAL TRANSFERS

Lateral transfers are movements of an employee between positions in the same pay group. An employee transferring to another department will be paid any compensatory time on the books.

3.12 DEMOTIONS

A demotion is a change in duty assignment of an employee from a position in one classification to a position in another classification in a lower pay group. An employee who is demoted may have his/her pay reduced. Demotions may be made for the purpose of voluntary assumption of a less responsible position, as a disciplinary measure, because of unsatisfactory performance in a higher position, or as a result of a reclassification of the employee's position.

3.13 PAY REDUCTION FOR DISCIPLINARY REASONS

An employee's pay for continued performance in the same position may be reduced as a disciplinary measure to a lower rate in the pay group for that position or to a rate in the next lower pay group.

3.14 APPROVING AUTHORITY

The Commissioners' Court is the approving authority for all payrolls under the terms of (1) these policies, (2) the classification and compensation plan or, (3) the annual budget.

3.15 GRANT FUNDED POSITIONS

Any employee whose salary is funded by grant revenues must take any and all accrued leave during the period funded by the grant.

Employees whose salaries are funded by grants are subject to all Personnel Policies and Procedures and Compensation Program. Those employees, whose salaries and benefits are funded 100% by the grant and understood to possibly be a short term employment, will follow the terms of the grant and will not be eligible for salary increases. If the County funds the position in the future, the position will then be reviewed by Human Resources for a recommendation to Commissioners' Court for classification of group and salary, with the understanding that the position could receive a decrease in salary.

3.16 EFFECTIVE DATE OF PAY RATE CHANGES

Employee hourly pay rate changes made other than at the beginning of a fiscal year will become effective no earlier than the first pay period following the date that the Human Resources Department receives the Personnel Action Form authorizing the change. Retroactive pay adjustments are not allowed.

4.00 – BENEFITS

4.01 MEDICAL AND LIFE INSURANCE

After 90 days of non-interrupted employment, the County of Burnet will provide group hospitalization, medical, life, and dental insurance for full-time employees. Premiums for employees are paid by the County. An eligible employee may add dependent coverage for family members at his/her expense. Each employee will be provided with coverage documentation.

4.02 SOCIAL SECURITY & MEDICARE TAX

All county employees participate in Social Security which provides certain retirement and disability income benefits, including Medicare. Participation in this federal program is required by law. Deductions are made from each pay check in accordance with federal guidelines; this deduction is noted as “FICA” on employees’ pay stubs. Burnet County funds an amount equal to the employee’s deduction to the Social Security Administration for the employee’s benefit. Employees are encouraged to go to www.ssa.gov for further information about their Social Security Benefits.

4.03 RETIREMENT

The County of Burnet is a member of the Texas County and District Retirement System. Membership in the retirement system is mandatory for all full-time and part-time employees. Only temporary employees with no prospects for continuation of employment beyond six months or an individual contractor may be excluded from TCDRS. Both the employee and the county contribute to the employee’s retirement account. Employees who terminate prior to retirement will, upon request, be refunded their contributed portion of their retirement account plus the interest earned on their contributed portion. Forms are available online at www.tcdrs.org, or in the Burnet County Human Resources Office.

The employee’s portion of the retirement contribution is tax deferred. You may have your deposits refunded to you or choose a Direct Rollover into an I.R.A. account or some other account approved by the IRS. If you do not choose a Direct Rollover, you will receive only 80% of the payment, because the Plan Administrator (TCDRS) is required to withhold 20% of the payment and send it to the IRS as income tax withholding to be credited against your taxes.

Any member is eligible for service retirement if the member satisfies any of the following requirements:

- 1) The member has completed at least eight (8) years of creditable service and has attained the age of at least sixty (60); or
- 2) The member has completed at least eight (8) years of creditable service and the member’s attained age and total accumulated credited service equals seventy-five (75) (referred to as the “rule of 75”); or
- 3) The member has accumulated 20 years credited service, whichever comes first.

Burnet County also makes employer contributions to the TCDRS Supplemental Death Benefits Fund. The beneficiary of a deceased employee would receive a lump-sum payment equal to a year’s salary in addition to a return of the deceased’s personal deposits and interest earnings. A retired member’s beneficiary would receive a lump-sum payment equal to \$5000.00.

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For more detailed information contact the Human Resources Department or www.tcdrs.org. Burnet County adheres to the rules and regulations as set forth by TCDRS in regards to employee retirement. These rules and regulation are subject to change.

4.04 WORKERS COMPENSATION

All employees of Burnet County are covered by the County's workers' compensation program while on duty for the County unless they have elected to retain their common law right of action. To retain common law right, a new employee must inform the County Human Resources Office in writing within the first 3 days of employment.

An employee who suffers a job-related illness or injury is eligible to have all medical expenses paid for such injury or illness and if unable to work for more than seven calendar days, shall be eligible to receive partial salary continuation benefits which begin with the eighth day of disability; by law, certified peace officers injured in the line of duty receive full salary continuation. Salary continuation ends at the end of the current term of the current sheriff.

An employee who suffers an on-the-job illness or injury shall notify his supervisor as soon as is reasonable possible; the supervisor will fill out the appropriate reporting forms and forward them within 12 hours of notification by the employee to the Human Resources Office. Failure to report job-related illnesses or injuries in a timely manner may affect an employee's eligibility to receive workers' compensation benefits or may delay benefit payments. The supervisor is required to notify the Human Resources Office when the injured worker returns to work.

Time off work due to a job-related illness or injury will run concurrent with time to which the employee is otherwise entitled under the Family and Medical Leave Act.

No employee is guaranteed that his job will be held open for any period of time unless he is entitled to and files for leave under the Family and Medical Leave Act, in which case he/she will be entitled to up to 12 weeks (480 intermittent work hours) leave, after which time the employee will be terminated if they are still unable to perform the essential functions of the position with or without reasonable accommodation. The employee must provide the paperwork required under our Family Leave policy.

Employees do not accrue vacation or sick leave while on workers' compensation salary benefits. They also are not paid by Burnet County for any holidays falling during their period of absence.

An employee may not perform any outside work or engage in any extra duty employment on the same calendar day(s) that he/she fails to report to work due to illness or injury.

An employee receiving workers' compensation salary benefits shall be required to provide a completed Workers' Compensation Status Report (DWCC-73) from the attending physician before being allowed to return to work. The release shall include whether or not the employee can return to full-time status with or without restrictions.

4.05 UNEMPLOYMENT INSURANCE

Employees of the County may be eligible for unemployment benefits under the Texas Unemployment Compensation Insurance.

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4.06 COBRA

The federal government enacted the Consolidated Omnibus Reconciliation Act of 1985 (COBRA) which allows certain individuals the option of continuing their group health insurance under specified conditions.

Covered employees and their dependents are eligible to continue their coverage for up to 18 months if termination of coverage is due to:

- 1) Loss of coverage due to reduction of work hours
- 2) Voluntary employee termination including retirement
- 3) Employee layoff for economic reasons
- 4) Employee discharged, except for gross misconduct
- 5) Employee has exhausted their FMLA leave

Covered employees and their dependents are eligible to continue their coverage for up to 29 months if the participant is deemed disabled by Social Security within the first 60 days of COBRA continuation of coverage.

COBRA coverage for covered employees and dependents up to 36 months is permitted if termination of coverage is due to:

- 1) Death of the covered employee
- 2) Divorce or legal separation from the covered employee
- 3) Medicare eligible employee (employee becomes eligible for Medicare, leaving dependents without group coverage)
- 4) Children who lose coverage due to certain contractual eligibility limitations

The coverage cannot be continued beyond the following dates:

- 1) The date on which the employer ceases to provide any group health plan to any employee. If a group health policy ceases to be in force with regards to the employee of the employer, it would be your employer's obligation to allow you or your dependents to continue under any replacing group policy or policies.
- 2) The date the full premium is not paid by the participant. (Including a 30 day grace period.)
- 3) When the individual becomes covered under any other group health plan, or is entitled to Medicare benefits.
- 4) In the case of a spouse, when the spouse remarries and becomes covered under another group health plan.

Your election to continue coverage must be done within 60 days of the date of the Continuation of Coverage Election Form, or your termination date, whichever occurs last. Benefits provided shall be identical to coverage provided for active full-time employees and dependents that have insurance under the plan but have not yet terminated their coverage. The cost to continue coverage is paid by the individual. Within 180 days before expiration of your continuation of coverage, you shall have the right to convert to a conversion plan at the time of your termination if it is being offered to other active full time employees under the plan.

Questions regarding your right to continue insurance after your termination date should be addressed to the Burnet County Human Resources Office.

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4.07 DEFERRED COMPENSATION

If you are interested in additional retirement options, you may become a member of Nationwide Retirement Solutions and have an additional amount deducted from your paycheck for this purpose. For more information, contact the Human Resources Department.

4.08 PUBLIC EMPLOYEES CREDIT UNION

All Burnet County employees are eligible to join the Public Employees Credit Union. You can get a membership form from Human Resources Office, or apply online at www.pecutx.org. If you join the credit union, the amounts you request may be deducted from your pay check and sent directly to the credit union.

5.00 – ABSENCES AND LEAVES

5.01 DEFINITIONS

Leave Time Any time off during your normal scheduled work period.

Unauthorized Absence An unauthorized absence is one in which the employee is absent from regular duty without the permission of the department head. Employees are not paid for unauthorized absences, and such absences are cause for disciplinary action, up to and including termination.

All leave taken by county employees must be approved by their department head or supervisor. For payroll purposes, vacation leave, sick leave, personal leave, holiday hours, or any other leave granted by the County will not be counted as work hours in the calculation of overtime. Leave time is permitted up to a maximum of 40 hours per work week, or employee's normal work schedule.

5.02 VACATION LEAVE

Accruing Vacation Leave Upon completion of the initial three month employment period, vacation leave benefits, figured from the date of employment, are credited to the employee. Thereafter, earned vacation leave is accrued and credited to the employee at the end of each month.

Full-time employees (exempt and non-exempt) accrue vacation leave as follows:

- First through ninth year of employment:
80 hours per year (6.67 hours per month)
- Tenth year and beyond:
120 hours per year (10 hours per month)

Part-time and temporary employees do not earn vacation leave.

Use of Vacation Leave Accrued vacation leave may be used upon the completion of the initial three-month employment period. No more than 80 hours of vacation leave may be carried forward from one calendar year to the next for the first through ninth year of employment. No more than 120 hours of vacation leave may be carried forward from one calendar year to the next for the tenth year of employment and beyond. Any accrued vacation leave in excess of these maximums as of December 31st of each year will be forfeited from the employee's leave record, without compensation.

Vacation leave of one hour or more taken by an exempt, non-elected employee must be documented by completing an Exception Note. The Exception Note should be signed by the employee and their department head/Elected Official, and turned in to the Human Resources Office.

5.03 SICK LEAVE

Accruing Sick Leave Upon completion of the initial three month employment period, sick leave benefits, figured from the date of employment, are credited to the employee. Thereafter, earned sick leave is accrued and credited to the employee at the end of each month.

Full-time employees (exempt and non-exempt) accrue sick leave at the rate of 80 hours per year (6.67 hours per month).

Part-time and temporary employees do not earn sick leave.

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Use of Sick Leave Accrued sick leave may be used upon the completion of the initial three-month employment period. Accrued sick leave may be utilized by full-time employees who are absent from work due to:

- 1) Personal illness or physical or mental incapacity;
- 2) Medical, dental, or optical exams or treatments;
- 3) Medical quarantine resulting from exposure to a contagious disease; or
- 4) Illness of the following members of an employee's immediate family:
 - a. Children
 - b. Spouse
 - c. Parents.

Medical Statement An employee's supervisor may request, and employees must provide upon request, written verification by a physician of a medical illness or injury precluding availability for duty at any time that sick leave benefits are requested.

Sick leave or one day or more, taken by an exempt employee, must be documented by completing an Exception Note signed by the Department Head/Elected Official and employee. The Exception Note is to be turned in to the Human Resources Office.

Accumulation of Sick Leave Sick leave not used during the year in which it accrues accumulates and is available for use in succeeding years, up to a maximum allowable accumulation of 90 days (720 hours).

Illness While on Vacation When an illness or physical incapacity occurs during the time an employee is on vacation leave, sick leave may be granted to cover the period of illness or incapacity and the charge against vacation leave reduced accordingly. Application for such substitution must be supported by a medical certificate or other acceptable evidence to supervisor. Supervisor will provide proper documentation to Human Resources Office.

5.04 MILITARY LEAVE

Full-time and part-time employees of the County who are members of the state military forces or members of the reserve components of the armed forces of the United States are entitled to leave of absence from their duties, without loss of time or efficiency rating or vacation leave or salary, on all days during which they are engaged in authorized training or duty ordered by proper authority, not to exceed 15 days in any one fiscal year. Requests for approval of military leave must have copies of the relevant military orders attached. Military leave in excess of 15 days will be charged to vacation or leave without pay.

5.05 CIVIL LEAVE

Employees will be granted civil leave with pay for jury duty on a scheduled workday. Employee payment for jury services shall be returned to the Burnet County General Fund.

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5.06 LEAVE OF ABSENCE

Leave of absence is an approved absence from duty in a non-pay status. Granting a leave of absence is at the discretion of the department head with the approval of the Commissioners' Court. Such leave of absence shall not be granted unless there is a reasonable expectation that the employee will return to employment with the county at the end of the approved period.

Employees on leave of absence receive no compensation and accrue no benefits. However, previously accrued benefits are retained during leave of absence unless otherwise prohibited by the terms or provisions of the benefit programs. Medical insurance can be continued if paid for in advance by the employee.

A leave of absence is appropriate for the following reasons:

- Recovery from extended illness or temporary disability;
- Educational purposes when successful completion will contribute to the work of the County;
- Public service assignments; or
- Personnel exchange programs which emphasize Intergovernmental relations.

5.07 EXTENDED LEAVE FOR ILLNESS OR TEMPORARY DISABILITY

Following FMLA, employees may request approval to use accrued sick leave and vacation leave for the purpose of paid release time to recover from an extended illness or temporary disability or may request approval for an unpaid leave of absence for these purposes. A request for leave for an extended illness or disability must be filed at least ten working days prior to the first day of leave unless emergency conditions exist. An employee also must provide a statement concerning his/her intentions about returning to work.

Paid Leave Upon written approval of the department head, an employee may use accrued sick leave, vacation leave, personal leave and holiday leave for the purpose of paid absence from duty during an extended illness or temporary disability.

Unpaid Leave of Absence Upon written approval of the department head and approval of Commissioner's Court, an employee may be granted up to six months of unpaid leave of absence for the purpose of recovery from an extended illness or temporary disability. During this time, an employee accrues no additional vacation leave, sick leave, personal leave, or longevity benefits, but retains those already accrued. Medical insurance may be continued if paid in advance by the employee. Other benefits are retained during unpaid leave of absence unless otherwise prohibited by the terms or provisions of the benefit program.

Conditions The department head may require an employee requesting a paid or unpaid leave for extended illness or temporary disability to provide a medical doctor's statement as to the date upon which the employee is no longer able to perform his/her duties and the expected length of the recuperation period. The employee may also be required to provide periodic statements from a medical doctor as to whether or not the employee is able to return to work. Failure to provide medical status reports or to contact the office on the schedule required by the department head is grounds for revoking the leave and for taking disciplinary action, up to and including termination.

5.08 USING LEAVE IN COMBINATION

Unless an employee who is absent on sick leave requests leave without pay upon exhaustion of sick leave, he/she will automatically be placed on vacation leave status until vacation leave is exhausted. Sick leave cannot be used for vacation leave purposes when vacation leave is exhausted.

With the approval of the department head, other types of leave and holidays may be used in any combination if it is determined to be in the best interest of the employee and the county.

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5.09 EMERGENCY LEAVE

Emergency leave with pay shall be granted by the department head for reasons of serious illness, accident, or death in an employee's family.

Emergency leave limitations (per occurrence):

Spouse, Child, Parent.....40 hours

Brother, Sister, Grandparents, Grandchild, Uncle, Aunt, Nephew, Niece, In-Laws.....16 hours

5.10 PERSONAL LEAVE

All full-time, including exempt, employees will be granted 16 hours of personal leave on January 1st of each year. Personal leave may be used as the employee desires, with department head approval.

Employees starting after January 1st of each year will be granted leave on a pro-rated basis.

Employees who have completed 5, 10, 15, 20...(÷5), etc. continuous years of service with Burnet County will receive an additional 8 hours of personal leave on January 1st of the year following the anniversary year.

5.11 HOLIDAYS

Holidays are determined each fiscal year by Commissioners' Court. A schedule of holidays shall be posted in each department and on the Burnet County website.

- A. HOLIDAY WORK – It is not always feasible to grant holidays at the scheduled time to employees assigned shifts of an around-the-clock operation. Any department head who finds it necessary to do so may direct some of all employees of the department to report for work on any holiday. For holiday pay policy, see Section 3.09.
- B. If an official holiday falls within an employee's vacation, the employee will be granted the holiday and not be charged for a day of vacation leave.
- C. Part-time and temporary employees are not eligible for holiday pay.

5.12 BAD WEATHER DAYS

Any full-time employee who, by his/her own choice, who misses work because of bad weather shall show time missed as vacation leave or personal leave.

Part-time employees will not receive any compensation for bad weather days as they are paid hourly for their actual hours worked.

Bad weather/emergency days mandated by the County Administrative Judge will be paid. Hours will not be used to compute overtime.

5.13 SICK LEAVE POOL

GENERAL

An employee may request to use pool leave only once per fiscal year, per catastrophic illness. A catastrophic illness or injury is defined as a terminal, life-threatening, and/or severe condition or combination of conditions affecting the mental or physical health of the employee (or his/her immediate family) that requires the services of a licensed health care practitioner for a prolonged period of time and that forces the employee to exhaust all accrued leave time (sick, vacation, personal, compensatory, holiday), thereby resulting in the loss of all compensation from the County. If the employee does not use his maximum entitlement on the first request, and another catastrophic event occurs, a second

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request can be submitted. An employee who is on pool leave at the end of the fiscal year and still cannot return to work does not have to reapply to continue using pool leave in the next fiscal year. However, he/she must ensure that a Certification of Health Care Provider be furnished each thirty (30) days. The employee may still only receive the maximum entitlement per illness.

Examples of Catastrophic Illness/Injury

- | | |
|--|-------------------------|
| ▪ Back conditions requiring extensive therapy or surgery | ▪ Kidney Disease |
| ▪ Heart conditions | ▪ Most types of cancers |
| ▪ Severe respiratory conditions | ▪ Pneumonia |
| ▪ Severe nervous disorders | ▪ Severe stroke |
| ▪ Injuries caused by serious accidents | |

Examples of Illness/Injury Not Normally Considered Catastrophic

- | | |
|-------------------------|--|
| ▪ Migraines/Headaches | ▪ Childbirth/Normal Recovery |
| ▪ Common Cold/Allergies | ▪ Miscarriage (without complications) |
| ▪ Flu | ▪ Elective Surgeries |
| ▪ Earaches | ▪ Routine dental or orthodontic issues |
| ▪ Upset Stomach | ▪ Absence due to substance abuse |
| ▪ Minor Ulcers | ▪ Stress |

All regular, full-time employees may apply to use sick leave from the sick leave pool subject to provisions. (The only exception is any employee being paid Worker's Compensation.)

An employee does not have to contribute to the pool in order to use from the pool, and no payback of pool sick leave is required.

Requests will be processed on a first-come, first-served basis. The Pool Committee will have five (5) workdays from the date they receive a request and a completed Certification of Health Care Provider in which to approve or deny the request. The decision of the Pool Committee will be the final decision. The supervisor of an employee requesting to use pool leave will ensure that an appropriate Certification of Health Care Provider regarding the illness or injury accompanies the request.

CONTRIBUTING SICK LEAVE TO THE POOL

An active employee may contribute up to 40 hours of sick leave to the pool each fiscal year in increments of 8 hours.

An employee who is separating from employment may donate not more than 80 hours of sick leave to the pool, in increments of 8 hours.

Employees will not be allowed to contribute sick leave to be used only by a particular person.

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REQUESTING TO USE SICK LEAVE FROM THE POOL

An employee must have completed one year of continuous service with the County before he/she is eligible to use leave from the pool.

Employees must exhaust all paid leave before they are eligible to use any leave from the pool.

An employee who has exhausted all paid leaves to which he/she is entitled may apply to use sick leave hours from the pool. Requests must be submitted in writing on a Sick Leave Pool Request Form (available from the Human Resources Office).

An employee may use pool sick leave for his/her own catastrophic illness or injury or for one in his/her immediate family. Immediate family is defined as child, spouse, or parent.

An employee must furnish a completed Certification of Health Care Provider (forms available from the Human Resources Office), prior to approval of the Sick Leave Pool Request. Sick Leave Pool hours will be granted in increments not to exceed thirty (30) work days. Recipients eligible for Sick Leave Pool hours in excess of thirty (30) work days will be required to furnish a completed Certification of Health Care Provider again, each thirty (30) day period, until the balance of hours granted is used entirely or the employee returns to work at the end of the illness.

The amount of hours available from the pool is determined by the number of years of continuous service with the County. The following will be used to determine the number of hours available:

- | | |
|----------------------|--|
| ▪ 1 year - 5 years | 1/9 balance of pool/or 30 work days, whichever is less |
| ▪ 5 years - 10 years | 1/6 balance of pool/or 60 work days, whichever is less |
| ▪ 10+ years | 1/3 balance of pool/or 90 work days, whichever is less |

In no event can the amount of sick leave used from the pool exceed 1/3 of the balance of hours in the pool or 90 work days, whichever is less.

An employee may also apply to receive sick leave from the pool if he/she gave sick leave to the pool and then exhausted his sick leave balance in the same fiscal year. Such employees may receive only the number of hours they contributed to the pool unless their illness or injury is catastrophic (life-threatening).

An employee on pool leave does not accrue paid leave.

Any unused balance of pool leave hours granted to an employee returns to the pool at the end of the illness. The estate of a deceased employee is not entitled to payment for unused pool sick leave.

**5.14 FAMILY AND MEDICAL LEAVE AND MILITARY FAMILY LEAVE
POLICY**

It shall be the policy of the County to provide eligible employees with all benefits and privileges required under the Federal Family and Medical Leave Act (FMLA) and Military Family Entitlements.

ELIGIBILITY

To be eligible for benefits under this policy, an employee must:

- A. Have worked for Burnet County at least twelve (12) months (need not be continuous service), and,
- B. Have worked at least one thousand two hundred fifty (1,250) hours during the previous twelve (12) months.

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QUALIFYING EVENTS

Family or medical leave under this policy may be taken for the following situations:

- A. The birth of a child and in order to care for that child; or
- B. The placement of a child in the employee's home for adoption or foster care; or
- C. To care for a spouse, child, or parent with a serious health condition; or
- D. The serious health condition of the employee that makes the employee unable to perform the essential functions of their job; or
- E. A qualifying exigency arising out of the fact that an employee's spouse, child or parent is a covered military member (National Guard or Reserves) on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; or
- F. To care for a covered service member (Regular Armed Forces, National Guard or Reserves) with a serious injury or illness if the employee is the spouse, child, parent or next of kin (nearest blood relative) of the service member.

SERIOUS HEALTH CONDITION

- A. Serious health condition of the employee shall be defined as a health condition that requires overnight inpatient care at a hospital, hospice, or residential care medical facility or continuing treatment by a health care provider.
- B. Serious health condition of a spouse, child, or parent shall be defined as a condition which requires overnight inpatient care at a hospital, hospice, or residential care facility, or a condition which requires continuing care by a licensed health care provider.

CONTINUING TREATMENT

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- A. Treatment two or more times within thirty (30) days of incapacity, or
- B. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment by a health care provider. This treatment must occur within the first seven (7) days of incapacity.
- C. Any period of incapacity due to pregnancy or prenatal care.
- D. Any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits to a health care provider and continues over an extended period of time.
- E. Any period of incapacity which is permanent or long term due to a condition that treatment was not effective.
- F. Any period of incapacity or absence to receive multiple treatments by a health care provider.

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QUALIFYING EMERGENCY LEAVE

Eligible employees may take FMLA leave when an employee's covered military member (spouse, child or any age or parent) is on active duty or called to active duty status in support of a contingency operation. The following qualify as exigency leave:

- A. Leave may be taken to address any issue that arises because the covered military member was given seven or less days' notice for active duty deployment in support of a contingency operation. Eligible employees may take up to seven (7) days beginning on the date the covered military member receives the call or order to active duty.
- B. Leave may be taken to attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member.
- C. Leave may be taken to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to active duty or call to active duty status of a covered military member.
- D. Leave may be taken to arrange for alternative childcare, provide childcare on an urgent basis (not as routine), to attend school or daycare meetings, to enroll or transfer covered children under age 19 when it is necessitated by the active duty or call to active duty status of a covered military member.
- E. Leave may be taken to make or update financial or legal arrangements to address the covered members' absence while on active duty or call to active duty status.
- F. Leave may be taken to act as the covered military member's representative before a governmental agency for obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status and for a period of ninety (90) days following the termination of the covered member's active duty status.
- G. Leave may be taken to attend counseling provided by someone other than a health care provider for oneself, for the covered military member or covered child provided the need for counseling arises from the active duty status or call to active duty status of a covered military member.
- H. Leave may be taken to spend time with a covered military member who is on a short-term, temporary, rest and recuperation leave during leave during the period of deployment. Eligible employees may take up to five (5) days of leave for each instance of rest and recuperation.
- I. Leave may be taken to attend post-deployment activities for the covered military member for a period of 90 days following the termination of the covered member's active duty status.
- J. Leave may be taken to address issues that arise from the death of a covered military member while on active duty status.
- K. Leave may be taken to address any other additional events that may arise out of the covered military member's active duty or call to active duty status provided Burnet County agrees the leave shall qualify as an exigency and agree to both the timing and the duration of such leave.

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LEAVE AMOUNT

- A. Up to twelve (12) weeks leave per twelve (12) month period may be used under this policy.
- B. Burnet County will measure the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy.
- C. All leave taken under this policy during the prior twelve (12) month period shall be subtracted from the employee's twelve (12) week leave eligibility and the balance is the leave the employee is entitled to take at that time.
- D. If a husband and wife both work for Burnet County, the maximum combined leave they shall be allowed to take in any twelve (12) month period for the birth or placement of a child, or care for a parent with a serious health condition is twelve (12) weeks. The combined limit is twenty-six (26) weeks in a single twelve (12) month period if leave is to care for a covered service member with a serious injury or illness.
- E. An eligible employee is entitled to up to twenty-six (26) workweeks of leave to care for a covered service member with a serious injury or illness during a single twelve (12) month period.
 - 1. The single twelve (12) month period begins on the first day the eligible employee takes FMLA to care for a covered service member and ends twelve (12) months after that date.
 - 2. If an eligible employee does not take all of his/her twenty-six (26) workweeks during this twelve (12) month period, the remaining part of the twenty-six (26) workweeks of leave entitlement to care for a covered service member is forfeited.
 - 3. This leave entitlement is applied on a per-injury basis such that an eligible employee may be entitled to take more than one period of twenty-six (26) workweeks of leave if the leave is to care for different covered service members or injury, except that no more than twenty-six (26) workweeks may be taken within any single twelve (12) month period.

PAID AND UNPAID

- A. If an employee has accrued leave, the employee shall be required to use the following paid leave as detailed below:
 - 1. Vacation time
 - 2. Holiday time
 - 3. Sick time
 - 4. Personal timeThe remainder of leave shall be unpaid.
- B. An employee who is taking leave because of his/her own serious health conditions or the serious health condition of an eligible family member shall be required to first use all earned compensatory time, then sick leave, vacation leave, and any other paid leave, with the remainder of the twelve (12) week period being unpaid leave.
- C. An employee taking leave for the birth of a child shall be required to use paid sick leave first, then earned compensatory time, vacation leave, holiday leave, and personal leave for the recovery period after the birth of the child and prior to being on unpaid leave.
- D. After the recovery period from giving birth to a child, the employee shall be required to first use all earned compensatory time, then vacation leave and other available paid leave, except for sick leave, with the remainder of the twelve (12) week leave period being unpaid leave.
- E. An employee who is taking leave for the placement of a child in the employee's home for adoption or foster care shall be required to use first earned compensatory time, then

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vacation leave, then other available paid leave, except for sick leave, with the remainder of the twelve (12) week period being unpaid leave.

- F. An employee who is taking leave for a qualifying exigency for a covered military member shall be required to use first compensatory time, then vacation leave and other available paid leave, except for sick leave, with the remainder of the twelve (12) week leave period being unpaid leave.
- G. An employee taking leave for the care of a covered service member shall be required to first use all earned compensatory time, then sick leave, vacation leave and any other paid leave, with the remainder of the twenty-six (26) week leave period being unpaid leave.
- H. The maximum amount of paid and unpaid leave that may be used under this policy in any twelve (12) month period is twelve (12) weeks, except for qualifying leave to care for a covered military member with a serious injury or illness with the maximum leave being twenty-six (26) weeks in a single twelve (12) month period.

INSURANCE

- A. While on leave under this policy, Burnet County shall continue to pay the employee's medical insurance premium at the same rate as if the employee had been actively at work.
- B. The employee shall be required to pay for dependent coverage, and for any other insurance coverage for which the employee would normally pay, or the coverage will be discontinued.
- C. Payment for coverage under section twenty-one (21) of this policy shall be made through regular payroll deduction while the employee is on leave (paid leave).
- D. While on unpaid leave, the employee shall be required to pay for premiums due to Burnet County under section twenty-one (21) of this policy no later than thirty (30) days after the due date which Burnet County sets or the coverage shall be discontinued.
- E. At the end of the twelve (12) weeks leave, all eligible employees will be offered COBRA if they are unable to return to work, except for the care of an injured covered military member where the eligible employee will be offered COBRA at the end of twenty-six (26) weeks in a single twelve (12) month period.

INTERMITTENT LEAVE AND REDUCED SCHEDULE

- A. Intermittent leave under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member.
- B. A reduced schedule under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member.
- C. All work time missed as a result of intermittent leave or a reduced work schedule under this policy shall be deducted from the employee's twelve (12) week leave eligibility. If the time missed is for the care of a covered military member with serious injury or illness, the time will be deducted from the employee's twenty-six (26) week leave eligibility in a single twelve (12) month period.

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CERTIFICATION REQUIREMENTS

- A. Burnet County shall have the right to ask for certification of the serious health condition of the employee or the employee's eligible dependent when the employee requests or is using leave under this policy.
- B. The employee must respond to the request within fifteen (15) days of the request or provide a reasonable explanation for the delay. If an employee does not respond, leave may be denied.
- C. Certification of the serious health condition of the employee shall include:
 - 1. The date the condition began;
 - 2. Its expected duration;
 - 3. The diagnosis of the condition;
 - 4. A brief statement of the treatment; and
 - 5. A statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's job.
- D. Certification of the serious health condition of an eligible family member shall include:
 - 1. The date the condition began;
 - 2. Its expected duration;
 - 3. The diagnosis of the condition;
 - 4. A brief statement of the treatment; and
 - 5. A statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.
- E. Certification for leave taken because of a qualifying exigency shall include:
 - 1. Military member is on active duty or called to active duty service;
 - 2. The dates of the covered military members active duty service;
 - 3. A statement of description, signed by the employee, of appropriate facts regarding the qualifying exigency, sufficient to support the need for leave;
 - 4. The approximate date on which the qualifying exigency will start and end;
 - 5. If the request is for an intermittent leave or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;
 - 6. If the qualifying exigency involves meeting with a third party, appropriate contact information such as: name, title, organization, address, telephone number, fax number and email address, and a brief description of the purpose of the meeting.
- F. Certification for leave taken for a serious injury or illness of a covered military member shall include:
 - 1. If the injury or illness was incurred in the line of duty while on active duty;
 - 2. The approximate date on which the illness or injury occurred and the probable duration;
 - 3. A description of the medical facts regarding the covered military members health condition, sufficient to support the need for care;
 - 4. If the covered military member is a current member of the Regular Armed forces, the National Guard or Reserves, and the covered military member's branch, rank, and unit currently assigned to;
 - 5. The relationship of the employee and the covered military service member;
 - 6. In lieu of certification, an ITO (invitational travel orders) or an ITA (invitational travel authorization) issued is sufficient certification for an eligible employee to be allowed to take FMLA to care for a covered military member. The employee may be required to provide confirmation of the covered family relationship to the seriously injured or ill covered military member.

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- G. If the employee plans to take intermittent leave or work a reduced schedule, the certification shall also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule. Certification for intermittent or reduced schedule leave may be requested every six (6) months in connection with an eligible absence.
- H. Burnet County shall have the right to ask for a second opinion from a physician of the County's choice, at the expense of the County, if the County has reason to doubt the certification, except FMLA to care for a seriously injured or ill covered service member supported by an ITO or ITA.
- I. If there is a conflict between the first and second certifications, Burnet County shall have the right to require a third certification, at the expense of Burnet County, from a health care practitioner agreed upon by both the employee and Burnet County, and this third opinion shall be considered final.

REQUESTING LEAVE

- A. Except where leave is unforeseeable, an employee shall be required to submit, in writing, a request for leave under this policy to his or her immediate supervisor.
- B. Where practicable, and employee should give his or her immediate supervisor at least thirty (30) days' notice before beginning leave under this policy.
- C. Where it is not reasonably practicable to give thirty (30) days' notice before beginning leave, the employee shall be required to give as much notice as is reasonably practicable.
- D. If an employee fails to provide thirty (30) days' notice for foreseeable leave, the leave request may be denied until at least thirty (30) days from the date Burnet County receives notice.

REINSTATEMENT

- A. Employees returning from leave under this policy, and who have not exceeded the twelve (12) week maximum allowed under this policy, shall be returned to the same job or a job equivalent to that the employee held prior to going on leave. Employees who have not exceeded the twenty-six (26) maximum in a single twelve (12) month period allowed to care for a seriously ill or injured covered military member shall be returned to the same job or a job equivalent to the job they held prior to going on leave.
- B. Where an employee is placed in another position, it will be one which has the equivalent status, pay, benefits and other employment terms and one which entails substantially equivalent skill, effort, responsibility and authority.
- C. Burnet County shall have no obligation to reinstate an employee who takes leave under this policy and who is unable to return to work after using the maximum weeks of leave allowed under this policy, or who elects not to return to work after using the maximum leave; this includes employees who may still have sick or vacation leave still available.

REPAYMENT OF PREMIUMS

Except in situations where the employee is unable to return to work because of the serious medical condition of the employee or eligible family member, or other situations beyond the control of the employee, an employee who does not return to work after using the maximum leave allowed under this policy shall be required to reimburse Burnet County for all medical premiums paid by Burnet County while the employee was on leave without pay.

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OTHER BENEFITS

While on leave without pay under this policy, an employee shall not earn vacation, sick leave, be eligible for holidays or holiday leave, or earn other benefits afforded to employees actively at work, except for those stated in this policy.

OTHER ISSUES

- A. Any area or issue regarding family and medical leave which is not addressed in this policy shall be subject to the basic requirements of the Federal Family and Medical Leave Act (FMLA) and the regulations issued to implement it.
- B. Burnet County may send out to an employee who has been out for three (3) or more days a Medical Certification to determine the employee's FMLA eligibility. The employee should have their physician complete and return the certification within fifteen (15) days of receipt to be eligible for FMLA. Failure to return the medical certification may result in denial of FMLA.
- C. Employees will be required to provide a Fitness-for Duty certification prior to returning to work.
- D. Once FMLA is exhausted, employees eligible for insurance will be offered COBRA.

5.15 PAID QUARANTINE LEAVE FOR PEACE OFFICERS AND DETENTION OFFICERS

Pursuant to Texas HB 2073, enacted June 15, 2021, Burnet County shall provide paid quarantine leave for peace officers and detention officers employed by Burnet County and ordered by a supervisor or the health authority to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty. This includes peace officers and detention officers as defined by this policy, who are employed by, appointed to or elected to their position.

"Detention officer" means an individual appointed or employed by a county as a county jailer or other individual responsible for the care and custody of individuals incarcerated in a county jail.

"Health authority" has the meaning assigned by Section 121.021, Health and Safety Code. A health authority is a physician appointed under the provisions of Chapter 121 to administer state and local laws relating to public health within the appointing body's jurisdiction. A health authority must be: a competent physician with a reputable professional standing who is legally qualified to practice medicine in the state and a resident of the state. They must take an official oath and file with the department.

For counties that do not establish a local health department or public health district, they may appoint a physician as health authority to administer state and local laws relating to public health in the county's jurisdiction.

"Peace officer" means an individual described by Article 2.12, Code of Criminal Procedure, who is elected for, employed by, or appointed by the county.

Eligible employees who are on qualifying paid quarantine leave shall receive all employment benefits and compensation, including leave accrual, retirement, and health benefits for the duration of the leave; and, if applicable, shall be reimbursed for reasonable costs related to the quarantine, including lodging, medical, and transportation. Contact the Human Resources Department or Auditor's Office for reimbursement procedure; lodging costs may not exceed the U.S. General Services Administration Standard Lodging Rate. An employee on qualifying paid quarantine leave will not have their leave balances reduced.

Off duty exposures will not be covered under this policy.

6.00 – HEALTH AND SAFETY

6.01 GENERAL SAFETY RULES

- A. Employees shall not turn on, use, repair, or operate any vehicle, crane, electricity, gas, steam, air, acid, caustic or other dangerous material or equipment unless qualified and authorized by a supervisor.
- B. Safety Guards and devices furnished by Burnet County or the department shall be used. Removal or non-use may be authorized only by the supervisor and approved by the department head.
- C. Approved personal protective equipment shall be worn whenever the exposure indicates the need for it, i.e., eye and ear protection equipment and safety belts. Protective footwear shall be worn as recommended by the supervisor.
- D. Only tools, equipment, machines, etc. that are properly maintained and adjusted may be used.
- E. Floors must be kept free of any material or substance that might constitute a tripping or slipping hazard. Employees responsible for any such material or substance spilled shall clean it up immediately.
- F. Horseplay, running, and practical jokes are prohibited on the job.
- G. Immediately report all injuries to your supervisor.
- H. The Human Resources Office shall be notified in all medical or lost time accidents of employees. The Auditor's Office shall be notified of all incidents related to public accidents.
- I. Computer keyboards should be placed at a level to prevent wrist strain causing Carpal Tunnel Syndrome.

6.02 CLOTHING AND SAFE DRESS

- A. Employees will wear clothing appropriate to their work assignments. Clothing will be in reasonably good condition and clean.
- B. Supervisors are responsible for ensuring that employees are informed as to the requirements for wearing apparel that is suitable for the type of work to be performed and the hazards involved.
- C. For those working with machinery or in other hazardous operations, shirts, blouses, trousers, slacks, coveralls, etc. should be well fitted, with no loose or flowing appendages. Sleeves, if full length, should be buttoned at the wrist. The practice of working without a shirt is prohibited.
- D. Employees with long hair who work around moving machinery must wear adequate hair covering to preclude the possibility of entanglement.
- E. Jewelry such as rings, pendants, necklaces, earrings, watches, etc. shall not be worn whenever they constitute a hazard, i.e. working around moving machines, electrical or electronics equipment, etc.

6.03 LIFTING AND MANUAL MATERIAL SAFETY HANDLING

Lifting and material handling type injuries make up a major portion of risk for employee injury. We also recognize that in order to reduce the risk of this type of injury, we must find alternatives to manual lifting and manual material handling. Employees are to follow these procedures when handling materials:

- A. Try to eliminate the need for lifting or reducing the risk of lifting injuries through:
 - 1. Organizing storage of materials.
 - 2. Limiting bulk and weight of materials to be lifted. Keep package sizes manageable. (Remember that bulky and awkward objects cause most material handling injuries.)
 - 3. Keeping aisles clear when carrying materials to prevent trips, stumbling, etc.
 - 4. Making sure you are aware of the weight of the objects. Underestimating or overestimating the weight of an object can lead to injury.
 - 5. Wiping off wet, greasy, or slippery objects before handling them.
- B. Rather than lifting manually, use the mechanical lifting devices whenever possible and team lifting when necessary.
- C. All manual lifting cannot be eliminated. Lift as a last resort, if mechanical aids are not available and the lift is necessary. When lifting alone, follow either of the appropriate lifting procedures below:
 - 1. Two hand squat lift involves six (6) steps:
 - a. Keep feet parted – one alongside and one behind the object.
 - b. Keep back straight, nearly vertical.
 - c. Tuck elbows and arms in and hold close to the body.
 - d. Grasp the object with your whole hand, not just the fingers.
 - e. Tuck your chin in.
 - f. Keep body weight directly over feet.
 - 2. Assisted one-hand lift should be used when it is impossible to bend the knees and squat. Reaching over into a container to lift something would be a good example of this:
 - a. Place the non-lift hand on the container top; bend over the container.
 - b. While bending over, kick the foot on the same side as the non-lifting hand rearward to provide forward body balance (optional).
 - c. Reach and grasp object to be lifted.
 - d. Push down with the non-lifting hand on the container top raising the upper body to a vertical position. Be sure to let the non-lifting arm do the work, not the back.
 - e. Remember, this technique is not always practical. This type of lift should be limited to a load weight of 15-20 lbs.
 - 3. Twisting the body should always be avoided. Turn your body as a whole unit to reduce the risk of an injury while lifting and carrying loads.
 - 4. It is impractical to establish a definite limit on how much weight can be lifted, however, based on an infrequent lift; the following can be used as a guideline. This is based on a normal lift (with no twisting) of a standard size box (20"x15"x10"). Allowance should be made if the object is bulkier than this by decreasing the allowable weight.
 - 5. Employees who will be lifting objects on the job should keep themselves in good physical condition. If you are going to be lifting objects that are heavy, or lifting for a prolonged period, take time to do some stretching and warm up exercise prior to starting the job. Studies have shown that this can have a dramatic effect on reducing injuries of this type.

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6.04 EMERGENCY RESPONSE

In the event an accident occurs, each employee shall take the necessary Emergency Response as outlined here: Look for medic alert bracelet or necklace. It is recommended that all employees with medical conditions wear a medic alert bracelet or necklace.

6.05 PERSONNEL INJURIES

It is strongly suggested that every employee take CPR training as soon as possible after being hired.

If an employee is injured, other employees in the immediate area are encouraged and authorized to the extent of his/her training and qualifications, to assist the injured employee. The most qualified employee on site should make the initial assessment of the severity of the injury and, if the injury is found to be minor (non-life-threatening) and if the injured employee is conscious and consents, is authorized to take the following action:

- A. Provide first aid to the injured employee.
- B. Transport the injured employee to the nearest physician or medical facility; or
- C. Contact Emergency Medical Services (EMS) or ambulance service.

For more severe or life-threatening injuries, immediately call 9-1-1.

No employee should attempt, and nothing herein is intended or should be construed to require any employee, to provide any medical aid or assistance, including moving an injured employee or otherwise administer any first aid, if the employee:

- A. Is not qualified or properly trained to administer such aid and/or assistance,
- B. Does not have the consent of an injured employee who is conscious and able to give consent,
- C. Determines that protective equipment (such as disposable gloves or breathing barriers) is not available or adequate to protect the employee from exposure to or contamination, or from contact with the injured employee's blood and other bodily fluids, or with any other hazardous chemical or material,
- D. Determines that by remaining at the scene with the injured employee, the employee puts his/her own safety at risk or his/her own well-being in harm's way, and
- E. For any reason under the circumstances then existing, is unwilling to risk, or to assume the risks, to their own safety and well-being in attempting to administer first aid.

Supervisor or Employee will report all medical injuries to the Human Resources Office as soon as possible on the day the accident occurs.

6.06 FIRE EMERGENCIES

If a fire emergency occurs, it is the responsibility of each employee to follow these basic rules in the order indicated:

- A. Remove injured person from any further danger when safe to do so.
- B. Sound an alert to make any persons in the immediate area aware of the fire emergency.
- C. Evacuate the facilities.
- D. Call the Fire Department at 9-1-1.
- E. Attempt to extinguish the fire using the proper type of equipment or extinguisher.

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6.07 HAZARDOUS MATERIAL INCIDENT

Chemical spills or exposure to chemical accidents can be extremely hazardous. Often the chemicals involved a change from dormant to volatile condition upon exposure to the environment or contact with other materials including air, earth, or water. All employees must evacuate any area where a hazardous material incident occurs and then call 9-1-1.

6.08 DUTIES OF EMPLOYEES

- A. Each employee will be issued a copy of the Safety Policy or assume responsibility for accessing the Safety Policy at www.burnetcountytexas.org.
- B. Each recipient shall sign a statement for the Safety Policy acknowledging receipt or the assumption of responsibility for accessing the Safety Policy online.
- C. Be courteous at all times and under all circumstances.
- D. If an employee observes another employee conducting any operation that is dangerous to themselves or others, immediately call his/her attention to it.
- E. If an employee is involved in an accident causing injury or damage and it is established that it is due to carelessness, negligence or a violation of a safety rule, that employee will be subject to disciplinary action up to and including termination at the discretion of the Department Head.
- F. Serious injury can result from horseplay. Offenders will be subject to disciplinary action up to and including termination at the discretion of the Department Head. Offenders are not covered under Worker's Compensation if injured while engaged in horseplay.
- G. Alcohol and Illegal Drugs
 - 1. The use of any kind of alcohol or illegal drugs while on duty is forbidden and will subject the offender to disciplinary action up to and including termination at the discretion of the Department Head.
 - 2. Employees are not covered under Worker's Compensation if it is established they were under the influence of alcohol or illegal drugs at the time of the injury.
 - 3. An employee shall notify his/her supervisor while taking any prescription medication that has the potential to affect performance of duties.
- H. Reporting Injuries and Vehicle Accidents
 - 1. Any injury suffered by an employee involving a motor vehicle while on the job shall be reported to their supervisor when it occurs. (see section 2.10)
 - 2. Supervisor shall immediately contact the Human Resources Office regarding any injuries to employee and the Auditor's Office regarding any damage to the vehicle.

6.09 MATERIAL STORAGE

- A. Material, wherever stored, should not create a hazard. It shall be limited in height and shall be piled, stacked or racked in a manner designed to prevent it from tipping, falling, collapsing, rolling or spreading. Racks, bins, plans, blocks, and/or sheets shall be used where necessary to make the piles stable.
- B. Heavy and awkward items shall be stored near the bottom of shelves or cabinets.
- C. Do not allow equipment or storage to come within 30 inches of all electrical panels.
- D. Secure storage shelf, cabinets, and other items which may tip over.
- E. Indoor storage shall not obstruct or adversely affect means of exit.
- F. Clearance shall be maintained around lights and heating units to prevent ignition of combustible materials.
- G. Storage shall be in orderly and regular stacks.
- H. No combustible material shall be stored outdoors within 10 feet of a building or structure.

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6.10 LIGHTING

- A. Adequate illumination which is suitable to provide a reasonably safe environment shall be provided.
- B. Where the quality of lighting cannot be obtained by general lighting methods, supplementary lighting shall be provided; all possible precautions should be taken to prevent electrical shock to the user.

6.11 WEATHER

Special precaution shall be taken in weather that is rainy, icy, or excessively hot. Proper clothing must be worn by workers and proper driving techniques must be followed.

6.12 RULES OF SAFETY

Every employee is responsible for notifying maintenance of any safety issues they become aware of.

A. Office Safety

- 1. Pencil sharpeners shall not be installed where they might be striking hazards.
- 2. Electric cords on machines and desk lamps must be kept in good repair. Cords are to be replaced when outer insulation is broken.
- 3. All fans shall be equipped with suitable guards. Fans shall not be placed where they might be struck.
- 4. Thumbtacks and other sharp objects should be kept in containers, not loose in desk drawers.
- 5. Individual upright shelves, lockers, and cabinets will be fastened to floor or walls, if the possibility of overturning exists. Where there are two or more, they will be fastened together.
- 6. Not more than one drawer of a file cabinet may be open at one time. Drawers should not be left open when not in use.
- 7. When it is necessary to store material on top of lockers or file cabinets, due regard must be given to the weight, shape, and stability of the material.
- 8. Have defective chairs repaired or replaced promptly.
- 9. Do not tilt back in straight chairs.
- 10. Extreme care must be exercised when cleaning glass used for desk tops.
- 11. Use knives, razor blades, scissors, or shears with care. Cutting edged instruments will be sheathed when not in use.
- 12. Paper cutters shall be equipped with a safety bar. Blade spring tension will be adjusted so that the blade will not fall of its own weight.
- 13. Desks shall be arranged so that electrical and telephone outlets and leads are not tripping hazards.
- 14. Splintered or jagged edges, or other defects found on office furniture will be promptly repaired or the equipment replaced.
- 15. Spindle (spike) files should not be used.
- 16. Before using office machines, be sure they are properly located and not in danger of falling.
- 17. Never clean or lubricate electrical appliances when they are in operation. When cleaning electrical appliances which are controlled by a switch on the machine, be sure the switch is turned off and the plug removed.
- 18. Protection should be provided against moving parts on power driven office equipment.

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- B. Flexible Electric Cords
 - 1. Flexible cords shall be maintained in good repair and must bear the Underwriters Laboratory (UL) label. Do not use cords that are frayed or damaged.
 - 2. Flexible cords should be limited to temporary use, and never cross traveled pathways, unless suitably protected to avoid damage and the creation of tripping hazards.
 - 3. Under no circumstances shall any flexible cord or electrical cord be spliced, except by qualified personnel.
 - 4. Never tack cords to the walls, etc., and keep cords away from pinch points and hot or wet surfaces. Never string cords across the ceiling, over pipes or near sinks, and never place cords and plugs under physical stress or tension.
- C. Copy Machines

All copiers should be located in an area with adequate ventilation.
- D. Road and Bridge

Every employee should be constantly watching for hazards along the roadway. If one is noted, prompt action should be taken to remove it or to notify your supervisor.
- E. Equipment and Machinery

All equipment and machinery operators will follow operator's manual and safety recommendations.

6.13 FIRE PREVENTION

- A. Oily rags, waste, etc., shall be placed in metal cans with covers and emptied frequently.
- B. Precautions against fire and explosions shall be used where flammables with a low flash point are used or stored. Some commonly hazardous liquids are paint, gasoline, paint thinners and solvents.
- C. Clean up flammable liquid spills immediately.
- D. Approved safety cans should be used in transporting and storing flammable liquids.
- E. Containers of flammable liquids shall be secured in vehicles before transporting.
- F. All buildings, especially shops and garages, shall be properly equipped with fire extinguishers.
- G. All fire extinguishers shall be visually inspected yearly. They shall be serviced every year or after any of the following acts or conditions:
 - 1. When found necessary in an inspection.
 - 2. When the extinguisher is used or emptied.
 - 3. When there is evidence of tampering.
 - 4. When there is physical damage or corrosion.
 - 5. When it has been exposed to any abnormal temperature, corrosive atmosphere or materials or leading, etc.
- H. A record of inspection shall be kept by the maintenance department and a tag attached to each extinguisher.
- I. One individual shall be appointed to perform inspections and see that extinguishers are serviced and maintain records.
- J. The size, type and quantity of extinguishers installed shall conform to local, state and federal safety and health standards.

6.14 REASON FOR RULES

As your employer, Burnet County is concerned for your safety. As an employee, safety is YOUR responsibility.

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6.15 SEAT BELT POLICY

Burnet County recognizes that seat belts are extremely effective in preventing injuries and loss of life. It is estimated that seat belts reduce the risk of dying in a motor vehicle crash by 45 percent in a car and by as much as 60 percent in a truck or SUV.

Burnet County values the lives and safety of our employees and wants to make sure that no one is injured or killed in a tragedy that could have been prevented by the use of seat belts. Therefore, all employees of Burnet County must wear seat belts when operating a county owned vehicle, or any vehicle on county premises, or on county business. All passengers who occupy the vehicle at any time and for any purpose, whether business or personal, are required to use seat belts at all times the vehicle is in motion.

The use of seat belts is to be considered a condition of employment with Burnet County. Failure to abide by this stated policy will be considered a breach of that condition of employment and subject the person in violation to disciplinary action, including suspension and possible termination.

6.16 TOBACCO FREE WORKPLACE

Burnet County endeavors to provide a healthy environment. Therefore, any form of tobacco consumed in county buildings and/or county owned vehicles is strictly prohibited. Additionally, no smoking is allowed within twenty-five (25) feet of exterior entranceways. Because of the relative novelty of the technology and the possible relationship to tobacco laws and medical drug policies, electronic cigarette legislation and public health investigations are currently pending in many counties. Current regulations vary widely, from regions with no regulations to others banning the devices entirely. In keeping with efforts to provide a healthy environment, Burnet County prohibits the use of electronic cigarettes in county buildings.

7.00 – USE OF COUNTY PROPERTY

7.01 GENERAL POLICY

Burnet County attempts to provide each employee with adequate tools, equipment, and vehicles for the job being performed and expects each employee to observe safe work practices and safe and courteous operation of vehicles and equipment in compliance with all municipal, county, and state regulations.

7.02 USE OF TOOLS, EQUIPMENT, PROPERTY AND VEHICLES

Employees who are assigned tools or equipment or vehicles by their departments are responsible for them and for their proper use and maintenance.

All county property shall be returned upon termination of employment.

No personal use of any county property, money, materials, supplies, tools, equipment or vehicles is permitted. Violations may result in discharge and possible prosecution.

The use of personal property in the course and scope of employment is at the employee's own risk for loss or damage. Reasonable measures will be taken to safeguard your personal belongings; however, Burnet County assumes no liability for personal property brought into the workplace. Any employee who brings personal property into the workplace assumes the full risk for it should it be lost, stolen, or damaged.

7.03 VALID DRIVER'S LICENSE

All elected officials/employees driving a County-owned vehicle must have a valid Texas Driver's License with a classification which allows for operation of the assigned vehicle(s). If during the course of employment an elected official/employee loses his/her driver's license due to suspension or non-renewal, the elected official/employee shall immediately notify his/her department head/elected official. It shall be the elected official/department head's responsibility to ensure that each of their employees possess a valid Texas Driver's License with the proper classification to operate the employee's assigned vehicle(s). Improper use of a County vehicle shall be subject to disciplinary action. If any employee is excluded from the County's liability insurance coverage due to their driving record, they will become ineligible to drive a County vehicle. An occupational driver's license is not considered a valid driver's license under this section.

Suspension or revocation of the driver's license of an employee who is assigned as a vehicle or equipment operator may result in a demotion or termination.

Burnet County may check employee driving records, at the county's discretion, for all employees who drive for Burnet County business reasons. This includes driving a county owned vehicle or their own car for Burnet County business. Employees who drive for the county must furnish the county with their driver's license number.

7.04 ACCIDENT REPORTING

Any employee operating county equipment or vehicles must report all equipment or vehicular accidents and property damage or liability claims to his/her supervisor and the proper law enforcement agency immediately.

Each vehicular accident, no matter how minor, must be reported to the county in order that an accident report can be filed. Reports should be made to the County Auditor's office. Failure to report accidents may lead to disciplinary action up to and including termination.

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Following all accidents, all drivers will be tested in accordance with our Drug and Alcohol Policy. CDL drivers must follow DOT regulations.

7.05 COUNTY TELEPHONES

No personal long distance telephone calls shall be charged to any county telephones. Personal long distance calls shall be charged to credit cards, charges reversed, or charges made to a third number. Personal calls shall be kept to a minimum.

Effective 10/01/2019, Burnet County will not reimburse employees for use of a personal cellular device. Where job needs demand immediate access to an employee, the county may issue a county-owned cellular telephone to an employee for work-related communications. These phones are intended to be used for business purposes and no personal calls are allowed. If personal cellular calls are made which result in a charge to the county, the employee will reimburse the county within 10 days after notification from the Auditor's Office. Burnet County employees to whom cell phones are issued may be required to keep location services enabled. Abuse of county issued cellular phones can result in disciplinary actions, up to and including termination.

7.06 COUNTY VEHICLE USAGES – GENERAL GUIDELINES

All vehicles must be parked at a county facility at the end of each working day unless prior authorization has been granted by their elected official or department head.

Vehicles may be used only for work-related duties and, if authorized, to drive to and from work. Vehicles may be used for no other purpose, except in an emergency, or for trips completely incidental to County employment while driving to and from a County-related job site.

If an elected official/employee uses a County vehicle to commute to and from their primary residence, the fringe benefit use of said vehicle may be included as taxable income of the elected official/employee in accordance with Internal Revenue Commuting Valuation Rules. Marked vehicles used by law enforcement officers used to commute to and from work are considered as qualified non-personal vehicles and the use of such vehicles is not considered taxable income. Unmarked vehicles used by law enforcement officers are also considered as qualified non-personal vehicles and the use of the vehicles by such personnel to commute to and from work is not considered as taxable income. The term "law enforcement officer" means an individual who is employed on either a full-time or part-time basis by a governmental unit that is responsible for the prevention or investigation of crime involving injury to persons or property (including apprehension or detention of persons for such crime), who is authorized by law to carry firearms, execute search warrants, and to make arrests (other than merely a citizen's arrest), and who regularly carries firearms (except when it is not possible to do so because of the requirements of undercover work). Use of either a marked or unmarked vehicle by a person who is not a law enforcement officer would be considered as taxable income.

Only County elected officials/employees, duly commissioned reserve officers authorized by the County Sheriff or Constable, or officers assigned to special operations and/or task force units approved by Commissioners' Court, are authorized to drive a County vehicle. A list of duly commissioned reserve officers authorized by the County Sheriff or Constable to drive a County vehicle shall be maintained by the respective department head/elected official and a copy kept by the Human Resources Office.

A. Personal Use

1. At no time may a County vehicle be used for personal gain, personal business, to drive to a place of secondary or part-time employment not related to County business, or for any other non-County-related use.

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2. Law Enforcement vehicles may be used for special events provided the County is reimbursed at a rate approved annually by Commissioners' Court.
3. County vehicles may not be used as tow vehicles, unless it is for official County business.
- B. Allowed passengers in County vehicles are: a) anyone in the care and custody of a law enforcement official; b) County employees; c) a non-employee on County-related business; and d) any person in need of transport due to an emergency.
- C. In the event of an accident involving a County owned vehicle being used by County elected official/employee for personal reasons, the County elected official/employee will be fully liable for all damage and/or injuries sustained to all parties in the accident.
- D. All drivers of County-owned vehicles, and those using their personal vehicles on County business, shall comply with all applicable State and local laws. It will be the responsibility of the driver to pay any fines imposed for not complying with such laws.
- E. Federal Law prohibits any CDL driver operating any vehicle over 10,000 GWR from texting with fines and penalties, up to including loss of CDL. Burnet County expressly prohibits anyone operating a County owned vehicle from texting with penalties, up to and including loss of employment.

The Commissioners' Court may grant a vehicle allowance to any elected official/employee deemed appropriate. The vehicle allowance will be paid monthly on the elected official/employee's paycheck as a Taxable Fringe Benefit as designated by IRS Fringe Benefit Guidelines.

7.07 UNIFORM POLICY

If a Burnet County employee receives a county uniform, Burnet County will comply with IFS regulations in determining if the benefit is taxable to the employee.

7.08 USE OF COUNTY CASH FUND

According to LGC Sec. 130.902 (c), a change fund may not be used to make loans or advances or to cash checks or warrants of any kind.

Therefore, no checks will be cashed for any reason from any county change drawer.

7.09 USE OF SIGNATURE STAMP

A signature stamp is used when an elected official or department head authorizes an employee to use the stamp on behalf of the person in authority. An employee who receives permission to use a signature stamp on behalf of a person in authority must account for the proper usage of the instrument. To this end, Burnet County requires the employee to personally sign or initial underneath a stamped signature to identify who placed it there. The employee will become the primary contact in case a document has been erroneously stamped. In case of a mistake, the person who stamped the document will be held accountable. Use the signature stamp on the proper documents and only after the person whose signature is on the stamp and has given permission for its use.

Do not use signature stamps on documents that require a personal review or assessment from the individual whose name is on the stamp. Improper use may result in legal ramification and/or disciplinary steps up to and including termination.

8.00 – DISCIPLINE

8.01 DISCIPLINE

All elected officials are strongly recommended and all department heads, supervisors and anyone responsible for hiring/firing and supervising employees are required to attend an annual HR Seminar provided by the County or by another professional organization.

Each department head shall have the authority to take disciplinary action against an employee when, for whatever reason, the department head feels that such action is necessary to ensure the effective operation of the department or to protect the interest of Burnet County. While all county employees are at-will employees and may be terminated at any time, a department head may choose to take other disciplinary action, depending on the nature and severity of the problem, prior to considering termination of employment. Examples of the disciplinary steps that may be taken include:

1. Oral Warnings; Prepare written account of “oral warning” and file in Personnel file.
2. Written Reprimand
3. Reduction in Pay
4. Suspension with Pay
5. Suspension without Pay; or deduction from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules or violation of safety rules.
6. Demotion
7. Termination

While it would not be possible to list every situation for which disciplinary action would be taken, the following is a brief list of some of those situations for which disciplinary steps would normally be used.

- Insubordination;
- Absence without leave, including failure to notify a supervisor of sick leave and repeated tardiness or early departure;
- Endangering the safety of other persons through negligent or willful acts;
- Intoxication or drug use while on duty;
- Unauthorized use of public funds or property;
- Violation of the requirements of these personnel policies;
- Conviction of a felony;
- Falsification of documents or records;
- Unauthorized use of official information or unauthorized disclosure of confidential information;
- Unauthorized or abusive use of official authority;
- Incompetence or neglect of duty; or
- Disruptive behavior which impairs the performance of others.

9.00 – SEPARATIONS

9.01 RESIGNATION

An employee who intends to resign is encouraged to notify his/her supervisor in writing at least two weeks prior to the last day of work.

9.02 RETIREMENT

The same notice requirements for resignation apply in the case of retirement. Retirement information may be obtained in the Human Resources Office or at www.tcdrs.org.

9.03 REDUCTION IN FORCE

An employee may be separated when his/her position is abolished or when there is either a lack of funds or lack of work.

When reductions in force are necessary, decisions on individual separations will be made after considering (1) the relative necessity of each position to the organization, (2) the performance record of each employee, and (3) qualifications of the employee for remaining positions.

9.04 TERMINATION

Burnet County is an “at will” employer, which means that Burnet County can terminate the employment relationship at any time, with or without prior notice, and for any reason not prohibited by statute.

9.05 DISABILITY

Burnet County adheres to the Americans with Disabilities Amendments Act of 2008, or the ADAAA.

9.06 DEATH

If a county employee dies, his/her estate receives all earned pay and any accrued and payable benefits.

9.07 TERMINATION PAY

Upon separation from county employment, employees will receive their final paycheck on the next regularly scheduled payday after their last day of work or HR receives notification of separation, whichever is later.

Upon separation from county employment, employees will be paid for all unpaid compensatory time on the books.

Upon separation from county employment, employees who have completed one year of continuous service to Burnet County will be paid for accrued and unused vacation leave up to a maximum of 80 hours. In the event of an employee resignation, payment of vacation leave is contingent upon two weeks’ notice and the completions of all scheduled work days in the notice period, unless prior approval is received from the Department Head.

No compensation will be paid upon separation for sick leave, personal leave, or holiday leave still carried on the books.

9.08 EXIT INTERVIEW

All employees terminating from Burnet County are encouraged to complete an Exit Interview with the Human Resources Office.

10.00 – PERSONNEL FILES

10.01 GENERAL

Official personnel files are maintained by the Human Resources Office. The record copy of all personnel information related to an employee shall be filed in the employee's personnel file.

Information in an employee's personnel file must be disclosed upon request unless specific items are accepted from disclosure by law. No information from any record placed in an employee's personnel file will be communicated to any person or organization except by the employee's department head or designated personnel in the Human Resources Office.

Employees are expected to inform the Human Resources Office of any changes in or corrections to information recorded in their individual personnel file, such as home address, telephone number, person to be notified in case of an emergency, or other pertinent information.

10.02 LEAVE RECORDS

Official records of vacation, sick, holiday, personal leave, and compensatory time accrual and usage will be kept for each employee by the Human Resources Office. Leave records will be reconciled and updated after the close of each payroll, with accruals being posted at the end of each month. Leave balances are shown on the official record to reflect any remaining time to which an employee is entitled.

11.00 – TRAVEL EXPENSES

11.01 ELIGIBILITY

Any employee of Burnet County required to travel in the performance of county business shall be reimbursed as provided for in these policies. Such travel shall be at the discretion of the department head. Use of county vehicles is encouraged whenever possible. Once an employee has given notice of resignation, they do not qualify for reimbursements to attend schools, conferences or any other non-required travel.

11.02 TRANSPORTATION COST

An employee using a private motor vehicle for transportation shall be reimbursed at the rate per mile allowable by IRS guidelines for actual mileage traveled using the shortest route to and from his/her destination.

When two or more employees travel in the same vehicle, only one may claim mileage reimbursement. This provision, however, shall not preclude any employee from receiving reimbursement for other eligible expenses incurred.

When an employee or elected official uses another mode of transportation, such as a bus, air or train, reimbursement shall be for the actual cost of the transportation. A ticket receipt must accompany the expense report. Employees and elected officials shall not be reimbursed for use of a rental car except where the cost of other transportation would exceed the cost of a rental car or is not available.

11.03 LODGING COST

Burnet County will pay for accommodations up to the single room rate unless two or more County employees enrolled in the conference are sharing a room.

Burnet County will pay for the prior night of lodging accordingly:

Miles	Training Start Time
60 – 120	at or before 10:30 a.m.
121 – 240	at or before Noon (12:00 p.m.)
241 – 360	at or before 3:00 p.m.
361 – 480	at or before 6:00 p.m.

If an employee travels more than 480 miles, Burnet County will pay for the prior night regardless of the training start time.

11.04 MEALS

Employees or elected officials traveling outside the county may receive a per diem not to exceed \$50.00 per day for meals, providing they are traveling overnight on official business.

Any amount in excess of the IRS per diem rate will be considered a taxable fringe benefit. Breakfast will be paid for if you travel before 6:30 a.m. Lunch will be paid for if you travel before 10:30 a.m. Dinner will be paid for if you travel after 7:00 p.m. Amounts for each meal would be as follows: Breakfast - \$16.00, Lunch - \$19.00, and Evening - \$28.00.

The employee has the option of presenting receipts not to exceed \$63.00.

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Employees that travel without an overnight stay must present receipts for reimbursement to be reimbursed on the employee's next paycheck. Amounts for each meal are as follows: breakfast may be reimbursed at \$16.00, lunch at \$19.00, and dinner at \$28.00. These meals are taxable as wages to the employee because travel must be away from home overnight to be excludable.

Burnet County will not reimburse for the following items:

- a. Alcoholic beverages;
- b. Optional Meals added as part of event registration;
- c. Guests' meals;
- d. Meals supplied by event sponsors (excluding breakfast).

Burnet County credit cards MAY NOT be used for payment of out-of-town conference/training meals.

11.05 INCIDENTAL EXPENSES

Employees or elected officials shall be reimbursed for the actual cost of the following incidental expenses incurred during official travel:

- Meals not to exceed Per Diem
- Standard Parking fees
- Bus fares
- Toll charges
- Gratuities
- Registration Fees
- Hotel/Motel
- Automobile Rental
- Registration
- Transportation Costs
- Airplane Travel
- Taxi Service

Receipts for these expenses shall be attached to the expense report for reimbursement.

Employees or elected officials shall not be reimbursed for expenditures incurred for the sole benefit of the traveler such as valet service, entertainment, movie rentals, etc. Other expenditures not reimbursable include:

- a. Traffic fines for parking or speeding violations
- b. Lost or stolen cash or other personal property
- c. Repairs to personal vehicles used for County travel
- d. Cancellation fees for unreasonable failure to cancel hotel or transportation reservations
- e. Spouse or family member expenditures
- f. Commuting costs between home and the office
- g. Laundry services

11.06 EXPENSE REPORT

All elected officials and employees filing an expense report shall do so within 30 days after the last date of travel. The expense report must be properly filled out, accompanied by the pertinent receipts, and signed by the department head. Reports are to be filed with the Auditor's Office.

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11.07 TRAVEL EXPENSE ADVANCES

In order to receive an advance on travel expenses, a Request for Advance Travel Expenses form covering hotel fees, meals, known parking fees, rental car fees, etc., must be submitted to the County Auditor's Office at least two weeks prior to departure. Upon return to Burnet County, a Travel Expense Report form must be completed and submitted to the County Auditor's Office. Any refund due the county will be paid to the County Treasurer's Office.

11.08 OUT-OF-STATE TRAVEL

All out-of-state (with exception of emergencies) travel must be approved in advance by Commissioners' Court.

11.09 NON-TRAVEL MEALS

This policy provides guidelines to departments concerning when non-travel meals, refreshments and related expenses may be paid for from County funds.

Generally, meals provided to employees are considered taxable wages that must be reported on form W-2, subject to Federal income tax withholding, social security and Medicare unless specifically excluded by a section of the Internal Revenue Code (IRC), IRC §61. § 3121, § 3401.

Federal Tax Regulations § 31.3121(a)-1(h) and § 31-3121(a)-3 provide that amounts paid specifically-either as advances or reimbursements-for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer are not wages and are not subject to withholding if paid under an accountable plan.

A plan under which an employee is reimbursed for expenses – or receives an allowance to cover those expenses – is an accountable plan only if three conditions are satisfied: (1) there must be a business connection for the expenses; (2) the employee must either substantiate or be deemed to have substantiated the expenses; and (3) the employee must return to the employer amounts in excess of the substantiated expense. IRC § 62(c); Reg §1.62-2©; Reg§1.274-5T.

Adequate accounting per IRS publication 5137 states, "The employee must verify the date, time, place, amount and business purpose of expenses. Receipts are required unless the reimbursement is made using per diem rates (per diem rates are only available for certain expenses). Treas. Reg. 1.62-2(e), IRC Section 274(d) and Revenue Procedure (Rev. Proc.) 2011-47"

Government Code §611.001 Employees may be reimbursed with public funds for meal expenses only to the extent the expenses are reasonable and necessary and serve a public purpose.

The Burnet County Commissioners' Court authorizes reimbursement for non-travel expenditures of food or refreshments as allowed by law for the following:

- Jurors (Code of Criminal Procedure Art. 104.001)
- Prisoners (Code of Criminal Procedure Art. 104.002)
- AgriLife Extension (Agriculture code §43.033)
- Annual County-wide events approved by the Commissioner's Court such as: the HHW event, the annual county-wide employee appreciation banquet and county-wide healthy county events.
- Beverages for the purpose of providing hydration (sports drinks containing electrolytes) for employees performing job tasks outdoors where they are exposed to hot or humid weather conditions. Such as employees performing road work or outdoor maintenance work.

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Reimbursement for all other non-travel meals paid for with county funds must be approved by the Commissioners' Court. County credit cards may not be used for meal expenditures not listed in this policy without prior approval from the Commissions' Court. Approved CC 1/9/23

12.00 – INTERNET, EMAIL

Email and internet are common tools for today's workplace. Faster communication and increased productivity results from this access to greater resources. However, such tools can be misused and cause harm. These policies are designed to avoid such issues and to promote an efficient workplace.

12.01 PROPERTY

Burnet County provides internet access to its employees for the sole purpose of conducting county business. Any and all messages, documents, emails, or work created or received on the county's email system is the property of Burnet County. All such property is subject to review by county officials without employee notice at any time. All such property is subject to disclosure to the Burnet County Attorney and/or the Burnet County Judge if part of an internal investigation.

12.02 PERSONAL USE AND PRIVACY ISSUES

A reasonable but limited amount of personal use of the county provided access and email system is allowed by county employees according to the direction of the Department Head or Elected Official. However, such use must not interfere with employee productivity (inside the department or in any other department), must not negatively affect the efficiency of the county's network, and must adhere to all Technology policies. Should an employee use the county's network resources for personal use, such information shall become the property of Burnet County. **Employees should not expect such information to be private in any manner, including personal communications when using county network resources.**

Any and all communications or documents placed on the county internet/email systems (whether related to county business or otherwise) must be appropriate at all times. No personal beliefs, mottos, religious references, or humorous references are allowed. Email signatures, regardless of origin (county address or otherwise) used on correspondence created or saved onto the county network must not contain such information.

All county email addresses may be monitored. Any communication made on the county email/internet systems, personal in nature or related to county business may be monitored. Monitoring will occur only at the written request of the Department Head or Elected Official of the employee(s) in their department; or, at the written direction of the Burnet County Judge and/or Burnet County Attorney if part of an internal investigation. Elected Officials or Department Heads may only require monitoring of employees under their direct supervision. Any violation of these policies reported to the Technology Department will be directed to the appropriate Department Head or Elected Official for potential investigation. Should the alleged violator be a Department Head or Elected Official, the Technology Director shall notify the Burnet County Judge and/or the Burnet County Attorney.

County email accounts and/or online county business accounts may not be forwarded or tied to any personal email accounts at any time. All user names, passwords, or other login information of any online account used for county business must be documented and provided to the Department Head or Elected Official of that department.

12.03 PUBLIC RECORDS

Email pertaining to county business is subject to the Public Information Act. Information viewed as confidential should not be discussed in an email unless it relates to a legal matter and confidentiality privileges apply. Conducting county business on personal devices may subject the device to the Public Information Act.

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Regarding Public Information Act, the Technology Department may provide the public with forms online to make records requests. Such requests must identify the specific department from which the requestor desires information and be sent to that department. The County Attorney shall be available to assist any Department Head and/or Elected Official in legal advice regarding Public Information requests.

12.04 NETWORK ACCESS AND TECHNICAL SUPPORT

Technical support is provided by the Technology Department which shall include configuration of network access, email setup and installation and support of approved software and hardware. The Technology Department will provide troubleshooting of issues arising from normal business operations on county owned equipment.

Safety of the county network can be compromised due to unauthorized activities possibly bringing the entire network system down. The costs and/or repairs resulting from the misuse of County equipment, including the county network system, will be reported to the County Judge and/or County Attorney for review. The possibility of seeking reimbursement from the offending county department may occur.

Electronic devices may not be added to the County network without prior written approval of the Technology Department. Should a request be denied, the matter may be reviewed by the elected official in charge of the department, the Burnet County Judge.

Use and installation of personal hardware or software for county business (including but not limited to laptops, pad's, cell phone chargers and applications, mp3 players, etc.) on county equipment or county network must be approved by the Technology Coordinator. Approved equipment must be verified to have adequate virus protection and compatible configuration prior to connection on the county network.

12.05 BANDWIDTH USAGE

Bandwidth is limited to a fixed amount supplied to the county by the internet service provider. Following examples reduce bandwidth availability which results in slower network speeds:

- Viewing online videos
- Listening to internet radio
- Downloading music or videos

12.06 NETWORK AND WORKSTATION MONITORING

Bandwidth usage and network activity will be monitored at any time by the Technology Department for troubleshooting purposes and to monitor network efficiencies. Any concerns arising from this action will be addressed with the appropriate Elected Official(s) or Department Head(s). Any Elected Official and/or Department Head may request a review of any computer in their department to insure proper usage. The request must be done in writing before any monitoring occurs.

Upon request, the Technology Director may be able to report on the websites visited on the requested computer, date and time of activity, and attempts to access prohibited sites.

NOTICE: Be advised that many websites will place unauthorized "markers" on a computer even if not directly opened.

12.07 ACCEPTABLE USE OF COUNTY EMAIL AND INTERNET RESOURCES:

- Conducting county business;
- Research for county business;
- Information gathering for county business;
- Limited work related social media and video use as authorized by Elected Official or Department Head.

In the event a blocked website is needed for county business purposes such as official investigations, training or webinars, such access must be requested in writing by a Department Head and/or Elected Official. Request must provide the name of the employee involved, the IP address of the computer to be used (if known), and the sites to be accessed along with a range of dates for this use.

12.08 UNACCEPTABLE USE OF COUNTY EMAIL AND INTERNET RESOURCES

- Accessing, sending, or forwarding email that violates county policy or is not county business;
- Engaging in an activity that is fraudulent, illegal, or malicious;
- Accessing, sending, forwarding, receiving or storing anything offensive, obscene, or defamatory or that tends to interfere with the productivity of other employees;
- Sending email that is considered to be harassing to the recipient or to any person who may be discussed within the email;
- Using email or county equipment for personal gain;
- Streaming audio or video websites, including YouTube and internet radio sites for non-work related purposes;
- On-line personal shopping;
- On-line gaming or gambling;
- Instant messaging for other than work related communications.

Violation of acceptable use will be reported to the user's Department Head or Elected Official which may subject the offender to disciplinary action up to and including possible termination. Repeated violations of acceptable use policy by an employee may lead to permanent loss of access which could affect that person's ability to fulfill their job requirement.

12.09 DOWNLOADING INFORMATION/COPYRIGHT

Downloading software without approval from the Technology Department is prohibited. Most software is subject to federal copyright laws in the same manner that written and recorded copyrighted material is protected. Information found on the internet does not give one the right to its use for free, or for unlimited purposes. The exception is information that contains a disclaimer to provide that right.

In general, internet users are allowed one download of copyrighted material for personal use. Any further downloading or use of copyrighted material without the permission of the copyright owner may lead to legal action. Downloading files and/or software from unauthorized sites may lead to spyware or viruses being installed on workstations and infecting the network.

12.10 DOCUMENT RETENTION

Email and electronic documents should be deleted from computers as soon as it is no longer needed or required to be kept. Email messages are simply electronic documents and should be considered no different than any other written county correspondence. It is the content and function of an email message that determines the retention period for the message.

The State of Texas has guidelines for all documentation. Examples:

Administrative Correspondence – 3 years

General Correspondence – 1 year

Transitory Information – After purpose of record has been fulfilled.

For more information regarding State retention policies, visit the TSLAC website.

<http://www.tsl.texas.gov/slrmlgschedules/index.html>

If the information must be stored for an extended period, it should be moved to disk or other external storage system. Contact the IT Director to assist with needed back up plans, futures, and best system of back up.

12.11 PASSWORD

Each user should have a unique logon name and password for any county owned technology device that uses the internet and email. Passwords should be changed periodically. It is vital to keep logon names and passwords confidential to all except to an employee's supervisor(s). ******Please note that the use of passwords does not give any expectation of privacy.***

12.12 VIOLATIONS OF TECHNOLOGY POLICY

Any violation(s) of the Burnet County technology policies will be immediately reported to the violator's Department Head and/or Elected Official. Depending on level of violation, disciplinary action, including but not limited to termination or employment, may result. A third violation of a technology policy by an employee may result in a recommendation from the Technology Department to block all internet use for said employee.

12.13 EQUIPMENT SPECIFICATIONS AND MINIMUM SYSTEM CONFIGURATION

All technology equipment purchased with county funds, grants or other special funds, and requiring approval by Commissioners' Court will be pre-approved by the Technology Director when necessary to verify compatibility prior to presenting to the court.

All computers on the network must meet current minimum system requirements at all times. These requirements will be reviewed annually by the Technology Director and reported to Commissioners' Court.

12.14 REQUESTS FOR TECHNICAL SERVICE

Technical support requests should be made *in writing* and may be emailed to support@burnetcountytexas.org or submitted through the Burnet County Communication Client icon. Contact the Technology Department for more information.

12.15 REMOTE ACCESS TO COUNTY DATA

Access to County information needed by Department Heads, Elected Officials, or their staff while away from county offices must be requested in writing. Please include employee name, data access needed, time frame and reason for remote access. Note: Department Head or Elected Official is responsible for monitoring hourly employee's time properly while working offsite.

12.16 COUNTY AND DEPARTMENT WEBSITES

The Technology Department manages the County's website. Department Heads and/or Elected Officials are responsible for maintaining their individual department pages. Technology staff will provide training and assistance as needed. Individual web pages must follow the same template for all departments in order to provide a uniform appearance of county website. Reviews of the county website will be done monthly by technology staff. Department Heads or Elected Officials will be notified if web pages for their department(s) appear to be outdated.

12.17 COURTS AND JUSTICE MANAGEMENT

Burnet County uses a countywide case management system that enables information to flow from an arrest to the disposition of a court case.

To ensure permissions to be granted to case management information are properly documented and assigned, rights and roles assignments must be requested in writing to include the Technology Department and the Elected Official who is statutory custodian of requested records.

The following are the statutory custodians of county records:

- County Clerk for County Court at Law and County Court data
- County Attorney for County Prosecutor data
- District Clerk for District Court and County Court at Law data
- District Attorney for District Prosecutor data
- Sheriff's Office for Law Enforcement and Jail data
- JP offices for each Justice of the Peace precinct's data

12.18 STATE MANDATED ANNUAL CYBERSECURITY TRAINING

Texas [House Bill 3834](#), effective June 14, 2019, requires all elected officials and most local government employees to complete an annual cybersecurity training program that has been certified by the [Texas Department of Information Resources \(DIR\)](#). Employees will be provided with the necessary link and login information to complete this annual training. Access to any Burnet County network or system (including, but not limited to, Odyssey, Time Clock, Incode) will be suspended for any employee who has not completed training by the stated deadline.

12.19 SOCIAL MEDIA DEVICES AND SERVICES PROHIBITED ON COUNTY DEVICES

Burnet County prohibits the installation or use of the social media service TikTok or any successor application or service developed or provided by ByteDance Limited or an entity owned by ByteDance Limited; or a social media application or service specified by proclamation of the governor on any device owned or leased by Burnet County and requires the removal of covered applications from those devices.

The installation and use of a covered application may be acceptable to the extent necessary for providing law enforcement, or developing or implementing information security measures. In order for the installation to be approved, Burnet County must require the use of the measures to mitigate risks posed to this state during the use of the covered application, and the documentation of those measures.

13.00 – BURNET COUNTY FRAUD POLICY

13.01 BACKGROUND

The County fraud policy is established to facilitate the development of controls which will aid in the detection and prevention of fraud against Burnet County. It is the intent of the County to promote consistent organizational behavior by providing guidelines and assigning responsibility for the development of controls and conduct of investigations.

13.02 SCOPE OF POLICY

This policy applies to any fraud, or suspected fraud, involving employees as well as consultants, vendors, contractors, outside agencies doing business with employees of such agencies, and/or any other related parties with a business relationship with Burnet County.

Any investigative activity required will be conducted without regard to the suspected wrongdoer's length of service, position/title, or relationship to the County.

13.03 POLICY

Management is responsible for the detection and prevention of fraud, misappropriations, and other inappropriate conduct. Fraud is defined as the intentional, false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her injury. Each member of management will be familiar with the types of improprieties that might occur within his or her area of responsibility, and be alert for any indication of irregularity.

Any fraud that is detected or suspected must be reported immediately to the County Attorney, who coordinates all investigations both internal and external.

13.04 ACTIONS CONSTITUTING FRAUD

The terms defalcation, misappropriation, and other fiscal wrongdoings refer to, but are not limited to:

- Any dishonest or fraudulent act;
- Forgery or alteration of any document or account belonging to the County;
- Forgery or alteration of a check, bank draft, or any other financial document;
- Misappropriation of funds, supplies, or other assets;
- Impropriety in the handling or reporting of money or financial transactions;
- Profiteering as a result of insider knowledge of County activities;
- Disclosing confidential and proprietary information to outside parties;
- Disclosing to other persons securities activities engaged in or contemplated by the County;
- Accepting or seeking anything of material value from contractors, vendors, or persons providing services/materials to the County. Exception: Gifts less than \$20 in value;
- Destruction, removal or inappropriate use of records, furniture, fixtures, and equipment; and/or
- Any similar or related inappropriate conduct.

13.05 OTHER INAPPROPRIATE CONDUCT

Suspected improprieties concerning an employee's moral, ethical, or behavioral conduct should be resolved by departmental management.

If there is any question as to whether an action constitutes fraud, contact the County Attorney for guidance.

13.06 INVESTIGATION RESPONSIBILITIES

The County Attorney has the primary responsibility for the initial investigation of all suspected fraudulent acts as defined in the policy. Decisions to prosecute or refer to examination results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made by the County Attorney, who shall report said findings and conclusions to the Commissioners' Court.

13.07 CONFIDENTIALITY

Burnet County treats all information received *confidentially*. Any employee who suspects dishonest or fraudulent activity will notify the County Attorney immediately, and *should not attempt to personally conduct investigations or interview/interrogations* related to any suspected fraudulent act (see REPORTING PROCEDURE section below). Investigations *will not be disclosed or discussed* with anyone other than those who have legitimate need to know. This is important in order to avoid damaging the reputations of persons suspected but subsequently found innocent of wrongful conduct and to protect the County from potential civil liability.

13.08 AUTHORIZATION FOR INVESTIGATING SUSPECTED FRAUD

Members of the Investigation Unit will have:

1. Free and unrestricted access to all County records and premises, whether owned or rented;
AND
2. The authority to examine, copy, and/or remove all or any portion of the contents of files, desks, cabinets, and other storage facilities on the premises without prior knowledge or consent of any individual who may use or have custody of any such items or facilities when it is within the scope of their investigation.

13.09 REPORTING PROCEDURES

Great care must be taken in the investigation of suspected improprieties or wrongdoings so as to avoid mistaken accusations or alerting suspected individuals that an investigation is under way. An employee who discovers or suspects fraudulent activity will *contact the County Attorney immediately*. The employee or other complainant may remain anonymous. All inquiries concerning the activity under investigation from the suspected individual, his or her attorney or representative, or any other inquirer should be directed to the County Attorney.

The reporting individual should be informed of the following:

- Do not contact the suspected individual in an effort to determine facts or demand restitution.
- Do not discuss the case, facts, suspicions, or allegations with *anyone*, unless specifically asked to do so by the County Attorney.

13.10 TERMINATION

If an investigation results in a recommendation to terminate an individual, the recommendation will be reviewed for approval by the department head. The County Attorney does not have authority to terminate an employee. The decision to terminate an employee is made by the employee's management.

13.11 ADMINISTRATION

The Commissioners' Court is responsible for the administration, revision, interpretation, and application of this policy. The policy will be reviewed annually and revised as needed.

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EXHIBIT A: HARASSMENT REPORT COMPLAINT FORM

Harassment is defined as any employee's visual, physical or verbal conduct toward another employee that interferes with the employee's working environment and job duties.

Burnet County is committed to a workplace free of harassment. Harassment includes unlawful, unwelcome words, acts or displays based on sex, race, color, religion, national origin, age, pregnancy, disability, family or military leave status or veteran's status. Such conduct becomes harassment when (1) the submission to the conduct is made a condition of employment; (2) the submission to, or rejection of; the conduct creates an offensive, intimidating or hostile working environment or interferes with work performance.

Harassment is strictly prohibited by Burnet County whether committed by an elected official, appointed official, department head, co-worker or non-employee with whom the county does business. All harassment should be reported immediately.

COMPLAINANTS NAME: _____

JOB TITLE: _____

BUSINESS PHONE: _____

CURRENT EMPLOYMENT STATUS: _____

DEPARTMENT: _____

ALLEGED HARASSERS NAME: _____

JOB TITLE: _____

BUSINESS PHONE: _____

CURRENT EMPLOYMENT STATUS: _____

DEPARTMENT: _____

Complainant, describe the harassment in precise terms. Verbal harassment requires the entire conversation, verbatim (attach additional page if needed) _____

Complainant, if physical harassment is involved describe the conduct with specificity. Include the physical circumstances of the alleged harassment, the date, time, location and names of witnesses, if any (attach additional page if needed): _____

Has the harassment ever happened before? _____

If so, when? _____

Where? _____

Was the incident reported to authorized personnel (include name of authorized personnel): _____

Describe the effects of the harassment. _____

Was medical personnel contacted (include name of medical personnel): _____

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EXHIBIT B: ALOCHOL AND DRUG TESTING FOR REASONABLE CAUSE

Reasonable Suspicion Testing: If an employee is having a work performance problem or displaying behavior that may be alcohol or drug related, or is otherwise demonstrating conduct that may be in violation of this Drug and Alcohol Policy where immediate management action is necessary, a supervisor, will require that employee to submit to a breath test, urinalysis and/or blood test. The following conditions may be signs of possible alcohol or drug use (this list is not all-inclusive):

- | | |
|---|--|
| <ul style="list-style-type: none">• Abnormally dilated or constricted pupils• Glazed stare – redness of eyes (sclera)• Flushed face• Change of speech (i.e. faster, slower, slurred)• Constant sniffing• Increased or unexplained absences• Redness under the nose• Sudden weight loss• Needle marks• Change in personality (i.e. paranoia, anger) | <ul style="list-style-type: none">• Increased appetite for sweets• Forgetfulness – performance altering – poor concentration• Borrowing money from co-workers or seeking an advance of pay or other unusual display of need for more money• Constant fatigue• Hyperactivity• Smell of alcohol• Difficulty walking or standing• Dulled mental processes• Slowed reaction rate |
|---|--|

BURNET COUNTY SUPERVISOR, state objective facts giving rise to the belief that the employee is under the influence of alcohol or a controlled substance: _____

EMPLOYEE'S NAME: _____

JOB TITLE: _____

BUSINESS PHONE: _____

CURRENT EMPLOYMENT STATUS: _____

DEPARTMENT: _____

BURNET COUNTY EMPLOYEE is expected to fully cooperate and consent to a drug or alcohol test when requested under the terms of Burnet County policy. Refusal to consent to a drug test when requested may result in immediate termination.

I understand and agree that the test(s) I am about to receive include(s) a test for alcohol, illegal drugs, and/or controlled substances.

I hereby give my consent to Burnet County to perform these tests. I understand that if I decline to sign this consent form and thereby decline to take the tests that my refusal may result in immediate termination.

Employee's Signature

Date

Supervisor's Signature if employee refuses to sign

Date

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EXHIBIT C: BURNET COUNTY EMPLOYEE TIMECLOCK PROCEDURES

**EXHIBIT D:
BURNET COUNTY EMPLOYEE TIMECLOCK PROCEDURES**

11/16/2018
1:31:44 PM

Select Company Burnet County Texas 1

ID Number

CLOCK IN **CLOCK OUT**

LEAVE ON BREAK RETURN FROM BREAK

LOG ON TO DASHBOARD

TO CLOCK IN AND OUT

- Go to Time Clock Plus (<https://time.burnetcountytexas.org/app/webclock/#/EmployeeLogOn>)
- Enter 4 digit Employee ID Number
- To Clock In – Click on “Clock In”
- To Clock Out – Click on “Clock Out”
- Enter 4 digit PIN (Last 4 of your Social Security Number)
- Click on “Log On”
- You should receive a confirmation that you were Clocked In or Clocked Out
- If you forget or are unable to Clock In or Clock Out, contact your Manager.

You may select “Log On To Dashboard” to view your hours and accruals.

Burnet County Commissioners Court

Jim Luther Jr.
Precinct 1

Damon Beierle
Precinct 2

James Oakley
County Judge

Billy Wall
Precinct 3

Joe Don Dockery
Precinct 4

Regular Session

9.

Meeting Date: 10/18/2024

Subject

Discussion and/or action regarding contracts, agreements or grants to be approved and/or ratified:

- a. Approval to apply for the Texas State Library Archives Commission Family Place Library grant for equipment and supplies for the children's library area and Parent-Child Workshop, consultant fees for medical, Community Resource Center, WIC, CHIP, ECI, and children's counselor and behaviors specialist for the Parent-Child Workshops, and travel to Cedar Park for the required TSLAC training on the family place library
 - b. Approve the Interlocal Agreement with the City of Bertram for a part-time library employee
 - c. Acknowledgment of the executed contract for CR 114 paving project with Ashphalt, Inc., LLC dba Lone Star Paving Company
 - d. Approval to apply and sign the resolution for the FY2025 Formula Grant for Indigent Defense Grant Program from Texas Indigent Defense Commission
-

Attachments

Interlocal agreement City of Bertram
Executed contract for CR 114

Interlocal Agreement Between
Burnet County, Texas, and the City of Bertram, Texas

This Agreement is made on the ____ day of October 2024, by and between the County of Burnet, hereinafter referred to as "Burnet County", and the City of Bertram, hereinafter referred to as "City." Each entity is a political subdivision of the State of Texas and a party to this agreement.

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code authorizes unites of local government to contract with one or more units of local government to perform government functions and services; and

WHEREAS, this Agreement is entered into pursuant to the authority, under the provisions of, and in accordance with, Chapter 791 of the Texas Government Code, for the performance of governmental functions and services; and for such other and further acts of cooperation as the parties may subsequently agree to by the execution of a separate and specific agreement ratified by the governing bodies of each contracting party, specifically the Commissioners Court of Burnet County and City.

WHEREAS, Burnet County operates a county wide public library system that supports citizens' access to free educational resources, reading material, and educational experiences. One such library of the system is located inside of the confines of City.

WHEREAS, City is dedicated to providing services for its citizens. It recognizes that the resources offered at a library benefits the local population. City wishes to financially support the County library located within so that its citizens can enjoy the benefits offered from a public library.

WHEREAS, City wishes to provide funding to Burnet County for the part-time services of an employee at the Bertram Library. Burnet County shall receive this financial assistance and in return, provide an employee at the Bertram Library who can assist local citizens with library needs.

WHEREAS, the governing bodies of Burnet County and City desire to foster goodwill and cooperation between themselves and the citizens they serve; and

WHEREAS, City and Burnet County, deem it to be in the best interest of both entities to enter into this Agreement in order to provide library services to the citizens of the county, including those located within the city. In consideration of the mutual covenants contained herein, Burnet County and City agree as follows:

Agreement

On a yearly basis, City shall provide Burnet County with funds to hire or maintain the part-time employment of a library staff at the Bertram Library. Said employee shall be an employee of Burnet County and shall be paid according to policies

set by the Burnet County Commissioners Court. The amount of funding to be provided by City will dictate the number of part-time hours the employee can work and thus provide services to the public. City shall inform Burnet County how much funding it will provide for an upcoming financial year no later than July 15th of each calendar year so that that Burnet County may budget appropriately for the upcoming financial year. In the event no funds are available, Burnet County shall make independent decisions regarding continuing to employee the part-time position.

Duration of Agreement

Unless mutually initiated, cancelled, or terminated earlier with thirty (30) days written notice this Agreement shall commence on the _____ day of October, 2024. This contract automatically renews on this same date each year thereafter until one or both of the parties decides to cancel or terminate with thirty (30) days written notice.

Compensation

By execution of this contract, the funding of a part-time employee by City shall be equally compensated by Burnet County in the form of the services to be provided by the part-time employee at the Bertram Library to the City's citizens. Further, Burnet County further agrees to provide the use of the Bertram Library facilities for City meetings upon request and at no cost. Availability on specific dates and time will be dependent upon the time of the request. All parties agree this is adequate compensation.

Notice to Parties

Any notice given hereunder by either party to the other shall be in writing and may be affected by personal delivery in writing or by certified mail, return receipt requested. Notice to Burnet County shall be sufficient if made or addressed to the office of the County Judge.

Notice to City shall be sufficient if made or addressed to the mayor at the address for the administrative offices of City. Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

Indemnification

City and Burnet County agree to promptly defend, indemnify and hold each other harmless from and against any and all claims, demands, suits, causes of action, and judgment's for (a) damages to the loss of property of any person; and/or (b) death, bodily injury, illness, disease, loss of services, or loss of income or wages to any person, arising out of incident to,

concerning or resulting from the negligent or willful act or omissions of the other, its agents, officers, and or employees in the performance of activities of duties pursuant to this Agreement.

Entire Agreement

This Agreement contains the entire Agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing signed by both parties.

This Agreement shall be governed by and constructed in accordance with the laws of the State of Texas. No assignment of this Agreement or of any right accrued hereunder shall be made, in whole or in part, by either party without the prior written consent of the other party. Venue shall be in Burnet County, Texas.

The undersigned officer and/or agents of the parties hereto are the properly authorized officials of the party presented and have the necessary authority to execute this Agreement on behalf of the parties hereto and each party hereby certifies to the other that any necessary resolutions extending said authority have been duly passed and approved and are now in full force and effect.

EXECUTED by the parties hereto, each respective entity acting by and through its duly authorized official as required by law, on the date specified on the multiple counterpart executed by such entity.

City of Bertram

Burnet County, Texas

By: _____
Mike Dickinson, Mayor

By: _____
James Oakley, Burnet County Judge

Date:

Date:

**EJCDC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is dated as of the 7TH day of OCTOBER in the year 2024 by
and between Burnet County, Texas (hereinafter called OWNER)
and Asphalt, Inc., LLC, dba Lone Star Paving Company (hereinafter called CONTRACTOR).

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

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

County road paving work consisting of planing (milling), 1.5" hot mix concrete overlay, and pavement markings.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

CR 114 PAVING PROJECT

Article 2. ENGINEER.

The Project has been designed by K.C. Engineering, Inc. (KCE) under the direction of OWNER. KCE shall hereinafter be called ENGINEER and is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIMES.

3.1 The Work will be substantially completed within 21 calendar days after the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within 28 calendar days after the date when the Contract Times commence to run.

3.2 *Liquidated Damages.* OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$500 for each calendar day that expires after the dates established in the milestones and phases included in the Project Manual and referenced in paragraph 3.1 for each phase specified.

When the OWNER reasonably believes that delays in completion will inexcusably occur, the Owner shall be entitled, but not required to, withhold from any amounts otherwise due to CONTRACTOR an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the CONTRACTOR overcomes the delay or any part thereof, for which the Owner has withheld payment, the OWNER shall promptly release to the CONTRACTOR those funds withheld, but no longer applicable as liquidated damages. OWNER shall have all other rights and remedies provided by the Contract Documents, law or equity; all such rights and remedies being cumulative and not exclusive, and may be exercised concurrently and/or successively.

Article 4. CONTRACT PRICE.

This contract is a Plans Quantity contract and payment shall be made based on Plans Quantity as defined in Section 005 of the K.C. ENGINEERING, INC. STANDARD SPECIFICATIONS (3rd Edition). OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined as the sum of the established unit price for each separately identified item on the Unit Price Schedule times the quantity for that item listed on the Unit Price Schedule. No quantities will be measured in the field for payment purposes. All payment shall be based on Plan Quantities, as shown on the Unit Price Schedule.

For changes in the work requiring a change order, payments to the Contractor shall be adjusted based on quantity adjustments from those shown on the Unit Price Schedule. No changes or revisions to quantities will be made unless such changes are specifically documented by signed change order.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress Payments: OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction as provided below. All such payments will be measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

Payments will be made in accordance with the criteria indicated below, but in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2 Retainage: Payments shall be made in the amount of the Application for Payment as recommended by ENGINEER, less 10% to be withheld for retainage, except as provided below.

5.3 90% Completion: When work has been 90% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, the ENGINEER may recommend that as long as the character and progress of the Work remain satisfactory, there will be no additional retainage on account of Work completed, in which case progress payments made for Work after 90% completion, but prior to Substantial Completion, will be in an amount equal to 100% of the Work completed between 90% completion and Substantial Completion.

5.4 Substantial Completion: Upon Substantial Completion, payment shall be made in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price (with the

balance being retainage), less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.5 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in paragraph 14.13.

5.4 *Materials on hand:* 100% (less retainage) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.2 of the General Conditions) may be requested for payment by the CONTRACTOR.

Article 6. INTEREST.

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 7. CONTRACTOR'S REPRESENTATIONS.

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

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.2.1 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1. This Agreement.

8.2. Project Manual.

8.3. Performance, Payment, and other Bonds, identified as Exhibit A and consisting of 16 page(s).

8.4. Supplementary Conditions

8.5. General Conditions.

8.6. Burnet County, Texas Conflict of Interest Disclosure, if required

8.7. Texas Ethics Commission, Certificate of Interested Parties Form 1295

8.8. Specifications referenced on the cover sheet of the construction plans.

8.9. Drawings consisting of a cover sheet and sheets numbered 1.1 to 22.12 inclusive with each sheet bearing the following general title: "COUNTY ROAD 114 PAVING PROJECT".

8.10. Addenda numbers 0 to 0, inclusive.

8.11. CONTRACTOR's Bid (pages 1 to 10, inclusive) marked: "Bid Form for CR 114 Paving Project"; including: "Instructions to Bidders for CR 114 Paving Project" and "Bid Summary Sheet for CR 114 Paving Project."

8.12. Documentation submitted by CONTRACTOR prior to Notice of Award (pages 11 to 14, inclusive).

8.13. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.

The documents listed in paragraphs 8.2 through 8.7 and 8.9 through 8.12 above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9. MISCELLANEOUS.

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 OTHER PROVISIONS. CONTRACTOR shall ensure that subcontracts with Subcontractors for this Project are consistent with and reflective of the terms of the Contract Documents applicable or relevant to Subcontractors, including, but not limited to, the prevailing wage rate requirements and the Labor Code requirements set forth above.

All rights and remedies of OWNER provided in the Contract Documents are in addition to all other rights and remedies provided by law or equity. All such rights and remedies are cumulative, and not exclusive, and may be exercised concurrently and/or successively.

9.6 CONTRACTOR shall deliver to OWNER all required bonds in accordance with the Contract Documents. Each bond shall be issued by a corporate surety authorized to do business in the State of Texas. The bonds must be in form approved by or supplied by OWNER and must comply with the requirements of Chapter 2253 of the Texas Government Code, and other applicable law, including the requirements of Section 7.19-1 of the Texas Insurance Code regarding reinsurance if the bond exceeds 10% of the Surety's capital and surplus. All sureties must be listed as approved sureties by the U. S. Department of Treasury.

In the event any surety on the bonds becomes insolvent or is otherwise unable to perform its obligations under the bonds, the CONTRACTOR shall provide substitute bonds or equivalent security satisfactory to the OWNER to protect the interests of OWNER and of persons furnishing labor and materials in the prosecution of the Work.

CONTRACTOR shall not begin any Work on this Project until all bonds and required insurance have been furnished by Contractor and approved by Owner.

9.7 The Contract shall be governed by and interpreted in accordance with the laws of the State of Texas. Venue for any action brought in connection with the Contract Documents shall lie in courts of competent jurisdiction in Burnet County, Texas. If any provision or part of the Contract

Documents is held to be void or unenforceable under any Law or Regulation, all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.8 In the event of any suit or action arising out of or relating to the Contract, the prevailing party in such proceeding shall be entitled to recover reasonable attorney fees and court costs. Reference is made to Section 271.159 of the Texas Local Government Code in connection with the recovery of attorney's fees. The parties agree to mediate any dispute arising in connection with the Contract Documents in good faith prior to filing suit for damages. The parties agree to mediate any dispute in good faith prior to filing suit for relief other than injunctive relief.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed this Agreement in triplicate originals. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

This Agreement will be effective on OCT 7, 2024.

OWNER: Burnet County, Texas

By: J. Dalley

Attest Meg Haley, P.E.

Address for giving notices

220 S. Pierce Street

Burnet, TX 78611

CONTRACTOR:

Asphalt Inc., LLC Alex Lane Star Paving Company

By: cut Alex Flores
E.V.P.

Attest [Signature]

Address for giving notices

11675 Jollyville Rd. Suite 150
Austin, Tx 78759

Email Address: alex@ispaving.com

License No. N/A

Agent for service of process: Andrew Warner
awarner@ispaving.com

EXHIBIT A

CNA SURETY

Bid Bond

Bond No. N/A

CONTRACTOR:

(Name, legal status and address)

Asphalt Inc., LLC dba Lone Star Paving
11675 Jollyville Rd., Suite 150
Austin, TX 78759

SURETY: Continental Casualty Company: Illinois Corporation

(Name, legal status and principal place
of business)

151 N. Franklin Street
17th Floor
Chicago, IL 60606

This document has important legal
consequences. Consultation with
an attorney is encouraged with
respect to its completion or
modification.

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

OWNER:

(Name, legal status and address)

Burnet County
133 East Jackson St.
Burnet, TX 78611

BOND AMOUNT: Five Percent of Greatest Amount Bid (5% of G.A.B.)

PROJECT:

(Name, location or address, and Project number, if any)

Burnet Co-CR 114 Paving Project
Burnet, TX
Invitation to Bid: #24-6110-01

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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

Signed and sealed this 17th day of September, 2024.

(Witness)

(Witness) Angie Astran

Asphalt Inc., LLC dba Lone Star Paving

(Principal)

(Seal)

(Title) Alex Flores / Executive Vice President
Continental Casualty Company

(Surety)

(Title) Brent M. Blonigan, Attorney-in-Fact

Bid Bond

Instructions

GENERAL INFORMATION

Purpose. AIA Document A310—2010 establishes the maximum penal amount that may be due the Owner if the Bidder fails to execute the contract and to provide the required performance and payment bonds, if any. It provides assurance that, if a bidder is offered a contract based on its tendered proposal but fails to enter into the contract, the Owner will be paid the difference in cost to award the contract to the next qualified bidder, so long as the difference does not exceed the maximum penal amount of the bond.

Related Documents. A310 is not incorporated by reference into other AIA documents. For further reference on bonding procedures, see AIA Document A701™—1997, Instructions to Bidders; and AIA Document G612™—2001, Owner's Instructions to Architect.

Use of Non-AIA Forms. AIA Document A310 may be used with any appropriate AIA or non-AIA document. **CAUTION SHOULD BE EXERCISED BEFORE ITS USE TO VERIFY ITS COMPLIANCE WITH CURRENT LAWS AND REGULATIONS BY CONSULTING WITH AN ATTORNEY OR A BOND SPECIALIST.**

USING A310—2010

Modifications. Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments.

Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions. Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes.

Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits.

By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny.

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user's limited license for use of the document, constitute the creation of a derivative work and violate the AIA's copyright.

Identification of the Parties. The Contractor, the Surety, and the Owner should be identified using their respective full names and addresses or legal titles under which the bond is to be executed. The state in which the Surety is incorporated also should be identified in the space provided.

Bond Amount. The dollar amount of the bond should be provided in both written and numerical form.

Project Description. The proposed project should be described in sufficient detail to identify (1) the official name or title of the facility; (2) the location of the site; (3) the proposed building type, size, scope or usage; and (4) the project number required by the owner, if any. A project number may be required by certain public owners to adequately identify the project to which the bond pertains.

Execution of the Bond. The bond must be signed by both the Contractor and the Surety. The parties executing (signing) the bond should print their title and impress their corporate seal, if any. Where appropriate, attach a copy of the resolution or bylaw authorizing the individual to act on behalf of the firm or entity. As to the Surety, this usually takes the form of a power of attorney issued by the Surety company to the bond producer (agent) who signs on its behalf.

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Brent M Blonigan, Rob J Dreiling, Kara Pierce, Raul F Campa, Debbie Palmer, Individually

of Richardson, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Laws and Resolutions, printed below, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 30th day of November, 2023.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

Larry Kasten

Vice President

State of South Dakota, County of Minnehaha, ss:

On this 30th day of November, 2023, before me personally came Larry Kasten to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority. and acknowledges same to be the act and deed of said insurance companies.

My commission expires

March 2, 2026



M. Bent

Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Laws and Resolutions of the Board of Directors of the insurance companies printed below are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this 17th day of September, 2024



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania

D. Johnson

Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF EACH OF CONTINENTAL CASUALTY COMPANY, NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, and AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA (as defined above, the "CNA Companies"):

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of each of the above CNA Companies at a meeting held on May 12, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of each of the CNA Companies.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of each of the above Companies by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of each of the above CNA Companies by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligor Services > Validate Bond Coverage, If you want to verify bond authenticity.

State of Texas

Claim Notice Endorsement

To be attached to and form a part of Bond No. NA.

In accordance with Section 2253.021(f) of the Texas Government Code and Section 53.202(6) of the Texas Property Code any notice of claim to the named surety under this bond(s) should be sent to:

CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Telephone: 1-877-672-6115

Figure: 28 TAC §1.601(a)(3)

1 IMPORTANT NOTICE

To obtain information or make a complaint:

2 You may contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at 312-822-5000.

3 You may call Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company's toll-free telephone number for information or to make a complaint at:

1-877-672-6115

4 You may also write to Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at:

CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

5 You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6 You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

7 PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8 ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Form F8277-6-2018

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company de Reading, PA y Continental Insurance Company al 312-822-5000.

Usted puede llamar al numero de telefono gratis de Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company's para informacion o para someter una queja al:

1-877-672-6115

Usted tambien puede escribir a Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company:

CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es

solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

CNA SURETY

Performance Bond

Bond No. 30224695

CONTRACTOR:

(Name, legal status and address)

Asphalt, Inc. dba Lone Star Paving
Company

11675 Jollyville Rd., Suite 150
Austin, TX 78759

OWNER:

(Name, legal status and address)

Burnet County

220 S. Pierce Street
Burnet, TX 78611

CONSTRUCTION CONTRACT

Date:

\$: 445,849.75

Amount: Four Hundred Forty-Five Thousand, Eight Hundred Forty-Nine and 75/100

Description:

(Name and location)

CR 114 Paving Project

BOND

Date:

(Not earlier than Construction Contract Date)

\$: 445,849.75

Amount: Four Hundred Forty-Five Thousand, Eight Hundred Forty-Nine and 75/100

Modifications to this Bond: ☐ None

☐ See Section 16

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Asphalt, Inc. dba Lone Star Paving
Company

Signature:

Name

and Title:

Alex Flores / E.V.P.

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company:

(Corporate Seal)

Continental Casualty Company

Signature:

Name Brent M. Blonigan

and Title: Attorney-in-Fact

Brent M. Blonigan

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Grayhawk Insurance
1820 N. Greenville Ave., Suite 200
Richardson, TX 75081
972-671-9105

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

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

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

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

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

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

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

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

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

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

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

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

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

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

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

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

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

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

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

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

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

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

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

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

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

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

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

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____ (Corporate Seal)

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____

CNA SURETY

Payment Bond

Bond No. 30224695

CONTRACTOR:

(Name, legal status and address)

Asphalt, Inc. dba Lone Star Paving
Company

11675 Jollyville Rd., Suite 150
Austin, TX 78759

SURETY: Continental Casualty Company: Illinois Corporation

(Name, legal status and principal place
of business)

151 N. Franklin Street
17th Floor
Chicago, IL 60606

This document has important legal
consequences. Consultation with
an attorney is encouraged with
respect to its completion or
modification.

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

AIA Document A312-2010
combines two separate bonds, a
Performance Bond and a
Payment Bond, into one form.
This is not a single combined
Performance and Payment Bond.

OWNER:

(Name, legal status and address)

Burnet County

220 S. Pierce Street
Burnet, TX 78611

CONSTRUCTION CONTRACT

Date:

\$ 445,849.75

Amount: Four Hundred Forty-Five Thousand, Eight Hundred Forty-Nine and 75/100

Description:

(Name and location)

CR 114 Paving Project

BOND

Date:

(Not earlier than Construction Contract Date)

\$ 445,849.75

Amount: Four Hundred Forty-Five Thousand, Eight Hundred Forty-Nine and 75/100

Modifications to this Bond: ☐ None

☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Asphalt, Inc. dba Lone Star Paving
Company

Signature:

Name

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)


Alex Plues / E.V.P.

SURETY

Company:

(Corporate Seal)

Continental Casualty Company

Signature:

Name Brent M. Blonigan

and Title: Attorney-in-Fact



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Grayhawk Insurance
1820 N. Greenville Ave., Suite 200
Richardson, TX 75081
972-671-9105

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

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

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

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

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

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

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

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company (herein called "the CNA Companies"), are duly organized and existing insurance companies having their principal offices in the City of Chicago, and State of Illinois, and that they do by virtue of the signatures and seals herein affixed hereby make, constitute and appoint

Brent M Blonigan, Rob J Dreiling, Kara Pierce, Raul F Campa, Debbie Palmer, Individually

of Richardson, TX, their true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on their behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind them thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of their insurance companies and all the acts of said Attorney, pursuant to the authority hereby given is hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Laws and Resolutions, printed below, duly adopted, as indicated, by the Boards of Directors of the insurance companies.

In Witness Whereof, the CNA Companies have caused these presents to be signed by their Vice President and their corporate seals to be hereto affixed on this 30th day of November, 2023.



Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania


Larry Kasten Vice President

State of South Dakota, County of Minnehaha, ss:

On this 30th day of November, 2023, before me personally came Larry Kasten to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is a Vice President of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company described in and which executed the above instrument; that he knows the seals of said insurance companies; that the seals affixed to the said instrument are such corporate seals; that they were so affixed pursuant to authority given by the Boards of Directors of said insurance companies and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said insurance companies.

My commission expires

March 2, 2026




M. Bent Notary Public

CERTIFICATE

I, D. Johnson, Assistant Secretary of Continental Casualty Company, an Illinois insurance company, National Fire Insurance Company of Hartford, an Illinois insurance company, and American Casualty Company of Reading, Pennsylvania, a Pennsylvania insurance company do hereby certify that the Power of Attorney herein above set forth is still in force, and further certify that the By-Laws and Resolutions of the Board of Directors of the insurance companies printed below are still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said insurance companies this _____ day of _____

Continental Casualty Company
National Fire Insurance Company of Hartford
American Casualty Company of Reading, Pennsylvania


D. Johnson Assistant Secretary

Authorizing By-Laws and Resolutions

ADOPTED BY THE BOARD OF DIRECTORS OF EACH OF CONTINENTAL CASUALTY COMPANY, NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, and AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA (as defined above, the "CNA Companies");

This Power of Attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the Board of Directors of each of the above CNA Companies at a meeting held on May 12, 1995:

"RESOLVED: That any Senior or Group Vice President may authorize an officer to sign specific documents, agreements and instruments on behalf of the Company provided that the name of such authorized officer and a description of the documents, agreements or instruments that such officer may sign will be provided in writing by the Senior or Group Vice President to the Secretary of the Company prior to such execution becoming effective."

This Power of Attorney is signed by Larry Kasten, Vice President, who has been authorized pursuant to the above resolution to execute power of attorneys on behalf of each of the CNA Companies.

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of each of the above Companies by unanimous written consent dated the 25th day of April, 2012:

"Whereas, the bylaws of the Company or specific resolution of the Board of Directors has authorized various officers (the "Authorized Officers") to execute various policies, bonds, undertakings and other obligatory instruments of like nature; and

Whereas, from time to time, the signature of the Authorized Officers, in addition to being provided in original, hard copy format, may be provided via facsimile or otherwise in an electronic format (collectively, "Electronic Signatures"); Now therefore be it resolved: that the Electronic Signature of any Authorized Officer shall be valid and binding on the Company."

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of each of the above CNA Companies by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

Go to www.cnasurety.com > Owner / Obligatee Services > Validate Bond Coverage, if you want to verify bond authenticity.

State of Texas

Claim Notice Endorsement

To be attached to and form a part of Bond No. 30224695.

In accordance with Section 2253.021(f) of the Texas Government Code and Section 53.202(6) of the Texas Property Code any notice of claim to the named surety under this bond(s) should be sent to:

CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Telephone: 1-877-672-6115

Figure: 28 TAC §1.601(a)(3)

1 IMPORTANT NOTICE

To obtain information or make a complaint:

2 You may contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at 312-822-5000.

3 You may call Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company's toll-free telephone number for information or to make a complaint at:

1-877-672-6115

4 You may also write to Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company at:
CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

5 You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

6 You may write the Texas Department of Insurance:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

7 PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact Continental Casualty Company, National Fire Insurance Company of Hartford, American Casualty Company of Reading, PA and Continental Insurance Company first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

8 ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

Form F8277-6-2018

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company al 312-822-5000.

Usted puede llamar al numero de telefono gratis de Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company's para informacion o para someter una queja al:

1-877-672-6115

Usted tambien puede escribir a Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company:
CNA Surety
151 North Franklin, 17th Floor
Chicago, IL 60606

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P.O. Box 149104
Austin, TX 78714-9104
Fax: (512) 490-1007
Web: www.tdi.texas.gov
E-Mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS:

Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el Continental Casualty Company, National Fire Insurance Company de Hartford, American Casualty Company de Reading, PA y Continental Insurance Company primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of Construction Contract (No. 1910-8, 1990 Edition) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1990 Edition) have meanings assigned to them in the General Conditions.

SC-1.9 Change Order

Amend the first sentence of paragraph 1.9 of the General Conditions by striking out the following words: CONTRACTOR and OWNER, and replacing them with the following word: ENGINEER, and so amended, paragraph 1.9 remains in effect.

SC-2.2 Copies of Documents

Amend the first sentence of paragraph 2.2 of the General Conditions by striking out the word: ten, and replacing it with the following word: six, and so amended, paragraph 2.2 remains in effect.

SC-2.7

Delete paragraph 2.7 of the General Conditions in its entirety and insert the following in its place: Before any work at the site is started, Contractor shall deliver to Owner certificates of insurance (and other evidence of insurance which the Owner may reasonably request) which Contractor is required to purchase and maintain in accordance with paragraphs 5.4 and 5.7.

SC-4.2.1.1 Subsurface Conditions

Delete paragraph 4.2.1.1 of the General Conditions in its entirety and insert the following in its place: No reports of exploration and tests of subsurface conditions at or contiguous to the site have been heretofore performed and utilized by the Engineer in preparing the Contract Documents; and.

SC-4.2.1.2 Physical Conditions

Add the following language at the end of the first sentence of paragraph 4.2.1.2 of the General Conditions: all said drawings of said physical conditions are incorporated as a part of the Contract Documents.

SC-4.4 Reference Points

Add the following language at the end of the first sentence of paragraph 4.4 of the General Conditions: said reference points are identified on plans.

SC-5.4

The limits of liability for the insurance required by paragraph 5.4 of the General Conditions shall provide the following coverages for not less than the following amounts or greater where required by Laws and Regulations:

5.4.1 and 5.4.2 Workers' Compensation, etc. under paragraphs 5.4.1 and 5.4.2 of the General Conditions:

- | | |
|---|-----------|
| (1) State: | Statutory |
| (2) Applicable Federal
(e.g., Longshoreman's): | Statutory |
| (3) Employer's Liability: | Statutory |

5.4.3, 5.4.4 and 5.4.5 Contractor's Liability Insurance under paragraphs 5.4.3 through 5.4.5 of the General Conditions which shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:

- | | |
|---|---------------|
| (1) General Aggregate
(Except Products -
Completed Operations) | \$ 100,000.00 |
| (2) Each Occurrence | |
| Bodily Injury | \$ 300,000.00 |
| Property Damage | \$ 25,000.00 |
| (3) Property Damage liability insurance will provide Explosion, Collapse
and Underground coverages where applicable. | |

5.4.6 Automobile Liability:

- | | |
|--------------------|---------------|
| (1) Bodily Injury: | |
| \$ 100,000.00 | Each Person |
| \$ 300,000.00 | Each Accident |
| Property Damage: | |
| \$ 25,000.00 | Each Accident |

SC-5.4.7

Burnet County, Texas and K.C. Engineering, Inc. shall be listed as additional insureds with respect to policies of insurance required to be purchased and maintained by Contractor by paragraphs 5.4.3 through 5.4.6, inclusive of the General Conditions.

SC-5.4.10

The Contractual Liability coverage required by paragraphs 5.4.10 of the General Conditions shall provide coverage for not less than the following amounts:

- | | |
|-----------------------|---------------|
| (1) General Aggregate | \$ 100,000.00 |
| (2) Each Occurrence - | |
| Bodily Injury | \$ 300,000.00 |
| Property Damage | \$ 25,000.00 |

SC-5.4.13

Delete paragraph 5.4.13 of the General Conditions in its entirety.

SC-5.6

Delete paragraphs 5.6 and 5.6.1 through 5.6.5 of the General Conditions in their entirety.

SC-5.7

Delete paragraph 5.7 of the General Conditions in its entirety and insert the following in its place: This contract shall not cause Owner to purchase or maintain any boiler or machinery insurance or additional property insurance except for Owner's compliance with Laws and Regulations.

SC-5.8

Delete paragraph 5.8 of the General Conditions in its entirety.

SC-5.10

Delete paragraph 5.10 of the General Conditions in its entirety.

SC-5.11

Delete paragraphs 5.11, 5.11.1, 5.11.2, 5.11.2.1 and 5.11.2.2 of the General Conditions in their entirety.

SC-5.11.1

Amend the third sentence of paragraph 5.11.1 of the General Conditions by adding the following to the beginning of the sentence: To the extent such policies cover the loss and payment is received.

SC-5.12

Delete paragraph 5.12 of the General Conditions in its entirety.

SC-5.13

Delete paragraph 5.13 of the General Conditions in its entirety.

SC-5.16

Amend the General Conditions by adding a new paragraph 5.16 to read as follows:

Contractor hereby represents to the Owner that all employees of the Contractor who will provide services on the Project will be covered by worker's compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Texas Worker's Compensation Commission, Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the Owner to declare the Contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the Owner.

The following is the form of notice of worker's compensation coverage prescribed by the Texas Worker's Compensation Commission. Pursuant to Section 110.110(d)(7), this notice must be printed with a title in at least 30-point bold type, and text in at least 19-point normal type, and shall be in both English and Spanish and any other language common to the worker population.

REQUIRED WORKER'S COMPENSATION COVERAGE

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

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

SC-6.3

Delete the last sentence of paragraph 6.3 of the General Conditions in its entirety.

SC-6.7

Amend the General Conditions by adding a new paragraph 6.7, Prevailing Wage Rates, to read as follows:

Contractor hereby acknowledges and agrees that Contractor and each subcontractor are responsible for complying with the applicable provisions of Chapter 2258 of the Texas Government Code regarding the payment of prevailing wage rates. Contractor and each subcontractor shall pay wages to persons performing labor in connection with this Contract in an amount that is not less than the applicable prevailing wage rates for such workers. The Contractor shall forfeit as a penalty to Owner sixty dollars (\$60.00) for each laborer, workman or mechanic employed for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than said stipulated rate for any work done under this Contract by the Contractor or by any subcontractor under Contractor. Owner may withhold additional funds as appropriate when confronted with wage rate violations.

SC-6.13

Delete paragraph 6.13 of the General Conditions in its entirety and insert the following in its place: Contractor shall obtain and pay for all licenses. Owner shall obtain and pay for all construction permits, governmental charges and inspection fees necessary for prosecution of the Work by Contractor. Contractor shall pay all charges of utility owners for connections to Work and Owner shall pay all charges of utility owners for capital costs related thereto such as plant investment fees.

SC-6.20

Amend the third sentence of the fifth paragraph of Article 6.20 of the General Conditions by striking out the following word: CONTRACT, and replacing it with the word: CONTRACTOR, and as so amended, paragraph 6.20 remains in effect.

SC-8.11

Delete paragraph 8.11 of the General Conditions in its entirety.

SC-9.3

Delete paragraph 9.3 of the General Conditions in its entirety.

SC-13.4

Amend the first sentence of paragraph 13.4 of the General Conditions by striking out the following word: OWNER, and replacing it with the word: CONTRACTOR, and as so amended, paragraph 13.4 remains in effect.

SC-14.4

Amend the last sentence of paragraph 14.4 of the General Conditions by deleting the period and adding the following: , notwithstanding the foregoing, to the extent the provision conflicts with Chapter 2252 of the Texas Government Code, the code provisions shall control.

SC-15.2

Amend paragraph 15.2 of the General Conditions by adding the following sentence to the end of the section: In no event shall Contractor be entitled to any other compensation or recovery of any damages pursuant to this agreement and this section 15.2 in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, lost productivity, impact damages, or other similar remuneration.

SC-16

Delete Exhibit GC-a "Dispute Resolution Agreement" in its entirety. Amend to provide that in the event of a dispute, Owner and Contractor may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws and Regulation in respect to any dispute.

**GENERAL CONDITIONS
OF THE
AGREEMENT BETWEEN OWNER AND CONTRACTOR**

AS PREPARED BY

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE
and
ISSUED AND PUBLISHED JOINTLY BY

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS

Whenever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1 *Addenda* - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2 *Agreement* - The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3 *Application for Payment* - The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4 *Asbestos* - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5 *Bid* - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6 *Bidding Documents* - The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.7 *Bidding Requirements* - The advertisement or invitation to Bid, instructions to bidders, and the Bid form.
- 1.8 *Bonds* - Performance and Payment bonds and other instruments of security.
- 1.9 *Change Order* - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
- 1.10 *Contract Documents* - The Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications, issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.
- 1.11 *Contract Price* - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.12 *Contract Times* - The numbers of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendations of final payment in accordance with paragraph 14.13.
- 1.13 *CONTRACTOR* - The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.14 *Defective* - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.15 *Drawings* - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
- 1.16 *Effective Date of the Agreement* - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.17 *ENGINEER* - The person, firm or corporation named as such in the Agreement.
- 1.18 *ENGINEER's Consultant* - A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is defined as such in the Supplementary Conditions.
- 1.19 *Field Order* - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.
- 1.20 *General Requirements* - Sections of Division 1 of the Specifications

GENERAL CONDITIONS

- 1.21 *Hazardous Waste* - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.22 *Laws and Regulations; Laws or Regulations* - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.23 *Liens* - Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.24 *Milestone* - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.25 *Notice of Award* - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.
- 1.26 *Notice to Proceed* - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
- 1.27 *OWNER* - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.
- 1.28 *Partial Utilization* - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.29 *PCBs* - Polychlorinated biphenyls.
- 1.30 *Petroleum* - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 1.31 *Project* - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
- 1.32 *Radioactive Material* - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2014, et seq.) as amended from time to time.
- 1.33 *Resident Project Representative* - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.
- 1.34 *Samples* - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.35 *Shop Drawings* - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
- 1.36 *Specifications* - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.37 *Subcontractor* - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.38 *Substantial Completion* - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 1.39 *Supplementary Conditions* - The part of the Contract Documents which amends or supplements these General Conditions.
- 1.40 *Supplier* - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
- 1.41 *Underground Facilities* - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- 1.42 *Unit Price Work* - Work to be paid for on the basis of unit prices.
- 1.43 *Work* - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials

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and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

- 1.44 *Work Change Directive* - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to different or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.
- 1.45 *Written Amendment* - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the effective date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

Delivery of Bonds:

- 2.1 When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

- 2.2 OWNER shall furnish to CONTRACTOR up to ten copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

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

Starting the Work:

- 2.4 CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

- 2.5 Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, unless CONTRACTOR knew or reasonably should have known thereof.
- 2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for review:
- 2.6.1 a preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - 2.6.2 a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;
 - 2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 2.7 Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

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- 2.8 Within twenty days after the Contract Times start to run, but before any Work at the site is started, a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

- 2.9 Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.6. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until the schedules are submitted to and acceptable to ENGINEER as provided below. The progress schedule will be acceptable to ENGINEER as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Times, but such acceptance will neither impose on ENGINEER responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be made acceptable to ENGINEER as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

- 3.1 The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.
- 3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 9.4.
- 3.3 **Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:**
- 3.3.1 Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
- 3.3.2 If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.23) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.
- 3.3.3 Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:
- 3.3.3.1 the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
- 3.3.3.2 the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER, ENGINEER or any of ENGINEER's consultants, agents or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

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- 3.4 Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

- 3.5 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one of more of the following ways:
- 3.5.1 a formal Written Amendment,
 - 3.5.2 a Change Order (pursuant to paragraph 10.4), or
 - 3.5.3 a Work Change Directive (pursuant to paragraph 10.1).
- 3.6 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one way or more of the following ways:
- 3.6.1 a Field Order (pursuant to paragraph 9.5),
 - 3.6.2 ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
 - 3.6.3 ENGINEER's written interpretation or clarification (pursuant to paragraph 9.4.).

Reuse of Documents:

- 3.7 CONTRACTOR, any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

ARTICLE 4 - AVAILABILITY OF LANDS: SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

Availability of Lands:

- 4.1 OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a correct statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws and Regulations. OWNER shall identify any encumbrances or restrictions not of general application but specifically related to use of lands so furnished with which CONTRACTOR will have to comply in performing the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR and OWNER are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in OWNER's furnishing these lands, rights-of-way or easements, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- 4.2 **Subsurface and Physical Conditions:**
- 4.2.1 **Reports and Drawings:** Reference is made to the Supplementary Conditions for identification of:
 - 4.2.1.1 **Subsurface Conditions:** Those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents; and
 - 4.2.1.2 **Physical Conditions:** Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.
 - 4.2.2 **Limited Reliance by CONTRACTOR Authorized Technical Data:** CONTRACTOR may rely upon the general accuracy of "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data,"

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CONTRACTOR may not rely upon or make any claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

- 4.2.2.1 the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or
- 4.2.2.2 other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3 any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- 4.2.3 **Notice of Differing Subsurface or Physical Conditions:** If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
 - 4.2.3.1 is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or
 - 4.2.3.2 is of such a nature as to require a change in the Contract Documents, or
 - 4.2.3.3 differs materially from that shown or indicated in the Contract Documents, or
 - 4.2.3.4 is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then

CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

- 4.2.4 **ENGINEER's Review:** ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

- 4.2.5 **Possible Contract Documents Change:** If ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.

- 4.2.6 **Possible Price and Times Adjustments:** An equitable adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work; subject, however, to the following:

- 4.2.6.1 such condition must meet any one or more of the categories described in paragraphs 4.2.3.1 through 4.2.3.4, inclusive;
- 4.2.6.2 a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
- 4.2.6.3 with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and
- 4.2.6.4 CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if:
 - 4.2.6.4.1 CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
 - 4.2.6.4.2 the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or
 - 4.2.6.4.3 CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefor as provided in Articles 11 and 12.

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However, OWNER, ENGINEER and ENGINEER's Consultant shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3 Physical Conditions - Underground Facilities:

4.3.1 Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2 The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2 Not Shown or Indicated: If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12. However, OWNER, ENGINEER and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred with any other project or anticipated project.

Reference Points:

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

4.5 Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1 OWNER shall be responsible for any Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site. OWNER shall not be responsible for any such materials brought to the site by CONTRACTOR, Subcontractor, Suppliers or anyone else for whom CONTRACTOR is responsible.

4.5.2 CONTRACTOR shall immediately: (i) stop all Work in connection with such hazardous condition and in any area affected thereby (except in an emergency as required by paragraph 6.23), and (ii) notify OWNER and ENGINEER (and thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such hazardous condition or take corrective action, if any. CONTRACTOR shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR special written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by CONTRACTOR to be resumed, either party may make a claim therefor as provided in Articles 11 and 12.

4.5.3 If after receipt of such special written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order such portion of the Work that is in connection with such hazardous condition or in such affected area to be deleted

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from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefor as provided in Articles 11 and 12. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

- 4.5.4 To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from such hazardous condition, provided that: (i) any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) nothing in this subparagraph 4.5.4 shall obligate OWNER to indemnify any person or entity from and against the consequences of that person's or entity's own negligence.
- 4.5.5 The provisions of paragraphs 4.2 and 4.3 are not intended to apply to Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material uncovered or revealed at the site.

ARTICLE 5 - BONDS AND INSURANCE

Performance, Payments and Other Bonds:

- 5.1 CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.
- 5.2 If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any State where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.
- 5.3 Licensed Sureties and Insurers; Certificates of Insurance:
- 5.3.1 All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.
- 5.3.2 CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

- 5.4 CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
- 5.4.1 claims under workers' compensation, disability benefits and other similar employee benefit acts;
- 5.4.2 claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
- 5.4.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
- 5.4.4 claims for damages insured by customary personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;
- 5.4.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom, and

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- 5.4.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The policies of insurance so required by this paragraph 5.4 to be purchased and maintained shall:

- 5.4.7 with respect to insurance required by paragraphs 5.4.3 through 5.4.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds;
- 5.4.8 include the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
- 5.4.9 include completed operations insurance;
- 5.4.10 include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.12, 6.16 and 6.31 through 6.33;
- 5.4.11 contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.3.2 will so provide);
- 5.4.12 remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work in accordance with paragraph 13.12; and
- 5.4.13 with respect to completed operations insurance, any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

OWNER's Liability Insurance:

- 5.5 In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.4, OWNER, at OWNER's option, may purchase and maintain, at OWNER's expense, OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

Property Insurance:

- 5.6 Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
- 5.6.1 include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
- 5.6.2 be written on a Builder's Risk "all-risk" or open peril or special cause of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework and Work in transit and shall insure against at least the following perils: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils as may be specifically required by the Supplementary Conditions;
- 5.6.3 include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- 5.6.4 cover materials and equipment stored at the site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER; and
- 5.6.5 be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR and ENGINEER with thirty days written notice to each other additional insured to whom a certificate of insurance has been issued.
- 5.7 OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and any other persons or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

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- 5.8 All the policies of insurance (and the certificates of other evidence thereof) required to be purchased and maintained by OWNER in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.11.
- 5.9 OWNER shall not be responsible for purchasing and maintaining any property insurance to protect the interests of CONTRACTOR, Subcontractors or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by CONTRACTOR, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- 5.10 If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraphs 5.6 or 5.7, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.
- 5.11 **Waiver of Rights:**
- 5.11.1 OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy issued.
- 5.11.2 In addition, OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them, for:
- 5.11.2.1 loss due to business interruption, loss of use or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of or resulting from fire or other peril, whether or not insured by OWNER; and
- 5.11.2.2 loss or damage to the completed Project or part thereof caused by, arising out of or resulting from fire or other peril covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.10, after substantial completion pursuant to paragraph 14.8 or after final payment pursuant to paragraph 14.13.

Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in this paragraph 5.11.2 shall contain provisions to the effect that in the event of payment of any such loss, damage or consequential loss the insurers will have no rights of recovery against any of CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, employees and agents of any of them.

Receipt and Application of Insurance Proceeds

- 5.12 Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- 5.13 OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance; Option to Replace:

- 5.14 If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten days required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party

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by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expenses of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

Partial Utilization - Property Insurance:

- 5.15 If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

- 6.1 CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.2 CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

- 6.3 CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.
- 6.4 Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports or required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

- 6.6 CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:
- 6.6.1 CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
- 6.6.2 Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.
- 6.7 **Substitutes and "Or-Equal" Items:**
- 6.7.1 Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by the words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by ENGINEER under the following circumstances:

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- 6.7.1.1 "Or-Equal": If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.
- 6.7.1.2 Substitute Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The procedure for review by the ENGINEER will include the following as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in structure to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.
- 6.7.1.3 CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.
- 6.7.2 Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, methods, technique, sequence or procedure of construction acceptable to ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.7.1.2.
- 6.7.3 ENGINEER's Evaluation: ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute item.
- 6.8.1 CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.
- 6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials or equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be adjusted by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written

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Amendment signed. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

- 6.9.1 CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontract, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 6.9.2 CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.
- 6.10 The divisions and sections of the Specifications and identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.11 All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

- 6.12 CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed to OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each an any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

- 6.13 Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

Laws and Regulations:

- 6.14.1 CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.
- 6.14.2 If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR or CONTRACTOR's obligations under paragraph 3.3.2.

Taxes:

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

Use of Premises:

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- 6.16 CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.
- 6.17 During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.
- 6.18 CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

- 6.19 CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

- 6.20 CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
- 6.20.1 all persons on the Work site or who may be affected by the Work;
 - 6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - 6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused directly or indirectly, in whole or in part, by CONTRACT, Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

Safety Representative:

- 6.21 CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

Hazard Communication Programs:

- 6.22 CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

Emergencies:

- 6.23 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the

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Work or variations from the Contract Documents have been caused thereby. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action.

6.24 Shop Drawings and Samples:

6.24.1 CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.

6.24.2 CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

6.25 Submittal Procedures:

6.25.1 Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

- 6.25.1.1 all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,
- 6.25.1.2 all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and
- 6.25.1.3 all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

6.25.2 Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

6.25.3 At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

6.26 ENGINEER will review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.27 ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of submission as required by paragraph 2.25.3 and ENGINEER has given written approval of each such variation by specific written notification thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.

6.28 Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

6.29 CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

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6.30 CONTRACTOR's General Warranty and Guarantee:

- 6.30.1 CONTRACTOR warrants and guarantees to OWNER, ENGINEER and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be *defective*. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:
- 6.30.1.1 abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or
 - 6.30.1.2 normal wear and tear under normal usage.
- 6.30.2 CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:
- 6.30.2.1 observations by ENGINEER;
 - 6.30.2.2 recommendations of any progress or final payment by ENGINEER;
 - 6.30.2.3 the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
 - 6.30.2.4 use or occupancy of the Work or any part thereof by OWNER;
 - 6.30.2.5 any acceptance by OWNER or any failure to do so;
 - 6.30.2.6 any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;
 - 6.30.2.7 any inspection, test or approval by others; or
 - 6.30.2.8 any correction of *defective* Work by OWNER.

Indemnification:

- 6.31 To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs(s) caused by, arising out of or resulting from the performance of the Work provided that such claim, cost, loss or damage: (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (ii) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by negligence or omission of a person or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such person or entity.
- 6.32 In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.31 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 6.33 The indemnification obligations of CONTRACTOR under paragraph 6.31 shall not extend to liability of ENGINEER and ENGINEER's Consultants, officers, directors, employees or agents caused by the professional negligence, errors or omissions of any of them.

Survival of Obligations:

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

ARTICLE 7 - OTHER WORK

Related Work at Site:

- 7.1 OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefor which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR

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prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefor as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.

- 7.2 CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.
- 7.3 If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure so to report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in such other work.

Coordination:

- 7.4 If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:
- 7.4.1 the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
- 7.4.2 the specific matters to be covered by such authority and responsibility will be itemized; and
- 7.4.3 the extent of such authority and responsibilities will be provided.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 - OWNER's RESPONSIBILITIES

- 8.1 Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.
- 8.2 In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.
- 8.3 OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.
- 8.4 OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.
- 8.5 OWNER's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 through 5.10.
- 8.6 OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.
- 8.7 OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.
- 8.8 In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.
- 8.9 The OWNER shall not supervise, direct or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences or procedures of construction or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.
- 8.10 OWNER's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.5.

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- 8.11 If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

OWNER's Representative:

- 9.1 ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

- 9.2 ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

Project Representative:

- 9.3 If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13 and in the Supplementary Conditions. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided in the Supplementary Conditions.

Clarifications and Interpretations:

- 9.4 ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or Article 12.

Authorized Variations in Work:

- 9.5 ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR who shall perform the Work involved promptly. If OWNER or CONTRACTOR believes that a Field Order justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree as to the amount or extent thereof, OWNER or CONTRACTOR may make a written claim therefor as provided in Article 11 or 12.

Rejecting Defective Work:

- 9.6 ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 1.39, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

- 9.7 In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.
- 9.8 In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

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- 9.9 In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determination for Unit Prices:

- 9.10 ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendations of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and : (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

- 9.11 ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.
- 9.12 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.15) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.
- 9.13 **Limitations on ENGINEER's Authority and Responsibilities:**
- 9.13.1 Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or to any surety for or employee or agent of any of them.
- 9.13.2 ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and program incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.
- 9.13.3 ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.13.4 ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- 9.13.5 The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.

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ARTICLE 10 - CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 10.2 If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of the Work Change Directive, a claim may be made therefor as provided in Article 11 or Article 12.
- 10.3 CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.
- 10.4 OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:
- 10.4.1 changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1, (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties;
 - 10.4.2 changes in the Contract Price or Contract Times which are agreed to by the parties; and
 - 10.4.3 changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11;
- provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.
- 10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price and Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.
- 11.3 The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:
- 11.3.1 where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);
 - 11.3.2 where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2);
 - 11.3.3 where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

- 11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the OWNER, such costs shall be in amounts no higher than those

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prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5.

- 11.4.1 Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full-time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.
- 11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
- 11.4.3 Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- 11.4.5 Supplemental costs including the following:
 - 11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
 - 11.4.5.2 Cost, including transportation and maintenance of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
 - 11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - 11.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
 - 11.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - 11.4.5.6 Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.
 - 11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.
 - 11.4.5.8 Minor expenses such as telegrams, long distance calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - 11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work.

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- 11.5 The term Cost of Work shall not include any of the following:
- 11.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
 - 11.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
 - 11.5.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
 - 11.5.4 Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).
 - 11.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.
- 11.6 The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:
- 11.6.1 a mutually acceptable fixed fee; or
 - 11.6.2 if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - 11.6.2.1 for costs incurred under paragraphs 11.4.1 and 11.4.2, the CONTRACTOR's fee shall be fifteen percent;
 - 11.6.2.2 for costs incurred under paragraph 11.4.3, the CONTRACTOR's fee shall be five percent;
 - 11.6.2.3 where one or more tiers of subcontracts are on the basis of Cost of Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.4.1, 11.4.2, 11.4.3 and 11.6.2 is that the Subcontractor who actually performs or furnishes the Work, at whatever tier, will be paid a fee of fifteen percent of the costs incurred by such Subcontractor under paragraphs 11.4.1 and 11.4.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;
 - 11.6.2.4 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;
 - 11.6.2.5 the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and
 - 11.6.2.6 when both additions and credit are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.2.5, inclusive.
- 11.7 Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

Cash Allowances:

- 11.8 It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:
- 11.8.1 the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
 - 11.8.2 CONTRACTOR's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any of the foregoing will be valid.

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Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9 Unit Price Work:

- 11.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.
- 11.9.2 Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separate identified item.
- 11.9.3 OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:
- 11.9.3.1 the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 11.9.3.2 there is no corresponding adjustment with respect to any other item of Work; and
 - 11.9.3.3 if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

- 12.1 The Contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Times (or Milestones) shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph 12.1.
- 12.2 All time limits stated in the Contract Documents are of the essence of the Agreement.
- 12.3 Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in paragraph 12.1. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions or acts of God. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.
- 12.4 Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (i) delays caused by or within the control of CONTRACTOR, or (ii) delays beyond the control of both parties including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

ARTICLE 13 - TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 13.1 Notice of Defects. Prompt notice of all *defective* Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All *defective* Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

- 13.2 OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

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Tests and Inspections:

- 13.3 CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate inspections or tests.
- 13.4 OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
- 13.4.1 for inspections, tests or approvals covered by paragraph 13.5 below;
- 13.4.2 that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9; and
- 13.4.3 as otherwise specifically provided in the Contract Documents.
- 13.5 If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.
- 13.6 If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.
- 13.7 Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

- 13.8 If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.
- 13.9 If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is *defective*, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefor as provided in amount thereof, may make a claim therefor as provided in Article 11. If, however, such Work is not found to be *defective*, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefor as provided in Articles 11 and 12.

OWNER May Stop the Work:

- 13.10 If the Work is *defective*, or if CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any surety or other party.

Correction or Removal of Defective Work:

- 13.11 If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all *defective* Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not *defective*. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- 13.12 **Correction Period:**
- 13.12.1 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be *defective*, CONTRACTOR shall promptly, without

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cost to OWNER and in accordance with OWNER's written instructions: (i) correct such *defective* Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not *defective*, and (ii) satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the *defective* Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair and replacement of work of others) will be paid by CONTRACTOR.

13.12.2 In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

13.12.3 Where *defective* Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

Acceptance of Defective Work:

13.13 If, instead of requiring correction or removal and replacement of *defective* Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such *defective* Work (such costs to be approved by ENGINEER as to reasonableness). If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

13.14 If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct *defective* Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER and ENGINEER's Consultants access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefor as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's *defective* Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

Application for Progress Payment:

14.2 At least twenty days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, retainage with respect to progress payments will be as stipulated in the Agreement.

CONTRACTOR's Warranty of Title:

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- 14.3 CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Applications for Progress Payment:

- 14.4 ENGINEER will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by OWNER to CONTRACTOR.
- 14.5 ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

- 14.5.1 the Work has progressed to the point indicated,
- 14.5.2 the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and
- 14.5.3 the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

- 14.6 ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with Contract Documents.
- 14.7 ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- 14.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,
- 14.7.2 the Contract Price has been reduced by Written Amendment or Change Order,
- 14.7.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or
- 14.7.4 ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- 14.7.5 claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work,
- 14.7.6 Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens,
- 14.7.7 there are other items entitling OWNER to a set-off against the amount recommended, or
- 14.7.8 OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive.

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

- 14.8 When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER,

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CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

- 14.9 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

- 14.10 Use by OWNER at OWNER's option of any substantially completed part of the Work which (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially completed, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

- 14.10.2 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

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

Final Application for Payment:

- 14.12 After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by paragraph 5.4, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including not limited to the evidence of insurance required by subparagraph 5.4.13, (ii) consent of surety, if any, to final payment, and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu of such releases or waivers of Liens and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

Final Payment and Acceptance:

- 14.13 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied

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that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.15. Otherwise, ENGINEER will return the Application to CONTRACTOR indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after the presentation to OWNER of the Application and accompanying documentation, in appropriate form and substance and with ENGINEER's recommendation and notice of acceptability, the amount recommended by ENGINEER will become due and will be paid by OWNER to CONTRACTOR.

- 14.14 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Waiver of Claims:

- 14.15 The making and acceptance of final payment will constitute:
- 14.15.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11, from failure to comply with the Contract Documents or terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and
- 14.15.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

- 15.1 At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 11 and 12.

OWNER May Terminate:

- 15.2 Upon the occurrence of any one or more of the following events:
- 15.2.1 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials and equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);
- 15.2.2 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
- 15.2.3 if CONTRACTOR disregards the authority of ENGINEER; or
- 15.2.4 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents.

OWNER may, after giving CONTRACTOR (and the surety, if any,) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses or damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

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- 15.3 Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies by OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.
- 15.4 Upon seven days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):
- 15.4.1 for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
 - 15.4.2 for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 15.4.3 for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
 - 15.4.4 for reasonable expenses directly attributable to termination.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from termination.

CONTRACTOR May Stop Work or Terminate:

- 15.5 If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty days after it is submitted or OWNER fails for thirty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and within thirty days after it is submitted, or OWNER has failed for thirty days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

If and to the extent that OWNER and CONTRACTOR have agreed on the method and procedure for resolving disputes between them that may arise under this Agreement, such dispute resolution method and procedure, if any, shall be as set forth in Exhibit GC-a, "Dispute Resolution Agreement," to be attached hereto and made a part hereof. If no such agreement on the method and procedure for resolving such disputes has been reached, and subject to the provisions of paragraphs 9.10, 9.11 and 9.12, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

Giving Notice:

- 17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

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

Notice of Claim:

- 17.3 Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

GENERAL CONDITIONS

- 17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

- 17.5 Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not limited to, all fees and charge of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

BURNET COUNTY, TEXAS

CONFLICT OF INTEREST DISCLOSURE

IMPORTANT NOTICE TO VENDORS AND BIDDERS – STATE LAW

State law (Chapter 176 of the Local Government Code) requires the filing of Conflict of Interest Questionnaires by certain individuals and businesses.

The questionnaires require disclosures describing certain business and gift giving relationships, if any, the filers may have with Local Government Officers or a member of a governing body of a local government entity.

The law applies to:

- Businesses and individuals who contract with the City or County,
- Businesses and individuals who seek to contract with the City (regardless of whether a bidder is awarded the contract), and
- Agents who represent such businesses in their business dealing with the City or County

A copy of the required reporting form is attached. **Form CIQ**

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each individual, business and agent who is subject to the law's filing requirement.

If you are required to file a Conflict of Interest Questionnaire, you should file it with the Burnet County Auditor, 133 East Jackson Street, Burnet, TX 78611

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity.

Asphalt Inc., LLC dba Lone Star Paving Company

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

N/A
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

N/A

B. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

N/A

A. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

N/A

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

N/A

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7 Signature of vendor doing business with the governmental entity

Date

9-5-2024

CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

Local Government Code § 176.001(1-a): "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

Local Government Code § 176.003(a)(2)(A) and (B):

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

Local Government Code § 176.006(a) and (a-1)

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

BURNET COUNTY, TEXAS

CERTIFICATE OF INTERSTED PARTIES DISCLOSURE

IMPORTANT NOTICE – STATE LAW

State Law (House Bill 1295) requires the filing of Certificate of Interested Parties Disclosure (Form 1295) by business entities.

The law states that a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The law applies only to a contract of a governmental entity or state agency that either (1) requires an action or vote by the governing body of the entity or agency before the contract may be signed or (2) has a value of at least \$1 million. The disclosure requirement applies to a contract entered into on or after January 1, 2016.

A business entity must use the application to enter the required information on Form 1295 and print a copy of the completed form, which will include a certification of filing that will contain a unique certification number. An authorized agent of the business entity must sign the printed copy of the form and have the form notarized. The completed Form 1295 with the certification of filing must be filed with the governmental body or state agency with which the business entity is entering into the contract.

If you have any questions about compliance, please consult your own legal counsel. Compliance is the individual responsibility of each individual, business and agent who is subject to the law's filing requirement.

If you are required to file a Certificate of Interested Parties, you should file it online with the Texas Ethics Commission:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

BID FORM FOR CR 114 PAVING PROJECT

PROJECT IDENTIFICATION: CR 114 Paving Project

CONTRACT IDENTIFICATION AND NUMBER: N/A

THIS BID IS SUBMITTED TO: Kain Smith, Burnet County Auditor, 133 East Jackson Street, Burnet, TX 78611

1. The undersigned BIDDER proposes and agrees, if this Bid is accepted, to enter into an Agreement with OWNER in the form included in the Contract Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Bid Price and within the Bid Times indicated in this Bid and in accordance with the other terms and conditions of the Contract Documents.
2. BIDDER accepts all of the terms and conditions of the Advertisement of Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for sixty days after the day of Bid opening. BIDDER will sign and deliver the required number of counterparts of the Agreement with the Bonds and other documents required by the Bidding Requirements within fifteen days after the date of OWNER'S Notice of Award.
3. In submitting this bid, BIDDER represents, as more fully set forth in the Agreement, that:
 - (a) BIDDER has examined and carefully studied the Bidding Documents:
PROJECT MANUAL
DRAWINGS
SPECIFICATIONS (As specified on the cover sheet of the construction plans)
ADDENDA (Acknowledged on the Bid Summary Sheet or on the sealed bid envelope)
 - (b) BIDDER has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the Work;
 - (c) BIDDER is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.
 - (d) BIDDER has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. BIDDER accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which BIDDER is entitled to rely as provided in paragraph 4.2 of the General Conditions. BIDDER acknowledges that such reports and drawings are not Contract Documents and may not be complete for BIDDER'S purposes. BIDDER acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Bidding Documents with respect to Underground Facilities at or contiguous to the site. BIDDER has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by BIDDER and safety precautions and programs incident thereof. BIDDER does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this Bid for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents.
 - (e) BIDDER is aware of the general nature of Work to be performed by OWNER and others at the site that relates to Work for which this Bid is submitted as indicated in the Contract Documents.
 - (f) BIDDER has correlated the information known to BIDDER, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
 - (g) BIDDER has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that BIDDER has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to BIDDER, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which this Bid is submitted.
 - (h) This Bid is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; BIDDER has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; BIDDER has not solicited or induced any person, firm or corporation to refrain from bidding; and BIDDER has not sought by collusion to obtain for itself any advantage over any other Bidder or over OWNER.

4. Measurement shall be based solely on Plan Quantities as listed in the Unit Price Schedule; no quantities shall be measured in the field for payment purposes. BIDDER will complete the Work in accordance with the Contract Documents for the Unit Prices and Quantities listed on the Unit Price Schedule for the for the following price(s):

Total Bid in Figures (as tabulated on the Unit Price Schedule): To be entered on the Bid Summary Sheet

5. BIDDER agrees that the Work will be substantially complete, and completed and ready for final payment in accordance with the times specified in Article 3 of the Standard Form of Agreement.

BIDDER accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified in the Agreement.

6. The following documents are required to be attached to be made a condition of this Bid:

(a) Required Bid Security in the form of certified check, cashier's check or corporate surety bond.

7. Communications concerning this Bid shall be addressed to:

Greg Haley, P.E.
K.C. Engineering, Inc.
705 Hwy 281 North, Suite 103
Marble Falls, Texas 78654

The address of BIDDER indicated below:

8. Terms used in this Bid which are defined in the General Conditions or Instructions will have the meanings indicated in the General Conditions or Instructions.

9. SUBMITTED on September 16th, 2024
State Contractor License No. N/A

If BIDDER is:

An Individual

By _____ (SEAL)
(Individual's Name)

doing business as _____

Business address: _____

Phone No.: _____

Email Address: _____

A Partnership

By Asphalt Inc., dba Lone Star Paving Company (SEAL)
(Firm Name)

Alex Flores/E.V.R.
(General Partner)

Business address: 11675 Jollyville Rd Ste.#150

Austin, TX 78759

Phone No.: 512-428-5778

Email Address: Alex@ispaving.com

A Corporation

By _____ (SEAL)
(Corporation Name)

(State of Incorporation)

By _____ (SEAL)
(name of person authorized to sign)

(Corporate Seal) (Title)

Attest _____
(Secretary)

Business address: _____

Phone No.: _____

Email Address: _____

Date of Qualification to do business is _____

A Joint Venture

By _____ (SEAL)
(Name)

(Address)

By _____ (SEAL)
(Name)

(Address) ddd

Phone No.: _____

Email Address: _____

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

INSTRUCTIONS TO BIDDERS FOR CR 114 PAVING PROJECT

1. Defined Terms

Terms used in these Instructions to Bidders which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8)(1990 Edition) have the meanings assigned to them in the General Conditions.

Certain additional terms used in these Instructions to Bidders have the meanings indicated below which are applicable to both the singular and plural thereof.

- 1.1 Bidder - one who submits a Bid directly to Owner as distinct from a Sub-Bidder, who submits a Bid to a Bidder.
- 1.2 Issuing Office - the office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.
- 1.3 Successful Bidder - the lowest, responsible and responsive Bidder to whom Owner (on the basis of Owner's evaluation as hereinafter provided) makes an award.

2. Copies of Bidding Documents

- 2.1 Complete sets of the Bidding Documents in the number and for the fee, if any, stated in the Advertisement or Invitation to Bid may be obtained from the Issuing Officer. The fee is non-refundable.
- 2.2 Complete sets of Bidding Documents must be used in preparing Bids; neither Owner nor Engineer assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- 2.3 Owner and Engineer in making copies of Bidding Documents available on the above terms do so only for the purpose of obtaining Bid for the Work and do not confer a license or grant for any other use.

3. Qualifications of Bidders

To demonstrate qualifications to perform the Work, each Bidder must be prepared to submit within five days after Bid opening upon Owner's request, detailed written evidence such as financial data, previous experience, present commitments and other such data as may be called for below (or in the Supplementary Instructions). Each Bid must contain evidence of Bidder's qualification to do business in the state where the Project is located or covenant to obtain such qualification prior to award of the contract.

4. Examination of Contract Documents and Site

- 4.1 It is the responsibility of each Bidder before submitting a Bid:
 - 4.1.1 To examine thoroughly the Contract Documents and other related data identified in the Bidding Documents (including "technical data" referred to below);
 - 4.1.2 To visit the site to become familiar with and satisfy Bidder as to the general, local site conditions that may affect cost, progress, performance or furnishing of the Work;
 - 4.1.3 To consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work;
 - 4.1.4 To study and carefully correlate Bidder's knowledge and observations with the Contract Documents and such other related data; and
 - 4.1.5 To promptly notify Engineer of all conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the Contract Documents and such other related documents.
 - 4.1.6 The Contractor shall satisfy himself that all quantities of material and work listed in the contract documents, whether paid for directly or considered subsidiary to the work, are adequate for completion of the work. The Contractor shall notify the engineer of any alleged quantity discrepancies no later than 7 calendar days prior to the bid opening date. Failure of the contractor to make such timely notification constitutes Contractor's acceptance of the quantities listed, and the Contractor shall be entitled to no later adjustments or additional compensation based on alleged errors in quantities listed in any of the bid documents.
- 4.2 Reference is made to the Supplementary Conditions for identification of:
 - 4.2.1 Those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities) which are at or contiguous to the site that have been utilized by Engineer in preparation of the Contract Documents. Bidder may rely upon the general accuracy of "technical data" contained in such drawings but not upon other data, interpretations, opinions or information shown or indicated in such drawings or otherwise relating to such structures, nor upon the completeness thereof for the purposes of bidding or construction.

Copies of such reports and drawings will be made available by Owner to any Bidder on request. Those reports and drawings are not part of the Contract Documents, but the "technical data" contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.2 of the General Conditions has been identified and

established in Paragraph SC-4.2 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

- 4.3 Information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based upon information and data furnished to Owner and Engineers by owners of such Underground Facilities or others, and Owner and Engineer do not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.
- 4.4 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions and Underground Facilities, and possible changes in the Contract Documents due to differing or unanticipated conditions appear in Paragraphs 4.2 and 4.3 of the General Conditions.
- 4.5 Before submitting a Bid, each Bidder will be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise, which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- 4.6 On request, Owner will provide each Bidder access to the site to conduct such examinations, investigations, explorations, tests and studies as each Bidder deems necessary for submission of a Bid. Bidder must fill all holes and clean up and restore the site to its former conditions upon completion of such examinations, explorations, investigations, tests and studies.
- 4.7 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Contract Documents and applying the specific means, methods, techniques, sequences or procedures of construction (if any) that may be shown or indicated or expressly required by the Contract Documents, that Bidder has given the Engineer written notice of all conflicts, errors, ambiguities and discrepancies that Bidder has discovered in the Contract Documents and the written resolutions thereof by Engineer is acceptable to Bidder, and that the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.
- 4.8 The provisions of 4.1 through 4.7, inclusive, do not apply to Asbestos, Polychlorinated biphenyls (PCBs), Petroleum, Hazardous Waste or Radioactive Material covered by Paragraph 4.5 of the General Conditions.

5. Availability of Lands for Work, etc.

The lands upon which the Work is to be performed, rights-of-way and easements for access thereto and other lands designated for use by Contractor in performing the Work are identified in the Contract Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Contract Documents.

6. Interpretations and Addenda

- 6.1 All questions about the meaning or intent of the Bidding Documents are to be directed to Engineer by email to gregg@kcengineering.com. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda emailed to all parties recorded by Engineer as having received the Bidding Documents. Questions received after 5:00 p.m. on the Friday prior to the date for opening of Bids may not be answered. Only questions answered by formal written Addenda delivered to all parties by email will be binding. Neither owner or Contractor shall be responsible for any bidder's failure to receive emails sent to the address provided by bidder. Oral and other interpretations or clarifications will be without legal effect.
- 6.2 Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner or Engineer.

7. Bid Security

- 7.1 Each Bid must be accompanied by Bid Security made payable to Owner in an amount of five percent of Bidder's maximum Bid price and in the form of a certified or bank check or a Bid Bond (on form attached, if a form is prescribed) issued by a surety meeting the requirements of Paragraph 5.1 of the General Conditions. The Bid Security must be included in the bid submittal immediately behind the Bid Summary Sheet.
- 7.2 The Bid Security of Successful Bidder will be retained until such Bidder has executed the Agreement, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid Security will be returned. If the Successful Bidder fails to execute and deliver the Agreement and furnish the required contract security within fifteen days after the Notice of Award, Owner may annul the Notice of Award and the Bid Security of that Bidder will be forfeited. The Bid Security of other Bidders whom Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of the seventh day after the Effective Date of the Agreement or the thirty-sixth day after the Bid opening, whereupon Bid Security furnished by such Bidders will be returned. Bid Security with Bids which are not competitive will be returned within seven days after the Bid opening.

8. Contract Times

The number of days within which, or the dates by which, the Work is to be substantially completed and also completed and ready for final payment (the term "Contract Times" is defined in paragraph 1.12 of the General Conditions) are set forth in the Agreement (or incorporated therein by reference to the attached Bid Form).

9. Liquidated Damages

Provisions for liquidated damages, if any, are set forth in the Agreement.

10. Substitute and "Or-Equal" Items

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications, without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement. The procedure for submission of any such application by Contractor and consideration by Engineer is set forth in Paragraphs 6.7.1, 6.7.2 and 6.7.3 of the General Conditions.

11. Subcontractors, Suppliers and Others

Requirements placed on the Contractor in regard to the use of Subcontractors, Suppliers, and others are established the Contract Documents.

12. Bid Form

- 12.1 The Bid Form is included with the Bidding Documents; additional copies may be obtained from Engineer (or the Issuing Officer).
- 12.2 All blanks on the Bid Form must be completed by printing in black ink or by typewriter.
- 12.3 Bids by corporations must be executed in the corporate name by the president or vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation must be shown below the signature.
- 12.4 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.
- 12.5 All names must be typed or printed in black ink below the signature.
- 12.6 The Bid shall contain an acknowledgement of receipt of all Addenda (the numbers of which must be indicated and signed on the Bid Summary Sheet or on the outside of the sealed bid envelope).
- 12.7 The address and telephone number for communications regarding the Bid must be shown.
- 12.8 Evidence of authority to conduct business as an out-of-state corporation in the state where the Work is to be performed shall be provided in accordance with Paragraph 3 above. State contractor license number, if any, must also be shown.
- 12.9 The Bid Summary Sheet is hereby referenced and incorporated as part of the Bid documents. At the Owner's discretion, any bid submittal that does not include a completed Bid Summary Sheet (Addenda may alternatively be acknowledged on the outside of the sealed bid envelope) may be considered an incomplete bid. The Bid Summary Sheet must be submitted as the second sheet of the bid submittal, immediately behind the Project Manual cover including the text "To be filled out and returned by bidder."

13. Submission of Bids

Bids shall be submitted at the time and place indicated in the Advertisement of Invitation to Bid and shall be enclosed in an opaque sealed envelope, marked with the Project title and name and address of Bidder and accompanied by the Bid Security. If the Bid is sent through the mail or other delivery system the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.

Each prospective Bidder is furnished one copy of the Bidding Documents with one separate unbound copy each of the Project Manual including the text "To be filled out and returned by bidder." The Bidding Documents may be retained by Bidder. The unbound copy of the Project Manual is to be completed and submitted in a sealed envelope labeled in the center of envelope as follows:

CR 114 Paving Project

The bidder's full name and contact information shall be listed on the upper left hand corner of the envelope.

14. Modification and Withdrawal of Bids

- 14.1 Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered to the place where Bids are to be submitted at any time prior to the opening of Bids.
- 14.2 If, within twenty-four hours after Bids are opened, any Bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid. Thereafter, the Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

15. Opening of Bids

Bids will be opened and (unless obviously non-responsive) read aloud publicly at the place where Bids are to be submitted. An abstract of the amounts of the base Bids and major alternates (if any) will be made available to Bidders after the opening of the Bids.

16. Bids to Remain Subject to Acceptance

All Bids will remain subject to acceptance for sixty days after the day of the Bid opening, but Owner may, in its sole discretion, release any Bid prior to that date.

17. Award of Contract

- 17.1 Owner reserves the right to reject any or all Bids, including without limitation the rights to reject any or all nonconforming, unresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if Owner believes that it would not be in the best interest of the Project to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner also reserves the right to waive all informalities not involving price, time or changes in the Work and to negotiate contract terms other than price with the Successful Bidder.
- 17.2 In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 17.3 Owner also may consider the operating costs, maintenance requirements, performance date and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data is required to be submitted prior to the Notice of Award.
- 17.4 Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of Bidders and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time.
- 17.5 If the contract is to be awarded, it will be awarded to the lowest responsible Bidder, or to the bidder who provides best value to Owner, in accordance with Chapter 252 of the Texas Local Government Code.
- 17.6 If the contract is to be awarded, Owner will give Successful Bidder a Notice of Award within thirty-five days after the day of the Bid opening.
- 17.7 In evaluating bids, the following terms in the Unit Price Schedule in the Bid Form shall be used as described below:
 1. "Unit Price" refers to the amount entered as the Unit Price in figures;
 2. "Amount" refers to the amount calculated by multiplying the Unit Price by the Quantity for that item and entered as the Amount (Quantity x Price);
 3. "Group" refers to the total of the Amount column for a specified group of work items; "General Requirements," Roadway Improvements," "Signs and Striping" are examples of "Groups;"
 4. "Group Total" refers to the sum of the Amount column for a Group;
 5. "Total" refers to the total (or subtotal) of the Amount column, including the Total Bid carried to the Bid Summary Sheet;
 6. "Unreadable figures" refers to any amount entered in the Unit Price Schedule (or elsewhere in the Bid Form) that is determined by the Engineer to be illegible, incomplete, or partially or completely indecipherable, all of which shall be determined by the Engineer at his sole discretion as the agent of the Owner;
 7. "Evaluated Bid" refers to the Total Bid, including Amounts and Unit Prices as corrected following the procedures in items a. through e. below.

In the evaluation of bids, the Engineer (acting as the Owner's Agent) shall resolve questions and/or discrepancies related to unreadable figures, incorrect calculations, incorrect totals, and omitted bid items using the procedure listed in subparagraphs a. through e., below:

- a. Incorrectly calculated Amounts, Group Totals, and/or Totals shall be resolved in favor of the correctly calculated Amount, Group Total, or Total.
- b. In the case of an Amount entered in unreadable figures, the correct Amount shall be determined as the corrected product of the Unit Price x Quantity as shown in the Unit Price Schedule.
- c. In the case of a Unit Price entered in unreadable figures, the correct Unit Price shall be determined by dividing the Amount by the Quantity in the Unit Price Schedule.
- d. In the case that both Unit Price and Amount are entered in unreadable figures for a single item, the correct Amount for that item shall be determined by subtracting the total of all other items within that Group from the Group Total for that Group. The Unit Price shall then be determined as described above.
- e. If the Contractor omits a bid item, or inadvertently leaves the Unit Price and Amount for a bid item blank, the Engineer will evaluate the bid using an Amount of zero dollars for that bid item.

In the event that all Amounts and/or Totals cannot be resolved to the Engineer's and Owner's satisfaction using the procedures listed above, the bid shall be rejected.

The Engineer shall provide the results of the bid evaluation to the apparent low bidder for his review and acceptance. If the bidder chooses to not accept the Contract based on the Evaluated Bid, he may withdraw his bid. If the bidder accepts the Evaluated Bid, payment for all bid items through the life of the Contract shall be adjusted according to the Unit Prices as included in the Evaluated Bid, and the Engineer shall then make recommendations to the Owner based on the Total Bid and Unit Prices as included in the Evaluated Bid.

By submitting a bid for the project described in these Instructions to Bidders, each bidder agrees to the determination of the low bidder and payment procedures described in this section 17.7, and each bidder further agrees that he is not, and will not be disadvantaged in any way by these bid evaluation procedures and/or subsequent bid award and/or payment procedures.

18. Contract Security

Paragraph 5.1 of the General Conditions and the Supplementary Conditions set forth Owner's requirements as to performance and payment Bonds. When the Successful Bidder delivers the executed Agreement to Owner, it must be accompanied by the required performance and payment Bonds.

19. Signing of Agreement

When Owner gives a Notice of Award to the Successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within fifteen days thereafter, Contractor will sign and deliver the required number of counterparts of the Agreement and attached documents to Owner with the required Bonds. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Contractor. Each counterpart is to be accompanied by a complete set of the Drawings with appropriate identification.

20. Prebid Conference

A Prebid Conference will not be held.

21. Sales and Use Taxes

As a subdivision of the State of Texas, Owner is exempt from Texas State Sales and Use Taxes on materials and equipment to be incorporated in the Work. Said taxes shall not be included in the Contract Price.

Provisions concerning retainage and Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

22. Retainage

Provisions concerning retainage and Contractor's rights to deposit securities in lieu of retainage are set forth in the Agreement.

23. Rights

Burnet County reserves the right to waive any informality that is not detrimental to any other bidder or potential bidder or to reject all bids or to accept the lowest responsible bidder that in the judgment of Burnet County will be in the best interest of Burnet County.

BID SUMMARY SHEET FOR CR 114 PAVING PROJECT

Acknowledgement of Addenda:

All Addenda must be acknowledged below in the space provided. Alternatively, Addenda may be acknowledged on the outside of the sealed envelope submitted for bid next to the project name. Inclusion of the full text of any Addendum in this bid packet will also constitute the bidder's acknowledgement of that Addendum.

Bidder's Name: Asphalt Inc., LLC dba Lone Star Paving Company
(Fill in Bidder's Name exactly as it appears on pages 2 and 3 of the Bid Form)

I have received, acknowledge, and accept all of the following Addenda:

ADDENDUM No.	SIGNATURE
N/A	

Total Bid Amount in numbers:

Total base bid in numbers (as tabulated on the Unit Price Schedule): \$ 445,849.75

Total bid alternate in numbers (as tabulated on the Unit Price Schedule): \$ N/A

The total bid in numbers above will be used to determine the apparent low bidder. The contract award will be based on bid amounts tabulated and verified by the Engineer.

CONTRACTOR'S BID
FOR
CR 114 PAVING PROJECT

PREPARED FOR:



Checklist of items to be returned

The following items shall be returned in order for the bid submittal to be considered acceptable:

- ☒ Completed Bid Summary Sheet
- ☐ Bid Security (5% of the maximum bid amount)
- ☒ Completed Conflict of Interest Questionnaire (if required)
- ☒ Completed Bid Form
- ☒ Completed Unit Price Schedule

Print Bidder's Name

Asphalt Inc., LLC dba Lone Star Paving Company

(Fill in Bidder's Name exactly as it appears on pages 2 and 3 of the Bid Form)

RETURN THIS SHEET WITH BID

PREPARED BY:

GREG HALEY, P.E.

K.C. ENGINEERING, INC.



Registration No. F-977
August 2024

K.C. ENGINEERING, INC.

705 Hwy 281 North, Suite 103, Marble Falls, TX 78654

(830) 693-5635

Emailing: Bid Submittal- Burnet County CR 114 Paving Project- LSP 9-16-24

1 message

Andrew Warner <awarner@lspaving.com>

Mon, Sep 16, 2024 at 3:34 PM

To: "bids@burnetcountytexas.org" <bids@burnetcountytexas.org>

Attention Burnet County Auditor,

Attached is our bid submittal for the Burnet County CR 114 Paving Project. We will be attending the 10:00 AM opening tomorrow and will also have a physical -sealed bid in the event that there is an error with the electronic Adobe PDF which can happen from time to time due to software updates between versions.

Thank you,

Andrew Warner
Estimator
Lone Star Paving
512-906-5864
awarner@lspaving.com

Disclaimer

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 **Bid Submittal- Burnet CR 114 Paving Project- LSP 9-16-24.pdf**
3340K

**UNIT PRICE SCHEDULE
FOR
CR 114 PAVING PROJECT
BURNET COUNTY, TEXAS**

The Pay Item reference indicates the controlling specification for each Pay Item of K.C. Engineering, Inc. Standard Specifications (3rd Edition). Pay Items containing a reference to TxDOT are from the Texas Department of Transportation *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges*, 2014.

Payment for all items shall be based on Plans Quantity, as described in Section 005, *Measurement and Payment*.

PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN NUMBERS	AMOUNT (Quantity x Unit Price)
GENERAL REQUIREMENTS					
010.16.1	SEQUENCE OF CONSTRUCTION	1	LS	4,100. ⁰⁰	4,100. ⁰⁰
010.16.2	FIELD ENGINEERING	1	LS	250. ⁰⁰	250. ⁰⁰
010.16.3	MOBILIZATION	1	LS	7,500. ⁰⁰	7,500. ⁰⁰
GEN. COND. ART. 5	BONDS AND INSURANCE	1	LS	5,000. ⁰⁰	5,000. ⁰⁰
TOTAL GENERAL REQUIREMENTS				\$ / 6,850. ⁰⁰	
ROADWAY IMPROVEMENTS					
TxDOT 354	PLANE (MILL) 0" - 2" DEPTH	524	SY	18. ⁰⁰	9,432. ⁰⁰
410.10	HOT MIX ASPHALT (1.5") - TxDOT TY D (ITEM 340)	29,891	SY	11.10	331,790. ¹⁰
TxDOT 530	INTERSECTIONS, DRIVEWAYS, AND TURNOUTS	1,843	SY	21. ⁰⁰	38,703. ⁰⁰
TOTAL ROADWAY IMPROVEMENTS				\$ 379,925. ¹⁰	

**UNIT PRICE SCHEDULE
FOR
CR 114 PAVING PROJECT
BURNET COUNTY, TEXAS**

The Pay Item reference indicates the controlling specification for each Pay Item of K.C. Engineering, Inc. Standard Specifications (3rd Edition). Pay Items containing a reference to TxDOT are from the Texas Department of Transportation *Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges*, 2014.

Payment for all Items shall be based on Plans Quantity, as described in Section 005, *Measurement and Payment*.

PAY ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE IN NUMBERS	AMOUNT (Quantity x Unit Price)
SIGNS, STRIPING & TRAFFIC CONTROL					
TxDOT 502	BARRICADES, SIGNS, AND TRAFFIC HANDLING	1	LS	700. ⁰⁰	700. ⁰⁰
TxDOT 510	ONE-WAY TRAFFIC CONTROL	40	HR	500. ⁰⁰	20,000. ⁰⁰
TxDOT 662	WK ZN PAV MRK SHT TERM (TAB) TY Y-2	1,177	EA	1.40	1,647. ⁸⁰
TxDOT 666	REFL PAV MRK TY I (Y) 4" (SLD) (100 MIL)	23,356	LF	.45	10,510. ²⁰
TxDOT 666	REFL PAV MRK TY I (W) 4" (SLD) (100 MIL)	23,477	LF	.45	10,564. ⁶⁵
TxDOT 666	REFL PAV MRK TY I (W) 24" (SLD) (100 MIL)	20	LF	15. ⁰⁰	300. ⁰⁰
TxDOT 672	REFL PAV MRK TY II-A-A	292	EA	6. ⁰⁰	1,752. ⁰⁰
TxDOT 677	REMOVE EXIST REFL PAV MRKR	0	EA	10. ⁰⁰	0. ⁰⁰
SP 1000.1	PORTABLE CHANGEABLE MESSAGE SIGN	2	EA	1800	3,600. ⁰⁰
TOTAL SIGNS, STRIPING & TRAFFIC CONTROL				\$ 49,074. ⁶⁵	
TOTAL BID (TOTAL OF ITEMS IN THE COLUMNS ABOVE)				\$ 445,849. ⁷⁵	