

STANDARD FORM OF AGREEMENT

STATE OF TEXAS

WILLIAMSON COUNTY

THIS STANDARD FORM OF AGREEMENT (the "Agreement") is by and between WILLIAMSON COUNTY, TEXAS, a political subdivision of the State of Texas (hereinafter called "County") and Joe Bland Construction (hereinafter called "Contractor").

The County 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 "Project" is generally described as follows:

Project No. **1808-256 – Ronald Reagan Blvd Turn Lanes Widening at Santa Rita Blvd**

Article 2. Engineer of Record

The Project has been designed by **Kon O. Kwan, P.E.**, who is hereinafter called the "Engineer of Record" and who is to act as the County's design professional.

Article 3. Contract Time

The Work shall be Substantially Completed in **30** working days (the "Contract Time"). Following Substantial Completion, the Contractor shall proceed expeditiously with adequate forces and shall achieve Final Completion within the time specified in the Special Conditions.

Article 4. Contract Price

County 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 pursuant to paragraph 4.1 below (the "Contract Price"):

- 4.1 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 that item as indicated in the Bid Form, and as totaled below:

TOTAL OF ALL UNIT PRICES FOUR HUNDRED TWENTY THOUSAND SIX HUNDRED EIGHT DOLLARS AND SIXTY CENTS \$420,608.60

As provided in the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classification are to be made by the Engineer of Record.

Article 5. Contractor's Representations

In order to induce County to enter into this Agreement, Contractor makes the following representations:

- 5.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents including the "technical data".
- 5.2 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.
- 5.3 Contractor 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.
- 5.4 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 which have been identified. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that the County and Engineer of Record 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.
- 5.5 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.
- 5.6 Contractor has given Engineer of Record written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer of Record 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.

- 5.7 Contractor represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under the Contract Documents.
- 5.8 Contractor warrants, represents, and agrees that if (i) it is a corporation or limited liability company, then it is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, or a foreign corporation or limited liability company duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this Agreement, and the individual executing the Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor; or (ii) if it is a partnership, limited partnership, or limited liability partnership, then it has all necessary partnership power and has secured all necessary approvals to execute and deliver this Agreement and perform all its obligations under the Contract Documents; and the individual executing this Agreement on behalf of Contractor has been duly authorized to act for and bind Contractor.
- 5.9 Neither the execution and delivery of this Agreement by Contractor nor the performance of its obligations under the Contract Documents will result in the violation of any provision, if a corporation, of its articles of incorporation or by-laws, if a limited liability company, of its articles of organization or regulations, or if a partnership, by any partnership agreement by which Contractor is bound, or any agreement by which Contractor is bound or to the best of the Contractor's knowledge and belief, will conflict with any order or decree of any court or governmental instrumentality relating to Contractor.
- 5.10 Except for the obligation of the County to pay Contractor the Contract Price pursuant to the terms of the Contract Documents, and to perform certain other obligations pursuant to the terms and conditions explicitly set forth in the Contract Documents, County shall have no liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement. Notwithstanding any obligation or liability of County to Contractor, no present or future partner or affiliate of County or any agent, officer, director, or employee of County, or of the various departments comprising Williamson County, or anyone claiming under County has or shall have any personal liability to Contractor or to anyone claiming through or under Contractor by reason of the execution or performance of this Agreement.

Article 6. Contract Documents

The "Contract Documents," which comprise the entire agreement between the County and Contractor concerning the Work, consist of the following:

- 6.1 This Standard Form of Agreement
- 6.2 Performance Bond
- 6.3 Payment Bond
- 6.4 Maintenance Bond
- 6.5 Certificate of Insurance
- 6.6 Wage Rates
- 6.7 General Conditions
- 6.8 Special Conditions
- 6.9 Technical Specifications
- 6.10 Plan Drawings
- 6.11 Addenda numbers 1 to 3, inclusive
- 6.12 Contractor's Bid Affidavit and Bid Form
- 6.13 Documentation submitted by Contractor prior to Notice of Award.
- 6.14 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 applicable sections in the General Conditions.

The documents listed in paragraphs 6.2 et seq. 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 6. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Article 7. Miscellaneous

- 7.1 Terms used in this Agreement, which are defined in the General Conditions, will have the meanings indicated in the General Conditions.

- 7.2 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.
- 7.3 The County 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.
- 7.4 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 the County 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 position.
- 7.5 Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas. Furthermore, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
- 7.6 The parties to this Agreement agree that during the performance of the services under this Agreement they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The parties to this Agreement will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 7.7 This Agreement is for the sole and exclusive benefit of the parties hereto, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.
- 7.8 Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

- 7.9 Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.
- 7.10 Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.
- 7.11 To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to County as to whether or not the same are available to the public. It is further understood that County's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that County, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to County by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.
- 7.12 County and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to the County, Contractor and Engineer of Record. All portions of the Contract Documents have been signed, initialed or identified by County and Contractor or identified by Engineer of Record on their behalf.
- 7.13 This Agreement and the Contract Documents represent the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. **NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE WILLIAMSON COUNTY COMMISSIONERS COURT.**

This Agreement will be effective on October 4, 2018 (which is the "Effective Date" of the Agreement).

COUNTY _____

CONTRACTOR _____

By: _____
Dan A. Gattis,
Williamson County Judge

By: [Signature]
Title: CFO

[CORPORATE SEAL]



Attest _____

Attest [Signature]

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1. Definition of Terms

For purposes of the Contract Documents, the following terms shall have the meanings set forth herein:

1.01 The Agreement

The term the "Agreement" shall mean Standard Form of Agreement by and between County and Contractor relating to the Work and the construction of the Project.

1.02 County

Williamson County, Texas, being a political subdivision of the State of Texas, is the entity identified in the Agreement and hereinafter referred to as the "County." Nothing contained in the Contract Documents shall create any contractual or agency relationship between any parties other than the County and the Contractor.

1.03 Department

The "Department" shall mean the Texas Department of Transportation (TxDOT).

1.04 Contractor

The term the "Contractor" shall mean the successful bidder that enters into the Agreement with the County for the construction of the Work and the Project defined by the Contract Documents.

1.05 Engineer

The term the "Engineer" shall mean the County Engineer or the authorized representative of the County Engineer.

1.06 General Engineering Consultant (GEC)

The term the "General Engineering Consultant" or "GEC" shall mean the consulting engineering firm representing and assisting the County in the design, review, and coordination of the design and construction phases of the Project. The GEC shall be responsible for the construction oversight of the Project.

1.07 Construction Observer

The "Construction Observer" or the "Observer" shall mean the County's employee or a contracted consultant who performs construction engineering and inspection services for the Project.

1.08 Construction Representative

The "Construction Representative" shall mean the GEC's designated field representative

during construction of the Project which shall provide for coordination and assistance of the construction observation effort.

1.09 Engineer of Record

The term “Engineer of Record” shall mean the County's design professional, who shall provide professional engineering design services for the Project.

1.10 Contract Documents

The “Contract Documents” shall consist of the Special Conditions, Notice for Bidders, Proposal, the fully executed Agreement, Performance and Payment Bonds, Maintenance Bond, Special Bonds (when required), General Conditions, Technical Specifications or Specifications, Plans and all modifications thereof incorporated in any such documents before the execution of the Agreement and all modifications that are made, in accordance with the Contract Documents, following the execution of the Agreement.

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Fully Executed Agreement, Performance and Payment Bonds, Maintenance Bond, Special Bonds (if any), Proposal, General Conditions, Special Conditions, Technical Specifications or Specifications, and Plans.

1.11 Subcontractor

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

1.12 Sub-Subcontractor

The term “Sub-Subcontractor” means one who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. It includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

1.13 Written Notice

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

1.14 Work

The Contractor shall provide and pay for all materials, machinery, equipment, tools, superintendence, labor, services, insurance, and all water, light, power, fuel, transportation and other facilities necessary for the execution and completion of the work covered by the Contract Documents (collectively known as the “Work”). Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The

Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which, when so applied, have a well-known technical or trade meaning shall be held to refer to such recognized standards.

1.15 Extra Work

The term "Extra Work" as used in the Contract Documents shall be understood to mean and include all work that may be required by the County to be done by the Contractor to accomplish any change, alteration or addition to the Work shown upon the plans, or reasonably implied by the specifications, and not covered by the Contractor's Proposal, except as provided under Section 2.13 "Changes and Alterations" herein.

1.16 Working Day

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

1.17 Calendar Day

The term "Calendar Day" is defined as any day of the week or month, no days being excepted.

1.18 Substantially Completed

The term "Substantially Completed" or "Substantial Completion" shall be understood to mean that all Project Work (or the work for a specified phase of the Project) requiring lane or shoulder closures or obstructions is completed, and traffic is following the lane arrangement as shown on the plans for the finished roadway (or the specified phase of work). Additionally, all pavement construction, resurfacing, traffic control devices, and pavement markings shall be in their final position (or as called for on the plans for the specified phase of work) at such time; provided, however, the Engineer may make an exception as to the permanent pavement markings being in their final position provided that, in the Engineer's sole discretion, the lack of markings does not cause a disruption to traffic flow or an unsafe condition for the traveling public, and work zone pavement markings are in place.

1.19 Notice of Substantial Completion

Notice issued to the Contractor by the Observer or County's Representative acknowledging Substantial Completion of the Project, signifying the end of time charges.

1.20 Certificate of Completion

Certificate issued to the Contractor by the Observer acknowledging "Final Completion" of the Project, as determined by completion of the Punch List, from which time the warranty period for the Project shall begin. The issuance of the Certificate of Completion shall serve as evidence of "Final Completion" and such certificate shall relieve the Contractor of ownership responsibilities for the Project, except for repair of damage caused by the Contractor or by the Contractor's operations to existing facilities or completed and substantially accepted work.

1.21 Certificate of Acceptance

Certificate issued to the Contractor by the County acknowledging final acceptance and purchase of the Project.

1.22 Project

The "Project" shall mean and include the Project defined, described and set forth in the Agreement.

1.23 Contract Time

The "Contract Time" shall mean the amount of time in which the Work shall be Substantially Completed. The number of days allotted for the Contract Time shall be specifically set forth in the Agreement.

1.24 Contract Price

The "Contract Price" shall mean the amount that the County shall pay the Contractor for completion of the Work in accordance with the Contract Documents. The specific amount of the Contract Price shall be determined pursuant to the terms of the Contract Documents.

2. Responsibilities of the Engineer and the Contractor**2.01 County-Observer Relationship**

The Observer will be the County's contracted consultant during construction. The duties, responsibilities and limitations of authority of the Observer as the County's representative during construction are as set forth in the Contract Documents and/or the Agreement for Construction Engineering and Inspection Services and shall not be extended or limited without written consent of the County or the Observer. The Observer will advise and consult with the County and the GEC, and all of the County's instructions to the Contractor shall be issued through the Observer.

2.02 Professional Observation by the Construction Observer

The Observer shall be on the jobsite when work is being performed to provide construction engineering inspections of the Work performed by the Contractor. In addition to performing material testing on behalf of the County, the Observer shall review the progress of the executed Work and to determine if such Work meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents; provided and except, however, that the Observer shall not be responsible, directly or indirectly, for the Contractor's construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident thereto or in connection therewith. Notwithstanding any other provision of the Contract Documents, the Engineer and the Observer shall not be responsible or liable for any acts, errors, omissions or negligence of the Contractor, any Subcontractor or any of the Contractor's or Subcontractor's agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the Work.

2.03 Payments for Work

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

2.04 Initial Determinations

The Observer initially shall determine all claims, disputes and other matters in question between the Contractor and the County relating to execution or progress of the Work or interpretation of the Contract Documents. The Observer's decision shall be rendered in writing to the GEC for review within a reasonable time, which shall not be construed to be less than ten (10) days.

2.05 Objections

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

2.06 Lines and Grades

Unless otherwise specified, all lines and grades shall be furnished by the Contractor at its own expense. Whenever necessary, construction work shall be suspended to permit performance of this work, but such suspension will be as brief as practicable and the Contractor shall be allowed no extra compensation therefore.

2.07 Contractor's Duty and Superintendence

The Contractor shall give adequate attention to the faithful prosecution and completion of the Work subject of the Contract Documents and shall keep on the Project site, at all times during its progress, a competent Superintendent and any necessary assistants to supervise and direct the Work. The Superintendent shall represent the Contractor in its absence and all directions given to the Superintendent shall be as binding as if given to the Contractor.

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

Likewise, the Contractor shall be solely responsible for the safety of itself, its employees and other persons, as well as for the protection and safety of the improvements being erected and its property or any other person's property, as a result of its operations under the Contract Documents. Engineering construction drawings and specifications, as well as any additional information concerning the Work to be performed passing from or through the Observer, shall not be interpreted as requiring or allowing the Contractor to deviate from the Contract documents, the plans and specifications; the intent of such drawings, specifications and any other such information being to define with specificity the agreement of the parties as to the Work the Contractor is to perform.

Any review of work in process, or any visit or observation and inspection during construction, or any clarification of plans and specifications, by the Observer or the County, or any agent, employee, or representative of either of them, whether through personal observation or inspection on the Project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or methods, is agreed by the Contractor to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the Contract Documents, or for the purpose of enabling the Contractor to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the Contractor from full and complete responsibility for the proper performance of its work on the Project, including but not limited to the propriety of means and methods of the Contractor in performing in accordance with the Contract Documents, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the Contractor from plans and specifications that may have been in evidence during any such visitation or observation by the Observer, the Engineer, or any of their representatives, whether called to the Contractor's attention or not, shall in no way relieve the Contractor from its responsibility to complete all work in accordance with the Contract Documents.

2.08 Contractor's Understanding

It is understood and agreed that the Contractor has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under the Contract Documents.

2.09 Character of Workers

The Contractor agrees to employ only orderly and competent workers, skillful in the performance of the type of work required under the Contract Documents, to do the Work; and agrees that whenever the Observer shall inform it in writing that any workers on the Work are, in its opinion, incompetent, unfaithful or disorderly, or refuse instructions from the Observer in the absence of the Superintendent, such worker shall be discharged from the Work and shall not again be employed on the Work without the Observer's written consent. No illegal alien may be employed by any Contractor for work on this Project, and a penalty

of \$500.00 per day will be assessed for each day and for each illegal alien who works for the Contractor at this Project.

2.10 Shop Drawings

The Contractor shall submit to the Observer, with such promptness as to cause no delay in its own work or in that of any other contractor, a minimum of four (4) stamped/reviewed copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the Engineer of Record shall pass upon them with reasonable promptness, making desired corrections. Note: A single copy of the reviewed drawings shall be retained by the reviewer, the County, and the County's Representative for their records. The Contractor may not submit more than four different shop drawing plans for review in any one week. The Engineer of Record shall return the shop drawings to the Contractor, via the GEC, within three (3) weeks of its having received them, with appropriate comments. The Contractor shall make any corrections required by the Engineer of Record, file with it two (2) corrected copies and furnish such other copies as may be needed. The Engineer of Record's approval of such drawings or schedules shall not relieve the Contractor from responsibility for deviations from drawings or specifications, unless the Contractor has in writing called the Engineer of Record's attention to such deviations at the time of submission, nor shall it relieve Contractor from responsibility for errors of any sort in shop drawings or schedules. It shall be the Contractor's responsibility to fully and completely review all shop drawings to ascertain their effect on its ability to perform the required work in accordance with the Contract Documents and within the time for completion thereof. Any shop drawings which are required for temporary supports must be signed and sealed by an Engineer registered in the State of Texas.

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

2.11 Preliminary Approval

The Observer shall not have the power to waive the obligations of the Contract Documents for the furnishing by the Contractor of good material, and of its performing good work as herein described, and in full accordance with the Contract Documents. No failure or omission of the Observer to discover, object to or condemn any defective work or material shall release the Contractor from the obligations to fully and properly perform in full accordance with the Contract Documents, including without limitation, the obligation to at once tear out, remove and properly replace any defective work or material at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the Observer shall, upon request of the Contractor, inspect and accept or reject any material furnished, and in the event the material has been once accepted by the Observer,

such acceptance shall be binding on the County unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered to be taken up or removed for re-examination by the Observer, prior to final acceptance, and if found not in accordance with the plans and/or specifications for said work, all expenses relating to the removing, re-examination and replacement shall be solely borne by the Contractor. Otherwise, if the questioned work is found to be in accordance with the plans and/or specifications for said work, the expense thus incurred shall be allowed as Extra Work and shall be paid for by the County; provided, however, where inspection or approval is specifically required by the specifications prior to performance of certain work, should the Contractor proceed with such work without requesting prior inspection or approval, the Contractor shall bear all expense of taking up, removing, and replacing this work if so directed by the Observer.

2.12 Defects and Their Remedies

It is further agreed that if the Work or any part thereof, or any material brought on the site of the Work for use in the Work or selected for the same, shall be deemed by the Observer as unsuitable or not in conformity with the Contract Documents, or the intent thereof, the Contractor shall, after receipt of notice thereof from the Observer, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with the Contract Documents.

2.13 Changes and Alterations

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

If such changes or alterations diminish the quantity of the Work to be done, they shall not constitute the basis for a claim for damages or anticipated profits on the Work that may be dispensed with, except as provided for unit price items under Section 5 "Measurement and Payment". If the amount of work is increased, and the Work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under the Contract Documents, except as provided for unit price items under Section 5 "Measurement and Payment". Otherwise, such additional work shall be paid for as provided under Extra Work. In the event the County makes such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the County shall compensate the Contractor for any material or labor so used, and for any actual loss occasioned by such change, due to actual expense incurred in preparation for the Work as originally planned.

3. General Obligations and Responsibilities

3.01 Keeping of Plans and Specifications Accessible and Keeping a Superintendent on the Project Site

The Contractor shall keep one (1) copy of the plans and specifications constantly accessible on the Work, with the latest revisions noted thereon. The Contractor shall give the Work its constant attention to facilitate the progress thereof and shall cooperate with the Construction Observer in every way possible. The Contractor shall designate, to the Construction Observer in writing, the name of a Superintendent, employed by the firm, regardless of how much of the Work may be sublet. The Superintendent will be available at all time. In the event a competent superintendent is not available, the Construction Observer may suspend work until one is available.

3.02 Ownership of Documents

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

3.03 Adequacy of Design

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

The paper copies of the Contract Documents are considered to be the official contract documents. Any request by the Contractor and use thereof of electronic or digital information, including engineering design and survey files, shall be at the sole risk and legal responsibility of the Contractor. Neither the County nor the Engineer of Record makes any warranty or representation as to the compatibility of the files provided with other software programs, nor shall they be held responsible for subsequent uses of the data by the Contractor or anyone who may obtain the data from the Contractor. **THE CONTRACTOR SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, INDEMNIFY AND HOLD THE COUNTY ITS AGENTS, EMPLOYEES, OR REPRESENTATIVES AND THE ENGINEER OF RECORD HARMLESS FROM ANY AND ALL CLAIMS, SUITS, LIABILITY, DEMANDS OR COSTS ARISING OUT OF OR RESULTING FROM SUCH USE.** Because data stored on electronic media can deteriorate undetected or be modified undetected, neither the County nor the Engineer of Record can be held liable for the completeness or correctness of the electronic data once in possession of the Contractor.

3.04 Contractor's Responsibility for Work

Until the issuance of the Certificate of Completion for the Project, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non execution of the Work.

In case of suspension of work for any cause, the Contractor shall be responsible for the preservation of all materials. The Contractor shall provide suitable drainage of the roadway in good and passable condition until Final Completion, except as outlined below for opening the roadway to traffic.

Whenever, in the opinion of the Observer, any roadway or portion thereof is in suitable condition for travel, it shall be opened to traffic; provided, however, such opening shall not be held to be, in any way, the final acceptance of the roadway or any part thereof or be held as a waiver of any of the provisions of the Contract Documents. Where it is considered by the Observer to be in the public interest and so ordered in writing by the Observer, any Substantially Completed roadway or portion thereof may be opened to traffic as follows:

- (1) When both required by plans, job sequence or the approved traffic control plan, and when the County accepts responsibility for maintaining such portion of the roadway opened to traffic.
- (2) When work is suspended for a period of time at the convenience of the County, the County will assume the responsibility for maintaining the entire roadway during the period of suspension; or
- (3) When the roadway or portion thereof is opened to traffic during construction operations at the convenience of the County, the County will assume responsibility for the maintenance of the traveled way and shoulders during the period in which it is opened to traffic.

The County, in assuming responsibility for maintenance under this provision, may require the Work to be done in accordance with Section 6, "Extra Work and Claims".

Except for damage by the Contractor or damage caused by the Contractor's operations, the Contractor will not be responsible for repair of damage to existing facilities or damage to completed and accepted work such as guard fence, bridge wings, railing, illumination assemblies, underpass structure, traffic barriers, delineator assemblies, signs, sign bridges, changeable message signs, vehicle impact attenuators (crash cushions and guardrail end treatments) and traffic signals, where such damage is caused by (a) motor-vehicle, seacraft or aircraft that are not being operated by Contractor; (b) railroad-train collision (c) vandalism; (d) Acts of God, such as earthquake, tidal wave, tornado, hurricane, or other cataclysmic phenomena of natures; or (e) Acts of Governmental Authorities.

Upon completion of all work provided for in the Contract Documents for any individual limits, control or project, the Observer may make an inspection, and if the Work is found to be satisfactory, the Contractor will be released from further maintenance on that portion of

the Work, except for damage caused by the Contractor or its operations. Such partial acceptance must be made in writing and shall in no way void or alter any terms of the Contract Documents. Other specific units of the Project will be accepted on an individual basis when shown on the plans or as approved, in writing, by the Observer.

3.05 Protection Against Accident to Employees and the Public

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

Within 24 hours after Contractor becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of anyone, whether or not it results from or involves any action or failure to act by the Contractor or any employee or agent of the Contractor and which arises in any manner from the performance of the Work, the Contractor shall send a written report of such accident or other event to the County and the Observer, setting forth a full and concise statement of the facts pertaining thereto. Such statement shall include a written recordation of the location of the event and the circumstances surrounding the event through photographs, interviewing witnesses, obtaining of medical reports and other documentation that defines the event. The Contractor shall also provide to the County a copy of any and all accident reports received from safety officials or agencies. Copies of such documentation shall be provided to the County and the Observer for their records. The Contractor shall also immediately send the County and the Observer a copy of any summons, subpoena, notice, or other documents served upon the Contractor, its agents, employees, or representatives, or received by it or them, in connection with any matter before any court arising in any manner from the Contractor's performance of the Work.

3.06 Performance and Payment Bonds

Unless otherwise specified, it is further agreed by the parties to the Contract Documents that the Contractor will execute separate performance and payment bonds, each in the sum of one hundred (100%) percent of the total Contract Price, on forms acceptable to County, guaranteeing faithful performance of the Work and the fulfillment of any guarantee required, and further guaranteeing payment to all persons supplying labor and materials or furnishing Contractor with any equipment in the execution of the Work subject of the Contract Documents. It is agreed that the Contractor shall have no rights under the Contract Documents until such performance and payment bonds are furnished to and approved by the County.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the price bid by the Contractor for the Work subject of the Contract Documents, and no extra payment for such bonds will be made by the County.

Each bond shall be executed by a corporate surety or corporate sureties, with an A.M. Best rating of "B" or better, duly authorized to do business and to issue surety bonds in the State of Texas. If any surety upon any bond furnished in connection herewith becomes insolvent, or otherwise not authorized to do business in this state, the Contractor shall promptly furnish equivalent security to protect the interests of the County and of persons supplying labor, materials and equipment in the prosecution of the Work subject of the Contract Documents. Furthermore, the surety company underwriting the bonds must be acceptable to the County.

Each bond shall be accompanied by a valid Power of Attorney (issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond) authorizing the agent who signs the bond to commit the company to the terms of the bond, and stating on the face of the Power of Attorney the limit, if any, in the total amount for which such agent is empowered to issue a single bond.

3.07 Protection of Adjoining Property

The Contractor shall take proper means to protect the adjacent or adjoining property or properties, in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken pursuant to the Contract Documents, from any damage or injury by reason of said process of construction; and the Contractor shall be liable for any and all claims for such damage on account of its failure to fully protect all adjoining property. **THE CONTRACTOR AGREES TO INDEMNIFY, SAVE AND HOLD HARMLESS THE COUNTY, THE OBSERVER THE GEC AND THE ENGINEER OF RECORD, AS WELL AS ANY OF THEIR AGENTS, REPRESENTATIVES, OFFICERS OR EMPLOYEES AGAINST ANY CLAIM OR CLAIMS FOR DAMAGES DUE TO ANY INJURY TO ANY ADJACENT OR ADJOINING PROPERTY, ARISING OR GROWING OUT OF THE PERFORMANCE OF THE WORK, BUT ANY SUCH INDEMNITY SHALL NOT APPLY TO ANY CLAIM OF ANY KIND ARISING SOLELY OUT OF THE EXISTENCE OR CHARACTER OF THE WORK.**

3.08 Protection Against Claims of Subcontractors, Laborers, Materialmen and Furnishers of Machinery, Equipment and Supplies

THE CONTRACTOR AGREES THAT IT WILL INDEMNIFY, DEFEND AND SAVE HARMLESS THE COUNTY, THE OBSERVER, THE GEC AND THE ENGINEER OF RECORD, AS WELL AS ANY OF THEIR AGENTS, REPRESENTATIVES, OFFICERS OR EMPLOYEES FROM ALL CLAIMS GROWING OUT THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY, MACHINERY PARTS, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THE WORK SUBJECT OF THE CONTRACT DOCUMENTS. When so desired by the County, the Contractor shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived. If the Contractor fails to furnish such evidence to County's complete satisfaction, then the County may either pay directly any unpaid bills of which the County has written notice of, or may withhold from

the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims. When satisfactory evidence is furnished that all liabilities have been fully discharged, payments to the Contractor shall be resumed in full in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligation upon the County by either the Contractor or its surety.

3.09 Protection Against Royalties or Patented Invention

The Contractor shall pay all royalties and license fees, and shall provide for the use of any design, device, material or process covered by letter patent or copyright by suitable legal agreement with the patentee or owner. **THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT RIGHTS AND SHALL INDEMNIFY AND SAVE HARMLESS THE COUNTY, THE OBSERVER THE GEC AND THE ENGINEER OF RECORD, AS WELL AS ANY OF THEIR AGENTS, REPRESENTATIVES, OFFICERS OR EMPLOYEES FROM ANY LOSS ON ACCOUNT THEREOF, EXCEPT THAT THE COUNTY SHALL DEFEND ALL SUCH SUITS AND CLAIMS AND SHALL BE RESPONSIBLE FOR ALL SUCH LOSS WHEN A PARTICULAR DESIGN, DEVICE, MATERIAL OR PROCESS OR THE PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS SPECIFIED OR REQUIRED BY THE COUNTY; PROVIDED, HOWEVER, IF CHOICE OF ALTERNATE DESIGN, DEVICE, MATERIAL OR PROCESS IS ALLOWED TO THE CONTRACTOR, THEN THE CONTRACTOR SHALL INDEMNIFY AND SAVE THE COUNTY HARMLESS FORM ANY LOSS ON ACCOUNT THEREOF.** If the material or process specified or required by the County is known by the Contractor to be an infringement, the Contractor shall be responsible for such loss unless it promptly gives such information to the County.

3.10 Laws and Ordinances

The Contractor shall at all times observe and comply with all federal, state and local laws, ordinance and regulations, which in any manner affect the Contract Documents or the Work, and **SHALL INDEMNIFY AND SAVE HARMLESS THE COUNTY, THE OBSERVER THE GEC AND THE ENGINEER OF RECORD, AS WELL AS ANY OF THEIR AGENTS, REPRESENTATIVES, OFFICERS OR EMPLOYEES AGAINST ANY CLAIM ARISING FROM THE VIOLATION OF ANY SUCH LAWS, ORDINANCES, AND REGULATIONS WHETHER BY THE CONTRACTOR OR ITS EMPLOYEES, EXCEPT WHERE SUCH VIOLATIONS ARE CALLED FOR BY THE PROVISIONS OF THE CONTRACT DOCUMENTS.** If the Contractor observes that the plans and specifications are at variance therewith, it shall promptly notify the Observer, in writing, and any necessary changes shall be prepared as provided in the Contract Documents for changes in the Work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Observer, the Contractor shall bear all costs arising therefrom.

In case the County is a body politic and corporate, the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the County may enter into contract, shall be controlling and shall be considered as part of the Contract Documents to the same effect as though embodied herein.

3.11 Assignment and Subletting

The Contractor further agrees that it will retain personal control and will give its personal attention to the fulfillment of the Work strictly in accordance with the Contract Documents and that Contractor will not assign, by Power of Attorney or otherwise, or sublet any right or interest it may have under the Contract Documents without the written consent of the Observer, and that no part or feature of the Work will be sublet to anyone objectionable to the Observer or the County. The Contractor further agrees that the subletting of any portion or feature of the Work, or materials required in the performance of the Work, shall not relieve the Contractor from its full obligations to the County as provided in the Contract Documents.

3.12 Indemnification

THE CONTRACTOR SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY, THE OBSERVER, THE GEC AND THE ENGINEER OF RECORD AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK, PROVIDED THAT ANY SUCH DAMAGE, CLAIM, LOSS, DEMAND, SUIT, JUDGMENT, COST OR EXPENSE:

- (1) IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY PERSON INCLUDING CONTRACTOR'S EMPLOYEES AND ANY SUBCONTRACTOR'S EMPLOYEES AND ANY SUB-SUBCONTRACTOR'S EMPLOYEES, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY INCLUDING CONTRACTOR'S PROPERTY (OTHER THAN THE WORK ITSELF) AND THE PROPERTY OF ANY SUBCONTRACTOR OF SUB-SUBCONTRACTOR INCLUDING THE LOSS OF USE RESULTING THEREFROM; AND,**
- (2) IS CAUSED IN WHOLE OR IN PART BY ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY ONE OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.**

THE OBLIGATION OF THE CONTRACTOR UNDER THIS PARAGRAPH SHALL NOT EXTEND TO THE LIABILITY OF THE OBSERVER, THE ENGINEER, THE GEC, THE ENGINEER OF RECORD THEIR AGENTS OR EMPLOYEES ARISING OUT OF THE PREPARATION OF MAPS, PLANS, REPORTS, SURVEYS, CHANGE ORDERS, DESIGNS OR SPECIFICATIONS, OR THE APPROVAL OF MAPS, PLANS, REPORTS, SURVEYS, CHANGE ORDERS, DESIGNS OR SPECIFICATIONS OR THE ISSUANCE OF OR THE FAILURE TO GIVE DIRECTIONS OR INSTRUCTIONS BY THE OBSERVER, ITS AGENTS OR EMPLOYEES, PROVIDED SUCH IS THE SOLE CAUSE OF THE INJURY OR DAMAGE.

IN ANY AND ALL CLAIMS AGAINST THE COUNTY, THE OBSERVER THE GEC OR THE ENGINEER OF RECORD OR ANY OF THEIR AGENTS OR EMPLOYEES BY ANY EMPLOYEE OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANY SUB-SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER SECTION 3.12 SHALL NOT BE

LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR OR ANY SUBCONTRACTOR OR SUB-SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

3.13 Insurance

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

- (1) Workman's compensation claims, disability benefits and other similar employee benefit acts;
- (2) Claims for damages because of body injury, occupational sickness or disease, or death of its employees, and claims insured by usual bodily injury liability coverages;
- (3) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees, and claims insured by usual bodily injury liability coverages; and
- (4) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

CERTIFICATE OF INSURANCE. Before commencing any of the Work, Contractor shall file with the County valid Certificates of Insurance acceptable to the County and the Observer. Such Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the County.

The Contractor shall also file with the County valid Certificates of Insurance covering all Sub-contractors of the Contractor.

3.14 Final Clean-up

Upon the completion of the Work and before acceptance and Final Payment will be made, the Contractor shall clean and remove from the site of the Work all surplus and discarded materials, temporary structures and debris of every kind. The Contractor shall leave the site of the Work in a neat and orderly condition at least equal to that which originally existed. Surplus and waste materials removed from the site of the Work shall be disposed of at locations that are both satisfactory to the Observer and in accordance with the laws pertaining to the disposal of such surplus, debris and waste materials.

In the event the Contractor fails or refuses to clean and remove surplus materials and debris as provided above, the County or the Observer may do so, or cause same to be done, at the

Contractor's expense, and the reasonable cost thereof shall be deducted from any amounts that are owing to the Contractor.

4. Prosecution and Progress

4.01 Time and Order of Completion

It is the meaning and intent of the Contractor Documents, unless otherwise specifically provided, that the Contractor shall be allowed to prosecute its work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to the economy of construction; provided, however, that the order and the time of prosecution shall be such that the Work shall be substantially completed, as a whole and in part, in accordance with the Contract Documents and within the time of completion designated in the Contractor's bid or proposal; provided, however, when the County is having other work done on the same Project or an adjoining project, either by contract or by its own force, the Observer may direct the time and manner of constructing the Work done under the Contract Documents, so that conflict will be avoided and the construction of the various works and projects being performed for the County shall be harmonized.

Unless otherwise specified, the Contractor shall plan to begin work 10 calendar days from the authorization date to begin work as designated by the Notice to Proceed.

The Contractor shall submit, at such times as may reasonably be requested by the Observer, schedules which shall show the order in which the Contractor proposes to carry on the Work, the dates at which the Contractor will start the several parts of the Work, and estimated dates of completion of the several parts.

Nighttime work is allowed only when shown on the plans or directed or allowed by the Engineer. Nighttime work is defined as work performed from 30 min. after sunset to 30 min. before sunrise.

4.02 Extension of Time

Should the Contractor be delayed in the completion of the Work by any act or neglect of the County, the Observer or the Engineer of Record, or of any employee of either, or by other contractors employed by the County, or by changes ordered in the Work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the Contractor's control, or by any cause which the Observer shall decide justifies the delay, then an extension of time shall be allowed for completing the Work, sufficient to compensate for the delay, the amount of the extension to be determined by the Observer; provided, however, before the Observer may decide whether or not to allow such an extension of time, the Contractor must tender a prompt written request for an extension of time wherein the Contractor shall give the Observer a written description of the cause of such delay. Adverse weather conditions will not be justification for extension of time on "Calendar Days" contracts.

4.03 Hindrances and Delays

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

5. Measurement and Payment**5.01 Quantities and Measurements**

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

5.02 Estimated Quantities

The Contract Documents are intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under the Contract Documents, they are approximate and are to be used only as a basis for estimating the probable cost of the Work and for comparing the proposals offered for the Work. It is understood and agreed that the actual amount of work to be done and material to be furnished under the Contract Documents may differ somewhat from these estimates.

Plans quantities may or may not represent the exact quantity of work performed or material moved, handled, or placed during the execution of the Work. For plans quantity measurement items, the estimated bid quantities are designated as final payment quantities, unless revised by the governing specifications. If the actual quantity measured as outlined under "Measurement" varies by more than 5% (or as stipulated under "Measurement" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized work done for payment purposes. The party requesting the adjustment will provide field measurements and calculations showing the revised quantity. When approved, this revised quantity will constitute the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in the Contract Documents. When quantities are revised by a change in design approved by the County, by change order, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount involved in the change, and the 5% variance will apply to the new plans quantity.

Where payment is based on the unit price method, the Contractor agrees that it will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually done, the material actually furnished under the Contract Documents and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should

become as much as twenty-five percent (25%) more than or twenty-five percent (25%) less than the estimated or contemplated quantity for such items, then either party to the Agreement, upon demand, shall be entitled to revised consideration upon the portion of the Work above or below twenty-five percent (25%) of the estimated quantity.

A "Major Item" shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five percent (5%) of the total contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by agreement between the parties, otherwise by the terms of the Contract Documents, as provided under Section 6.03 "Extra Work".

5.03 Price of Work

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all of the Work by the Contractor, and on the completion of all of the Work and on the delivery of all material in full conformity with the specifications and stipulations contained in the Contract Documents, the County agrees to pay the Contractor the Contract Price that is set forth in the Agreement. The Contractor hereby agrees to receive such Contract Price in full for furnishing all material and all labor required for the Work, also for all expense incurred by Contractor, and for well and truly performing the same and the whole thereof in the manner with and in accordance to the Contract Documents.

5.04 Partial Payments

On or before the first Wednesday of each month, the Contractor shall submit to the Observer a statement showing the total value of the Work performed up to and including the last day of the preceding month. The statement shall also include the value of all sound materials delivered on the job site and to be included in the Work and all partially completed work whether bid as a lump sum or a unit item which, in the opinion of the Observer, is acceptable. The Observer shall either examine and approve by signature or modify and approve such modified statement.

The County shall then pay the Contractor, within 30 days of the statement submittal, the total amount of the approved statement, less ten percent (10%) of the amount thereof, which ten percent (10%) shall be retained until Final Payment, and further less all previous payments and all further sums that may be retained by the County under the terms of the Contract Documents and/or under state or federal law. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the Contractor, then the County may, upon written recommendation of the Observer, pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor, at the County's option, may be relieved of the obligation to fully complete the Work and, thereupon, the Contractor shall receive payment of the balance due Contractor under the contract subject to the terms and conditions stated in the Contract Documents.

- (1) When work progress is fifty percent (50%) complete, as determined by the value of the work completed to date against the original or revised contract amount, whichever is greater, the County may reduce the amount retained to five percent (5%) of the value of all work satisfactorily complete to date, including the value paid for materials on hand, provided, in the sole opinion of the Observer, the Contractor is making satisfactory progress toward completion of the project in a timely manner and there is no other cause to retain a greater percentage.
- (2) Upon issuance of the NOTICE OF SUBSTANTIAL COMPLETION and agreement to final project quantities, the percent retained may be further reduced, at the discretion of the Engineer and the Observer, to two percent (2%) of the total value of all work completed to date. This amount shall be retained until Final Payment and close out of the project.

5.05 Punch List

The Contractor shall notify the Observer in writing when, in the Contractor's opinion, the Work has been "Substantially Completed" and when so notifying the Observer, the Contractor shall furnish to the Observer, in writing, a detailed list of unfinished work, also known as the Punch List. The Observer will review the Punch List and will add any items that the Contractor failed to include on said list. The fact that a structure or facility has been "Substantially Completed" shall not excuse the Contractor from performing all of the Work undertaken, whether such work is of a minor or major nature. Furthermore, the Contractor shall remain obligated to fully complete the Work and perform its obligations under the Contract Documents after the Work has been Substantially Completed.

5.06 Final Completion and Acceptance

The Contractor shall have a specified time period for completion of the Punch List items, as set forth in Section XI of the Special Conditions, "Completion of Work on Time." Within ten (10) days after the Contractor has given the Observer written notice that the Punch List has been completed, the Observer shall inspect the Work and within said time, if the Work is found to be completed in accordance with the Contract Documents, the Observer shall issue to the Contractor its Certificate of Completion. In the event the Punch List has not been completed, the Observer shall advise the Contractor, in writing, of the Observer's basis for deeming the Punch List incomplete. Following the Contractor's receipt of the Observer's notice that the Punch List is incomplete, the Contractor shall complete the remaining items prior to the expiration of the above referenced specified time period for completion of the Punch List items. Upon satisfactory completion of the Punch List and the issuance of the Certificate of Completion, it shall be the Contractor's responsibility to submit the contract close-out documents, which shall include the record drawings, maintenance bond and Affidavit of All Bills Paid, and thereupon it shall be the duty of the County to issue a Certificate of Acceptance (Final Acceptance) to the Contractor.

5.07 Final Payment

Upon the issuance of the Notice of Substantial Completion, the Observer shall proceed to make final measurements and prepare final statement for the value of all work performed and materials furnished under the terms of the Contract Documents and shall certify same to the

County, and, then, Final Payment shall be made to the Contractor. At the County's sole discretion, this payment may include payment for work remaining to be performed in association with the removal of temporary erosion controls or the establishment of permanent stabilization measures. On or after the 30th day, and before the 35th day after the date of the Certificate of Acceptance, the balance due the Contractor under the terms of the Contract Documents shall be paid. Neither the Certificate of Acceptance nor the Final Payment, nor any provision in the Contract Documents, shall relieve the Contractor of the obligation for fulfillment of any warranty which may be required.

5.08 Payments Withheld

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

- (a) Defective work not remedied or other obligations hereunder not completed.
- (b) Claims filed or reasonable evidence indicating the probable or potential filing of claims.
- (c) Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- (d) Damage to the County or another contractor's work, material or equipment.
- (e) Reasonable doubt that the Work can be completed for the unpaid balance of the contract amount or Contract Price.
- (f) Reasonable indication that the Work will not be completed within the contract time.
- (g) Other causes affecting the performance of the Work subject of the Contract Documents.

When the above grounds are removed or the Contractor provides a surety bond satisfactory to the County, which will protect the County in the amount withheld, payment shall be made for amounts withheld because of them.

5.09 Delayed Payments

Should the County fail to make payment to the Contractor of the sum named in any partial or final statement, when such payment is due, then the County shall pay to the Contractor, in addition to the sum shown as due by such statement, interest thereon in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of County's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. County's payment of the amount due plus said interest shall fully liquidate any injury to the Contractor growing out of such delay in payment. It is expressly agreed that delay by the County in making payment to the Contractor of the sum named in any partial or final statement shall not constitute, on the part of the County, a breach under the Contract Documents, nor shall it serve as an abandonment by the County. Furthermore, any delay by the County in making payment to the Contractor of the sum named in any partial or final statement shall not, to any

extent or for any time, relieve the Contractor of its obligations to fully and completely perform pursuant to the terms of the Contract Documents.

6. Extra Work and Claims

6.01 Change Orders

Without invalidating the Agreement or any terms of the Contract Documents, the County may, at any time or from time to time, order additions, deletions or revisions to the Work. Any such additions, deletions or revisions to the Work may only be effectuated and authorized by written Change Order. The said written Change Order shall be prepared by the GEC for execution by the County and the Contractor. The Change Order shall set forth the basis for any change in Contract Price, as hereinafter set forth in Section 6.03, Extra Work, and for any change in contract time which may result from the change.

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

6.02 Minor Changes

The Observer may authorize minor changes in the Work which are not inconsistent with the overall intent of the Contract Documents and which do not involve an increase in Contract Price. If the Contractor believes that any minor change or alteration authorized by the Observer involves Extra Work which entitles it to an increase in the Contract Price, the Contractor shall make written request to the Observer for a written Field Order. For purposes of this section, a "Field Order" shall mean the Contractor's cost proposal for the Extra Work that the Contractor believes would increase the Contract Price.

In such case, the Contractor, by copy of its communication to the Observer or by separate writing, shall advise the County of its request to the Observer for a written Field Order. The Contractor's notice to the County shall inform the County that the work subject of the written Field Order may result in an increase in the Contract Price.

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

6.03 Extra Work

It is agreed that the basis of compensation to the Contractor for work either added or deleted by a change order or for which a claim for Extra Work is made shall be determined by the unit prices upon which the Work and Project was bid to the extent such work can be fairly classified within the various work item descriptions. For work that cannot be fairly classified within the said various work item descriptions, the basis of compensation to the Contractor

for work either added or deleted by a change order or for which a claim for Extra Work is made shall be determined by one or more of the following methods:

Method (A)

By agreed unit prices; or

Method (B)

By agreed lump sum; or

Method (C)

If neither Method (A) nor Method (B) is agreed upon before the Extra Work is commenced, then the Contractor shall be paid the "actual field cost" of the Work, plus fifteen percent (15%).

In the event said Extra Work is performed and paid for under Method (C), then the provisions of this paragraph shall apply and the "actual field cost" is hereby defined to include the cost to the Contractor of all workmen, such as foremen, timekeepers, mechanics and laborers, and materials, supplies, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and a rateable proportion of premiums on performance and payment bonds and maintenance bonds, public liability and property damage and workers' compensation, and all other insurance as may be required by any law or ordinance, or directed or agreed to by the County. The Observer may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the Observer. The Observer or the County may also specify, in writing before the Extra Work commences, the method of doing the Extra Work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the Contractor. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the written Extra Work order. The fifteen percent (15%) of the "actual field cost" to be paid the Contractor shall cover and compensate Contractor for its profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the Contractor's camp or field office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered, in writing, by the Observer. In case any orders or instructions, either oral or written, appear to the Contractor to involve Extra Work for which Contractor should receive compensation or an adjustment in

the construction time, Contractor shall make written request to the Observer for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the Observer insists upon its performance, the Contractor shall proceed with the Work after making written request for written order and shall keep an accurate account of the "actual field cost" thereof, as provided under Method (C).

6.04 Time of Filing Claims

The County and Contractor hereby agree and acknowledge that all questions of dispute or adjustment presented by the Contractor shall be in writing and filed with the Observer within thirty (30) days after the Observer has given any directions, order or instruction to which the Contractor desires to take exception. The Observer shall reply within thirty (30) days to such written exceptions by the Contractor and render the Observer's final decision in writing. In case the Contractor should appeal from the Observer's decision, the Contractor may file with the County its objection. It is further agreed that the acceptance by the Contractor of the Final Payment shall serve as a bar to any claims that the Contractor may have for matters arising prior to or after the Contractor's acceptance of the Final Payment.

6.05 Continuing Performance

The Contractor shall continue performance of the Work during all disputes or disagreements with the County. The production or delivery of goods, the furnishing of services and the construction of projects or facilities shall not be delayed, prejudiced or postponed pending resolution of any disputes or disagreements, except as the County may otherwise agree in writing.

7. Abandonment of Contract

7.01 Abandonment by Contractor

In case the Contractor should abandon and fail or refuse to resume work within ten (10) days after written notification from either the County or the Observer, or if the Contractor fails to comply with the orders of the Observer when such orders are consistent with the Contract Documents, then and in such case where performance bonds exist, the appropriate sureties on these bonds shall be provided with a notice of abandonment and notice for completion whereby (i) the sureties are notified of the Contractor's abandonment or Contractor's failure or refusal to resume work; and (ii) the sureties are directed to complete the Work. A copy of the notice of abandonment and notice for completion shall be delivered to the Contractor.

After receiving a copy of the above described notice of abandonment and notice for completion, the Contractor shall not remove from the Project any machinery, equipment, tools, materials or supplies that then currently exist on the Project site, but the same, together with any materials and equipment under contract for the Work, may be held for use on the Project by the County or the surety on the performance bond, or another contractor in completion of the Work; and the Contractor shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Section 6, Extra Work and Claims, herein), it being understood that the use of such

equipment and materials will ultimately reduce the cost to complete the Work and be reflected in the final settlement.

Where there is no performance bond provided or in case the surety should fail to commence compliance within ten (10) days after service of the herein above provided notice of abandonment and notice for completion, then the County may provide for completion of the Work in either of the following elective manners:

- (1) The County may thereupon employ such force of men and use such machinery, equipment, tools, materials and supplies as the County may deem necessary to complete the Work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to the Contractor, and expense so charged shall be deducted and paid by the County out of such monies as may be due, or that may thereafter at any time become due to the Contractor under and by virtue of the Contract Documents. In case such expense is less than the sum which would have been payable under the Contract Documents if the same had been completed by the Contractor, then the Contractor shall receive the difference. In case such expense is greater than the sum which would have been payable under the Contract Documents if the same had been completed by the Contractor, then the Contractor and/or its surety shall pay the amount of such excess to the County, or
- (2) The County, under sealed bids, after five (5) days notice published one or more times in a newspaper having general circulation in the area of the location of the Project, may let a contract for the completion of the Work under substantially the same terms and conditions which are provided in the Contract Documents. In case there is any increase in cost to the County under the new contract as compared to what would have been the cost under the Contract Documents, such increase shall be charged to the Contractor and the surety shall be and remain bound therefor. However, should the cost to complete any such contract prove to be less than what would have been the cost to complete under the Contract Documents, the Contractor and/or its surety shall be credited therewith.

When the Work shall have reached Final Completion, the Contractor and its surety shall be so notified and Certificates of Completion and Acceptance, as provided in Section 5.06 herein above, shall be issued. A complete itemized statement of the contract accounts, certified by the Observer as being correct, shall then be prepared and delivered to the Contractor and its surety, whereupon the Contractor and/or its surety, or the County as the case may be, shall pay the balance due as reflected by said statement within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the Work is less than that which would have been the cost to the County had the Work been completed by the Contractor under the terms of the Contract Documents, or when the Contractor and/or its surety shall pay the balance shown to be due by them to the County, then all machinery, equipment, tools, materials or supplies left on the site of the Project shall be turned over to the Contractor and/or its surety.

Should the cost to complete the Work exceed the amount the County would have been obligated to pay the Contractor had the Work been completed by the Contractor under the terms of the Contract Documents, and should the Contractor and/or its surety fail to pay the amount due the County within the time designated hereinabove, and should there remain any machinery, equipment, tools, materials or supplies on the site of the Project, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the Contractor and its surety at the respective addresses designated in the Contract Documents. After properly tendering such notice, such property shall be held at the risk of the Contractor and its surety subject only to the duty of the County to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice, the County may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the Contractor and its surety. Such sale may be made at either public or private sale, with or without notice, as the County may elect. The County shall release, to their proper owners, any machinery, equipment, tools, materials, or supplies, which remain on the Project and which belong to persons other than the Contractor or its surety. The books on all operations provided herein shall be opened to the Contractor and its surety.

7.02 Abandonment by the County

In the event that the County should fail, within ten (10) days after receiving written notification from the Contractor, to comply with the terms of the Contract Documents, then the Contractor may suspend or wholly abandon the Work, and may remove therefrom all machinery, tools and equipment, and all materials on the Project site that have not been included in payments to the Contractor and have not been wrought into the Work. Thereupon, the Observer shall make an estimate of the total amount earned by the Contractor, which estimate shall include the value of all work actually completed by said Contractor (at the prices stated in the Contract Documents), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of the Contract Documents. The Observer shall then make a final statement of the balance due the Contractor by deducting from the above estimate all previous payments by the County and all other sums that may be retained by the County under the terms of the Agreement and the Contract Documents and the Observer shall certify same to the County who shall pay to the Contractor on or before thirty (30) days after the date of the Observer's certification.

8. Subcontractors

8.01 Award of Subcontracts for Portions of the Work

Unless otherwise specified in the Contract Documents or in the Instructions to Bidders, the Contractor, as soon as practicable after the award of the contract, shall furnish to the Observer, in writing for acceptance by the County, a list of the names of the Subcontractors proposed for the principal portions of the Work. The Observer shall promptly notify the Contractor, in writing, if the County, after due investigation, has objection to any Subcontractor on such list and does not accept such Subcontractor.

The Contractor shall not contract with any Subcontractor or any person or organization (including those who are to furnish materials or equipment fabricated to a special design) proposed for portions of the Work designated in the Contract Documents or in the Instructions to Bidders or, if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has been rejected by the County. The Contractor will not be required to contract with any Subcontractor or person or organization against whom the Contractor has a reasonable objection.

If the County refuses to accept any Subcontractor or person or organization on a list submitted by the Contractor in response to the requirements of the Contract Documents or the Instructions to Bidders, the Contractor shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate change order shall be issued; however, no increase in the Contract Price shall be allowed for any such substitution unless the Contractor has acted promptly and responsively in submitting for acceptance any list or lists of names as required by the Contract Documents or the Instructions to Bidders.

If the County requires a change of any proposed Subcontractor or person or organization previously accepted by them, the Contract Price shall be increased or decreased by the difference in cost occasioned by such change and an appropriate change order shall be issued.

The Contractor shall not make any substitution for any Subcontractor or person or organization that has been accepted by the County, unless the substitution is acceptable to the County.

8.02 Subcontractual Relations

All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provisions that:

- (1) preserve and protect the rights of the County, the Observer, the GEC and the Engineer of Record under the contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights;
- (2) require that such work be performed in accordance with the requirements of the Contract Documents;
- (3) require submission to the Contractor of the applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with the Contract Documents;
- (4) require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided in the Contract Documents for like claims by the Contractor upon the County;
- (5) obligate each subcontractor specifically to consent to the provisions of this section.

A copy of all such signed subcontract agreements shall be filed by the Contractor with the Observer before the Subcontractor shall be allowed to commence work.

8.03 Payments to Subcontractors

The Contractor shall pay each Subcontractor, upon receipt of payment from the County, an amount directly based upon the value of the Work performed and allowed to the Contractor on account of such Subcontractor's work, less the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments to its subcontractors.

If the Observer fails to approve a payment for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall pay the Subcontractor, on demand made at any time after the Certificate for Payment should otherwise have been issued, for its work to the extent completed, less the retained percentage, if any.

The Observer may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

Neither the County, the Observer nor the Engineer shall have any obligation to pay or to see to the payment of any monies to such Subcontractor except as may otherwise be required.

9. Protection of Persons and Property

9.01 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

9.02 Safety of Persons and Property

The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- (1) all employees on the Work and all other persons who may be affected thereby;
- (2) all the Work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor or any of its Subcontractors or Sub-subcontractors; and
- (3) other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, fences, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety

and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

All blasting, including methods of storing and handling explosives and highly inflammable materials, shall conform to federal, state, local laws and ordinances.

The following is a list of requirements in addition to federal, state, and local laws and ordinances:

- (1) The Contractor shall furnish the County with a Certificate of Blasting Insurance in the amount of \$300,000.00 for each contract, at least twenty-four (24) hours prior to using explosives. A blasting permit must be obtained from the appropriate jurisdictions at least five (5) days prior to use of explosives. If blasting is covered under the Contractor's General Insurance Certificate for each contract, a separate blasting certificate will not be required.
- (2) The following public utility companies and departments will be notified by the Contractor, on every occasion, at least twenty-four (24) hours prior to the use of explosives: Water and Wastewater, Electric, Gas, Telephone and the County Engineering Department.
- (3) Explosive materials to be used shall be limited to blasting agents and dynamite, unless prior approval of other materials is obtained in writing from the Engineering Department.
- (4) During blasting, all reasonable precautions shall be taken to protect pedestrians, passing vehicles, and public or private property. Blasting mats or protective cover shall be used when required by the Observer, the permit, or by safe blasting practices.
- (5) All explosives shall be stored in accordance with all applicable laws and codes.
- (6) The Engineer or its representative shall have the right to limit the use of explosives and/or blasting methods which in its opinion are dangerous to the public or nearby property of any kind.
- (7) The Contractor, at its expense, shall promptly repair or replace all items known to be damaged as a result of blasting. All claims of damage shall be investigated by the County or by consulting firms approved by the County.
- (8) The Contractor shall maintain accurate records throughout the blasting operations showing the type explosive used, number of holes, pounds per hole, depth of hole, total pounds per shot, delays used, date and time of blast and initials of the Observer. The Contractor is fully responsible for all claims resulting from its blasting operation.

All damage or loss to any property referred to in this article caused, in whole or in part, by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be

remedied by the Contractor, except damage or loss attributable solely to faulty drawings or specifications or solely to the acts or omissions of the County its agents, employees, or representatives or anyone employed by either of them, and not attributable in any degree to the fault or negligence of the Contractor.

The Contractor shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the County.

9.03 Location and Protection of Utilities

Notwithstanding any other provision of the Contract Documents, the Contractor shall be solely responsible for the location and protection of any and all public utility lines and utility customer service lines in the Project area. The Contractor shall exercise due care to locate and to mark, uncover or otherwise protect all such lines in the construction zone and any of the Contractor's work or storage areas. Upon request, the County shall provide such information as it has about the location and grade of water, sewer, gas, and telephone and electric lines and other utilities in the Work area but such information shall not relieve or be deemed to be in satisfaction of the Contractor's obligation hereunder, which shall be primary and nondelegable. Any such lines damaged by the Contractor's operations shall be immediately repaired by the Contractor or it shall cause such damage to be repaired at its expense.

10. Termination

10.01 Termination by the County for Cause

Conditions for termination are as follows:

- (A) Without prejudice to any other legal or equitable right or remedy which it would otherwise possess hereunder or as a matter of law, the County shall be entitled, by giving Contractor five (5) days prior written notice, to terminate the Agreement in its entirety at any time:
 - (1) If the Contractor becomes insolvent, voluntarily files for bankruptcy, is the subject of an involuntary petition for bankruptcy commenced by its creditors, makes a general assignment for the benefit of creditors or becomes the subject of any other proceeding commenced under any statute or law for the relief of debtors; or
 - (2) If a receiver trustee or liquidator of any of the property or income of Contractor shall be appointed; or
 - (3) If Contractor:
 - (a) Shall fail to prosecute the Work or any part thereof with diligence necessary to insure its progress and completion as prescribed by the time schedules; and shall fail to take such steps to remedy such default within ten (10) days after written notice thereof from the County; or
 - (4) If Contractor:
 - (a) Shall commit a default under any of the terms, provisions, conditions, or covenants contained in the Contract Documents; and

- (b) Shall fail to take such steps to remedy such default within ten (10) days after written notice thereof from the County.
- (B) In the event of County's termination for cause, Contractor shall only be paid its reimbursable costs incurred prior to the effective date of the termination notice and shall not be entitled to receive any further fixed fee payments hereunder and shall be further subject to any claim the County may have against Contractor under other provisions of the Contract Documents or as a matter of law, including the refund of any overpayment of reimbursable costs and/or fixed fee.
- (C) If the Agreement is terminated for cause, the County shall have the right, but shall not be obligated, to complete the Work itself or by others; and to this end, the County shall be entitled to take possession of and use such equipment and materials as may be on the Project site, and to exercise all rights, options, and privileges of Contractor under its subcontracts, purchase orders, or otherwise; and Contractor shall promptly assign such rights, options and privileges to the County. If the County elects to complete the Work itself or by others, pursuant to the foregoing, the Contractor will reimburse the County for all costs incurred by the County (including, without limitation, applicable, general, and administrative expenses, and field overhead, and the cost of necessary equipment, materials, and field labor) in correcting work by Contractor which fails to meet contract requirements.

Nothing contained in the preceding sections shall require the County to pay for any of the Work which is unsatisfactory, as determined by the Observer or which is not submitted in compliance with the terms of the Contract Documents. The County shall not be required to make any payments to Contractor when Contractor is in default under the Contract Documents.

This Article shall not constitute a waiver of any right, at law or at equity, which the County may have if Contractor is in default, including the right to bring legal action for damages or to force specific performance of the terms and conditions of the Contract Documents.

10.02 Termination for Convenience

In connection with the Work outlined in the Contract Documents, it is agreed and fully understood by Contractor, that the County may cancel or indefinitely suspend further work hereunder or terminate the Agreement for the convenience of the County, upon fifteen (15) days written notice to Contractor. In the event the County terminates the Agreement for convenience, it is hereby understood and acknowledged by the Contractor that immediately upon receipt of the County's notice of termination, all work and labor being performed under the Contract Documents shall cease. Contractor shall invoice the County for all work satisfactorily completed and shall be compensated in accordance with the terms of the Contractor Documents for work accomplished prior to the receipt of said notice. No amount shall be due for lost or anticipated profits. However, no cost incurred after the effective date of the notice of termination shall be treated as reimbursable costs unless it relates to carrying out the un-terminated portion or taking closeout measures.

10.03 Obligations of Contractor Following Termination

After receipt of a notice of termination, whether such termination be for cause or convenience, Contractor shall, in good faith and to the best of its ability, do all things necessary to assure the efficient proper closeout of the terminated work (including the protection of County property). Among other things, the Contractor shall, except as otherwise directed or approved by the County:

- (1) Stop the Work on the date and to the extent specified in the notice of termination.
- (2) Place no further orders for subcontracts for services, equipment or materials, except as may be necessary for completion of such portion of the Work as is not terminated.
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination.
- (4) Assign to the County, in the manner and to the extent directed by it, all right title, and interest of Contractor under the orders or subcontracts so terminated; in which case, the County shall have the right to settle or pay any or all claims arising out of such termination of such orders and/or subcontracts.
- (5) With the approval of the County, settle all outstanding liabilities and all claims arising out of such termination or orders and subcontracts.
- (6) Deliver to the County, all documents, property, plans, field surveys, maps, cross sections and other data, designs and work related to the Project, which shall become the property of the County upon termination. The delivery of such items shall be made in a reasonably organized form, without restriction on future use. Should the County subsequently contract with a new contractor for continuation of services on the Project subject of the Contract Documents, Contractor shall cooperate in providing information to the County and the new contractor.

11. Inspection and Audit

Contractor's records shall be subject to audit and such records shall include, but not be limited to accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the County in connection with the contractor's work for the County. All of the foregoing, hereinafter referred to as "records," shall be open to inspection and subject to audit and/or reproduction by County or its authorized representative to the extent necessary to adequately permit evaluation and verification of:

- (a) Contractor compliance with the Contract Documents,
- (b) compliance with County's business ethics policies,
- (c) compliance by other contractors or subcontractors with contracts with County or Contractor, and
- (d) compliance with provisions for pricing change orders, invoices or claims submitted by the Contractor or any of its payees.

Other specific records subject to audit include all information, materials and data of every kind and character such as documents, subscriptions, recordings, computerized information, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information that may, in County's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by the Contract Documents. Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Project. In those situations where Contractor's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Contractor agrees to provide County's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange formats.

The County or its designee shall be entitled to audit all of the Contractor's records for a period of three (3) years after final payment or a longer period if required by law.

Contractor shall require all payees (including those entering into lump sum subcontracts and lump sum major material purchase orders), to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee. Requirements to include flow-down audit provisions in contracts with payees will apply to Subcontractors, Sub-Subcontractors, material suppliers, etc. when working under any type of contract including lump sum agreement, unit price agreements, time and material agreements, cost plus agreements, or other agreements. Contractor will cooperate fully and will cause all payees to cooperate fully in furnishing or in making available to County from time to time whenever requested in an expeditious manner any and all such information, materials and data required by this section.

County's agent or its authorized representative shall have access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of the Work, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this section.

Structures.....\$ 12.87

LABORER

Asphalt Raker.....\$ 12.12
Flagger.....\$ 9.45
Laborer, Common.....\$ 10.50
Laborer, Utility.....\$ 12.27
Pipelayer.....\$ 12.79
Work Zone Barricade
Servicer.....\$ 11.85

PAINTER (Structures).....\$ 18.34

POWER EQUIPMENT OPERATOR:

Agricultural Tractor.....\$ 12.69
Asphalt Distributor.....\$ 15.55
Asphalt Paving Machine.....\$ 14.36
Boom Truck.....\$ 18.36
Broom or Sweeper.....\$ 11.04
Concrete Pavement
Finishing Machine.....\$ 15.48
Crane, Hydraulic 80 tons
or less.....\$ 18.36
Crane, Lattice Boom 80
tons or less.....\$ 15.87
Crane, Lattice Boom over
80 tons.....\$ 19.38
Crawler Tractor.....\$ 15.67
Directional Drilling
Locator.....\$ 11.67
Directional Drilling
Operator.....\$ 17.24
Excavator 50,000 lbs or
Less.....\$ 12.88
Excavator over 50,000 lbs...\$ 17.71
Foundation Drill, Truck
Mounted.....\$ 16.93
Front End Loader, 3 CY or
Less.....\$ 13.04
Front End Loader, Over 3 CY.\$ 13.21
Loader/Backhoe.....\$ 14.12
Mechanic.....\$ 17.10
Milling Machine.....\$ 14.18
Motor Grader, Fine Grade....\$ 18.51
Motor Grader, Rough.....\$ 14.63
Pavement Marking Machine....\$ 19.17
Reclaimer/Pulverizer.....\$ 12.88
Roller, Asphalt.....\$ 12.78
Roller, Other.....\$ 10.50
Scraper.....\$ 12.27
Spreader Box.....\$ 14.04
Trenching Machine, Heavy....\$ 18.48

Servicer.....\$ 14.51

Steel Worker
Reinforcing.....\$ 14.00
Structural.....\$ 19.29

TRAFFIC SIGNAL INSTALLER
Traffic Signal/Light Pole
Worker.....\$ 16.00

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

WELDER.....\$ 15.97

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

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses(29CFR 5.5 (a) (1) (ii)).

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

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

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

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

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

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

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

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

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION