

**STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR**

THIS AGREEMENT is effective as of the _____ day of January in the year 2017 by and between City of League City (hereinafter called "**OWNER**") and DWC Management, LLC – David Wight Construction Co.,Ltd. (hereinafter called "**CONTRACTOR**").

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

ARTICLE 1. WORK.

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

**CONSTRUCTION OF
EMERGENCY REPAIR
OF
STORM SEWER OUTFALL FOR 413 HARBOURSIDE WAY**

ARTICLE 2. ENGINEER.

The Project has been designed by: **CITY OF LEAGUE CITY** who is hereinafter called "**ENGINEER**" and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

- 3.1 The Contract Time begins to run on the earlier of the date indicated in the Notice to Proceed or 10 days after the effective date of the Agreement. Contractor shall mobilize and begin Work in earnest no later than ten (10) days after the date indicated on the Notice to Proceed. The Work will be substantially complete within 30 calendar days after the date the Contract Time commences. The Work will be finally completed in accordance with Contract Documents within 45 calendar days after the date when the Contract Time commences.

ARTICLE 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds as follows: Seventy Thousand Five Hundred and Eighteen Dollars (\$ 70,518.00).

ARTICLE 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit, and ENGINEER shall process, Applications for Payment in

accordance with the General, Supplementary, and Special Conditions.

- 5.1 **Progress Payments.** OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. The CONTRACTOR must submit its pay estimate as prescribed in the Supplementary and Special Conditions of these Contract Documents. An amount not exceeding ten percent of the total of each progress payment shall be retained by OWNER as allowed by law.
- 5.2 **Final Payment.** Completion and acceptance of the Work by ENGINEER and OWNER is a condition precedent to final payment. Contingent upon completion and acceptance of the Work by ENGINEER and OWNER, the OWNER shall make final payment including payment of retainage as allowed by law.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS.

To induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

- 6.1 CONTRACTOR has examined, carefully studied and understands the Contract Documents (including Addenda) and the other related data identified in the Bidding Documents.
- 6.2 CONTRACTOR visited the site and became familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.
- 6.3 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.
- 6.4 CONTRACTOR has carefully studied all reports, explorations and tests of subsurface conditions and physical conditions at or contiguous to the site. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of such and information and data.
- 6.5 CONTRACTOR is aware of the general nature of work performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 6.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7. CONTRACT DOCUMENTS.

Contract Documents, which are all incorporated into this Agreement by reference herein, shall include this Agreement, any Addenda, all Conditions (General, Supplementary and Special), all specifications and plans, the Bid Proposal, and written modifications and all Bid Documents and Technical Specifications for the Construction of the Emergency Repair of Storm Sewer Outfall for 413 Harbourside Way what were issued in connection with the request for Proposal for Emergency Repair.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed three (3) copies of this Agreement. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on January, 2017 (which is the effective date of the Agreement).

OWNER:

City of League City

By: _____
John Baumgartner, Interim City Manager

Attest: _____
Diana Stapp, City Secretary

Address for giving notices:

300 West Walker Street
League City, Texas 77573

CONTRACTOR:

DWC Management, LLC
David Wight Construction Co. Ltd.

By: _____
Authorized Agent

Attest: _____

Address for giving notices:

APPROVED AS TO FORM AND LEGALITY:

By: _____
Nghiem Doan, City Attorney

Project No. _____

PAYMENT BOND

TEXAS STATUTORY PAYMENT BOND

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF _____ §

THAT WE, _____, as Principal, hereinafter called "Principal" and the other subscriber hereto _____, a corporation organized and existing under the laws of the State of _____, licensed to business in the State of Texas and admitted to write bonds, as Surety, herein after called "Surety", do hereby acknowledge ourselves to be held and firmly bound to the City of League City "Owner", in the sum of _____ (\$ _____) for payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, Principal has entered into a certain contract with Owner, dated the _____ day of _____, 20____, for EMERGENCY REPAIR OF STORM SEWER OUTFALL FOR 413 HARBOURSIDE WAY, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that if Principal shall pay all claimants supplying labor and material to him or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be null and void; otherwise to remain in full force and effect;

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

IN WITNESS THEREOF, the said Principal and Surety have signed and sealed this instrument on the respective dates written below their signatures.

ATTEST, SEAL: (if a corporation)
WITNESS: (if not a corporation)

(Name of Contractor)

Attested By: _____
Name:
Title:

By: _____
Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

Attested By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

(Address of Surety for Notice)

Local Recording Agent Personal Identification Number: _____

The name and address of the Resident Agent of Surety is: _____

Project No. _____

PERFORMANCE BOND

PERFORMANCE BOND

THE STATE OF TEXAS

§

§

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF _____

§

THAT WE, _____, as Principal, hereinafter called "Contractor" and the other subscriber hereto _____, as Surety, do hereby acknowledge ourselves to be held and firmly bound to City of League City "Owner", in the sum of _____ (\$_____) for the payment of which sum, well and truly to be made to Owner and its successors, the said Contractor and Surety do bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

WHEREAS, the Contractor has on or about this day executed a Contract in writing with Owner for
Construction of
EMERGENCY REPAIR OF STORM SEWER OUTFALL FOR 413 HARBOURSIDE WAY all of such work to be done as set out in full in said Contract Documents therein referred to and adopted by the Owner, all of which are made a part of this instrument as fully and completely as if set out in full herein.

NOW THEREFORE, if the said Contractor shall faithfully and strictly perform Contract in all its terms, provisions, and stipulations in accordance with its true meaning and effect, and in accordance with the Contract Documents referred to therein and shall comply strictly with each and every provision of Contract and with this bond, then this obligation shall become null and void and shall have no further force and effect; otherwise the same is to remain in full force and effect.

Should the Contractor fail to faithfully and strictly perform the Contract in all its terms, including but not limited to the indemnifications thereunder, the Surety shall be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof, as more fully set forth herein. It is further understood and agreed that the Owner or its representatives shall exercise reasonable diligence in securing compliance on the part of the Contractor with the terms of the Contract. The Surety hereby waives any notice to it of any default, or delay, by the Contractor in the performance of his Contract, except to the extent that such notice is required in anticipation of or in connection with a claim on this bond. The Surety understands and agrees that the provision in the Contract that Owner shall retain certain amounts due the Contractor until the expiration of thirty days from the acceptance of the Work is intended for the Owner's benefit.

It is further expressly agreed by Surety that Owner or its representatives are at liberty at any time, without notice to the Surety, to make any change in the Contract Documents and in the Work to be done thereunder, as provided in the Contract, and in the terms and conditions thereof, or to make any change in, addition to, or deduction from the work to be done thereunder; and that such changes, if made, shall not in any way vitiate the obligation in this bond and undertaking or release the Surety therefrom.

It is further expressly agreed and understood that the Contractor and Surety will fully indemnify and save harmless Owner from any liability, loss, cost, expense, or damage arising out of or in connection with the failure of the Contractor to perform work as required under the Contract. In the event that Owner shall bring any suit or other proceeding at law on the Contract or this bond or both, the Contractor and Surety agree to pay to Owner the sum of 10 percent of whatever amount may be recovered by Owner in

suit or legal proceeding, which sum of 10 percent is agreed by all parties to be indemnity to Owner for the expense of or time consumed by its Attorney, his assistants, and office force, and other cost and damage occasioned to Owner. This amount of 10 percent is fixed and liquidated by the parties, it being agreed by them that the exact damage to Owner would be difficult to ascertain.

This bond and all obligations created hereunder shall be performable in Galveston County, Texas. This bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions hereof shall be applicable whether or not within the scope of said statute.

Notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United State Postal Service post office or receptacle, with proper postage affixed (certified mail, return receipt requested), addressed to the respective other party at the address prescribed in the Contract Documents, or at such other address as the receiving party may hereafter prescribe by written notice to the sending party.

IN WITNESS THEREOF, the said Contractor and Surety have signed and sealed this instrument on the respective dates written below their signatures and have attached current Power of Attorney.

ATTEST, SEAL: (if a corporation)

WITNESS: (if not a corporation)

(Name of Contractor)

Attested By: _____

By: _____

Name:
Title:

Name:
Title:
Date:

ATTEST/WITNESS (SEAL)

(Full Name of Surety)

Attested By: _____

By: _____

Name:
Title:
Date:

Name:
Title:
Date:

(Address of Surety for Notice)

Local Recording Agent Personal Identification Number: _____

The name and address of the Resident Agent of Surety is: _____

GENERAL CONDITIONS OF AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.01 OWNER, CONTRACTOR AND ENGINEER. The Owner, the CONTRACTOR and the ENGINEER are those persons or organizations identified as such in the Agreement. The term ENGINEER means a person authorized to act as a representative of the entity designated by the Owner to provide engineering or other ENGINEER services required in connection with the preparation and performance of this Contract.

1.02 CONTRACT DOCUMENTS. The contract documents shall consist of all of the documents contained, assembled and bound with these General Conditions of Agreement, including, whether or not labeled as such, Notice to Bidders (Advertisement), General Instructions to Bidders, Subcontractors and Major Suppliers Form, Bid Proposal, signed Agreement, Performance, Payment and One Year Maintenance Bonds (if required), Special Bonds (when required), General Conditions of Agreement, Special Conditions of Agreement (if any), Insurance Certificate, Technical Specifications, Plans and all modifications thereof incorporated in any of the documents before the execution of the Agreement, and any other document, whether or not labeled, which shall become a part of the set of documents bound together with the General Conditions of Agreement.

The contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. Any conflicts between any of the contract documents shall be resolved first by reference to these General Conditions of Agreement; and in the event the General Conditions of Agreement do not address such conflict, then the designated ENGINEER shall resolve any conflict by a written interpretation, copies of which shall be forwarded to all parties to the Contract, and the original shall be attached to and shall become a part of these General Conditions of Agreement and thus a part of the contract documents.

1.03 SUBCONTRACTOR. The term "subcontractor", as employed herein, includes only those having a direct contract with the CONTRACTOR for performance of work on the project contemplated by these contract documents. Owner shall have no responsibility to any subcontractor employed by CONTRACTOR for performance of work on the project contemplated by these contract documents, and any such subcontractor shall look exclusively to CONTRACTOR for any payments due subcontractor.

1.04 WRITTEN NOTICE. Written Notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by Certified Mail, Return Receipt Requested, to the last known business address or registered office of such individual, firm or corporation.

1.05 WORK. Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, services, insurance, and all water, light, power, fuel, transportation and all other facilities or services of any nature whatsoever necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. The Contractor shall, if required by the ENGINEER as representative of the Owner, furnish satisfactory evidence as to the kind and quality of materials.

Materials or work described in words which so applied have well-known, technical or trade meaning shall be held to refer to such recognized standards. All work shall be done and all materials shall be furnished in strict conformity with the contract documents.

1.06 EXTRA WORK. The term "Extra Work", as used in this Contract, shall be understood to mean and include all work that may be required by the ENGINEER as representative of the Owner, to be done by the CONTRACTOR to accomplish any change, alteration or addition to the work shown upon the plans or reasonably implied by the specifications, and which shall, prior to the commencement of such work, be authorized in writing by the ENGINEER.

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

1.08 CALENDAR DAY. A "calendar day" is any day of the week or month, no days being excepted.

1.09 INTERPRETATION OF WORDS AND PHRASES. Whenever the words "directed", "permitted", "designated", "required", "considered necessary", "prescribed" or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation or prescription of the ENGINEER as the Owner's representative is intended. Similarly, the words "approved", "acceptable", "satisfactory" or words of like import shall mean that no exception is taken, but does not relieve CONTRACTOR of responsibility for performance of project requirements.

Whenever in the Specifications or drawings accompanying this Agreement, the terms of description of various qualities relative to finish, workmanship or other qualities of similar kind which cannot, from their nature, be specifically and clearly described and specified, but are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said Specifications shall be decided by the ENGINEER as the Owner's representative, and said work shall be done in accordance with his interpretations of the meaning of the words, terms or clauses defining the character of the work.

1.10 SPECIAL CONDITIONS. In the event special conditions are contained herein as part of the contract documents and said special conditions conflict with any of the general conditions contained in this Contract, then in such event the special conditions shall control.

2. RIGHTS AND RESPONSIBILITIES OF THE OWNER

2.01 ADEQUACY OF DESIGN. It is understood that the Owner believes it has employed competent Engineers and/or designers. It is, therefore, agreed that the Owner shall be responsible for the adequacy of the design, sufficiency of the contract documents, the safety of the structure and the practicability of the operations of the completed project, provided 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 Owner. The burden of proof of such compliance shall be upon the CONTRACTOR to show that he has complied with the requirements

of the contract documents and approved modifications thereof and all approved additions and alterations, thereto, as the same shall have been interpreted by the ENGINEER.

2.02 RIGHT OF ENTRY. The Owner reserves the right to enter the property or location on which the work herein contracted for is to be constructed or installed, for itself or such agent or agents as it may select, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as the Owner may desire. The Owner shall have the right to make inspections at all reasonable times, and the CONTRACTOR shall have no cause to complain if his work shall be delayed by reason of such inspection, construction or installation of collateral work.

2.03 OWNERSHIP OF DRAWINGS. All drawings, specifications and copies thereof furnished by the ENGINEER shall not be reused on other work and, with the exception of the sets forming the part of the signed contract documents, are to be returned to the ENGINEER on request at the completion of the work. All models are the property of the Owner.

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

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages or anticipated profits on the work that may be dispensed with. If the amount of work is increased and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this Contract, except as hereinafter provided for unit price items under Article 6 of this Contract; otherwise, such additional work shall be paid for as provided under Article 7 hereof for Extra Work. In case the Owner shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the Owner shall compensate the CONTRACTOR for any material or labor so used and for any actual loss occasioned by such change due to actual expenses incurred in preparation for the work as originally planned.

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

3. RIGHTS AND RESPONSIBILITIES OF THE ENGINEER

3.01 OWNER-ENGINEER RELATIONSHIP. The ENGINEER shall serve as the Owner's representative during construction. The duties, responsibilities and limitations on the authority of the ENGINEER as the Owner's representative during construction are set forth in the contract documents; and the ENGINEER shall not have authority to extend the Owner's liability or to bind the Owner for any additional liability of any nature whatsoever without the written consent of the Owner. The ENGINEER shall constantly advise the Owner as to the progress of the work, and any instructions by the Owner to the CONTRACTOR shall be issued through the ENGINEER.

It is the intent of this Agreement that there shall be no delay in the execution of the work; therefore, written decisions or directions rendered by the ENGINEER as the Owner's representative shall be promptly carried out, and any claim arising therefrom shall be adjusted as hereinafter provided. Unless otherwise specified, it is mutually agreed between the parties to this Agreement that the ENGINEER shall review all work included herein and shall have the authority to issue written stop work orders whenever such stoppage may be necessary to insure the proper execution of this Contract.

3.02 KEEPING OF PLANS AND SPECIFICATIONS ACCESSIBLE. The ENGINEER shall furnish the CONTRACTOR three (3) sets of Plans and Specifications without expense to the CONTRACTOR, and the CONTRACTOR shall keep one copy of the same constantly accessible on the job site, with the latest revisions noted thereon. Additional sets can be provided to the CONTRACTOR at his request for the fee set in the Notice to Bidders. The CONTRACTOR shall be responsible for preserving the Plans and Specifications for reference and review by the Owner or the ENGINEER.

3.03 PRELIMINARY APPROVAL. The ENGINEER shall not have the power to waive the obligations imposed under this Contract for the furnishing by the CONTRACTOR of good material, and for performing good work as herein described, and in full accordance with the Plans and Specifications, without alteration, deletion or change. No failure or omission of the ENGINEER to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligation to fully and properly perform the Contract, 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 discovery of such defective work or material; provided, however, that the ENGINEER shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished, and in the event the material has been once accepted by the ENGINEER, such acceptance shall be binding on the Owner, unless it can be clearly shown that such material furnished does not meet the specifications for this work.

Any questioned work may be ordered taken up or removed for re-examination by the ENGINEER prior to final acceptance, and if found not to be in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; otherwise the expense thus incurred shall be allowed as Extra Work and shall be paid for by the Owner, provided that where inspection or approval is specifically required by the Specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval, he shall bear all expense of taking up, removing and replacing this work if so directed by the ENGINEER.

3.04 OBSERVATIONS BY ENGINEER. The ENGINEER shall make periodic visits to the site to observe the progress and quality of the executed work and to determine if such work generally meets the essential performance and design features and the technical, functional and/or Professional requirements of the contract documents, and is in all other respects being performed in compliance with the contract documents. However, the ENGINEER shall not be responsible for making any detailed, exhaustive, comprehensive or continuous on-site observations to check the quality and/or quantity of the work, nor shall the ENGINEER be in any way responsible, directly or indirectly, for the construction means, methods, techniques, sequences, quality, procedures, programs, safety precautions or lack of same incident to the work being performed or any part thereof. The ENGINEER shall use reasonable care to prevent deviation from the intent and substance of the contract documents by the CONTRACTOR in the performance of the work and any part thereof and, on the basis of such on-site observations, will keep the Owner informed of the progress of the work and will endeavor to guard the Owner against defects and deficiencies in the work of the CONTRACTOR. Notwithstanding any other provision of this Agreement or any other contract document, the ENGINEER shall not be in any way responsible or liable for any acts, errors, omissions or negligence of the CONTRACTOR, any subcontractors' agents, servants or employees or any other person, firm or corporation performing or attempting to perform any of the work.

3.05 LINES AND GRADES. The CONTRACTOR shall employ a surveyor licensed in the state of Texas to provide all lines, grade and construction staking.

3.06 DETERMINATION OF QUESTIONS AND DISPUTES. In order to prevent delays and disputes and to discourage litigation, it is agreed that the ENGINEER shall, in all cases, determine the amounts and quantities of the several kinds of work which are to be paid for under this Contract. The ENGINEER shall determine all questions in relation to said work and the construction thereof, as well as all claims, disputes and other matters in question between the CONTRACTOR and the Owner relating to the execution or progress of the work or the interpretation of the contract documents. In the event the ENGINEER shall become aware of or shall receive information that there is a dispute or a possible dispute as to the reasonable interpretation of the terms and conditions of the contract documents, or any other dispute, claim or question, the ENGINEER shall, within a reasonable time, provide a written interpretation of the contract documents or a written decision on all claims of the parties hereto and on all questions arising relative to the execution of the work, copies of which shall be delivered to all parties to the Contract, and the original thereof shall become a part of the contract documents and shall be binding and final as to all parties to the Contract.

3.07 OBJECTIONS. In the event the ENGINEER renders any decision which, in the opinion of either the Owner or the CONTRACTOR, is not in accordance with the meaning and intent of this Contract, either party may, within thirty (30) days of receipt of such decision, file its written objection to the decision with the ENGINEER; and the ENGINEER shall, upon receipt of such written objection and within thirty (30) days thereafter, review the same and render a written affirmation or modification of the original interpretation, which shall become a part of the contract documents. Either party who shall remain aggrieved after the ENGINEER has rendered his affirmation or modification of his previous decision, shall have the right, within a period not to exceed sixty (60) days after the ENGINEER has filed his affirmation or modification of the decision with the City Secretary, to file suit in the District Court of Galveston County, seeking a declaratory judgment or other relief to determine the intent of the contract documents. If any aggrieved party

shall fail to file such a petition with the District Court within the time specified, the decision of the ENGINEER shall become final and binding and non-appealable.

3.08 RECOMMENDATION OF PAYMENT. The ENGINEER shall review the CONTRACTOR's application for payment and supporting documents, shall determine the amount owed to the CONTRACTOR and shall provide written recommendation to the Owner for payment to the CONTRACTOR in such amount. Such recommendation of payment to CONTRACTOR shall constitute a representation to the Owner of the ENGINEER's judgment that the work has progressed to the point indicated, to the best of his knowledge, information and belief; however, such recommendation of an application for payment to CONTRACTOR shall not be deemed to be a representation by the ENGINEER that any examination has been made to determine how or for what purpose CONTRACTOR has used the monies paid on account of the contract price. As a condition of final payment, the CONTRACTOR shall execute an Agreement for Final Payment and CONTRACTOR's Sworn Release, in a form as included herein and made a part of these contract documents, being its agreement to accept the amount recommended by the ENGINEER as full payment for the work that has been completed as set out in the CONTRACTOR's application for payment and supporting data.

4. RIGHTS AND RESPONSIBILITIES OF THE CONTRACTOR

4.01 INDEPENDENT CONTRACTOR. CONTRACTOR is, and shall remain, an independent CONTRACTOR, solely responsible for the manner and method of completing the work under this Contract, with full and exclusive power and authority to direct, supervise and control his own employees and to determine the means, method and manner of performing such work, so long as such methods do not adversely affect the completed improvements or any other property abutting or adjoining the work area, the Owner and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the Plans, Specifications and Contract. The fact that the Owner or ENGINEER as the Owner's representative shall have the right to observe CONTRACTOR's work during his performance and to carry out the other prerogatives which are expressly reserved to and vested in the Owner and the ENGINEER hereunder, is not intended to and shall not at any time change or affect the status of the CONTRACTOR as an independent CONTRACTOR with respect to either the Owner or the ENGINEER as the Owner's representative or to the CONTRACTOR's own employees or to any other person, firm or corporation.

4.02 CONTRACTOR'S UNDERSTANDING. It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which in any way affect the work under this Contract. It is further understood that the CONTRACTOR has satisfied himself as to the terms, meaning and intent of all of the contract documents and understands the meanings of all parts of such documents or other factors affecting the work, which were not previously understood. No verbal agreement or conversation with any officer, agent or employee of the Owner or the ENGINEER, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

4.03 LAWS AND ORDINANCES. The CONTRACTOR shall at all times observe and comply with all federal, state or local laws, ordinances and regulations, regardless of whether the

same are adopted before or after the execution of this Contract, which in any manner affect the Contract or the work, and shall indemnify, save and hold harmless the Owner and the ENGINEER against any claim arising out of the violation of any such laws, ordinances and regulations, whether by the CONTRACTOR or his employees. If the CONTRACTOR observes that the Plans and Specifications are at variance with federal or state laws or the ordinances or regulations of the City, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be made as provided in the Contract for changes in the work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the ENGINEER, he shall bear all costs arising therefrom.

The Owner is a municipal corporation of the State of Texas, and the law from which it derives its powers, insofar as the same regulates the objects for which, or the manner in which, or the conditions under which the Owner may enter into contracts, shall be controlling and shall be considered as part of this Contract to the same effect as though embodied herein. The Code of Ordinances of the City and other applicable regulations of the OWNER shall be deemed to be embodied in this Contract.

4.04 ASSIGNMENT AND SUBLETTING. The CONTRACTOR further agrees that he will retain personal control and will give his personal attention to the fulfillment of this Contract and that he will not assign, by power of attorney or otherwise, or sublet said Contract without the written consent of the ENGINEER, and that no part or feature of the work will be sublet to anyone objectionable to the ENGINEER or the Owner. In addition, the Owner reserves the right to disapprove the subletting of this Contract or any portion hereof on any basis whatsoever. The CONTRACTOR further agrees that the subletting of any portion or feature of the work or materials required in the performance of this Contract shall not relieve the CONTRACTOR from his obligations to the Owner, as provided for by this Agreement.

4.05 PERFORMANCE AND PAYMENT BONDS. In the event the contract price shall be in excess of \$25,000.00, the CONTRACTOR shall execute separate Performance and Payment Bonds, each in the sum of one hundred percent (100%) of the total contract price, which shall be increased at any time to cover any change orders, additives or add-ons, in accordance with Chapter 2253, Texas Government Code, as amended. If the contract price does not exceed \$25,000.00, the statutory bonds will not be required. All required bonds shall be submitted on forms supplied by the Owner for this purpose, guaranteeing the faithful performance of the work and fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing him any equipment in the execution of the Contract. It is agreed that the Contract shall not be in effect until such Performance and Payment Bonds are furnished and approved by the Owner.

Each such bond shall be executed by a corporate surety or corporate sureties duly authorized to do business in the State of Texas. The cost of the premium for the Performance and Payment Bonds shall be included in the CONTRACTOR's Proposal.

4.06 INSURANCE. Minimum insurance requirements for CONTRACTOR awarded this Contract shall be as follows:

- (1.) Worker's Compensation. Worker's Compensation Insurance as defined by the Texas Worker's Compensation Act.

A. Definitions:

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

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

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

- B. The CONTRACTOR shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.01(44) for all employees of the CONTRACTOR providing services on the project, for the duration of the project.
- C. The CONTRACTOR must provide a certificate of coverage to the City of League City prior to being awarded the contract.
- D. If the coverage period shown on the CONTRACTOR's current certificate of coverage ends during the duration of the project, the CONTRACTOR must, prior to the end of the coverage period, file a new certificate of coverage with the City of League City showing that coverage has been extended.
- E. The CONTRACTOR shall obtain from each person providing services on a project, and provide to the City of League City:

- (1.) A certificate of coverage, prior to that person beginning work on the project, so that the City of League City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2.) No later than seven days after receipt by the CONTRACTOR, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The CONTRACTOR shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The CONTRACTOR shall notify the City of League City in writing by certified mail or personal delivery, within 10 days after the CONTRACTOR knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The CONTRACTOR shall post on each project site a notice, in the text, form and manner prescribed by the Texas Worker's Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The CONTRACTOR shall contractually require each person with whom it contracts to provide services on a project to:
 - (1.) Provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project.
 - (2.) Provide to the CONTRACTOR, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project.
 - (3.) Provide the CONTRACTOR, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

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

- A. Bodily Injury and Property Damage:
- General Aggregate Limits: \$1,000,000
- Products/Completed Operations Aggregate Limits: \$1,000,000
- (3.) Business Automobile Liability: Business Automobile Liability (including non-owned and lease vehicles):
- A. Bodily Injury: \$1,000,000
Each Person
- B. Property Damage: \$1,000,000
Each Accident
- (4.) Contractual Endorsement: The Contractual Liability shall provide coverage for not less than the following amounts:
- A. Bodily Injury: \$1,000,000
Each Occurrence
- B. Property Damage: \$1,000,000
Each Occurrence
- (5.) OWNER's Insurance: CONTRACTOR shall provide insurance for the Owner as follows:
- A. The City of League City, the ENGINEER, their agents and employees shall be named as an Additional Insured under the General Liability and Automobile Policies. A copy of the endorsements shall be furnished to the City.
- (6.) Property Insurance: As Indicated.
- (7.) Umbrella Liability Policy: CONTRACTOR shall purchase and maintain Excess and Liability Insurance *Umbrella) in a form following the underwritten coverage in an amount of \$2,000,000 each occurrence and \$2,000,000 aggregate.
- (8.) Settlement of Insurance Claims: Losses insured under policies that include Owner as a named insured shall be adjusted with Owner and made payable to Owner as trustee for the insured, as their interests may appear.
- (9.) The Owner, the ENGINEER, their agents and employees, must be named as one of the insured in each of the above coverages.
- (10.) The usual ten-day cancellation notice clause may be inserted in all coverages where appropriate and customary.

- (11.) All coverages must be with companies acceptable to the Owner. The CONTRACTOR will furnish the Owner with a copy of each insurance policy required in connection with this work if requested by the Owner.

In the event the CONTRACTOR shall fail to provide insurance as herein required, or be subject to claim, demand or litigation growing out of or arising from a claim not contemplated herein, such failure on the part of the CONTRACTOR shall not serve to release or in any way discharge or shift the liability of the CONTRACTOR to the ENGINEER or Owner; but the CONTRACTOR does herein agree to indemnify and hold the ENGINEER and Owner harmless from any and all claims growing out of or arising by reason of any of the circumstances herein enumerated, or any other claims or demands made by any person, growing out of or arising by reason of the work performed by the CONTRACTOR.

The CONTRACTOR shall defend, indemnify and hold harmless the Owner and the ENGINEER and their respective officers, agents and employees, from and against all damages, claims, losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, arising out of or resulting from the performance of the work, provided that any such damages, claim, loss, demand, suit, judgment, cost or expense:

- (1.) Is attributable to bodily injury, sickness, disease or death to or injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom; and,
- (2.) Is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

4.07 PERMITS AND FEES. Unless otherwise provided in the Contract Documents, the CONTRACTOR shall secure and pay for all construction permits, licenses, and other inspections necessary for proper execution and completion of the Work and which are legally required at the time bids are received.

4.08 TEXAS STATE SALES TAX. Materials incorporated into this project are exempt from State Sales Tax according to provisions of the Texas Tax Code, Chapter 151, Subsection H.

The CONTRACTOR must obtain a limited sales, excise and use tax permit or exemption certificate which shall enable him to buy the materials to be incorporated into the work without paying the tax at the time of purchase.

4.09 CONTRACTOR'S DUTY AND SUPERINTENDENCE. The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this Contract and shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the ENGINEER as the Owner's representative. The superintendent shall represent the CONTRACTOR in his absence and shall act as the employee or agent of the CONTRACTOR, and all directions given to him shall be binding as if given to the CONTRACTOR. Adequate supervision by competent and reasonable representatives of the CONTRACTOR is essential to the

proper performance of the work, and lack of such supervision shall be grounds for suspending operations of the CONTRACTOR.

The work, from its commencement to completion, shall be under the exclusive charge and control of the CONTRACTOR, and all risk in connection therewith shall be borne by the CONTRACTOR. Neither the Owner nor the ENGINEER as the Owner's representative will be responsible for the acts or omissions of the CONTRACTOR, its subcontractors or any of its agents or employees, or any other persons performing any of the work.

4.10 CHARACTER OF WORKERS. The CONTRACTOR agrees to employ only orderly and competent workers, skillful in the performance of the type of work required under this Contract, to do the work, and agrees that whenever the ENGINEER shall inform him in writing that any worker or workers on the work are, in his opinion, incompetent, unfaithful or disorderly, or in the ENGINEER's opinion, are not using their best efforts for the progress of the work, such worker or workers shall be discharged from the work and shall not again be employed on the work without the ENGINEER's written consent.

4.11 LABOR, EQUIPMENT, MATERIALS, CONSTRUCTION PLANT AND BUILDINGS. The CONTRACTOR shall provide all labor, tools, equipment, machinery and materials necessary in the prosecution and completion of this Contract where it is not otherwise specifically provided that the Owner shall furnish the same; and further, the CONTRACTOR shall be responsible for the care, preservation, conservation and protection of all materials, supplies, machinery, equipment, tools, apparatus, accessories, facilities, all means of construction and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid or not paid for such work, until the entire work is completed and accepted.

Temporary buildings, structures for housing workers, or the erection of tents or other forms of protection, or structures for the use of the CONTRACTOR will be permitted only at such places as the ENGINEER shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the ENGINEER. Any structures of any nature constructed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection or construction thereof; and the CONTRACTOR agrees to indemnify and hold the ENGINEER or Owner harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, construction or maintenance of CONTRACTOR's buildings.

4.12 SANITATION. Necessary sanitary conveniences for the use of laborers on the work site, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points and shall be approved by the ENGINEER, and their use shall be strictly enforced. Any structures of any nature constructed or erected by the CONTRACTOR for the purposes herein set out, shall be the sole responsibility of the CONTRACTOR as to the proper erection or construction thereof, and the CONTRACTOR agrees to indemnify and hold the ENGINEER or Owner harmless from any claims of any nature whatsoever brought against either of them for damages allegedly sustained by anyone by reason of the erection, construction or maintenance of CONTRACTOR's buildings.

4.13 CLEANING AND MAINTENANCE. The CONTRACTOR shall at all times keep and maintain the premises free from accumulation of debris caused by the work, and at the completion of the work, he shall remove all such debris and also his tools, scaffolding and surplus materials and shall leave the work broom-clean or its equivalent. The work shall be left in good order and condition. In case of dispute, the Owner may remove the debris and charge the cost to the CONTRACTOR.

4.14 PERFORMANCE OF WORK. It is further agreed that it is the intent of this Contract that all work must be done and all material must be furnished in accordance with the generally accepted practice for such materials furnished or work completed.

4.15 RIGHT OF OWNER TO MODIFY METHODS AND EQUIPMENT. If at any time the methods or equipment used by the CONTRACTOR are found to be inadequate to secure the quality of work with the rate of progress required under this Contract, the Owner or the ENGINEER as the Owner's representative may order the CONTRACTOR in writing to increase their safety or improve their character and efficiency, and the CONTRACTOR shall comply with such order.

If at any time the working force of the CONTRACTOR is inadequate for securing the progress herein specified, the CONTRACTOR shall, if so ordered in writing, increase his force or equipment, or both, to such an extent as to give reasonable assurance of compliance with the schedule of progress.

4.16 LAYOUT OF WORK. Except as specifically provided herein, the CONTRACTOR shall be responsible for laying out all work and shall accomplish this work in a manner acceptable to the ENGINEER.

4.17 SHOP DRAWINGS. The CONTRACTOR shall submit to the ENGINEER, with such promptness as to cause no delay in his own work or in that of any other CONTRACTOR, six (6) checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades. CONTRACTOR will check and approve shop drawings for compliance with requirements of Contract and will so certify by stamp on each drawing prior to submittal to ENGINEER. Any drawings submitted without CONTRACTOR's stamp of approval will not be considered and will be returned to him for proper submission. The ENGINEER shall pass upon them with reasonable promptness, making desired correction. The CONTRACTOR shall make any corrections required by the ENGINEER, file with him two (2) corrected copies and furnish such other copies as may be needed. The ENGINEER's approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless he has, in writing, called the ENGINEER's attention to such deviations at the time of the submission, and the ENGINEER has acknowledged such deviations in writing, nor shall it relieve him from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR's responsibility to fully and completely review all shop drawings to ascertain their effect on his ability to perform the required contract work in accordance with the Plans and Specifications and within the contract time.

Such review by the ENGINEER shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the Plans and Specifications, and shall not relieve the CONTRACTOR of his duty as an independent

CONTRACTOR as previously set forth, it being expressly understood and agreed that the ENGINEER does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR's performance hereunder, and any action taken by the ENGINEER shall not relieve the CONTRACTOR of his responsibility and liability, as set out in the contract documents.

4.18 ENGINEER-CONTRACTOR RELATIONSHIP; OBSERVATIONS. It is agreed by the CONTRACTOR, that the ENGINEER, as the Owner's representative, and/or the Owner shall be and is authorized to appoint such subordinate Professionals, supervisors or observers as said ENGINEER and/or the Owner may from time to time deem proper to observe the materials furnished and the work done under this Agreement, and to see that said materials is furnished and said work is done in accordance with the specifications. The CONTRACTOR shall furnish all reasonable aid and assistance required by the subordinate Professionals, supervisors or observers for the proper observation and examination of the work. The CONTRACTOR shall regard and obey the directions and instructions of any subordinate Professionals, supervisors or observers so appointed, when such directions and instructions are consistent with the obligations of this Agreement and accompanying Plans and Specifications, provided, however, should the CONTRACTOR object to any orders by any subordinate Professional, supervisor or observer, the CONTRACTOR may, within six (6) days, make written appeal to the ENGINEER for his decision.

4.19 OBSERVATION AND TESTING. The Owner or the ENGINEER as the Owner's representative shall have the right at all reasonable times to observe and test the work. The CONTRACTOR shall make all necessary arrangements and provide proper facilities and access for such observation and testing at any location wherever work is in preparation or progress. The CONTRACTOR shall ascertain the scope of any observation which may be contemplated by the Owner or the ENGINEER and shall give ample notice as to the time each part of the work will be ready for such observation. The Owner or the ENGINEER may reject any work found to be defective or not in accordance with the contract documents, regardless of the stage of its completion or the time or place of discovery of such errors, and regardless of whether the ENGINEER has previously accepted the work through oversight or otherwise. If any work is covered without approval or consent of the Owner, it must, if requested by the Owner or the ENGINEER, be uncovered for examination, at the sole expense of the CONTRACTOR. In the event that any part of the work is being fabricated or manufactured at a location where it is not convenient for the Owner or the ENGINEER to make observations of such work or require testing of said work, then in such event, the Owner or the ENGINEER may require the CONTRACTOR to furnish the Owner or the ENGINEER with certificates of inspection, testing or approval made by persons competent to perform such tasks at the location where that part of the work is being manufactured or fabricated. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization as may be required by law or the contract documents.

If any work which is required to be observed, tested or approved is covered up without written approval or consent of the Owner or the ENGINEER, it must, if requested by the Owner or the ENGINEER, be uncovered for observation and testing, at the sole expense of the CONTRACTOR. The cost of all such inspections, tests and approvals shall be borne by the CONTRACTOR unless otherwise provided herein. Any work which fails to meet the requirements of such tests, inspections or approval, and any work which meets the requirements of any such tests

or approval but does not meet the requirements of the contract documents shall be considered defective. Such defective work shall be corrected at the CONTRACTOR's expense.

Neither observations by the Owner or by the ENGINEER, nor inspections, tests or approvals made by the Owner, the ENGINEER or other persons authorized under this Agreement to make such inspections, tests or approvals, shall relieve the CONTRACTOR from his obligation to perform the work in accordance with the requirements of the contract documents.

4.20 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 ENGINEER as unsuitable or not in conformity with the Plans and Specifications, the CONTRACTOR shall, after receipt of written notice thereof from the ENGINEER, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this Contract. It is further agreed that any such remedial action contemplated herein shall be at CONTRACTOR's expense.

4.21 LIABILITY FOR PROPER PERFORMANCE. Professional construction drawings and specifications, as well as any additional instructions and information concerning the work to be performed, passing from or through the ENGINEER, shall not be interpreted as requiring or allowing the CONTRACTOR to deviate from the Plans and Specifications contained as a part of the contract documents, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable and contractually bound, at his own expense, for design, construction, installation and use or non-use of all items and methods instant to the performance of the Contract, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, similar items or devices used by him during construction, and work performed either directly or incident to construction, and for all loss, damage or injury incident thereto, either to person or property, whether such damage be suffered by the ENGINEER, the Owner or any other person not a party to this Contract.

Any review of work in progress or any visit or observation during construction, or any clarification of Plans and Specifications by the ENGINEER or Owner, or any agent, employee or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for 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 which are part of the Contract, 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 proper performance of his work on the project, including, without limitation, the propriety of means and methods of the CONTRACTOR in performing said Contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Any action by the ENGINEER or the Owner in visiting or observing during construction, or any clarification of Plans and Specifications shall not constitute a waiver of CONTRACTOR's liability for damages as herein set out. Deviation by the CONTRACTOR from Plans and Specifications, whether called to the CONTRACTOR's attention or not, shall in no way relieve CONTRACTOR from his responsibility to complete all work in

accordance with said Plans and Specifications, and further shall not relieve CONTRACTOR of his liability for loss, damage or injury as herein set out.

4.22 PROTECTION AGAINST ACCIDENT TO EMPLOYEES AND THE PUBLIC. The CONTRACTOR shall take out and procure a policy or policies of Worker's Compensation Insurance with an insurance company licensed to transact business in the State of Texas, which policy shall comply with the Worker's Compensation laws of the State of Texas. 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 laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General CONTRACTORS of America, except where incompatible with federal, state or municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, ladders, bridges, gangplanks and other safety devices.

The safety precautions actually taken and their adequacy shall be the sole responsibility of the CONTRACTOR, in his sole discretion as an independent CONTRACTOR. Inclusion of this paragraph in the Agreement, as well as any notice which may be given by the Owner or the ENGINEER as the Owner's representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the CONTRACTOR of his duty and shall not be construed as any assumption of duty to supervise safety precautions by either the CONTRACTOR or any of his subcontractors.

4.23 PROTECTION OF ADJOINING PROPERTY. The CONTRACTOR shall employ proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this Agreement, from any damage or injury by reason of said process of construction; and he shall be liable for any and all claims for such damage on account of his failure to fully protect all adjoining property. **THE CONTRACTOR AGREES TO INDEMNIFY, SAVE AND HOLD THE OWNER AND ENGINEER 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 CONTRACT.**

4.24 PROTECTION AGAINST CLAIMS OF SUBCONTRACTORS, LABORERS, MATERIALMEN AND FURNISHERS OF MACHINERY, EQUIPMENT AND SUPPLIES. **THE CONTRACTOR AGREES THAT HE WILL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ALL CLAIMS GROWING OUT OF THE LAWFUL DEMANDS OF SUBCONTRACTORS, LABORERS, WORKERS, MECHANICS, MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT.** When so desired by the Owner, the CONTRACTOR shall furnish satisfactory evidence that all obligations of the nature hereinabove designated have been paid, discharged or waived.

If the CONTRACTOR fails to do so, then the Owner may, at the option of the Owner, either pay directly any unpaid bills of which the Owner has written notice, or withhold from the

CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the CONTRACTOR shall be resumed in full, in accordance with the terms of this Contract.

Any and all communications between any parties under this paragraph shall be in writing.

4.25 PROTECTION AGAINST ROYALTIES OR PATENTED INVENTION. The CONTRACTOR shall pay all royalties and license fees and shall provide for the use of any design, device, material or process covered by letters patent or copyright, by suitable legal agreement with the patentee or owner thereof. **THE CONTRACTOR SHALL DEFEND ALL SUITS OR CLAIMS FOR INFRINGEMENT OF ANY PATENT OR COPYRIGHT AND SHALL INDEMNIFY, SAVE AND HOLD THE OWNER AND THE ENGINEER HARMLESS FROM ANY LOSS ON ACCOUNT THEREOF, EXCEPT THAT THE OWNER SHALL DEFEND ALL SUCH SUITS AND CLAIMS AND SHALL BE RESPONSIBLE FOR ALL SUCH LOSS WHEN A PARTICULAR DESIGN, DEVICE, MATERIAL OR PROCESS OR THE PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS SPECIFIED OR REQUIRED BY THE OWNER; PROVIDED, HOWEVER, IF CHOICE OF ALTERNATE DESIGN, DEVICE, MATERIAL OR PROCESS IS ALLOWED TO THE CONTRACTOR, THEN THE CONTRACTOR SHALL INDEMNIFY, SAVE AND HOLD THE OWNER HARMLESS FROM ANY LOSS ON ACCOUNT THEREOF.** In addition, if the material or process specified or required by the Owner is an infringement, the CONTRACTOR shall be responsible for such loss unless he promptly advises the Owner of such infringement.

4.26 INDEMNIFICATION. The CONTRACTOR shall be solely responsible for the safety of himself, his employees and all other persons, as well as for the protection of the improvements being erected and the property of himself or any other person, as a result of his operations hereunder. **THE CONTRACTOR AGREES TO INDEMNIFY AND HOLD THE ENGINEER AND THE OWNER HARMLESS FROM ANY CLAIMS OR DEMANDS OF ANY NATURE WHATSOEVER MADE BY ANY EMPLOYEE, EMPLOYEES, AGENTS OR SUBCONTRACTORS OF CONTRACTOR, OR BY ANY UNION, TRADE ASSOCIATION, WORKER'S ASSOCIATION OR OTHER GROUPS, ASSOCIATIONS OR INDIVIDUALS, ALLEGEDLY REPRESENTING EMPLOYEES OF THE CONTRACTOR, IN ANY DISPUTE BETWEEN THE CONTRACTOR AND HIS EMPLOYEES, DIRECTLY OR INDIRECTLY INVOLVING, GROWING OUT OF OR ARISING FROM CLAIMS BY SUCH EMPLOYEES FOR WAGES, SALARY, WORKING CONDITIONS OR ANY OTHER COMPLAINT OR CLAIM WHICH MAY BE MADE.**

THE CONTRACTOR, HIS SURETIES AND INSURANCE CARRIERS SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS THE OWNER AND THE ENGINEER AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS OF ANY CHARACTER WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES, AND SHALL BE REQUIRED TO PAY ANY JUDGMENT THEREFOR, WITH COSTS, WHICH MAY BE OBTAINED AGAINST THE OWNER AND/OR THE ENGINEER OR ANY OF THEIR OFFICERS, AGENTS OR EMPLOYEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF

THE WORK, PROVIDED THAT ANY SUCH DAMAGES, CLAIM, LOSS, DEMAND, SUIT, JUDGMENT, COST OR EXPENSE:

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

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

4.27 LOSSES FROM NATURAL CAUSES. All loss or damage to the CONTRACTOR arising out of the nature of the work to be done or from any unforeseen circumstances in the prosecution of the same, or from the action of the elements, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained and borne by the CONTRACTOR at his own cost and expense.

4.28 GUARANTEE. The CONTRACTOR shall furnish the OWNER with a written guarantee on all workmanship and materials provided by him for the project. The written guarantee shall be made out to the OWNER and in a form satisfactory to the OWNER's legal counsel, guaranteeing all the work under the Contract to be free from faulty material in every particular and free from improper workmanship; and against unusual damage from proper and usual use; and agreeing to replace or to re-execute without cost to the OWNER such work as may be found to be improper or imperfect, and to require replacement or re-execution. This guarantee shall be made to cover a period of one year from the date of acceptance of work under the Contract, as evidenced by the OWNER'S Certificate of Acceptance, of the work. Neither the Certificate of Acceptance, final payment, nor any provision in the Contract Documents shall relieve the CONTRACTOR of the responsibility for neglect or faulty material or workmanship during the period covered by the guarantee. The one year period of any guarantee clauses will not limit the OWNER'S other rights under common law to have defects remedied when discovered after one year.

5. PROSECUTION AND PROGRESS

5.01 TIME AND ORDER OF COMPLETION. It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute his work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time

of prosecution shall be such that the work shall be completed as a whole, in accordance with this Contract, the Plans and Specifications, and within the time of completion designated in the Proposal; provided, also, that when the Owner is having other work done, either by contract or by his own force, the ENGINEER may direct the time and manner of constructing the work done under this Contract, so that conflict will be avoided and the construction of the various works being done for the Owner shall be harmonized.

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

5.02 EXTENSION OF TIME. The CONTRACTOR agrees that he has submitted his Proposal in full recognition of the time required for the completion of this project, taking into consideration the average climatic range and industrial conditions prevailing in this locality, and has considered the liquidated damage provisions as hereinafter set forth and that he shall not be entitled to, nor will he request, an extension of time on this Contract, except when completion of the work has been delayed by any act or neglect of the Owner, the ENGINEER, or any employee of either, by other CONTRACTORS employed by the Owner, by changes ordered in the work, by strikes, lockouts, fires and unusual delays by common carriers, by unavoidable cause or causes beyond the CONTRACTOR's control, or by any cause which the ENGINEER shall decide justifies the delay. The CONTRACTOR shall give the ENGINEER prompt notice, in writing, of the cause of such delay; and within ten (10) days after receipt of a written request for an extension of time shall from the CONTRACTOR, supported by all requested documentation, the ENGINEER shall submit such written request, together with his written recommendation, to the City Council for consideration, and the City Council shall grant an extension of time for completing the work, sufficient to compensate for the delay.

5.03 HINDRANCES AND DELAYS. In executing the Contract Agreement, the CONTRACTOR agrees that in undertaking to complete the work within the time herein fixed, he has taken into consideration and made allowances for all hindrances and delays incident to such work, whether growing out of delays in securing material or workmen or otherwise. No claim shall be made by the CONTRACTOR for damages resulting from hindrances or delays from any cause during the progress of any portion of the work embraced in this Contract, except where the work is stopped by order of the Owner, or the ENGINEER as the Owner's representative for the Owner's convenience, in which event such expense as in the judgment of the ENGINEER is caused by such stoppage of said work shall be paid by the Owner to the CONTRACTOR.

5.04 LIQUIDATED DAMAGES FOR DELAY. It is understood and agreed that time is of the essence in this Contract and that the CONTRACTOR will commence said work on the date specified and will complete said work within the time specified in the Proposal. It is expressly understood and agreed, by and between the CONTRACTOR and the Owner, that the time for the completion of the work described herein is reasonable time for the completion of the same, taking into consideration the average climatic range and conditions and usual industrial conditions prevailing in this locality. The CONTRACTOR further agrees that a breach of this Contract as to completion on time will cause damage to the Owner and that such damages cannot be accurately measured or that ascertainment will be difficult. Therefore, the parties agree that for each and every calendar day the work or any portion thereof shall remain uncompleted after the expiration of the

time limit set in the Contract or as extended by the Owner Council, the CONTRACTOR shall pay, as minimum liquidated damages, and not as a penalty, the amount set out in the proposal.

However, the foregoing agreement as to liquidated damages constitutes only an agreement by the Owner and the CONTRACTOR as to the minimum amount of damages which the Owner will sustain in any event by reason of the CONTRACTOR's failure to complete the work within the specified time. Should the Owner suffer damage over and above the minimum amount specified, by reason of the CONTRACTOR's failure to begin the work when ordered, carry it forward uninterruptedly after beginning, or complete it within the specified time in strict accordance with the Plans and Specifications, the Owner may recover such additional amount.

The Owner shall have the right to deduct and withhold the amount of any and all such damages whether it be the minimum amount stipulated above or otherwise, from any monied owing by it to said CONTRACTOR or the Owner may recover such amount from the CONTRACTOR and the sureties of his bond; all of such remedies shall be cumulative and the Owner shall not be required to elect any one nor be deemed to have made an election by proceeding to enforce any one remedy.

6. MEASUREMENT AND PAYMENT

6.01 DISCREPANCIES AND OMISSIONS. It is agreed that it is the intent of this Contract that all work described in the Proposal, the Plans and Specifications and other contract documents, is to be done for the prices quoted by the CONTRACTOR and that such price shall include all appurtenances necessary to complete the work in accordance with the intent of these contract documents as interpreted by the ENGINEER. If the CONTRACTOR finds any discrepancies or omissions in these Plans, Specifications or contract documents, he should notify the ENGINEER and obtain a clarification before the bids are received, and if no such request is received by the ENGINEER prior to the opening of bids, then it shall be considered that the CONTRACTOR fully understands the work to be included and has provided sufficient sums in his Proposal to complete the work in accordance with these Plans and Specifications. It is further understood that any request for clarification must be submitted no later than seven (7) days prior to the opening of bids.

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

6.03 ESTIMATED QUANTITIES. This Agreement, including the Specifications, Plans and estimate, is intended to show clearly all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this Contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and the materials to be furnished under this Contract may differ somewhat from the estimates and that the items listed or estimated quantities stated shall not give rise to a claim by the CONTRACTOR against the Owner for compensation, unless the work shall have actually been authorized, and performed and material supplied.

Where payment is based on the unit price method, the CONTRACTOR agrees that he will make no claim for damages, anticipated profits or otherwise, on account of any differences which

may be found between the quantities of work actually done and the material actually furnished under this Contract and the estimated quantities contemplated and contained in the Proposal.

6.04 PRICE OF WORK. In consideration of the furnishing of all the necessary labor, equipment and material and the completion of all work by the CONTRACTOR, and upon the completion of all work and the delivery of all materials embraced in this Contract in full conformity with the specifications and stipulations herein contained, the Owner agrees to pay to the CONTRACTOR the prices set forth in the Proposal attached hereto, which is made a part of this Contract, for the material actually used and services actually performed; however, the Owner does not assume any obligation to pay for any services or material not actually authorized and used. The CONTRACTOR hereby agrees to receive such prices as payment in full for furnishing all materials and all labor required for the aforesaid work, and for all expenses incurred by him, and for full performance of the work and the whole thereof in the manner and according to this Agreement, the attached Plans and Specifications and contract documents, and the requirements of the ENGINEER.

6.05 PAYMENTS. No payments made or certificates given shall be considered as conclusive evidence of the performance of the Contract, either in whole or in part, nor shall any certificate or payment be considered as acceptance of defective work. CONTRACTOR shall, at any time requested during the progress of the work, furnish the Owner or the ENGINEER with a verifying certificate showing the CONTRACTOR's total outstanding indebtedness in connection with the work. Before final payment is made, the CONTRACTOR shall satisfy the Owner, by affidavit or otherwise, that there are no outstanding liens against Owner's premises by reason of any work under the Contract. Acceptance by CONTRACTOR of final payment of the contract price shall constitute a waiver of all claims against Owner which have not theretofore been timely filed as provided in this Contract.

6.06 PARTIAL PAYMENTS. On or before the tenth day of each month, the CONTRACTOR shall prepare and submit to the ENGINEER, for approval or modification, an application for partial payment, being a statement showing as completely as practicable, the total value of the work done by the CONTRACTOR up to and including the last day of the preceding month. The ENGINEER shall then review such statement and application for partial payment and the progress of the work made by the CONTRACTOR and, if found to be in order, shall prepare a certificate for partial payment and shall deliver his certification for payment to the Owner and the CONTRACTOR. No payment shall be made for materials on hand, unless specifically provided for in the Special Conditions to this Agreement.

The CONTRACTOR shall then, prior to payment by the Owner, certify and attest to the certification that he is in accord with the certification and agrees to accept the amounts set out therein and the total set out therein for the work and for the prices contained in the certification. If the CONTRACTOR does not agree or desires to protest the ENGINEER's certification, the same shall not be certified by the ENGINEER to the Owner for payment until such dispute has been resolved, and the CONTRACTOR agrees that any claim by the CONTRACTOR for additional compensation, of any nature whatsoever, not contained in the ENGINEER's certification, shall be waived, and further contracts and agrees, upon acceptance of the CONTRACTOR's payment, that this shall constitute full and final payment for work performed by the CONTRACTOR contained in the CONTRACTOR's statement which shall be attached to the ENGINEER's certification.

The OWNER shall then pay the CONTRACTOR, within thirty (30) days of receipt of the ENGINEER's recommendation for payment, the total amount of the ENGINEER's Certificate of

Partial Payment, less ten percent (10%) if the total contract price at time of contract execution is less than four hundred thousand dollars (\$400,000.00) and five percent (5%) if the total contract price at time of execution is four hundred thousand (\$400,000.00) or more. Such amount shall be retained until final payment, and further less all previous payments and all further sums that may be retained by the OWNER under the terms of this Agreement. It is understood, however, that in case the whole work be near to completion, as certified by the ENGINEER, and some unexpected or unusual delay occurs, through no neglect or fault on the part of the CONTRACTOR, the OWNER may, upon written recommendation of the ENGINEER, pay a reasonable and equitable proportion of the retained percentage to the CONTRACTOR, or the CONTRACTOR, at the OWNER's option, may be relieved of the obligation to fully complete the work, and thereupon, the CONTRACTOR shall receive, at the OWNER's option, payment of the balance due him under the Contract, subject only to the conditions set forth under "6.09 FINAL PAYMENT." The OWNER, at its option and in accordance with State law, may reduce retainage to less than ten percent.

6.07 USE OF COMPLETED PORTIONS. The Owner shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding that the time for completing the entire work or such portions may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the contract documents. If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to such extra compensation or extension of time, or both, as may be determined in accordance with the provisions of this Agreement.

The CONTRACTOR shall notify the ENGINEER, by letter executed by a duly qualified officer of CONTRACTOR, that in CONTRACTOR's opinion, the Contract is "completed".

6.08 FINAL COMPLETION AND ACCEPTANCE. Within ten (10) days after the CONTRACTOR has given the ENGINEER written notice that the work has been completed, the ENGINEER and the Owner shall inspect the work; and within said time. When the work is found to be completed in accordance with the contract documents, the ENGINEER shall issue to the Owner and the CONTRACTOR his Certificate of Completion. Thereupon, it shall be the duty of the Owner, within ten (10) days, to issue a Certificate of Acceptance of the work to the CONTRACTOR or to advise the CONTRACTOR in writing of the reason for non-acceptance.

6.09 FINAL PAYMENT. Upon the issuance of the CERTIFICATE of Completion and Owner's Certificate of Acceptance, the ENGINEER shall proceed to make final measurements and prepare a final statement of the value of all work performed and materials furnished under the terms of the Agreement and shall present the same to the CONTRACTOR for acceptance. The CONTRACTOR, if he finds such statement to be in order, including all work upon which a claim for payment may be made, shall note his acceptance thereon; and by accepting the same, the CONTRACTOR agrees to release any and all claims of any nature whatsoever against the Owner or the ENGINEER, growing out of or by reason of the performance of the Contract, the construction of the work, for Extra Work, or for any other reason whatsoever, either growing out of the Contract and the documents attached thereto or otherwise. In addition, the CONTRACTOR shall execute a full and final release in a form provided by the Owner, a copy of which is attached to these contract documents and made a part hereof, which shall be presented to the Owner with the ENGINEER's final statement and any Change Orders or additions or deletions therefrom, duly attested by the CONTRACTOR, requesting payment.

The Owner shall pay to the CONTRACTOR, on or after the 30th day and before the 35th day after the date of the Certificate of Completion, the balance due the CONTRACTOR under the terms of the Agreement, provided the CONTRACTOR has duly executed and returned all documents requiring execution or approval as herein provided, or as may be provided by the Owner, and that he has fully performed his contractual obligations under the terms of this Contract. 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 by law or by the contract documents.

6.10 CORRECTION OF WORK BEFORE FINAL PAYMENT. The CONTRACTOR shall promptly remove from Owner's premises all materials deemed unsuitable by the ENGINEER on account of failure to conform to the Contract, whether actually incorporated in the work or not, and CONTRACTOR shall, at his own expense, promptly replace such condemned materials with other materials conforming to the requirements of the Contract. The CONTRACTOR shall also bear the expense of restoring all work of other CONTRACTORS damaged by any such removal or replacement. If CONTRACTOR does not remove and replace any such condemned work within a reasonable time after receipt of a written notice from the Owner or the ENGINEER, the Owner may remove and replace it at CONTRACTOR's expense.

6.11 CORRECTION OF WORK AFTER FINAL PAYMENT. Neither the final payment nor certificate nor any provision in this Contract shall relieve the CONTRACTOR of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of substantial completion. The Owner or the ENGINEER shall give notice of observed defects with reasonable promptness.

6.12 PAYMENTS WITHHELD. The Owner may, on account of subsequently discovered evidence, withhold or nullify the whole or part of any certificate or withhold partial or full payment to such extent as may be necessary to protect himself from loss on account of:

- (1) Defective work not remedied;
- (2) Claims filed or reasonable evidence indicating probable filing of claims;
- (3) Failure of the CONTRACTOR to make payments properly to subcontractors or for material or labor;
- (4) Damage to another CONTRACTOR;
- (5) Reasonable doubt that the work can be completed for the unpaid balance of the contract amount;
- (6) Reasonable indication that the work will not be completed within the contract time.
- (7) Failure on the part of the CONTRACTOR to execute any and all documents, releases or other documents presented to the CONTRACTOR for execution, as provided for herein or otherwise.

When the above grounds are removed or the CONTRACTOR provides a Surety Bond satisfactory to the Owner, which will protect the Owner in the amount withheld, payment may be made for the amounts withheld because of them. However, the Owner shall have the discretion of withholding or making payment in the event any of items (1) through (7) shall be applicable to the work or progress thereof.

6.13 DELAYED PAYMENTS. Should the Owner fail to make payment to the CONTRACTOR of the sum named in any partial or final statement, when payment is due, after the same has been recommended for payment by both the ENGINEER and the CONTRACTOR, and the CONTRACTOR has met all other conditions stipulated herein or in the contract documents entitling the CONTRACTOR to payment, then the Owner shall pay to the CONTRACTOR, in addition to the sum shown as due by such statement, interest thereon at the rate of six percent (6%) per annum from date due, as provided under “6.06 PARTIAL PAYMENTS” and “6.09 FINAL PAYMENT”, until fully paid, which shall fully liquidate any injury to the CONTRACTOR growing out of such delay in payment; but the right is expressly reserved to the CONTRACTOR, in the event payments be not promptly made as provided under “6.06 PARTIAL PAYMENTS”, to at any time thereafter treat the Contract as abandoned by the Owner and to recover compensation as provided under “8. ABANDONMENT OF CONTRACT”, unless such payments are withheld in accordance with the provisions of “6.12 PAYMENTS WITHHELD”.

7. EXTRA WORK AND CLAIMS

7.01 CHANGE ORDERS. Without invalidating this Agreement, the Owner may, at any time or from time to time, as the need arises, order changes not within the Scope of Work; such changes will be authorized by Change Order to be prepared by the ENGINEER for execution by the Owner and the CONTRACTOR. The Change Order shall set forth the basis for any change in original contract amount, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to approve a Change Order which has been prepared by the ENGINEER, the ENGINEER may instruct the CONTRACTOR, in writing, to proceed with the work as set forth in the Change Order, and the CONTRACTOR may make a claim against the Owner for Extra Work involved therein. However, the CONTRACTOR shall only be entitled to payment upon the execution of the final certification and release in a form as provided for herein, and CONTRACTOR shall approve such certification before the Owner shall be obligated to make payment.

7.02 MINOR CHANGES. The ENGINEER may authorize minor changes in the work not inconsistent with the overall intent of the contract documents and not involving an increase in contract price. If the CONTRACTOR believes that any minor changes or alteration authorized by the ENGINEER involves Extra Work or entitles him to an increase in the contract price, the CONTRACTOR shall make written request to the ENGINEER for a written Field Order.

In such case, the CONTRACTOR, by copy of his communication to the ENGINEER or otherwise in writing, shall advise the Owner of his request to the ENGINEER for a written Field Order and that the work involved may result in an increase in the contract price.

Any request by the CONTRACTOR for a change in contract price shall be made prior to beginning the work covered by the proposed change.

7.03 EXTRA WORK. It is agreed that the CONTRACTOR shall perform all Extra Work under the direction of the ENGINEER when presented with a written work order signed by the ENGINEER, subject, however, to the right of the CONTRACTOR to require written confirmation of

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

Method (A) -- By agreed unit prices; or

Method (B) -- By agreed lump sum; or

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

In the event said Extra Work 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 workers, 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 transportation charges necessarily incurred together with all power, fuel, lubricants, water and similar operating expenses, plus 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 Worker's Compensation, and all other insurance as may be required by law or ordinance, or directed by the Owner, or by them agreed to when such costs are actually increased due to the Extra Work. "Actual field cost" may be decreased by any amount which is solely attributable to delays or additional costs caused by the CONTRACTOR, such as, but not limited to, CONTRACTOR's failure to pursue work continuously.

The ENGINEER may direct the form in which accounts of the "actual field cost" shall be kept and the records of these accounts shall be made available to the ENGINEER. The ENGINEER or Owner may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise these matters shall be determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using one hundred percent (100%), unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General CONTRACTORS of America where practicable, and 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 to the CONTRACTOR, shall cover and compensate him for his profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the "actual field cost" as herein defined, save that where the CONTRACTOR's camp or field office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate the same shall be included in the "actual field cost."

No claim for Extra Work of any kind will be allowed unless ordered in writing by the ENGINEER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which he should receive compensation or an adjustment in the construction time, he shall make written request to the ENGINEER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the ENGINEER insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall

keep an accurate account of the “actual field cost” thereof, as provided under Method (C). The CONTRACTOR shall then have the right to submit his claim directly to the Owner by proper certification and attestation, on forms provided by the Owner. If the Owner shall fail to pay or guarantee to pay said amount claimed within thirty (30) days of the date of submission, the CONTRACTOR shall have the right to file suit in the District Court of the County designated on the Agreement Form, for declaratory judgment or other relief, to determine his rights to such claim, and if he shall fail to file suit within sixty (60) days after the date of presentment to the Owner, the CONTRACTOR shall lose and forfeit his right to make such claim for Extra Work at any later date, and all claims held by the CONTRACTOR shall be deemed forfeited and forever barred if the CONTRACTOR shall accept final payment without having first filed suit in the District Court.

7.04 TIME OF FILING CLAIMS. It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the ENGINEER within thirty (30) days after the ENGINEER has given any directions, order or instruction to which the CONTRACTOR desires to take exception. The ENGINEER shall reply within thirty (30) days to such written exceptions by the CONTRACTOR and render his final decision in writing. In case the CONTRACTOR should desire to appeal from the ENGINEER's decision, the CONTRACTOR may request a meeting between representatives of the Owner and the CONTRACTOR for the purposes of appealing the ENGINEER's decision directly to the Owner, such meeting to occur within ten (10) days after the date of the delivery to the CONTRACTOR of the ENGINEER's final decision. If the CONTRACTOR shall still be aggrieved after a meeting with the Owner and/or his representative, the CONTRACTOR shall have sixty (60) days after the date of the delivery to the CONTRACTOR of the ENGINEER's final decision, to appeal the same to the District Court of the County designated on the Agreement Form, by filing suit for declaratory judgment or other appropriate relief. In the event the CONTRACTOR shall fail, for any reason, to file suit, and shall accept final payment for all work completed, the Owner shall be released of any and all liability, and the action by the CONTRACTOR in accepting final payment shall constitute a final bar and satisfaction of all claims held by the CONTRACTOR against the Owner.

8. ABANDONMENT OF CONTRACT

8.01 ABANDONMENT BY CONTRACTOR. In case the CONTRACTOR should abandon and fail or refuse to resume work within ten (10) days after written notification from the Owner or the ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER when such orders are consistent with the contract documents, then and in that case, where Performance and Payment Bonds exist, the sureties on these bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of abandonment, the CONTRACTOR shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same, together with any materials and equipment under contract for the work, may be held for use on the work by the Owner or the surety on the Performance Bond, or another CONTRACTOR in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefor, 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 or in case the surety should fail to commence compliance with the notice for completion hereinabove provided for within ten (10) days after the service of such notice, then the Owner may provide for completion of the work in either of the following elective manners:

- (a) The Owner may thereupon employ such force of workers and use such machinery, equipment, tools, and supplies as the Owner may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the Owner out of such monies as may be due or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this Contract if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this Contract if the same had been completed by such CONTRACTOR, then the CONTRACTOR and/or his surety shall pay the amount of such excess to the Owner; or
- (b) The Owner, under sealed bids, under the times and procedures provided for by law, may let the contract for completion of the work under substantially the same terms and conditions which are provided in this Contract. In case of any increase in cost to the Owner under the new contract, as compared to what would have been the cost under this Contract, such increase shall be charged to the CONTRACTOR, and the surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this Contract, the CONTRACTOR and/or his surety shall be credited therewith.

When the work shall have been completed, the CONTRACTOR and his surety shall be so notified and Certificates of Completion and Acceptance, as hereinabove provided, shall be issued. A complete itemized statement of the contract accounts, certified by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and his surety, whereupon the CONTRACTOR and/or his surety shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion. The Owner, prior to incurring an obligation to make payment hereunder, shall have such statement of completion attested to by the CONTRACTOR as accurate, and upon payment of the sum stated therein, the Owner shall be entitled to full and final release of any claims or demands by the CONTRACTOR.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the Owner had the work been completed by the CONTRACTOR under the terms of this Contract, or when the CONTRACTOR and/or his surety shall pay the balance shown to be due by them to the Owner, then all machinery, equipment, tools or supplies left on the site of the work shall be turned over to the CONTRACTOR and/or his surety. Should the cost to complete the work exceed the contract price, and the CONTRACTOR and/or his surety fail to pay the amount due the Owner within the time designated above, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and his surety at the respective addresses designated in the Contract, provided, however, that actual written notice given in any manner will satisfy this condition. After mailing or other giving of such

notice, such property shall be held at the risk of the CONTRACTOR and his surety, subject only to the duty of the Owner to exercise ordinary care to protect such property. After fifteen (15) days from the date of such notice, the Owner may sell such property, equipment, tools, materials or supplies, and apply the net sum derived from such sale to the credit of the CONTRACTOR and his surety. Such sale may be made at either public or private sale, with or without notice, as the Owner may elect. The Owner shall release any machinery, equipment, tools, materials or supplies, which remain on the work, and belong to persons other than the CONTRACTOR or his surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and his surety.

8.02 ABANDONMENT BY OWNER. In case the Owner shall fail to comply with the terms of this Contract and should fail or refuse to comply with said terms within ten (10) days after written notification by the CONTRACTOR, then the CONTRACTOR may suspend or wholly abandon the work, and may remove therefrom all machinery, tools and equipment, and all materials on the site of the work that have not been included in payments to the CONTRACTOR and have not been wrought into the work. And thereupon, the ENGINEER shall make an estimate of the total amount earned by the CONTRACTOR, which estimate shall include the value of all work actually completed by said CONTRACTOR (at the prices stated in the attached Proposal where unit prices are used), the value of all partially completed work at a fair and equitable price, and the amount of all Extra Work performed at the prices agreed upon, or provided for by the terms of this Contract, and a reasonable sum to cover the cost of any provisions made by the CONTRACTOR to carry the whole work to completion and which cannot be utilized. The ENGINEER shall then make a final statement of the balance due the CONTRACTOR by deducting from the above estimate all previous payments by the Owner and all other sums that may be retained by the Owner under the terms of this Agreement, and shall present the same to the CONTRACTOR for the CONTRACTOR's approval; and upon the CONTRACTOR's approving the same as being true, correct and accurate, and upon payment of said sum, the CONTRACTOR shall release the Owner of any and all liability growing out of or by reason of said Contract, and then the same shall be presented to the Owner, who shall pay to the CONTRACTOR, on or before thirty (30) days after the date of notification by the CONTRACTOR of the balance shown by said final statement as due the CONTRACTOR under the terms of this Agreement.

SPECIAL CONDITIONS

1. SPECIAL CONDITIONS are inserted to describe additional requirements applicable to this Contract. In the event of conflict between requirements as set forth the SPECIAL CONDITIONS and the General Conditions of Agreement or Technical Specification items, the requirements as set forth in the SPECIAL CONDITIONS shall govern.
2. Prices in the Contract Documents include all compensation for full completion of all work items in place, and include providing all labor, materials, tools, equipment, services, supplies, incidentals, and all necessary operations.
3. Work not specifically set forth in the Bid Proposal as pay items shall be considered subsidiary obligations of Contractor and costs shall be included in the item bid prices named in the unit Bid Proposal.
4. Permits. Contractor is responsible to obtain all necessary permits to accomplish the Work described within these documents.

It is the Contractor's responsibility to coordinate with the Owner to determine all requirements and to meet such requirements.

5. Warranty - Neither the final payment nor certificate nor any provision in this Contract shall relieve the Contractor of responsibility for faulty materials or workmanship, and he shall remedy any defects due thereto and pay for any damage to other work resulting therefrom, which shall appear within a period of one (1) year from the date of final acceptance. The final acceptance date is established when the final walk through of the project has occurred and the punch list items identified from the final walk through have been completed by the Contractor. Certificate of acceptance will be issued upon verification by the Engineer of the completion of punch list items from "final walk through". The Warranty period will commence from the date of final acceptance. The Contractor is made aware that the warranty period will start from the date of final acceptance for the entire project regardless of earlier completion times of the individual project areas.
6. Guarantees - Guarantee work, including equipment installed, to be free from defects due to faulty workmanship or materials for period of one year from date of issue of Certificate of Acceptance. Upon notice from Owner, repair defects in all construction which develop during specified period at no cost to Owner. Neither final acceptance nor final payment nor any provision in Contract Documents relieves Contractor of above guarantee. Notice of observed defects will be given with reasonable promptness. Failure to repair or replace defect upon notice entitles Owner to repair or replace same and recover reasonable cost thereof from Contractor and/or his Surety.
7. Taxes and Insurance. In addition to the general obligations and responsibilities for insurance and protection set out in the General Conditions of Agreement of these Specifications, the Contractor shall comply with the following provisions:

City of League City
Emergency Repair of Storm Sewer Outfall Project

- A. The Contractor acknowledges that he has qualified and will make all payments under the terms of the Unemployment Compensation Law of the State in which the work is performed.
 - B. The Contractor, and all subcontractors employed on the work, shall carry insurance of minimum limits as stated in the General Conditions of Agreement.
 - C. The Contractor, before starting work for the Owner, must furnish to the Owner Certificates of Insurance or other acceptable evidences from a reputable insurance company or companies (such companies to be acceptable to the Owner) licensed to write insurance in the State of Texas, showing that the Contractor is covered by the insurance as stated in the General Conditions of Agreement.
 - D. The certificates of insurance furnished to the Owner shall contain a provision that coverage under such policies shall not be canceled or materially changed until at least 30 days prior written notice have been given to the Owner.
 - E. In the event the policy or policies are not renewed, 30 days prior written notice shall be given to the Owner.
 - F. All accidents or injuries to Contractor's employees working on the job site must be immediately reported to the Engineer (Professional).
 - G. The certificates to the above insurance policies shall be filed with the City Secretary within ten (10) days after notification of award of contract.
 - H. The Contractor shall also comply with all Federal, State, and Local laws and ordinances relating to Social Security, Unemployment Insurance, Pensions, etc., and shall pay all taxes, levies or assessments for which he may be liable.
8. Wage Rates and Subcontractors. The current wage rates as shown on the attached sheets
- A. (Attachment 3 to General Conditions) shall apply. It's mandatory that the Contractor and any subcontractor under him pay not less than the said specified rates to all laborers, workmen and mechanics employed by him in the execution of this contract, as specified in the Tex. Rev. Civ. Stat. Ann. art. 5159a.
 - B. Contractor shall use due diligence in securing local subcontractors, vendors, and labor/craftsmen in performance of this agreement. Contractor shall submit to the Owner documentation of efforts in this regard prior to award of Contract.
 - C. The Contractor and each subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed by him, in connection with this contract, and showing also the actual per diem wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the City of League City, its officers and agents.

- D. The Contractor shall pay, as a penalty, sixty dollars (\$60.00) to the Owner for each calendar day, or portion thereof, for each laborer, workman or mechanic, who is paid less than the stipulated rate for any work done under this Contract.
 - E. The Contractor shall submit to the Owner documentation of compliance with the above items, on a periodic as requested basis.
9. Progress Schedule – The Contractor shall submit, in acceptable form, anticipated progress schedule covering work to be performed at the pre-construction conference. Schedule shall be updated periodically to reflect changes and must be submitted with the monthly pay estimate.
10. Use of Premises. The Contractor shall be required to restrict his efforts to the City's property and to the existing easements secured by the City. The Contractor, at his option and expense, may secure additional working easements from adjacent property owners, if desired.
- A. If the Contractor utilizes any adjacent property for construction or storage, the Contractor will be required to submit an agreement letter from the property owner to the City for concurrence and shall also submit a release letter from property owners stating that the property has been satisfactorily restored. The release will be required prior to contract closeout.
 - B. If the Contractor utilizes or damages any property outside of the public right of way, the Contractor shall repair and restore the property to equal to or better than prior to construction. It is the Contractor's responsibility to make the repair to the satisfaction of the property owner. The Contractor is required to provide a release letter from the property owner after the repairs have been completed.
 - C. The project site(s) is/are located on an operating City street that services commercial and residential properties; therefore, public safety is of paramount importance.
 - D. The Contractor shall cover or enclose all open excavations, trenches, bore pits and other hazardous areas at all times when construction is not actually in progress.
 - E. Contractor shall promptly remedy any hazardous conditions existing on the project site, whether or not he has been directed to do so by the Engineer/Professional.
11. Record Drawings - Upon completion of the project, the Contractor shall furnish Owner with two sets of direct prints, marked with red pencil, to show as-built dimensions and locations of all work constructed. As a minimum, the final as-built drawings shall include the following:
- 1. Horizontal and vertical locations of work.
 - 2. Changes in equipment and dimensions due to substitutions.
 - 3. "Nameplate" data on all installed equipment.
 - 4. Deletions, additions, and changes to scope of work.
 - 5. Any other changes made.

Record drawings are to be submitted with Contractor's Notice of Completion and are a condition of the Contractor's Notice of Completion.

12. Preservation of Trees and Shrubs. Trees and shrubs within the right-of-way shall not be removed or disturbed unless stated otherwise on the plans. Unless indicated in the Bid Proposal, any work required to provide tree protection, maintenance and evaluation will be considered incidental to the various pay items and no separate payment for this work will be made. Where tree roots must be cut, follow the repair method described in the "Technical Specifications". The contractor must utilize the services of a professional Arborist when such work is required.
13. Any areas of grass which are disturbed or dug up during the construction shall be replaced with St. Augustine sod, or, upon permission of the Engineer/Professional, grass which matches the grass removed, or as stated on plans.
14. When construction occurs in City right-of-ways, alleys and easements on residential yard areas, care shall be taken to minimize construction damage to yard areas. Contractor shall return all areas to a condition equal or better than prior to construction.
15. The Contractor shall be aware that utilities and pipelines (including but not limited to telephone, gas, petrochemical or petroleum product lines, cable, and electric) are present in the alleys, easements, and in the right-of-way. The potential of encountering these lines during excavation is very high. The Contractor shall coordinate with all the pertinent utility companies and schedule his work in such a manner that delays and interruptions of service do not occur. The Contractor will provide adequate protection to the utilities and pipelines as required or directed by the pertinent utility company's and include costs in the related bid items to work around the pertinent utilities and to complete the work.
16. The Contractor shall be aware that the location and depth of the existing utilities shown on the plans is based on information obtained from utility maps and information provided by others and has not been field verified. There is a potential for additional tie-ins to the existing utility that are not shown on the plans. The possibility of encasement (steel pipe, concrete pipe, stabilized sand, concrete) of the utility, and presence of manholes or structures not shown on plans exist. The potential for change in alignment due to additional manholes located in the field or potential for installing additional manholes on the existing main above and beyond those shown on plans exist. The Contractor shall coordinate verify all the above prior to commencing construction. The information provided will in no way relieve the Contractor of his responsibility of verification prior to construction.
17. Subsurface Utility Exploration - It is not represented that PLANS show all existing storm sewer, sanitary sewer, water, gas, telephone, petroleum or petroleum related pipelines and electrical facilities and other underground structures. It is the Contractor's responsibility to determine the depth, location and their existence which may conflict with the proposed construction by referring to available records, consulting appropriate municipal departments and utility owners and by making necessary exploration and excavations. All investigative work will be done and all repairs required after completion of investigative work shall be performed by the Contractor at no additional cost to the project.

- A. Whenever existing utilities, not indicated on PLANS, present obstructions to grade and alignment of pipe, immediately notify Professional and Owner, who without delay, will determine whenever existing utilities are to be relocated, or grade and alignment of proposed pipe changed. When necessary to move services, poles, guy wires, pipelines, or other obstructions, the Contractor shall contact and coordinate and make arrangements with owners of said utilities. Owner will not be liable for damages on account of delays due to changes or adjustments made by owners of privately owned utilities and faulty workmanship by owners of privately owned utilities which hinder progress of work regardless of work authorized by Owner or other entities.
 - B. It is the Contractor's responsibility to install the proposed water line and maintain proper clearances with all utilities and meet the regulatory requirements. Any damage to existing sprinklers or sanitary sewer service lines shall be repaired to Owner's satisfaction at no additional cost to the project.
18. In the event a utility (shown or not shown on plan drawings) including but not limited to gas, electric, telephone, cable, petroleum or petroleum related pipelines is exposed due to excavation and is in conflict, the appropriate company shall be contacted by the Contractor. The Contractor shall make a concerted effort to the Professional's satisfaction to identify the utility (if unknown) and avoid any conflict with the utility. The Contractor shall provide all the necessary documentation for the efforts expended by the contractor in locating the utility. The documentation shall be either telephone conversation memos, letters, meetings on site and other coordination efforts performed to identify the utility or pipeline. In the event of a conflict with the utility, and the Professional concurs that the Contractor had made a concerted effort to avoid the conflict, and in spite of his effort, the conflict cannot be avoided without the utility being relocated, the Owner will assist in coordinating the relocation efforts of the utility with the pertinent company. (The Contractor is still responsible for coordinating efforts with the utility or the pipeline company). The Contractor during the period the utility is being relocated, will move his crew(s) to other areas at his own expense. The Contractor will not be paid any compensation for delays or downtime resulting from the coordination and relocation efforts performed by the Contractor or the utility owner due to the utility conflict. The Contractor may request additional time if the relocation effort hinders his construction effort. No additional payment will be approved. If the Contractor chooses to assist the utility or pipeline company in the relocation effort, he shall be doing so at his own risk. The Owner will not be responsible for costs incurred by the Contractor from providing such assistance to the utility or pipeline companies.
19. The Contractor shall accomplish the proposed construction by hand excavation while working in close proximity to utilities, structures, landscaping, trees, shrubs, swimming pools, etc. and whenever necessary or as directed by the project representative. Any additional costs associated with utilizing hand excavation shall not be paid for separately and shall be included in the unit price bid for the related item.
20. The Contractor is made aware and shall make provisions in his unit price bid to allow for changes in alignment (vertical and horizontal) of the proposed water main during

construction to avoid conflicts, field conditions, and to expedite construction. The Contractor is made aware that the proposed water main may be required to be installed at a greater depth than originally anticipated to avoid conflicts and to maintain clearances with other utilities. No additional payment shall be made for any increased installation efforts expended by the Contractor. The Owner will not be responsible for any claims for additional costs resulting from increased level of effort resulting from the change in alignment. Any coordination or verification of existing utilities (including but not limited to gas, electric, water, sewer, petrochemical pipeline) resulting from the realignment shall not be paid for separately and shall be incidental to project costs. In the event the Contractor desires additional time due to the conflict, the Contractor shall submit documentation supporting such request to the Owner as per the project specifications. The Owner will review and evaluate such requests on a case by case basis.

21. Utility Services for Construction - Water necessary for construction will be available at no additional cost to Contractor. Contractor shall obtain a fire hydrant water meter from the Owner and shall monitor all water usage as metered. The Contractor may be required to draw water at specific locations as directed by the Owner. Contractor shall not use resident's water.
22. Interruption of Utility Services – Contractor shall not operate valves or other controls on existing systems. Exercise care in performing work so as not to interrupt service. Locate and uncover existing utilities ahead of heavy excavation equipment. At house connections, either lift trenching machine over lines or cut and reconnect with minimum interruption of service. In the event there is a need for interruption of water service, the Contractor shall contact the City in writing so that the City forces can operate the appropriate valves. The Contractor shall provide a minimum of 72 hours notice to property owners whose service will be interrupted.
23. Resident and Property Owner Notification. Once the work begins it shall be constructed and completed in the shortest time possible to minimize inconvenience to property owners. Contractor shall assure that all affected property owners are notified between 72 hours and 2 weeks before work begins on their street/alley/easement. The Contractor shall provide property owners the minimum following information; work to be performed, starting and ending dates, and name and number of City official to be contacted for questions. Written notices shall be approved by Engineer prior to distribution.
24. Driveway Disturbance. Residents and property owners shall be notified, by the Contractor, between 72 hours and 2 weeks in advance of disturbance of driveways. Notice to property owners shall follow the procedure as stated in the previous item. Driveways that are open cut shall be reconstructed as soon as possible to minimize inconvenience to the property owners. The materials used for the replacement of the driveways shall be as shown on the plans and in all cases shall be equal to or better than the existing material. In the event an excavation at a driveway must be left open over night, the excavation shall be covered and temporary access to the property shall be provided. Access shall be maintained to adjacent property at all times. Anchored steel sheeting, bridges, temporary driveway or other substantial structure shall be used to provide temporary access to the property.

25. All traffic control devices, placement and activities shall be as per the latest version of the Texas Manual on Uniform Traffic Control Devices (TXMUTCD). If there is any conflict between the TXMUTCD and traffic control requirements with the Contract Documents, the Contractor shall notify the Engineer immediately.
26. Traffic During Construction. When construction begins on a street, the Contractor shall maintain traffic on the streets at all times. Contractor shall also make necessary provisions to allow ambulance, police, fire and other emergency vehicles access to the street.

During construction, the Contractor shall allow resident traffic access to the street with proper guidance, direction, flagmen and traffic control and only at such times that damage will not occur to the new construction or to the vehicles.

27. Closing Streets to Traffic. The Contractor shall maintain traffic on the project streets throughout construction. In the event a Contractor must close a street to all traffic, he shall obtain prior permission from the City Engineering Department and he shall provide a minimum of 72 hours notice in writing to the following: the Professional, City's Engineering Department, City's Fire Department, and City's Police Department.
- A. The Contractor shall schedule and conduct his operations in the intersections as rapidly as possible to minimize the length of time the intersections will be closed to traffic.
 - B. Whenever a portion of a street is closed to traffic, the Contractor shall verify that alternate access is available for residents and property owners on that street or for residents and property owners desiring to access crossing streets. Appropriate detour signage shall be provided to clearly indicate detours, as per the Texas Manual on Uniform Traffic Control Devices.
 - C. Contractor shall maintain cross street traffic at other intersecting streets at appropriate times during the construction to facilitate local access as approved and coordinated with the Owner.
 - D. When the Contractor must close a roadway, 72-hour advance notice must be given to the City and the Engineer. All materials incorporated into the work pertaining to the road closure, must be on the jobsite 24-hours in advance of the road closure for inspection. All barricading and construction signage shall be in accordance with the Texas Manual on Uniform Traffic Control Devices for Streets and Highways.
 - E. The Contractor shall provide the Engineer and Owner for authorization a schedule and plan of anticipated road blockages, alternative access and detours prior to implementing said schedule and plan.
28. Warning Signs and Barricades. When any street or any section of a street is closed, the Contractor shall furnish and maintain adequate barricades, warning and directing signs, red flags and lights at the end of each street and at all intersections along the street within the limits of the work. All expenses incurred for the above requirements shall be borne by the

Contractor. All warning signs and barricades shall be in conformance with the Texas Manual of Uniform Traffic Control Devices latest edition.

29. Work to protect items to remain by installation of temporary construction, including posting of warning signs, placement of protective fencing, barriers, barricades and covers, and restoration of damaged items to remain, will be considered incidental to the various pay items and no separate payment for this work will be made.
30. Excavated Material and Storage of Equipment and Materials. No equipment, material or excavated material shall be stored or deposited on streets, lawns, driveways, sidewalks, gardening or shrubbery.
31. Work necessary to haul materials from original positions to points of disposition, including excavation of earth materials and utilization in construction or other disposition, will be considered incidental to the various pay items and no separate payment for this work will be made.
32. Construction materials storage facility site shall comply with applicable City of League City requirements and meet the following minimum requirements:
 - A. Provide storage facility of neat and reasonable uniform appearance, structurally adequate for required purpose.
 - B. Maintain during entire construction period.
 - C. Prior to start of work, install enclosure fence with locked entrance gate.
 - D. Provide an all-weather surface with adequate drainage to City facilities. Do not drain onto adjacent property.
 - E. Clean mud and debris from City streets on a daily basis or more often as required. Construction operations may be temporarily suspended if the storage facility is not properly maintained.
33. Barricading Excavation Areas. All excavation areas shall be barricaded at all times to prevent motorists from inadvertently driving into bore pits, open cuts, and trenches. All excavation must also be cordoned off with 4-foot high orange polyethylene fence with mesh size 2.5" by 0.80", Tenax Beacon or approved equal, installed as per manufacturer's recommendations and acceptable to the City of League City. The fence shall be supported with enough intermediate support to avoid excessive sagging. Adequate barricades with flashing yellow lights shall also be provided to protect pedestrian traffic and vehicular traffic.
 - A. No excavations shall be left open overnight.
 - B. All excavations which cannot be back filled overnight for the installation of manholes, storm and sanitary sewers, and utilities shall be covered with anchored steel sheeting, in paved areas, and 3/4" plywood, wood planking or some other material approved by the

City in non-paved areas. The steel sheeting shall be of sufficient thickness to support H-20 loading, truck or lane that produces maximum stress. The excavation area must be well protected with traffic barricades equipped with flashing yellow lights.

- C. It is the Contractor's responsibility to insure the safety of the public, himself, his employees and all other persons. Provisions listed here are minimum measures and in no way relieves the Contractor of his responsibility or changes or alters other requirements within these contract documents.
 - D. The Contractor is hereby made aware that the work is being conducted in an area consisting of a high amount of pedestrian and vehicular traffic. The possibility of vandalism to his barricades, sheeting, tape, other protective devices and equipment does exist. The Contractor is responsible for maintaining all traffic barricades, sheeting, tape and other protective devices during construction hours and non-construction hours such as weekends, holidays, nights and inclement weather periods. Upon notification of the need for maintenance of the barricaded areas, either by the Contractor's own personnel, the City or its representatives, the Contractor shall promptly take the required corrective measures.
34. Replacement of Damage. If any damage is done to existing asphalt or concrete roads or appurtenances, by equipment, tires, metal tracks or other construction practices, damage shall be saw cut, removed and replaced with materials equal to or superior to the existing material. Damage shall include but not limited to scrapes and tread marks. Repair of damaged areas will be at the Contractor's expense.
35. Damage to pavement, curbs, driveways, sidewalks or any other structure caused by the Contractor during construction shall be repaired at the Contractor's expense.
36. Construction Sequence. It is important to the Owner that this project be accomplished in the most expedient manner possible.
37. The Contractor shall schedule his work such that each section will be substantially complete prior to moving his construction operation to another section. More than one section can be under construction at one time, only if each section has continuous, active, and uninterrupted construction operation and approved by the City.
38. The nature of this project is such that there are different sections along the project alignment where construction may occur. The Contractor shall not leave one construction section to begin work on another site unless:
- A. The work on the section, in the Owner's opinion, is complete to the point where the Contractor can move to the next section.
 - B. The Contractor will maintain an active on-going construction effort on each section to a completion point which the Owner feels is adequate; and the Owner concurs that an active on-going construction effort is being maintained.

- C. The Contractor has adequate forces to work multiple sections to the Owner's satisfaction; and the Owner concurs with the Contractor that adequate forces are available.
- D. The Contractor has obtained concurrence from the Owner that work can begin on another section.

It is the Owner's desire not to have multiple partially completed sections on which minimal work is being performed. It is the Owner's desire not to have multiple sections on which cleanup is remaining to be performed.

It is the Owner's desire that each section be completed to the point where the installation is complete, testing is complete, cleanup is complete and grass or appropriate surface material has been installed prior to the Contractor moving to another section. If the Contractor desires to work multiple sections along the project alignment at any one time, then he shall provide adequate manpower on each section to maintain a continuous, active, on-going work effort on each section and obtain prior approval from Owner.

- 39. Other Contracts - Other construction may be underway concurrently in this area. Afford utility companies and other Contractors reasonable opportunity for introduction and storage of their materials and execution of their work. All work under this Contract must be properly connected and coordinated with that constructed by others. The City is not responsible or liable for any claims resulting from delays by other Contractors or utility companies in the area regardless of the entity authorizing such work and any faulty workmanship resulting from such work performed.
- 40. Alternate Designs - If alternate design features are proposed for convenience of Contractor, submit design calculations and detail drawings covering proposed changes and related modifications of Contract PLANS to Professional for review. Make drawings same size as Contract PLANS and of comparable quality. Make payment of charges resulting from modifications, including engineering charges for checking such designs.
- 41. Cleanup. Remove from site of work, and from public and private property, temporary structures, rubbish, and waste materials including excess excavated materials. Dispose of surplus earth as directed or as specified. Complete cleanup not greater than 800 feet behind operation. The operation may be suspended by the Owner's Representative temporarily if complete cleanup is further behind than 800 feet. Contractor is to be aware that the cleanup procedure will be strictly enforced by the Owner. There will be no extra pay for complying to said item.

Complete cleanup of a site shall be mandatory before the Contractor can begin work on another site. Multiple sites can be worked on simultaneously, however, complete cleanup must be conducted before a work crew leaves one site to work on another site.
- 42. Some manholes or valve structures may have been paved over or otherwise covered up, may not be existing, or may not be correctly shown in the plans. The cost to field locate and open the manhole, valve, or other structures shall be incidental to the work specified.

If requested by the Contractor, the Owner will make a concerted effort to provide any available layout maps of the existing utilities, but the Owner does not guarantee the accuracy of such information. The information provided will in no way relieve the Contractor of his responsibility of verification prior to construction.

43. Incidental Construction Items. All items called out on the construction drawings or within the specifications which are not itemized in the bid proposal section of these documents shall be considered incidental to the cost of the project.
44. Any increased width of pavement, driveway, curb reconstruction or sidewalk repairs from that shown on the plans required due to over excavation, undermining (due to improper shoring) or for Contractor convenience shall be incidental to the cost of the item requiring excavation.
45. All testing equipment shall be calibrated at maximum twelve month intervals and after any repairs or adjustments by devices of accuracy traceable to either National Bureau of Standards or accepted values of natural physical constants. The Contractor shall provide a written certification to the Engineer/Professional on the calibration.
46. Repairs to curbs, driveways, roadways and sidewalks shall be constructed with materials consistent with the existing and adjacent material and according to the detail shown in the plans as a minimum. All curbs, sidewalks, roadways and driveways to be removed and replaced shall be saw cut (a straight, even, clean cut) at the point of removal so that an even joint results between existing pavement and new pavement. Jointing material shall be placed between the new and existing material.
47. The Contractor is made aware of rainfall events that may impact the construction efforts regardless of where the rainfall occurs, whether upstream or downstream of the project. The Contractor's construction operation shall not impede the drainage flow and shall maintain drainage at all times. The Contractor is responsible for the installation and removal of temporary pipes, pumps and/or structures or any other means as necessary to maintain drainage during construction operations. The Contractor shall take all necessary measures to provide a safe condition during the construction operations to protect his workers, machinery and property. No separate payment shall be made for maintaining drainage.
48. The Contractor is responsible for the verification of all key design elevations prior to commencing construction. Yard swales and pipe drains disturbed during construction shall be repaired or replaced with positive drainage towards the street or other existing drainage structure or swale at no additional cost to the Owner.
49. Tack Coat - During the time period from April 15th to October 16th, of each year, asphaltic material used for tack coat shall be either SS-1, anionic slow setting emulsion or CSS-1, cationic slow setting emulsion. During the remainder of the year, the asphaltic material shall be either RC-250 or RC-2, rapid curing cutback asphalt.
50. The Contractor shall carry out his operations in strict accordance with all applicable Occupational Safety and Health Administration (OSHA) standards. Special attention is

drawn to those safety requirements involving work on all elevated platforms and entry into a confined space. It shall be the Contractor's responsibility to familiarize himself with OSHA standards and regulations pertaining to all aspects of the work. All work shall be done in accordance with OSHA, Safety and Health Regulations of the United States Government for Construction, State of Texas laws and regulations, Galveston County regulations and City ordinances. Contractor shall provide documentation that confirm there is personnel onsite with knowledge of safety steps that need to be taken for entering a confined space. No work in a confined space shall be allowed until the Contractor has proven competency for this type of work and measures have been taken to provide full safety for workers. The City of League City requires that any person that enters a confined space be certified for confined space entry.

51. The Contractor shall replace or repair pavement, sidewalks, driveways, culverts, inlets, curbs, gutters, shrubbery, trees, fences, sod and other like obstructions removed or disturbed to a condition equivalent to or better than existing condition. In the event sod is removed or disturbed it will be replaced to a healthy green condition, regardless of the condition of the existing sod.
52. The Contractor will have his representative available on the project site 24 hours/day during the duration of any wastewater diversion pumping. No separate payment shall be made for diversion pumping efforts and the cost expended must be included in the unit price for related items. The Contractor is responsible for maintaining additional standby pumps in the event of failure of any pumps.
53. Contractor shall be aware that groundwater is present in the construction sites. Seepage into excavation may occur. This seepage should be collected in sumps and pumped out (sumping). This type of de-watering is considered incidental to the cost of the improvement.
 - A. If seepage cannot be handled by sumping, then mechanical dewatering techniques such as well pointing shall be used.
 - B. Piezometers - Since ground water conditions can change depending on current conditions, the Contractor shall install piezometers at areas where dewatering is considered and groundwater level and seepage conditions should be checked prior to construction. The Contractor shall utilize the services of a geotechnical engineering firm to install the piezometers and report on the groundwater conditions. The installation of piezometers in advance of the excavation can give the Contractor advance notice for the need to well point and will therefore aid the Contractor in his scheduling efforts. If it is determined that well pointing is required, then the cost of the piezometer will be incidental to the well pointing.
54. Soils stratigraphy and groundwater conditions encountered during excavations may vary from those observed in the geotechnical investigation report provided in this specification. The Contractor should collect additional subsurface information as he deems necessary to determine the conditions of the site. If conditions significantly differ from those presented in the geotechnical report attached to these specifications, the Contractor shall notify the Owner and Professional immediately.

55. The Contractor shall monitor all excavations and retaining structures on a continuous basis by experienced personnel who can make evaluations as to the appropriateness of the retention system used.
56. The Contractor shall comply with Texas Worker's Compensation Commission Rule 28 TAC§110.110 relating to Reporting Requirements for Building or Construction Projects for Governmental Entities.
57. Dewatering - Contractor shall maintain dewatering after any in-trench cement stabilized sand bedding and backfill has been installed so that a good set on the cement has been obtained. Do not remove well points immediately after placement of cement stabilized sand. The dewatering shall remain a minimum of 48 hours after placement of the cement stabilized sand bedding and/or backfill. The Contractor shall obtain site representative concurrence prior to the removal of dewatering.
58. Trench Safety - Contractor shall be aware that conditions may exist whereby solid sheeting and shoring may be more appropriate than trench boxes.

The Contractor shall provide an excavation safety system as approved by OSHA 29 CFR Part 1926 (latest revision) indicating the use of sheeting, shoring, bracing, under pinning, etc., to be utilized where conditions warrant such system. This system shall be provided in addition to other excavation systems the Contractor selects as per section 01526 "Trench Safety System".

59. Permanent timber trench safety is intended to be used when wet sand is encountered and is not able to be controlled by standard trench safety. This Bid Item (when provided) is not intended to be used as standard trench safety. In locations of wet sand trench conditions where permanent timber trench safety is used, and a separate bid item is provided, it will be paid for in lieu of standard trench safety and not in addition to. Permanent timber trench safety used at other locations will be paid for as standard trench safety.
60. All claims for extension of time shall be made in writing to the Owner no more than ten days after the occurrence of the delay or after the cause of the delay has become apparent; otherwise they shall be considered waived. In the case of the continuing cause of delay, only one claim is necessary. Any request for an extension of time shall be accompanied by a revised construction schedule which, if approved by the Owner, shall become the Contractor's construction schedule.

When the Contract is on a calendar day basis, no extension of time shall be allowed for adverse weather conditions reasonably anticipatable from historical weather data, and such weather conditions shall not be deemed a casualty beyond the Contractor's control. The Contractor may be granted an extension of time because of unusual inclement weather which is beyond the normal weather recorded. Listed as follows are the mean number of days in which there occurred 0.10 inch or more of precipitation for Galveston County:

City of League City
Emergency Repair of Storm Sewer Outfall Project

January	10	February	8	March	8	April	6
May	6	June	7	July	9	August	9
September	9	October	7	November	8	December	10

Rain days per month in amounts exceeding the number of days shown above may be credited as a “Rain Day” if a claim is made in accordance with the Contract Documents. A “Rain Day” is any day in which a rain event occurs at the site and is sufficient to prevent the Contractor from performing work critical to maintaining the project schedule.

61. Dust Control - The Contractor shall take necessary measures to control dust on the site and minimize blowing dust. The Contractor shall water the site as necessary and when requested by the Owner to control blowing dust. The site shall be watered to the Owner’s satisfaction.
62. Traffic Officer Required. Unless otherwise specified, off-duty uniformed police officer shall be used for the regulation of traffic at the following locations:
- A. Where multi-lane vehicular traffic must be diverted into single-lane vehicular traffic.
 - B. Where vehicular traffic must change lanes abruptly.
 - C. Where construction equipment either enters or crosses vehicular traffic lanes and walks.
 - D. Where construction equipment may intermittently encroach on vehicular traffic lanes and unprotected walks and cross-walks.
 - E. Where construction activities might affect public safety and convenience.
 - F. Where traffic regulation is needed due to rerouting of vehicular traffic around the work site.
 - G. The use of flagmen is for the purpose of assisting in the regulation of traffic flow and movement, and does not in any way relieve the Contractor of full responsibility for taking such other steps and provide such other flaggers or personnel as the Contractor may deem necessary to protect the work and the public, and does not in any way relieve the Contractor of his responsibility for any damage for which he would otherwise be liable.
 - H. Flaggers shall be used and maintained, at such points, for such periods of time, as may be required to provide for the public safety and convenience of travel. Flaggers, and their use, shall conform to Item 7, Article 7.7 of the TxDOT Standard Specifications.
 - I. No separate payment will be made for uniformed traffic officers and/or flaggers. Such services as outlined in this item are incidental to the cost of the project.
63. Certified flagmen may be used on the project. However, there may be conditions that would warrant uniformed officers for traffic control. The Contractor is responsible for identifying such conditions and situations, and must utilize uniformed officers. The Contractor is responsible for maintaining safe traffic control at the job site at all times. The Contractor

must utilize uniformed officers for traffic control, in TxDOT right of way, school vicinity, major thoroughfares and other areas designated by the City at no additional cost to the project. Uniformed peace officers shall be off-duty League City police officers as a first priority, and then other Galveston County peace officers as a second option. In the event League City policemen or Galveston County peace officers are available, the Contractor shall provide documentation and justification for the use of other peace officers. The City reserves the right to request the Contractor to utilize uniformed officers at any location throughout the project.

A certified flagman must be formally trained in traffic control procedures. Certified flagmen must wear bright-colored vest and be equipped with appropriate flagging and communication devices while on the work site. They must also have in their possession while on duty a proof of training identification issued by a certified institute.

64. The Contractor shall provide a minimum of 72 hours notice in writing to the Owner and the Engineer and the project's on-site representative of any testing. The Contractor shall document the test results and provide a copy to the Owner and the Engineer. All testing procedures shall conform to the specifications and standards of the Owner. The Contractor shall keep in daily contact with the on-site representative through completion of the project and shall have a superintendent on the job site who can communicate in English with the on-site representative at all times.
65. The Contractor is responsible for locating the existing water lines, including valves prior to construction. The Contractor shall provide a minimum of one week's notice in writing to the City for assistance in operating the valves in the system. The Contractor shall be aware there are water lines with no existing valves present for isolating the line. The Contractor is responsible for making the tie-ins (wet connections) under pressure in those areas. The Contractor shall be paid at the bid unit price for wet connection. No additional payment shall be made performing such work under unfavorable conditions or increased level of effort resulting from such conditions.
66. The locations of the proposed fire hydrants shown on plans are approximate. The Contractor shall field verify the locations with the Owner's representative and the Engineer/Professional prior to installation. In the event the Contractor fails to obtain concurrence with the Owner's representative or the Engineer regarding the locations, the Contractor shall relocate the said fire hydrants to the locations determined by the Owner at no cost to the project.
67. The Contractor shall remove and replace fence sections as necessary to accomplish the construction at no additional cost to the Project. In the event of damage to fences or other improvements, structures, plants, landscaping, etc. due to Contractor's performance of work, the Contractor will replace them with equal or better product, to Owner's satisfaction, all at no additional cost to the Project.
68. The Contractor shall be aware that the work may be performed in areas that are in close proximity to structures (power poles, buildings, pipelines, and other structures). The Contractor shall take all precautions necessary to protect such structures from damage and

insure safety to his personnel during construction. Any damages resulting from the Contractor's operations to such structures shall be repaired at no additional cost to the project.

In the event the Contractor determines that some structures conflict with the proposed improvements, the Contractor shall provide a written notice to the City documenting the location of such structure. The City will coordinate with the pertinent Owner and try to expedite the relocation efforts. However, the City does not guarantee the time of relocation efforts.

69. The Contractor is responsible for addressing all complaints from citizens and commercial property owners caused due to the performance of his work. The Contractor shall take appropriate measures to address all complaints from the citizen and commercial property owner's to their satisfaction in a timely manner. The Contractor shall submit to the Engineer/Professional a letter from the citizen or commercial property owner acknowledging the complaints have been addressed and any repair work necessary work has been completed by the Contractor.
70. The Contractor shall have a supervisor present on the site at all times when on-site activities relating to the Work are occurring, except for periods of absence approved by the Engineer/Professional or the Owner when: (i) the supervisor's absence from the site is caused by compelling or emergency circumstances, and (ii) the Contractor makes suitable provisions for substitute supervision. The Contractor shall notify the Owner and the Engineer/Professional as soon as the need for an absence is known. Approvals of absences will not be unreasonably withheld.
- If the Engineer/Professional and the Owner jointly notify the Contractor that the current supervisor should be replaced for good cause, the Contractor will replace the supervisor as soon as practicable, and in any event within ten days (or such other time period as may be approved by the Engineer/Professional and Owner). For this purpose, "good cause" means: (i) the supervisor is not causing the Work to be performed in accordance with the Contract Documents, (ii) the supervisor is not communicating effectively with the Owner, the Engineer/Professional or other persons affected by the Work, or (iii) the supervisor is failing to prevent (or remedy) needless dislocation, damage or inconvenience related to the work.
71. The Contractor is made aware that the bid quantities shown in the bid proposal are approximate and may change. No additional payment shall be made for increase and/or decrease in bid quantities. The City reserves the right to make adjustments (tie-in at different locations or extend utility line limits) in the field. Payment for performing the work shall be made at the established bid unit price in the contract.
72. As part of the Contract Closeout, prior to release of the contract retainage, the Contractor shall provide the following:

- A. Agreement of Final Payment and CONTRACTOR'S Sworn Release
- B. Subcontractor/ Materialman's Full and Final Release and Waiver of Claims and Liens

- C. Consent of Surety to Final Payment- Either AIA Document G707, or Surety Standard Form
 - D. One Year Maintenance Bond
 - E. Record Drawings
73. Negotiation or changes to unit prices due to material/labor price increases will not be allowed for duration of this project. The bid unit prices of the successful bidder for the project shall govern regardless of the magnitude of price decrease or increase in material costs during the project duration.
74. The Contractor is made aware that trucks carrying all excavated materials/spoils shall utilize a designated route approved by the City. Such routes will be provided by the City at the pre-construction conference.
75. Bidder shall have full responsibility for interpretation of the soils bore log information and use of the information for his bidding and construction purposes. Bidder may perform soils investigation as they deem appropriate. In the event the Bidder desires to perform his own geotechnical investigation along the project areas, he must notify the City and obtain approval prior to proceeding with such investigations. The bidder is also responsible for contacting One Call prior to commencing any work. Any damages to the City or private utilities is the Bidders responsibility.

END OF SECTION